



On September 23, 2024, the Department of Justice (DOJ) revised its *Evaluation of Corporate Compliance Programs (ECCP)* guidance which specifies factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements.<sup>1</sup> Although the ECCP is intended for the DOJ's prosecutors, boards and senior management of financial institutions can use the ECCP to augment and reinforce the principles that are present in their primary financial regulators' rules and guidance. ECCP was first published in 2017, but as recent revisions illustrate, the DOJ is focused on understanding the design, function, and evolution of a company's compliance program.

### 5 summary insights

**Foundational questions:** The ECCP outlines three key questions prosecutors should consider when evaluating a corporate compliance program: (1) is the program well designed, (2) is the program being implemented effectively, and (3) does the program work in practice? Prosecutors may consider the comprehensiveness of the program (e.g., risk assessment, policies and procedures, training programs, reporting and investigation process); whether the program is resourced and empowered (e.g., funding, authority, and stature); and whether the compliance program was working as intended at the time of the offense (e.g., continuous improvement and investigation and remediation of misconduct).

**Data and resources:** The ECCP was updated to empower prosecutors to evaluate companies' compliance program technology and resource allocation to manage risk appropriately, particularly relative to other functions within the organization. Prosecutors will be asked to evaluate compliance programs' access to timely data, the availability of data analytics tools, and how the company measures the preciseness of its models.

**Lessons learned:** The ECCP now asks prosecutors to consider whether companies have incorporated lessons from their own prior issues as well as from other companies operating in the same industry and geographical region. The ECCP asks whether companies have incorporated lessons learned in risk assessments, policy and procedure design, training and periodic testing. Revising based on lessons learned can demonstrate risk-tailoring which prosecutors may credit when evaluating the quality and effectiveness of the compliance program.

**New and emerging technology risks:** Prosecutors will now evaluate how companies use new and emerging technology to conduct business. Companies will be evaluated on their risk assessments of that technology and steps taken to mitigate potential risks, such as whether emerging technology risk management has been integrated into the firm's broader enterprise risk management (ERM) strategies and where appropriate controls exist to monitor and provide oversight.

**Increasing sophistication:** The DOJ's revised evaluation expectations continue their trend toward driving greater program sophistication and demonstrating effectiveness. Prosecutors will consider, at the time of an investigation's resolution, whether the company has made investments in, and improvements to, its corporate compliance program and whether internal controls and remediation have been tested for effectiveness.

### 5 considerations to evaluate

- 1 Leverage ECCP with supervisory guidance:** Financial institutions across-sectors, such as banking, capital markets, investment management, and insurance may find the ECCP to be a close analogue of their financial regulators' supervisory guidance and exam manuals, which go into detail on regulatory expectation for the design and management of compliance programs. Firms can use the ECCP as a supplement to their primary regulatory guidance and regulations to conduct internal self-assessments and better understand how authorities may view the firm's compliance practices.
- 2 Invest in data capabilities:** The DOJ's concern with data availability is not new. However, the newly added focus is that companies should be using data and tools to "create efficiencies in compliance operations and measure the effectiveness of compliance program." Firms should assess the knowledge and access that compliance personnel have to relevant data, identify any obstacles that may hinder or delay data access, and explore opportunities to leverage data analytic models. Additionally, institutions should consider these data initiatives alongside an evaluation of their data governance practices.
- 3 Incorporate lessons learned into compliance programs:** Firms should provide for compliance monitoring capabilities with procedures to identify issues in a timely manner and escalate potential violations as appropriate. It is important for firms to conduct root cause analysis where program failures may have occurred and incorporate identified solutions into the program. To properly incorporate lessons learned from other firms, financial institutions should monitor and review public enforcement actions within their sector to consider further opportunities to improve their compliance program.
- 4 Build a robust governance structure:** Before deploying new technology, financial institutions should allocate resources dedicated to implementing the proper controls needed to oversee its usage in business processes. This may involve updating existing policies, such as those related to data and third parties. For technologies such as artificial intelligence (AI), institutions will need to demonstrate a strong control environment around model development and usage, including data governance, testing, and independent review and challenge.
- 5 Effectiveness is the goal:** The ECCP notes the existence of misconduct does not, by itself, mean that a compliance program did not work or was ineffective at the time of an offense. Institutions should focus on demonstrating compliance programs are fit-for-purpose given the firm's risk profile and provide for continuous improvement. For example, firms can demonstrate a strong risk management culture from the tone at the top with adequate investment of resources towards detecting and investigating potential misconduct and conducting a thorough remediation effort.

## Endnotes

<sup>1</sup> US Department of Justice (DOJ), "[Evaluation of Corporate Compliance Programs](#)," updated September 2024.

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