



DOJ Guidance Document Comparison: Evaluation of Corporate Compliance Programs

2017	2019	2020	2022 Monaco Memo
<p>Sets forth topics and sample questions relevant for evaluating a corporate compliance program around the following topics:</p> <ol style="list-style-type: none"> 1. Analysis and Remediation of Underlying Misconduct 2. Senior and Middle Management 3. Autonomy and Resources 4. Policies and Procedures 5. Risk Assessment 6. Training & Communication 7. Confidential Reporting and Investigation 8. Incentives and Disciplinary Measures 9. Continuous Improvement, Periodic Testing and Review 10. Third Party Management 11. Mergers & Acquisitions 	<p>Sets forth topics relevant for evaluating a corporate compliance program around three overarching questions:</p> <ol style="list-style-type: none"> 1. Is the program well-designed? 2. Is the program being applied earnestly and in good faith? In other words, is the program being implemented <i>effectively</i>? 3. Does the compliance program actually work in practice? <p>*Focus on whether the compliance program is EFFECTIVE at the time of the offense/at the time of a charging decision or resolution. JM 9-28.000 Principles of Federal Prosecution of Business Organizations, Justice Manual (“JM”), available at https://www.justice.gov/jm/jm-9-280000-principles-federal-prosecution-business-organizations.</p>	<p>Similar to 2019, sets forth topics relevant for evaluating a corporate compliance program around the same three overarching questions, with a clarification for the second question:</p> <ol style="list-style-type: none"> 1. Is the program well-designed? 2. Is the program being applied earnestly and in good faith? In other words, is the program <i>adequately resourced and empowered to function effectively</i>? 3. Does the compliance program actually work in practice? <p>On assessing effectiveness of programs, includes that <i>reasonable</i>, individualized determination in each case <i>considers various factors including, but not limited to company’s size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company’s operations, that might impact its compliance program.</i></p> <p>With the three main questions above, prosecutors may evaluate the company’s performance on various topics that the Criminal Division has frequently found relevant in evaluating a corporate compliance program <i>both at the time of the offense and at the time of the charging decision and resolution.</i></p> <p>Similar to 2019 in acknowledging that the sample topics and questions set forth in this document may not all be relevant, and others may be more salient given the</p>	<p>Provides interpretation of prior corporate compliance guidance, does not replace prior guidance addressing corporate compliance and other related areas such as corporate charging, self-disclosure, foreign prosecutions, evaluating cooperation, and the use and selection of monitors.</p>



2017	2019	2020	2022 Monaco Memo
		particular facts at issue and the circumstances of the company.	
<p>Risk Assessment-</p> <p>Risk Management Process – What methodology does company use to identify, analyze, address risks?</p> <p>Information Gathering/Analysis – What metrics has company collected to help detect misconduct?</p> <p>Manifested Risks – How has risk assessment accounted for manifested risks?</p>	<p>I. Is the Corporation’s Compliance Program Well-Designed?</p> <p>Risk Assessment-</p> <ul style="list-style-type: none"> • Similar to 2017 but includes examples. • For example, prosecutors should consider whether the company has analyzed and addressed the varying risks presented by the location of its operations, industry sector, competitiveness of the market, regulatory landscape, potential clients/business partners, transactions with foreign governments, payments to foreign officials, use of third parties, gifts, travel, and entertainment expenses, and charitable and political donations. • Prosecutors should also consider: the <i>effectiveness</i> of the company’s risk assessment and how they have tailored the compliance program based on the risk assessment and whether criteria is <i>periodically updated</i>. JM 9-47-120 FCPA Corporate Enforcement Policy; Chapter 8 – Sentencing of Organizations – United States Sentencing Guidelines (“U.S.S.G.”) • Similar to 2017, addresses risk management and information gathering/analysis. • Adds a section on risk-tailored resource allocation that addresses 	<p>I. Is the Corporation’s Compliance Program Well-Designed?</p> <p>Risk Assessment-</p> <ul style="list-style-type: none"> • Similar to 2019 and emphasizes that prosecutors should endeavor to understand why the company has chosen to set up the compliance program the way that it has, and why and how the company’s compliance program has evolved over time. • Similar to 2019, addresses risk management process and risk-tailored resource allocation. • Similar to 2019, addresses updates and revisions, but also asks whether the periodic review is a snapshot in time or based upon continuous access to operational data and information across functions. In addition to whether periodic reviews have led to updates in policies and procedures, 2020 adds controls to the list of potential updates. • Adds a section on lessons learned that addresses whether the company has a process for tracking and incorporating its periodic risk assessment lessons learned either from the company’s own prior issues or from those of others operating in the same industry and/or geographical location. 	



