



FRAUD DETERRENCE: Keeping Regulators on Your Side

Federal Incentive

Sound governance and internal controls will not only facilitate opportunities for growth and cost-savings, but also reduce federal penalties where criminal activity is found.

According to the United States Sentencing Commission sentencing guidelines, two factors mitigate the punishment culpable organizations may receive. One such factor is the existence of an effective compliance and ethics program. Demonstration of this program can reduce fine ranges by up to 95% if "an organization can demonstrate that it had put in place an effective compliance and ethics program and that a criminal violation represented an aberration within an otherwise law-abiding community".

Effective compliance and ethics standards, updated in 2004, are in line with features of Sarbanes Oxley and the Senate Finance Committee proposed reforms for tax-exempt organizations. These features include:

- > Standards and procedures to prevent and detect criminal conduct
- > Responsibility at all levels and adequate resources, and authority for the program
- > Personnel screening related to program goals
- > Training at all levels
- > Auditing, monitoring, and evaluating program effectiveness
- > Non-retaliatory internal reporting systems

Organizations, like individuals, can be found guilty of criminal conduct. Organizations cannot be imprisoned, however, they can be fined, sentenced to probation, ordered to make restitution, compelled to issue public notices of conviction, and subjected to applicable forfeiture statutes. The U.S. sentencing guidelines apply to all organizations whether public or private. They were designed for two key purposes: ensuring "just punishment" and promoting "deterrence." Under these purposes, punishment should correspond to the degree of blameworthiness of the offender and incentives are offered to all organizations to proactively detect and prevent criminal conduct within their ranks.

Leniency

For example, on October 13, 2004, Royal Ahold settled multiple SEC charges without admitting or denying the various allegations in the SEC complaint. This type of settlement arrangement often includes large monetary penalties. However, the SEC noted that it "...did not seek a penalty from Ahold, among other reasons, because of the company's extensive cooperation with the Commission's investigation." The SEC statement then continued to list examples of this cooperation that included robust accounting and internal control assessments and increased disclosures on related matters.

The most common crimes organizations are sentenced for (in order of decreasing frequency) are fraud, environmental pollution, money laundering, antitrust, and food and drug violations.