



(Increasing) Expectations of
the US Department of Justice
towards Corporate Compliance

Highlights of update | September 2024

Relevance of US Department of Justice Guidance for Corporate Compliance

The US Department of Justice (DOJ) 'Evaluation of Corporate Compliance Programs' serves as a cornerstone document for organizations aiming to establish, maintain, and enhance their corporate compliance programs. By adhering to these principles, organizations can build robust compliance programs that not only meet regulatory expectations but also foster a culture of integrity and accountability. The guidance is pivotal for several reasons:

1. Benchmark for Best Practices | The DOJ guidelines provide a benchmark for best practices in compliance and ethics management. By aligning with these guidelines, organizations can demonstrate their commitment to ethical conduct and lawful operations, which can be particularly beneficial during regulatory reviews and in mitigating penalties during legal proceedings.

2. Framework for Program Assessment | The Evaluation outlines a comprehensive framework for assessing the design, implementation, and effectiveness of corporate compliance programs. It encourages organizations to evaluate their own compliance efforts through the lens of the DOJ's three fundamental questions:

- Is the compliance program well designed?
- Is the program being applied earnestly and in good faith?
- Does the program work in practice?

3. Risk Management | A critical aspect of the DOJ guidance is its emphasis on risk-based compliance. Organizations are urged to identify and prioritize risks specific to their industry, operational footprint, and regulatory environment. This risk-based approach ensures that compliance resources are allocated efficiently and effectively, focusing on high-risk areas that could lead to significant legal and reputational damage.

4. Continuous Improvement and Adaptability | The DOJ underscores the importance of continuous improvement, periodic testing, and review of compliance programs. Companies are encouraged to adapt their compliance strategies based on lessons learned from past incidents, both within their own operations and from industry peers. This dynamic approach helps organizations stay ahead of emerging risks, including those associated with new technologies such as artificial intelligence (AI).

5. Leadership Commitment | The role of senior and middle management in fostering a culture of compliance cannot be overstated. The DOJ guidance highlights the need for visible and active commitment from leadership to instill ethical values throughout the organization. This involves not only setting the tone at the top but also ensuring that compliance officers have the necessary authority, resources, and independence to enforce compliance policies effectively.

6. Incentives and Accountability | Effective compliance programs incorporate incentives for ethical behavior and clear consequences for non-compliance. The DOJ encourages organizations to establish transparent and consistent disciplinary mechanisms, and to reward employees who contribute to the integrity and effectiveness of the compliance program.

7. Third-Party Management | Given the complexities of modern supply chains and business partnerships, managing third-party risk is a significant component of the DOJ's evaluation criteria. Organizations are expected to perform thorough due diligence and continuous monitoring of third-party relationships to prevent misconduct such as bribery and corruption.

8. Integration with Business Strategy | The DOJ guidance suggests that compliance programs should not operate in isolation but be integrated into the overall business strategy and operations of the organization. This holistic approach ensures that compliance considerations are embedded in decision-making processes at all levels, from strategic planning to daily operational activities.

Conclusion | The DOJ's 'Evaluation of Corporate Compliance Programs' is more than just a regulatory checklist; it is a strategic tool that can help organizations navigate the complexities of compliance in today's dynamic business environment, and can enhance business reputation, investor confidence, and long-term sustainability. For corporate management and ethics and compliance leads, understanding and implementing the DOJ's guidelines is essential for maintaining corporate integrity and mitigating risks.

Comparison of US DOJ 'Evaluation of Corporate Compliance Programs' version of March 2023 versus September 2024

Section	March 2023 version	Highlights of changes and additions in the September 2024 version
Introduction	Describes factors prosecutors should consider in evaluating compliance programs.	No change or addition to be highlighted.
I. Is the Corporation's Compliance Program Well Designed?	Evaluates design and effectiveness, including policies, procedures, and training.	No change or addition to be highlighted.
A. Risk Assessment	Evaluates how the company identifies and addresses risks, including periodic updates and lessons learned.	Includes evaluation of the company's use of new technologies, including AI. Addition of considerations for emerging risks and new technologies.
B. Policies and Procedures	Assesses the design, comprehensiveness, accessibility, and integration of policies and procedures.	Includes procedures for updating policies regarding lessons learned and emerging risks. Addition of procedures to address emerging risks and lessons learned.
C. Training and Communications	Evaluates the integration, effectiveness, and relevance of training and communications.	Adds evaluation of engagement and learning from training sessions, and lessons learned from other companies. Addition of evaluation metrics for training effectiveness and inclusion of lessons from other companies.
D. Confidential Reporting Structure and Investigation Process	Assesses the existence, effectiveness, and anti-retaliation measures of reporting mechanisms.	Incorporates anti-retaliation policies and incentivizing reporting. Addition of anti-retaliation training and incentivization of reporting.
E. Third Party Management	Assesses risk-based due diligence and ongoing monitoring of third parties.	Emphasizes timely review of vendors and use of data analytics for ongoing monitoring. Addition of vendor risk evaluation through data analytics.
F. Mergers and Acquisitions (M&A)	Evaluates due diligence and integration of compliance programs post-acquisition.	Adds considerations for integrating critical enterprise systems post-acquisition. Addition of ERP systems integration during M&A.
II. Is the Corporation's Compliance Program Adequately Resourced and Empowered to Function Effectively?	Evaluates resources, authority, and autonomy of the compliance function.	Emphasizes comparison of resources and technology between compliance and other functions. Addition of comparison of resource allocation across company functions.
A. Commitment by Senior and Middle Management	Assesses leadership's commitment to and reinforcement of compliance.	No change or addition to be highlighted.
B. Autonomy and Resources	Evaluates structure, qualifications, resources, and independence of compliance personnel.	Adds measures for evaluating data resources and analytics tools. Addition of measures for data resource evaluation and analytics.
C. Compensation Structures and Consequence Management	Assesses incentives for compliance and application of disciplinary measures.	Adds more detailed metrics for evaluating the consistency and effectiveness of disciplinary measures. Addition of detailed metrics for evaluating consequence management.
III. Does the Corporation's Compliance Program Work in Practice?	Evaluates the effectiveness of compliance programs at the time of misconduct and charging.	Adds continuous measurement of compliance effectiveness and adjustment to new technologies. Addition of continuous improvement metrics and new technology adjustments.
A. Continuous Improvement, Periodic Testing, and Review	Emphasizes periodic review, audits, and lessons learned.	Emphasizes monitoring and testing of new technologies, including AI. Addition of monitoring and testing AI and other new technologies.
B. Investigation of Misconduct	Evaluates the structure and funding of investigation mechanisms.	Details about policies for personal devices, communication platforms, and messaging applications. Addition of considerations for personal devices and communication policies.
C. Analysis and Remediation of Any Underlying Misconduct	Evaluates root cause analysis and remediation efforts.	No change or addition to be highlighted.

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