2017	2019	2020	2022 Monaco Memo
	<p>whether the company devotes a disproportionate amount of time to policing low-risk areas instead of high-risk areas and whether the company gives greater scrutiny, as warranted, to high-risk transactions than more modest and routine hospitality and entertainment.</p> <ul style="list-style-type: none"> • Adds a section on updates and revisions that addresses whether the risk assessment is current and subject to periodic review, whether there have been any updates to policies and procedures in light of lessons learned, and whether these updates account for risks discovered through misconduct or other problems with the compliance program. 		
<p>Policies and Procedures <i>Design & Accessibility</i></p> <ul style="list-style-type: none"> • Designing Compliance Policies/Procedures – Process for designing? Who is involved? Consult business first? • Applicable Policies and Procedures – Do they have policies and procedures that prohibit the misconduct? How do they assess whether policies and procedures have been effectively implemented? Function ownership? • Gatekeepers – Has there been clear guidance/training for persons who issue payments 	<p>Policies and Procedures</p> <p>As threshold matter, prosecutors should examine whether company has Code of Conduct that sets forth, among other things, the company’s commitment to compliance with relevant Federal laws that is accessible and applicable to all employees.</p> <p>Prosecutors should also assess whether company has established policies and procedures that incorporate the culture of compliance into day-to-day operations.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses design. • Also adds section on comprehensiveness that addresses what efforts the 	<p>Policies and Procedures</p> <ul style="list-style-type: none"> • Similar to 2019, addresses design, but also includes understanding the process for updating existing policies and procedures as a part of design. • Similar to 2019, addresses comprehensiveness. • Similar to 2019, addresses accessibility, but also addresses whether the policies and procedures have been published in a searchable format for easy reference and whether the company tracks access to various policies and procedures to understand what policies are 	<p>Use of Personal Devices and Third-Party Applications</p> <p>Memo adds interpretation of 2020 and prior guidance noting all corporations with robust compliance programs should have effective policies governing the use of personal devices and third-party messaging platforms for corporate communications, should provide clear training to employees about such policies, and should enforce such policies when violations are identified.</p> <p>Prosecutors should also consider whether a corporation seeking cooperation credit in connection with an investigation has instituted policies to ensure that it will be able to collect and</p>



2017	2019	2020	2022 Monaco Memo
<p>(gatekeepers) in the control processes relevant to the misconduct? What has been the process for them to raise concerns?</p> <ul style="list-style-type: none"> • Accessibility – How does company communicate policies and procedures to employees? How has company evaluated usefulness of policies and procedures? <p><i>Operational Integration</i></p> <ul style="list-style-type: none"> • Responsibility for Integration – Who has been responsible for integrating policies and procedures? With whom have they consulted? How have they been rolled out? • Controls – What controls failed/were absent? Are they there now? • Payment Systems – How was misconduct funded and what process could have prevented improper access to funds? Have processes been improved? • Approval/Certification Process – How do those with approval authority know what to look for and how to escalate concerns? What steps have been taken to remedy failures identified in this process? • Vendor Management – If vendors were involved in misconduct, what was vendor selection process and did vendor in question go through the process? 	<p>company made to monitor/implement policies and procedures that reflect spectrum of risks, including changes in legal and regulatory landscape.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses accessibility, but also addresses whether there are linguistic or other barriers to foreign employees’ access (if the company has foreign subsidiaries). • Similar to 2017, addresses responsibility for operational integration, but also addresses the specific ways in which compliance policies and procedures are reinforced through the company’s internal control systems. • Similar to 2017, addresses gatekeepers. 	<p>attracting more attention from relevant employees.</p> <ul style="list-style-type: none"> • Similar to 2019, addresses responsibility for operational integration. • Similar to 2019, addresses gatekeepers. 	<p>provide to the government all non-privileged response documents related to the investigation, including work-related communications (e.g., texts, emessages, or chats), and data contained on phones, tablets, or other devices that are used by its employees for business purposes.</p> <p>Memo points out [t]he ubiquity of personal smartphones, tablets, laptops, and other devices poses significant corporate compliance risks, particularly as to the ability of companies to monitor the use of such devices for misconduct and to recover relevant data from them during a subsequent investigation. The rise in use of third-party messaging platforms, including the use of ephemeral and encrypted messaging applications, poses a similar challenge.</p>



