

Insights

Department of Justice Publishes New Guidance for Evaluating Corporate Compliance Programs

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On April 30, 2019, the United States Department of Justice ("DOJ") published new recent guidance for corporate compliance programs, entitled "Evaluation of Corporate Compliance Programs." Such publications are particularly helpful as they provide guidance for white-collar prosecutors on the evaluation of corporate compliance programs, and in turn, may assist an organization in taking steps to avoid potential corporate criminal liability.

The document is organized around the following three questions that prosecutors typically ask in evaluating corporate compliance programs as part of their investigation:

- Is the program well designed?
- Is the program effectively implemented?
- Does the Program actually work in practice?

Using this framework, the new DOJ guidance is divided into three parts.

Part I discusses the key components of a well-designed program, specifically: conducting risk assessments, drafting effective policies and procedures, regular training and open communications, reporting and investigation of noncompliance, mergers and acquisitions and third-party management.

Part II reviews the key elements of effective program implementation, including program commitment by executives and middle managers, program autonomy and resources, and the various incentives and disciplinary measures used to promote quality care, lawful and ethical business relationships and accurate billing practices.

Part III focuses on the metrics used by prosecutors in evaluating program effectiveness and its capacity to attain continuous improvement, periodic risk assessment, investigations of actual or suspected misconduct and the steps necessary to mitigate and correct confirmed offenses.

The DOJ guidance supplements other corporate compliance guidance published by the Department of Health and Human Services' Office of Inspector General measuring the "effectiveness" of corporate compliance programs. We



strongly encourage any organization to review its current compliance program and revise it in light of such guidance as needed. We regularly advise our clients regarding the effectiveness of their corporate compliance programs.

If you have any questions or require additional information regarding these matters, please do not hesitate to contact Susan E. Ziel or Brandon W. Shirley.