

RELIABILITY & SECURITY

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What Makes a Good Internal Compliance Program

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Internal Compliance Program

To have an effective compliance program

- Exercise due diligence to prevent and detect violations
- Promote an organizational commitment to compliance

[FERC Penalty Guidelines \(PL10-4-000\)](#)

An effective program

- Provides structure, accountability, consistency
- Reduces risk

Program Components

Policies and Procedures

An effective program “utilizes policies and procedures to give both content and effect to ethical norms and to mitigate risks identified by the company as part of its risk assessment process.”

[DOJ Evaluation of Corporate Compliance Programs](#)

Program Components

Policies and
Procedures

Governance

“Even a well-designed compliance program may be unsuccessful in practice if implementation is lax, under-resourced, or otherwise ineffective.”

“Effective implementation ... requires those charged with a compliance program’s day-to-day oversight to act with adequate authority and stature.”

Program Components

Policies and
Procedures

Governance

Incident Response

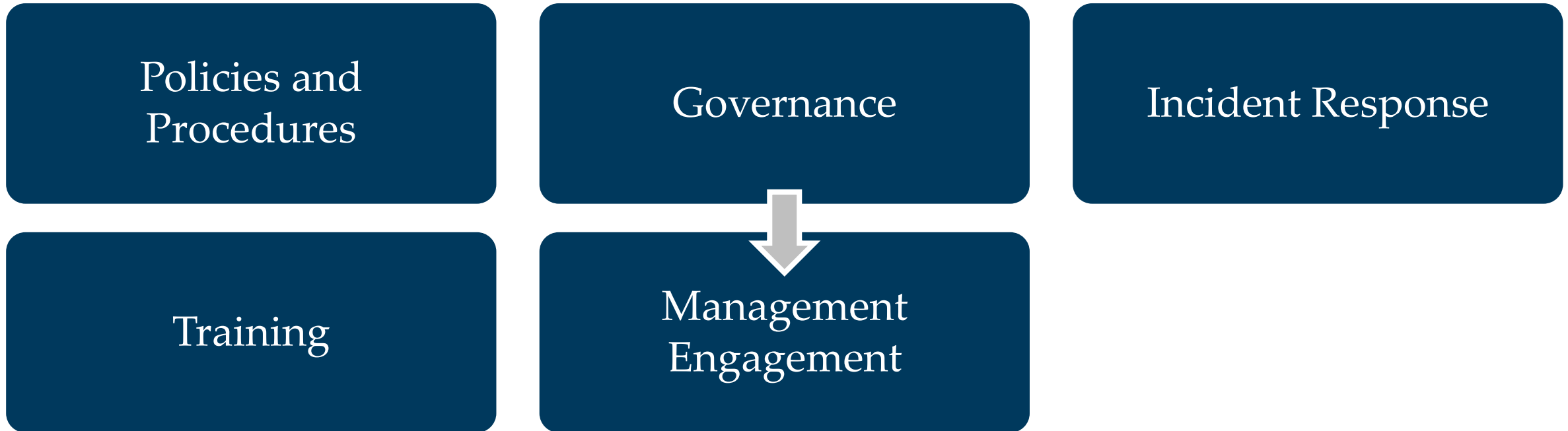
An effective program has “a well-functioning and appropriately funded mechanism for the timely and thorough investigations of any allegations or suspicions of misconduct by the company, its employees, or agents.”

Program Components



An effective program uses *“appropriately tailored training and communications ... to ensure that policies and procedures have been integrated into the organization.”*

Program Components



An effective program “requires a high-level commitment by company leadership to implement a culture of compliance from the middle and the top.”

Program Components



“One hallmark of an effective compliance program is its capacity to improve and evolve ... over time to address existing and changing compliance risks.”

Program Components

Policies and
Procedures

Governance

Incident Response

Training

Management
Engagement

Continuous
Improvement

Culture and Commitment

Demonstrating Your Program

Self-Reports/Self-Logs

- Discovery and detective controls
- Facts and circumstances, extent of condition
- Root and contributing causes
- Risk and impact

Mitigation

- Remediation and corrective controls
- Preventive controls

[Self-Report and Mitigation Checklist](#)



Demonstrating Your Program

Audits and Spot-checks

- Processes and procedures
- Internal controls
- Documentation
- Lines of responsibility
- Communication and training
- Recommendations and Areas of Concern

Demonstrating Your Program

- Outreach
- Program and controls testing
- Event analysis
- Misoperations
- Transmission and generation outages
- Modeling data validation
- And more

Resources

- [FERC Policy Statement on Enforcement](#)
(PL-06-1-000) October 20, 2005
- “13 questions”

Docket No. PL06-1-000

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- Was the wrongdoing related to actions by senior management, the result of pressure placed on employees by senior management to achieve specific results, or done with the knowledge and acquiescence of senior management? Did management engage in a cover-up?
- How did the wrongdoing come to light? Did senior management resist or ignore efforts to inquire into actions or otherwise impede an inquiry into the violation?
- What effect would potential penalties have on the financial viability of the company that committed the wrongdoing?