2017	2019	2020	2022 Monaco Memo
<p>Training & Communication</p> <p>Risk-Based Training – What training have relevant employees received? Has company provided tailored training for high-risk and control employees that addressed risks in area of misconduct? What analysis has company undertaken to determine who should be trained and on what subjects?</p> <p>Form/Content/Effectiveness of Training – Has training been offered in form/language appropriate for intended audience? Has company measured effectiveness of training?</p> <p>Communications about Misconduct – What has senior management done to let employees know company’s position on misconduct? What communications have there been generally when employee is terminated for failure to comply with company’s policies, procedures, and controls?</p> <p>Availability of Guidance – What resources have been available to employees to provide guidance relating to compliance policies? How has company assessed whether employees know when to seek advice/whether willing to do so?</p>	<p>Training & Communication</p> <p>Prosecutors should assess steps taken by the company to ensure that policies and procedures have been integrated into the organization, including through periodic training/certification for all directors, officers, relevant employees, and where appropriate, agents and business partners.</p> <p>Includes examples.</p> <p>Prosecutors should assess whether the company has relayed information in a manner tailored to audience size, sophistication, subject matter expertise.</p> <p>Some companies give employees practical advice or case studies to address real-life scenarios and/or guidance on how to obtain ethics advice on a case by case basis as needs arise.</p> <p>Prosecutors should also assess whether training adequately covers prior compliance incidents and how the company measures the effectiveness of its training curriculum.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses risk-based training, but also asks whether supervisory employees have received different or supplementary training. • Similar to 2017, addresses form/content/effectiveness of training, but also asks whether training is provided online or in-person or both and the company’s rationale for its choice. Also asks whether employees have been tested on what they learned and 	<p>Training & Communication</p> <p>Similar to 2019 and includes additional examples.</p> <p>Some companies have invested in shorter, more targeted training sessions to enable employees to timely identify and raise issues to appropriate compliance, internal audit, or other risk management functions.</p> <ul style="list-style-type: none"> • Similar to 2019, addresses risk-based training. • Similar to 2019, addresses form/content/effectiveness of training, but also asks whether provided online or in-person, if there is a process by which employees can ask questions arising out of the trainings. It also asks whether the company has evaluated the extent to which the training has an impact on employee behavior or operations. • Similar to 2019, addresses communications about misconduct and availability of guidance. 	



2017	2019	2020	2022 Monaco Memo
	<p>how the company addressed employees who fail all or a portion of the testing.</p> <ul style="list-style-type: none"> Similar to 2017, addresses communications about misconduct and availability of guidance. 		
<p>Confidential Reporting and Investigation Effectiveness of the Reporting Mechanism – How has company collected, analyzed, and used information from its reporting mechanisms? How has company assessed seriousness of allegations it receives? Has compliance function had full access to reporting and investigative information?</p> <p>Properly Scoped Investigation by Qualified Personnel – How has company ensured that investigations have been properly scoped, and were independent, objective, appropriately conducted, and properly documented?</p> <p>Response to Investigations – Has company’s investigation been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives? What has been process for responding to investigative findings? How high up in company do investigative findings go?</p>	<p>Confidential Reporting Structure and Investigation Process</p> <p>Prosecutors should assess whether the company’s complaint-handling process includes proactive measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers. Prosecutors should also assess the company’s processes for handling investigations of such complaints, including the routing of complaints to proper personnel, timely completion of thorough investigations, and appropriate follow-up and discipline.</p> <p>Confidential reporting mechanisms are highly probative of whether a company has established corporate governance mechanisms that can effectively detect and prevent misconduct. JM 9-28.800</p> <ul style="list-style-type: none"> Similar to 2017, addresses effectiveness of the reporting mechanism, but focuses on whether the company has an <i>anonymous</i> reporting mechanism and if not, why not and how the reporting mechanism is publicized to the company’s employees/whether it has been used. 	<p>Confidential Reporting Structure and Investigation Process</p> <ul style="list-style-type: none"> Similar to 2019, addresses effectiveness of the reporting mechanism, but also asks how the reporting mechanism is publicized to other third parties in addition to the company’s employees. It also asks whether the company takes measures to test whether employees are aware of the hotline and feel comfortable using it. Similar to 2019, addresses properly scoped investigations by qualified personnel. Similar to 2019, addresses investigation response. Similar to 2019, addresses resources and tracking of results, but also asks whether the company periodically tests the effectiveness of the hotline, for example, by tracking a report from start to finish. 	<p>Use of Personal Devices and Third-Party Applications</p> <p>Memo provides interpretation of 2020 and prior guidance on mechanisms for identifying, reporting, and remediating potential violations of law and instructs prosecutors to consider whether the corporation has implemented effective policies and procedures governing the use of personal devices and third-party messaging platforms to ensure that business-related electronic data and communications are preserved.</p>



