

2020 DOJ Compliance Program Guidelines Focuses Attention on Compliance Investigations

By Richard Kusserow | August 20, 2020

The [2020 Department of Justice \(DOJ\) Compliance Program Guidance](#) (the Guidance) evidences an increased interest and focus on effective compliance investigations. The Guidance asks many questions on the topic of investigations, and instructs prosecutors to ask whether “the company has a well-functioning and appropriately funded mechanism for the timely and thorough investigations of any allegations or suspicions of misconduct by the company, its employees, or agents?”

Prosecutors are also instructed to ask, “[w]hat investigation resources are in place to investigate suspected misconduct?” The DOJ also considers specifically how compliance personnel are trained on investigations. In making determinations about whether a compliance program effectively investigates issues, the DOJ asks many other more detailed questions, including the following:

- How has the company ensured that investigations have been properly scoped, and were independent, objective, appropriately conducted, and properly documented?
- Are investigations conducted in a timely manner?
- Does the compliance department have full access to reporting and investigative information?
- How does the company determine which complaints or ‘red flags’ merit further investigation?
- How does the company determine who should investigate, and who makes that determination?
- Is there a process for monitoring the outcome of investigations and ensuring accountability for the response to any findings or recommendations?
- Does the company periodically analyze the reports or investigation findings for patterns of misconduct or other ‘red flags’ for compliance weaknesses?
- Does compliance monitor its investigations and resulting discipline to ensure consistency?
- Have investigations been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory managers and senior executives?
- What has been the process for responding to investigative findings?
- How high up in the company are investigations and their findings reported?
- Are investigative findings resulting in appropriate follow-up and discipline?
- Were there prior opportunities to detect the misconduct in question, such as audit reports identifying relevant control failures or allegations, complaints, or investigations?
- What is the company’s analysis of why such opportunities were missed?

In order to provide satisfactory answers for all these questions, Compliance Officers should ensure they have a training plan for those assigned to investigate. The plans should include [basic familiarization training on properly conducting a compliance investigation](#). To investigate complaints and allegations,

they need to know how to properly plan, scope, staff, gather evidence, conduct, and report results of investigations. This includes knowing how to properly conduct interviews of witnesses and subjects. It is also important to develop and implement written compliance investigation guidance in the form of [policies and procedures](#).

For more information on compliance written guidance and investigator training, contact Richard Kusserow (rkusserow@strategicm.com).