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**EVALUATING YOUR COMPLIANCE PROGRAM**

This is the first of a two part series that discusses how to measure the effectiveness of your compliance program using recent guidance from the U.S. Department of Justice (DOJ) and Office of Inspector General (OIG). This guidance is important to review and understand, since a compliance program that only incorporates the seven elements of an effective compliance program without measurement or evidence of effectiveness will not be sufficient for credit with enforcement and regulatory agencies.\*

**INTRODUCTION**

In February 2017, the DOJ issued the document entitled "Evaluation of Corporate Compliance Programs," which outlines important topics and questions the DOJ frequently asks when investigating a corporate entity. Then in March 2017, the OIG released "Measuring Compliance Program Effectiveness: A Resource Guide," which outlines how components of a corporate compliance program can be benchmarked and measured.



Both clearly show that organizations without a sound compliance program have a far more challenging time scoring bonus points when faced with an investigation. Both the DOJ and the OIG have stated that, in determining whether to investigate a business, bring criminal charges, or enter into a settlement agreement, one factor they will look at is whether there is an effective pre-existing compliance program in place.

\*See e.g., OIG Special advisory bulletin entitled "Updated Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act."

## DOJ GUIDANCE

The DOJ expects compliance programs to be both strong on paper and in practice. The DOJ's guidance focuses on three areas: (1) company culture, (2) compliance structure and resources, and (3) the effectiveness of company policies and procedures. This guidance provides critical insight into the substantive compliance-focused questions that the DOJ's Fraud Section frequently considers when evaluating a compliance program. These three focus areas are broken down into the following 11 categories:

### 1. **Analysis and Remediation of Underlying Misconduct**

- This focuses on whether a root cause analysis has been conducted, whether there were prior indications the misconduct was missed, and what changes were made to reduce the risk of the same or similar issues occurring in the future.

### 2. **Role and Involvement of Senior and Middle Management**

- Seeks to determine the level of commitment at the governing body, senior management, and middle management levels to foster compliance.

### 3. **Autonomy and Resources**

- Seeks to determine if a compliance program is independent, experienced, qualified, and well-funded.

### 4. **Policies and Procedures**

- Emphasizes the importance of adopting effective compliance policies and procedures.

### 5. **Risk Assessment**

- Targets whether the organization identifies and manages compliance risk, including industry and company-specific risks.

### 6. **Training and Communication**

- Focuses on employee training programs and the effectiveness of communications related to compliance.

### 7. **Confidential Reporting and Investigation**

- Are there appropriate mechanisms available to employees to report potential misconduct, and how does the organization investigate reported issues and respond to confirmed compliance violations?





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