2017	2019	2020	2022 Monaco Memo
	<ul style="list-style-type: none">• Similar to 2017, addresses properly scoped investigations by qualified personnel, but also addresses how the company determines which complaints or red flags merit further investigation and how the company determines who should conduct an investigation, and who makes that determination.• Similar to 2017, addresses investigation response, but also addresses whether the company applies timing metrics to ensure responsiveness and whether the company has a process for monitoring the outcome of investigations and ensuring accountability for the response to any findings or recommendations.• Adds section Resources and Tracking of Results that addresses whether the reporting and investigating mechanisms are sufficiently funded, how the company has collected, tracked, analyzed, and used information from its reporting mechanisms, and whether the company periodically analyzes the reports or investigation findings for patterns of misconduct or other red flags for compliance weaknesses.		
Third Party Management Risk-Based and Integrated Processes – How has company’s third party management process corresponded to	Third Party Management A well-designed compliance program should apply risk-based due diligence to third party relationships. Although	Third Party Management Similar to 2019 and emphasizes that although the need for, and degree of appropriate due diligence may vary	



2017	2019	2020	2022 Monaco Memo
<p>the nature and level of the enterprise risk identified by the company? How has this process been integrated into the relevant procurement and vendor management processes?</p> <p>Appropriate Controls – What was business rationale for the use of third parties in question? What mechanisms exist to ensure contract terms specifically describe services to be performed, that payment terms are appropriate, that the described contractual work is performed, and that compensation is commensurate with services rendered?</p> <p>Management of Relationships – How has company considered and analyzed third party’s incentive model against compliance risks? How has company monitored the third parties in question? How has company trained relationship managers about what compliance risks are and how to manage them? How has company incentivized compliance and ethical behavior by third parties?</p> <p>Real Actions and Consequences – Were red flags identified from due diligence of third parties involved in misconduct and how were they resolved? Has a similar third party been suspended, terminated, or audited as a result of compliance issues? How has company monitored these actions?</p>	<p>degree of appropriate due diligence may vary based on size and nature of company/transaction, prosecutors should assess extent to which company has an understanding of the qualifications and associations of third party partners, including agents, consultants, and distributors that are commonly used to conceal misconduct, such as the payment of bribes to foreign officials in international business transactions.</p> <p>Prosecutors should assess whether the company knows its third party partners’ reputations and relationships, if any, with foreign officials, and the business rationale for needing the third party in the transaction.</p> <p>Similar to 2017, addresses that prosecutors should further assess whether the company engaged in ongoing monitoring of the third party relationships, but also adds that a company can do so through updated due diligence, training, audits, and/or annual compliance certifications by the third party.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses risk-based and integrated processes and appropriate controls. • Similar to 2017, addresses management of relationships, but also addresses whether the company has audit rights to analyze books and accounts of third parties and whether company has exercised these rights in the past. 	<p>based on size and nature of the company, transaction, and third party, prosecutors should assess the extent to which the company has an understanding of the qualifications and associations of third party partners, including agents, consultants, and distributors that are commonly used to conceal misconduct.</p> <p>Similar to 2019, prosecutors should assess whether the company understands the business rationale for needing the third party in the transaction and the risks posed by third party partners, including reputations and relationships, if any, with foreign officials.</p> <p>Prosecutors should assess a company’s third party management practices, not just due diligence, as a factor to determine whether a compliance program is able to detect misconduct.</p> <ul style="list-style-type: none"> • Similar to 2019, addresses risk-based and integrated processes and appropriate controls. • Similar to 2019, addresses management of relationships, but also addresses whether the company engages in risk management of third parties throughout the lifespan of the relationship, or primarily during the onboarding process. • Similar to 2019, addresses real actions and consequences. 	



