

Report on Supply Chain Compliance Volume 2, Number 9. May 16, 2019

New US Justice and Treasury Departments guidances underline importance of compliance programs

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The United States Departments of Justice (DOJ) and of the Treasury issued important guidance documents in the same week. The first document is the DOJ's updated "[Evaluation of Corporate Compliance Programs](#)" issued on April 30, and the second is the Treasury Department's Office of Foreign Assets Control's (OFAC) [guidance on sanctions compliance](#) released May 2.

The prior version of the "Evaluation of Corporate Compliance Programs" was released in February 2017 and provided a list of topics and sample questions that DOJ investigators would focus on in the event of an investigation. The updated version goes much deeper into the topics and questions, and also "seeks to better harmonize the guidance with other Department guidance and standards while providing additional context to the multifactor analysis of a company's compliance program."

The new guidance includes input from across the DOJ (unlike the 2017 version that was released by only the DOJ's Fraud Section) and intends "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)."

The guidance is structured around three key questions:

1. Is the program well-designed?
2. Is the program effectively implemented?
3. Does the program actually work in practice?

Each section has a detailed list of topics and suggestions. Regarding the first question, for example, the guidance discusses the basic elements of an effective compliance program, such as risk assessments, policies and procedures, training and communications, reporting and investigations, third-party management, and mergers and acquisitions. It encourages prosecutors to look at each topic and assess if the compliance program incorporates the necessary elements and to what extent.

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