Credit for Internal Compliance, Self-Reporting, and Cooperation

21. The second point to be taken into account as required by section 316A of the FPA and new section 22 of the NGA is what efforts the company made to remedy the violation in a timely manner. This aspect of company reaction to wrongdoing involves what consideration will be given for steps taken by entities to prevent, monitor, and immediately stop misconduct, to report violations to the Commission, and to cooperate with the Commission's enforcement actions.

1. Internal compliance

22. Internal compliance is an important proactive tool. We encourage companies engaged in jurisdictional activities to take steps to create a strong atmosphere of compliance in their organizations. To this end, the following are factors that will be taken into account in determining credit given for a company's commitment to compliance:

- Does the company have an established, formal program for internal compliance? Is it well documented and widely disseminated within the company? Is the program supervised by an officer or other high-ranking official? Does the compliance official report to or have independent access to the chief executive officer and/or the board of directors? Is the program operated and managed so as to be independent? Are there sufficient resources dedicated to the compliance program?
- Is compliance fully supported by senior management? For example, is senior management actively involved in compliance efforts and do company policies regarding compensation, promotion, and disciplinary action take into account the relevant employees' compliance with Commission regulations and the reporting of any violations?

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did modify the compliance program? relevant employees? Is the training understanding of relevant rules and

re an ongoing process for auditing

ongdoing? Did it take disciplinary ns? When misconduct occurs, is it a different nature? Does the company re effective internal controls and duct?

what credit, if any, can be given for considering enforcement action and es, compliance plans, and the like but er, at a minimum a company ofits resulting from the wrongdoing.

Companies are in the best position and regulations, both inadvertent and hen a company self-reports violations parties. The following are re for self-reporting violations to the lations so reported:

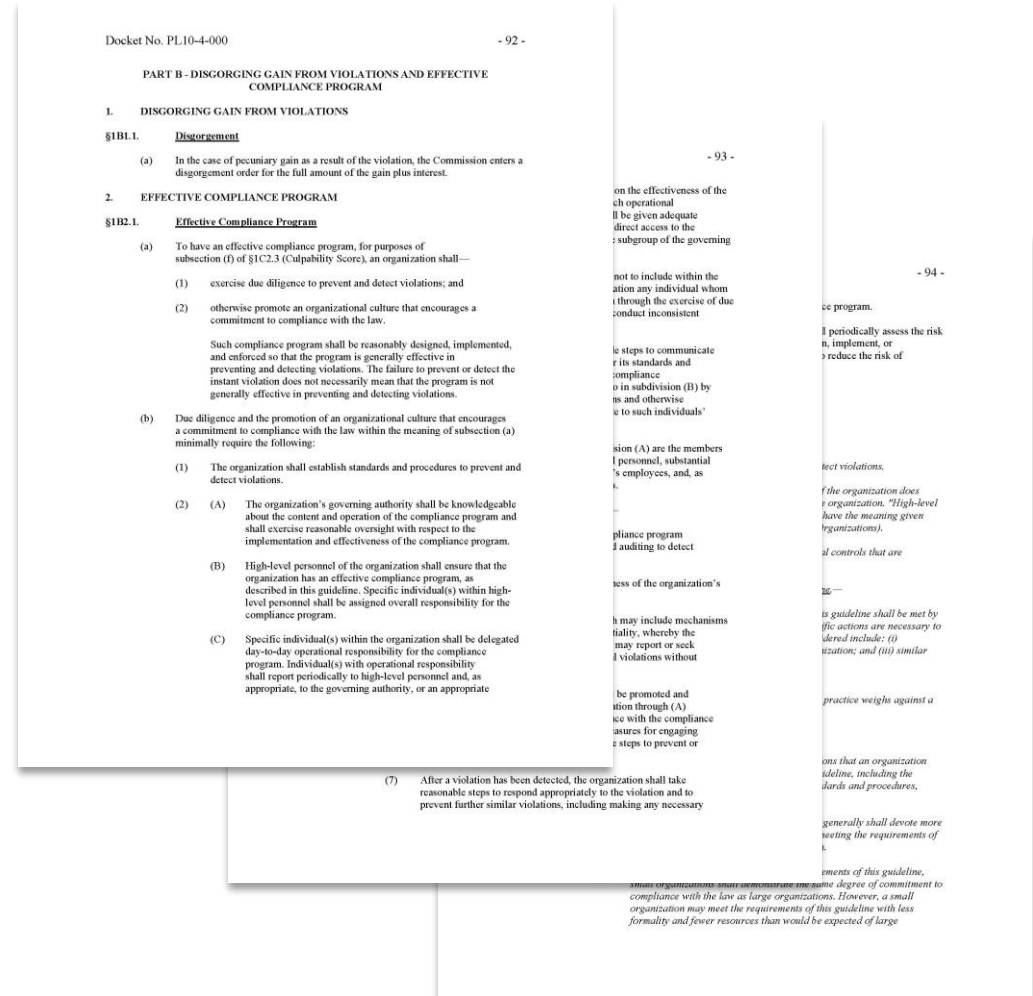
st? Was it through a self-evaluation, n? Did the company act immediately