2017	2019	2020	2022 Monaco Memo
	<ul style="list-style-type: none"> Similar to 2017, addresses real actions and consequences, but also addresses whether company keeps track of third parties that do not pass due diligence or that are terminated, and whether company takes steps to ensure those third parties are not hired or re-hired later. 		
<p>Mergers & Acquisitions</p> <p>Due Diligence Process – Was misconduct or risk of misconduct identified during due diligence? Who conducted the risk review for the acquired/merged entities and how was it done? What has been the M&A due diligence process generally?</p> <p>Integration in the M&A Process – How has compliance function been integrated into merger, acquisition, and integration process?</p> <p>Process Connecting Due Diligence to Implementation – What has been the company’s process for tracking and remediating misconduct or misconduct risks identified during the due diligence process? What has been company’s process for implementing compliance policies and procedures at new entities?</p>	<p>Mergers & Acquisitions</p> <p>Pre-M&A due diligence enables acquiring company to evaluate more accurately each target’s value and negotiate for the costs of any corruption or misconduct to be borne by the target.</p> <p>The extent to which a company subjects its acquisition targets to appropriate scrutiny is indicative of whether its compliance program is able to effectively enforce its internal controls and remediate misconduct at all levels or the organization.</p> <ul style="list-style-type: none"> Similar to 2017, addresses due diligence process, integration in the M&A process, and process connecting due diligence to implementation. 	<p>Mergers & Acquisitions</p> <p>A well-designed compliance program should include comprehensive due diligence of any acquisition targets, as well as a process for timely and orderly integration of the acquired entity into existing compliance program structures and internal controls.</p> <p>Flawed or incomplete pre- or post-acquisition due diligence and integration can allow misconduct to continue at the target company, harm a business’s profitability and reputation, and risk civil and criminal liability.</p> <ul style="list-style-type: none"> Similar to 2019, addresses due diligence process, but also addresses whether the company was able to complete pre-acquisition due diligence and, if not, why not. Similar to 2019, addresses integration in the M&A process. Similar to 2019, addresses process connecting due diligence to implementation, but also asks what has been the company’s process conducting post- 	



2017	2019	2020	2022 Monaco Memo
		<p>acquisition audits at newly acquired entities.</p>	
<p>Senior and Middle Management Conduct at the Top – How have senior leaders, through words/actions, encouraged or discouraged the misconduct? What concrete action have they taken to demonstrate leadership in company’s compliance and remediation efforts? How does company monitor its senior leadership’s behavior? How has senior leadership modeled proper behavior to subordinates?</p> <p>Shared Commitment – What specific actions have senior leaders and other stakeholders taken to demonstrate commitment to compliance, including their remediation efforts? How is information shared among different components of the company?</p> <p>Oversight – What compliance expertise has been available on the board of directors (BOD)? Have BOD and/or external auditors held executive or private sessions with compliance and control functions? What types of information have the BOD and senior management examined in their exercise of oversight in the area in which misconduct occurred?</p>	<p>II. Is the Corporation’s Compliance Program Being Implemented Effectively?</p> <p>Prosecutors are instructed to probe specifically whether a compliance program is a “paper program” or one “implemented, reviewed, and revised, as appropriate, in an effective manner.” JM 9-28.800. In addition, prosecutors should determine “whether the corporation has provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation’s compliance efforts.” JM 9-28.800. Prosecutors should also determine “whether the corporation’s employees are adequately informed about the compliance program and are convinced of the corporation’s commitment to it.” JM 9-28.800.</p> <p>A. Commitment by Senior and Middle Management</p> <p>Similar to 2017, provides that company’s top leaders set the tone for the rest of the company, but also provides specific examples by stating that prosecutors should examine the extent to which senior management have clearly articulated the company’s ethical standards, conveyed and disseminated them in a clear and unambiguous terms, and demonstrated rigorous adherence by example. Prosecutors should examine how middle management have reinforced those standards and encouraged employees to abide by them. U.S.S.G. 8B2.1(b)(2)(A)-(C).</p>	<p>II. Is the Corporation’s Compliance Program Adequately Resourced and Empowered to Function Effectively?</p> <p>Similar to 2019 and adds that a well-designed compliance program may be unsuccessful in practice if implementation is under-resourced.</p> <p>A. Commitment by Senior and Middle Management</p> <p>Similar to 2019 and emphasizes the importance for a company to create and foster a culture of ethics and compliance at all levels of the company and to implement a culture of compliance from the middle and the top.</p> <p>Similar to 2019, addresses conduct at the top, shared commitment, and oversight.</p>	



