



Evaluation of Corporate Compliance Programs Guidance Document - June 2020 Update Key Themes and Changes

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Purpose of DOJ Criminal Division's Evaluation of Corporate Compliance Programs Guidance Document

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., monitorship or reporting obligations).

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Evolution of DOJ Criminal Division's Evaluation of Corporate Compliance Programs Guidance Document

- **February 2017**
- **April 2019 Update**
- **June 2020 Update**

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ECCP June 2020 Update: Key Overall Themes

- Ensuring compliance program is sufficiently supported
- Increased focus on company's specific risk profile
- Additional questions relating to tracking and testing of the compliance program's effectiveness
- Increased focus on how a company's program has evolved/improved, including based on lessons learned

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ECCP June 2020 Update: Key Specific Changes

- **DOJ Considers Many Factors in Evaluating a Company's Risk Profile**
 - “the company's size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external, that might impact its compliance program.”
- **Enhances language to the 3 “Framework” Questions:**
 - “Is the corporation's compliance program well-designed?”
 - “Is the program being applied earnestly and in good faith? In other words, is the program **adequately resourced and empowered** to function effectively?”
 - “Does the corporation's compliance program work” in practice?”

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ECCP June 2020 Update: Key Specific Changes

- **Additional Focus on Incorporating Lessons Learned into Risk Assessments**
 - “Does the company have a process for tracking and incorporating into its periodic risk assessment lessons learned from either the company's own issues or from those of other companies operating in the same industry and/or geographical region”?
- **Accessibility and Tracking of Policies and Procedures**
 - “Have the policies and procedures been published in a searchable format for easy reference?”
 - “Does the company track access to various policies and procedures to understand what policies are attracting more attention from relevant employees?”
- **Testing the Impact of Training**
 - “Has the company evaluated the extent to which the training has an impact on employee behavior of operations?”

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ECCP June 2020 Update: Key Specific Changes

- **Testing the Effectiveness of the Hotline**
 - “Does the company periodically test the hotline, for example by tracking a report from start to finish?”
- **Continuous Due Diligence of Third Parties**
 - “Does the company engage in risk management of third parties throughout the lifespan of the relationship, or primarily during the onboarding process?”
- **M&A Integration of Acquired Entity**
 - “Timely and orderly integration of the acquired entity into existing compliance program structures and internal controls”
- **Additional Emphasis on Compliance Commitment of Middle Management**

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ECCP June 2020 Update: Key Specific Changes

- **Additional Emphasis on Data Resources and Access**
 - “Do compliance and control personnel have sufficient direct or indirect access to relevant sources of data to allow for timely and effective monitoring and/or testing of policies, controls or transactions?”
 - “Do any impediments exist that limit access to relevant sources of data and, if so, what is the company doing to address the impediments?”
- **Additional Monitoring of Investigations/Discipline**
 - “Does the compliance function monitor its investigations and resulting discipline to ensure consistency?”
- **Importance of Adaptation Based on Lessons Learned**
 - “Does the company review and adapt its compliance program based on lessons learned from its own misconduct and/or that of other companies facing similar risks?”

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