mpty? Did senior management i to provide information to identify

- Did the company take immediate steps to stop the misconduct? Did it implement or create an adequate response to the misconduct?
- Did the company arrange for individuals with full knowledge of the matter to meet with Commission enforcement staff?

Resources

- [FERC Revised Policy Statement on Penalty Guidelines \(PL10-4-000\) September 17, 2010](#)
- “7 factors”



Resources

■ DOJ Evaluation of Corporate Compliance Programs September 2024

U.S. Department of Justice
Criminal Division
Evaluation of Corporate Compliance Programs
(Updated September 2024)

Introduction

The “Principles of Federal Prosecution of Business Organizations” in the Justice Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. JM 9-28.300. These factors include “the adequacy and effectiveness of the corporation’s compliance program at the time of the offense, as well as at the time of a charging decision” and the corporation’s remedial efforts “to implement an adequate and effective corporate compliance program or to improve an existing one.” JM 9-28.300 (citing JM 9-28.800 and JM 9-28.1000). Additionally, the United States Sentencing Guidelines advise that consideration be given to whether the corporation had in place at the time of the misconduct an effective compliance program for purposes of calculating the appropriate organizational criminal fine. *See* U.S.S.G. §§ 8B2.1, 8C2.5(f), and 8C2.8(11). Moreover, Criminal Division policies on monitor selection instruct prosecutors to consider, at the time of the resolution, whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal controls systems and whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future to determine whether a monitor is appropriate.

This document is meant to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation’s compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution (*e.g.*, monitoring or reporting obligations).

Because a corporate compliance program must be evaluated in the specific context of a criminal investigation, the Criminal Division does not use any rigid formula to assess the effectiveness of corporate compliance programs. We recognize that each company’s risk profile and solutions to reduce its risks warrant particularized evaluation. Accordingly, we make a reasonable, individualized determination in each case that considers various factors including, but not limited to, the company’s size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company’s operations, that might impact its compliance program. There are, however, common questions that we may ask in the course of making an individualized determination. As the Justice Manual notes, there are three “fundamental questions” a prosecutor should ask:

1. Is the corporation’s compliance program well designed?
2. Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?

Internal Compliance Program Attributes

Governance

- Document compliance governance structure
- Document all compliance matters and follow reporting channels
- Integrate compliance and risk management
- Ensure adequate resources, knowledge, and skills
- Demonstrate culture of compliance
- Ensure sufficient and effective management oversight

Policies & Procedures

- Implement code of conduct
- Design comprehensive policies and procedures
- Reinforce with operational internal controls
- Update as needed and communicate changes
- Make documentation accessible and measure awareness
- Monitor vendor adherence to policies and procedures
- Activities completed more often than required is positive
- Completion of regular internal audits

Training

- Implement communication plan and risk-based training for—
 - Policies and procedures
 - Lessons learned
 - Misconduct
- Include all relevant personnel (employees, contractors, vendors)
- Measure training effectiveness and impact
- Compliance roles and responsibilities are established and documented
- Review and update as needed
- Multiple personnel responsible for tasks to ensure backups/business continuity
- Continuous NERC and CIP/O&P training

Investigations

- Implement reporting program/hotline
- Investigate all reports
- Track and analyze outcomes
- Implement lessons learned

Incentives

- Promote compliance through incentives
- Define consistent disciplinary measures
- Build incentives and consequences into vendor contracts

Continuous Improvement

- Test, assess, and monitor compliance processes and performance
- Audit and test compliance controls
- Develop metrics and share results with stakeholders
- Monitor for new standard versions and integrate them
- Participate in collaboration forums and groups
- Review and update policies, processes, and procedures on a regular basis for accuracy and efficacy
- Monitor new Standards/Requirements

Potential Noncompliance

- Investigate both noncompliance and near misses
- Perform root cause analysis and develop mitigation
- Perform risk assessment, including potential harm, mitigation factors, and interim risk
- Design, implement, and track corrective action plans
- Analyze root cause trends and integrate lessons learned
- Layer preventive controls and detective controls