2017	2019	2020	2022 Monaco Memo
	<ul style="list-style-type: none"> Similar to 2017, addresses conduct at the top, but also addresses whether managers have tolerated greater compliance risks in pursuit of new business or greater revenues and whether managers encouraged employees to act unethically to achieve a business objective or impeded compliance personnel from effectively implementing their duties. Similar to 2017, addresses shared commitment, but also provides examples of other stakeholders (e.g., business and operational managers, finance, procurement, legal, human resources). Also addresses whether the company has persisted in their commitment in the face of competing interests or business objectives. Similar to 2017, addresses oversight. 		
<p>Autonomy and Resources</p> <p>Compliance Role – Was compliance involved in training and decisions relevant to the misconduct? Did the compliance or relevant control functions (e.g., Legal, Finance, or Audit) ever raise a concern in the area where the misconduct occurred?</p> <p>Stature – How has compliance function compared with other strategic functions in company in terms of stature, compensation levels, rank/title, reporting line, resources, and access to key decision-makers? What has been the</p>	<p>Autonomy and Resources</p> <p>As a threshold matter, prosecutors should evaluate how the compliance program is structured.</p> <p>“A large organization generally shall devote more formal operations and greater resources...than shall a small organization.” Commentary to USSG 8B2.1 note 2(C). By contrast, “a small organization may [rely on] less formality and fewer resources.”</p> <p>Prosecutors should evaluate whether “internal audit functions [are] conducted at a level sufficient to ensure their</p>	<p>Autonomy and Resources</p> <ul style="list-style-type: none"> Similar to 2019, addresses structure, but also asks what are the reasons for the structural choices the company has made. Similar to 2019, addresses seniority and stature. Similar to 2019, addresses experience and qualifications, but also asks how the company invests in further training and development of the compliance and other control personnel. 	



2017	2019	2020	2022 Monaco Memo
<p>turnover rate for compliance and relevant control function personnel? What role has compliance played in the company’s strategic and operational decisions?</p> <p>Experience and Qualifications – Have the compliance and control personnel had the appropriate experience and qualifications for their roles and responsibilities?</p> <p>Autonomy – Have compliance and relevant control functions had direct reporting lines to anyone on BOD? How often do they meet with BOD? Are members of senior management present for meetings? Who reviewed performance of compliance function and what was review process? Who has determined compensation/bonuses/raises/hiring/termination of compliance officers? Do compliance and relevant control personnel in the field have reporting lines to headquarters? If not, how has company ensured their independence?</p> <p>Empowerment – Have there been specific instances where compliance raised concerns or objections in the area of wrongdoing? How has company responded to such concerns? Have there been specific transactions or deals that were stopped, modified, or more closely examined as a result?</p> <p>Funding and Resources – How have decisions been made about the allocation of personnel and resources for the compliance and relevant control functions in light of the company’s risk profile? Have there been times when</p>	<p>independence and accuracy,” as an indicator of whether compliance personnel are in fact empowered and positioned to “effectively detect and prevent misconduct.” JM 9-28.800.</p> <p>Structure – Where within the company is the compliance function housed (e.g., within the legal department, under a business function, or as an independent function reporting to the CEO and/or board)? Is the compliance function run by a designated chief compliance officer, or another executive within the company, and does that person have other roles within the company? Are compliance personnel dedicated to compliance responsibilities or do they have other, non-compliance responsibilities within the company? Why has the company chosen the compliance structure it has in place?</p> <ul style="list-style-type: none"> • Similar to 2017, addresses seniority and stature. • Similar to 2017, addresses experience and qualifications, but also addresses whether the level of experience and qualifications for compliance personnel roles have changed over time and who reviews the performance of the compliance function and what the review process is. • Similar to 2017, addresses funding and resources, but addresses specifically, whether there has been sufficient staffing for compliance personnel to effectively audit, document, analyze, and act on results of 	<ul style="list-style-type: none"> • Similar to 2019, addresses funding and resources. • Adds a section on data resources and access that addresses whether compliance and control personnel have sufficient direct or indirect access to relevant sources of data to allow for timely and effective monitoring and/or testing of polices, controls, and transactions. It also addresses whether any impediments exist that limit access to relevant sources of data and, if so, what the company is doing to address the impediments. • Similar to 2019, addresses autonomy. • Similar to 2019, addresses outsourced compliance functions. 	



