

Compliance Investigations

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The Department of Justice (DOJ) and Department of Health and Human Services Office of the Inspector General (OIG) stress the importance of conducting investigations of potential wrongdoing regardless of an organization's size.

The OIG emphasizes that Compliance Officers should independently investigate compliance violations and be unfettered by management or legal counsel. The OIG underscores this in Corporate Integrity Agreements. The 2020 DOJ ["Evaluation of Corporate Compliance Programs"](#) guidance places heavy emphasis on prosecutorial questions about compliance investigations, such as the following:

- What steps does the company take to ensure investigations are independent, objective, appropriately conducted, and properly documented?
- How has the company ensured that the investigations have been properly scoped, and were independent, objective, appropriately conducted, and properly documented?
- Does the company have 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?

Many organizations may not be able to provide optimal answers to such prosecutor questions. If that is the case, the Compliance Officer needs to rectify the deficiency. Often, the problem exists because there are relatively few matters that require investigation. Many organizations with limited capability to conduct investigations assign this function to legal counsel. However, this may not be an appropriate solution; both DOJ and OIG indicate that conducting compliance investigations, independent of legal counsel, is the responsibility of the Compliance Officer. Of course, issues that implicate laws, regulations, or potential litigation should involve legal counsel, but such cases should be exceptions to the rule.

Get Prepared

Becoming prepared for conducting internal investigations begins with developing written guidance. Organizations should maintain a variety of related policies, beginning with Duty to Report, Anonymous/Confidential Reporting, Hotline Operations, and Investigations. It is also important to distinguish the roles of the Compliance Officer and Legal Counsel; the latter should be involved in matters that implicate laws, regulations, and potential litigation.

Once written guidance and protocols have been implemented, there is the question of training those who may become involved in an investigation. Organizations should consider implementing a training program on the basics of conducting a proper interview and writing reports.

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