2017	2019	2020	2022 Monaco Memo
<p>requests for resources by compliance have been denied? If so, how have those decisions been made?</p> <p>Outsourced Compliance Functions – Has company outsourced all or parts of its compliance functions to an external firm or consultant? What has been rationale for doing so? Who has been involved in decision to outsource? How has that process been managed (including who oversaw and/or liaised with external firm/consultant)? What access level does that external firm or consultant have to company information? How has the effectiveness of the outsourced process been assessed?</p>	<p>compliance efforts? And whether the company allocated sufficient funds for the same.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses autonomy. • Similar to 2017, addresses outsourced compliance functions. 		
<p>Incentives and Disciplinary Measures</p> <p>Accountability – What disciplinary actions did company take in response to misconduct and when did they occur? Were managers held accountable? Did the company’s response consider disciplinary actions for supervisors’ failure in oversight? What is the company’s record on employee discipline relating to type of conduct at issue? Has company ever terminated or disciplined anyone (reduce/eliminate bonuses, issued warning letter, etc.) for the type of misconduct at issue?</p> <p>Human Resources Process – Who participated in making disciplinary decisions for the type of misconduct at issue?</p> <p>Consistent Application – Have the disciplinary actions and incentives been fairly and consistently applied across the organization?</p>	<p>Incentives and Disciplinary Measures</p> <p>Prosecutors should also assess the extent to which the company’s communications convey to its employees that unethical conduct will not be tolerated and will bring swift consequences, regardless of the position or title of the employee who engages in the conduct. USSG 8B2.1(b)(5)(C).</p> <p>By way of example, some companies have found that publicizing disciplinary actions internally, where appropriate, can have valuable deterrent effects. Some companies have also found that providing positive incentives—personnel promotions, rewards, and bonuses for improving and developing a compliance program—have driven compliance. Some companies have even made compliance a significant metric for management bonuses and/or have made working on</p>	<p>Incentives and Disciplinary Measures</p> <p>Similar to 2019 and adds that by way of example, some companies have found that publicizing disciplinary actions internally, where appropriate and possible, can have valuable deterrent effects.</p> <p>Similar to 2019, addresses human resources process.</p> <p>Similar to 2019, addresses consistent application, but also asks whether the compliance function monitors its investigations and resulting discipline to ensure consistency.</p> <p>Similar to 2019, addresses incentive system.</p>	<p>Compensation Structures that Promote Compliance</p> <p>Consistent with 2020 guidance and adds examples of compliance-related compensation measures, for example, the use of compliance metrics and benchmarks in compensation calculations and the use of performance reviews that measure and reward compliance-promoting behavior, both as to the employee and the subordinates whom they supervise.</p> <p>Since misconduct is often discovered after it has occurred, prosecutors should examine whether compensation systems are crafted in a way that allows for retroactive discipline, including through the use of clawback measures, partial escrowing of compensation, or equivalent arrangements.</p> <p>If a corporation has included clawback provisions in its compensation</p>



2017	2019	2020	2022 Monaco Memo
<p>Incentive System – How has company incentivized compliance and ethical behavior? How has company considered the potential negative compliance implications of its incentives and rewards? Have there been specific examples of actions taken (e.g., promotions or awards denied) as a result of compliance and ethics considerations?</p>	<p>compliance a means of career advancement.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses human resources process and asks who participates in making disciplinary decisions but also asks whether the same process is followed for each instance of misconduct and if not, why not? Also addresses whether the actual reasons for discipline are communicated to employees and if not, why not, whether there are legal or investigative-related reasons for restricting information, or whether pre-textual reasons have been provided to protect the company from whistleblowing. • Similar to 2017, addresses consistent application, but also asks whether similar instances of misconduct were treated disparately and if so, why? • Similar to 2017, addresses incentive system, but also asks who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel? • Does not include separate section on accountability (moved to section on Analysis and Remediation of Any Underlying Misconduct) 		<p>agreements, prosecutors should consider whether, following the corporation’s discovery of misconduct, a corporation has to the extent possible, taken affirmative steps to execute on such agreements and clawback compensation provisions paid to current or former executives whose actions or omissions resulted in, or contributed to, the criminal conduct at issue.</p>
	<p>III. Does the Corporation’s Compliance Program Work in Practice?</p>	<p>III. Does the Corporation’s Compliance Program Work in Practice?</p>	



2017	2019	2020	2022 Monaco Memo
	<p>The Principles of Federal Prosecution of Business Organizations require prosecutors to assess “the adequacy and effectiveness of the corporation’s compliance program at the time of the offense, as well as at the time of a charging decision.” JM 9-28.300.</p> <p>In assessing whether a company’s compliance program was effective at the time of the misconduct, prosecutors should consider whether and how the misconduct was detected, what investigation resources were in place to investigate suspected misconduct, and the nature and thoroughness of the company’s remedial efforts.</p> <p>To determine whether a company’s compliance program is working effectively at the time of a charging decision or resolution, prosecutors should consider whether the program evolved over time to address existing and changing compliance risks. Prosecutors should also consider whether the company undertook an adequate and root cause analysis to understand what contributed to misconduct and degree of remediation needed to prevent similar events in the future.</p> <p>For example, prosecutors should consider, among other factors, “whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal controls systems” and “whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or</p>	Similar to 2019.	



2017	2019	2020	2022 Monaco Memo
	<p>detect similar misconduct in the future.” Benczkowski Memo at 2.</p>		
<p>Continuous Improvement, Periodic Testing and Review</p> <p>Internal Audit – What types of audits would have identified issues relevant to the misconduct? Did those audits occur and what were the findings? What types of relevant audit findings and remediation progress have been reported to management and the board on a regular basis? How have management and the board followed up? How often has internal audit generally conducted assessments in high-risk areas?</p> <p>Control Testing – Has company reviewed and audited its compliance program in the area relating to the misconduct, including testing of relevant controls, collection and analysis of compliance data, and interviews of employees and third parties? How are the results reported and action items tracked? What control testing has the company generally undertaken?</p> <p>Evolving Updates – How often has the company updated its risk assessments and reviewed its compliance policies, procedures, and practices? What steps has company taken to determine whether policies/procedures/practices make sense for particular business segments/subsidiaries?</p>	<p>A. Continuous Improvement, Periodic Testing, and Review</p> <p>Prosecutors should consider whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale. Some companies survey employees to gauge the compliance culture and evaluate the strength of controls, and/or conduct periodic audits to ensure that controls are functioning well, though the nature and frequency of evaluations may depend on company’s size and complexity.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses internal audit, but also asks what the process is for determining where and how frequently internal audit will undertake an audit, and the rationale behind that process. Also asks how audits are carried out. • Similar to 2017, addresses control testing. • Similar to 2017, addresses evolving updates, but also addresses whether the company has undertaken a gap analysis to determine whether particular areas of risk are not sufficiently addressed in its policies, controls, or training. • Adds section on Culture of Compliance – How often and how does company measure its culture of compliance? Does company seek input from all levels of 	<p>A. Continuous Improvement, Periodic Testing, and Review</p> <ul style="list-style-type: none"> • Similar to 2019, addresses internal audit. • Similar to 2019, addresses control testing. • Similar to 2019, addresses evolving updates, but also addresses whether the company reviews and adapts its compliance program based upon lessons learned from its own misconduct and/or that of other companies facing similar risks. • Similar to 2019, addresses culture of compliance. 	



2017	2019	2020	2022 Monaco Memo
	<p>employees to determine whether they perceive senior and middle management’s commitment to compliance? What steps has company taken in response to its measurement of the compliance culture?</p>		
	<p>B. Investigation of Misconduct Similar to 2017 section: Confidential Reporting Structure and Investigation Process</p>	<p>B. Investigation of Misconduct Similar to 2019.</p>	
<p>Analysis and Remediation of Underlying Misconduct Root Cause Analysis – What is company’s root cause analysis of the misconduct? What systemic issues were identified? Who in the company was involved in making the analysis? Prior indications – Were there prior opportunities to detect the misconduct in question, such as audit reports identifying relevant control failures or allegations, complaints, or investigations involving similar issues? What is company’s analysis of why such opportunities were missed? Remediation – What specific changes has the company made to reduce the risk that the same or similar issues will not occur in the future? What specific remediation has addressed the issues identified in the root cause and missed opportunity analysis?</p>	<p>Analysis and Remediation of Any Underlying Misconduct Prosecutors evaluating the effectiveness of a compliance program are instructed to reflect back on “the extent and pervasiveness of the criminal conduct; the number and level of the corporate employees involved; the seriousness, duration, and frequency of the misconduct; and any remedial actions taken by the corporation, including, for example, disciplinary action against past violators uncovered by the prior compliance program, and revisions to corporate compliance programs in light of lessons learned.” JM 9-28.800.</p> <ul style="list-style-type: none"> • Similar to 2017, addresses root cause analysis • Adds section on prior weaknesses, including what controls failed, whether policies and procedures should have prohibited the misconduct and whether they were effectively implemented, and whether the functions who had ownership of policies and 	<p>Analysis and Remediation of Any Underlying Misconduct Similar to 2019.</p>	



2017	2019	2020	2022 Monaco Memo
	<p>procedures have been held accountable.</p> <ul style="list-style-type: none">• Adds section on payment systems, including how the misconduct in question was funded, what processes could have prevented or detected improper access to those funds, and whether those processes have been improved.• Adds section on vendor management, including whether vendors were involved in the misconduct, the process for vendor selection, and whether the vendor underwent that process.• Similar to 2017, addresses prior indications and remediation. <p>Adds section on accountability, including what disciplinary actions the company took in response to the misconduct and whether they were timely, whether managers were held accountable for misconduct that occurred under their supervision, whether the company considered disciplinary actions for failures in supervision, the company's record on employee discipline relating to the type of conduct at issue, and whether the company ever terminated or otherwise disciplined anyone for the type of misconduct at issue. (Note: This section on accountability was removed from the Incentives and Disciplinary Measures section and included here instead).</p>		