

MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

- What is your ruler?
- What methods do you use to measure?
- How do you make your reporting meaningful?



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Introductions

- Christine Gordon
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UNIVERSITY**



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We come from different sectors, but our Compliance Programs have common ground

Definition of a Compliance and Ethics Program*

“designed to prevent and detect criminal conduct”

SOURCES OF COMPLIANCE:

- Law and Regulation – Federal and State
- Institutional – Policy, Procedure, Contracts
- 3rd Party oversight - Accreditation, Enforcement
- Other

* Source: Federal Sentencing Guidelines

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Why measure Compliance Program effectiveness?

“You can’t fix what you don’t measure.”

- Compliance professional discussing the importance of assessment

Measuring Compliance program effectiveness is recommended by several authorities, including the United States Sentencing Commission.

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Poll

How mature is your Compliance/Ethics program?

5 = Very mature

4 = Strong, approaching maturity

3 = Stable

2 = Still building

1 = Just starting out

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What do we mean by Compliance Assessment/Measurement

There are two types of Compliance assessments:

7 Elements

- (1) standards and procedures
- (2) organizational leadership and culture
- (3) training and education
- (4) monitoring, auditing, and evaluation of program effectiveness
- (5) performance incentives and disciplinary measures;
- (6) appropriate remedial action; and
- (7) risk assessment.

SOURCES OF COMPLIANCE:

- Law and regulation
- Industry Codes of Conduct
- Institutional
- 3rd Party oversight
- Other

MACRO LEVEL

Measuring the effectiveness of our Compliance Program Structures generally – the effective elements of a compliance program

OR

MICRO LEVEL

Measuring compliance with individual obligations, like a specific law or institutional policy

Examples: Title IX compliance, adherence to record retention laws, compliance with the terms of an NIH research grant, Foreign Corrupt Practices Act (FCPA) Anti-Kickback Statute, False Claims Act, Physician Payments Sunshine Act

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What do we mean by Compliance Assessment/Measurement

What we want:



What we don't want:



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Why measure Compliance Program effectiveness?

Goals of Measuring and Assessing your Compliance Program

- Assess effectiveness of compliance structures
- Determine - What is goal, are we meeting it?
 - E.g., Hotline set up for people to report concerns who would otherwise not come forward

Ideally, when measuring effectiveness:

- Take the subjectivity out of the metric
- Same assessment to measure progress year over year
- Continually monitor risks and assess compliance efforts.
 - Personnel/Role shifts can change compliance into non-compliance
 - At least annually, re-assess for new issues and risks

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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

What is your ruler?



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What is your Ruler/Measuring Stick



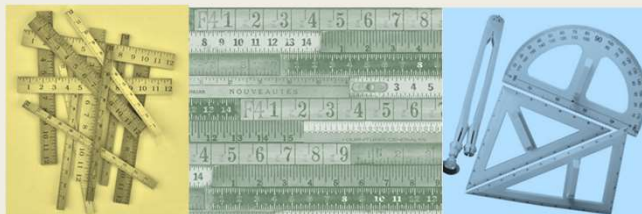
- What are the standards you are measuring your Compliance Program and specific compliance activities against?
- Your ruler will be determined by whether you are conducting a Compliance Program Assessment (Macro assessment) or a specific compliance obligation (Micro assessment)



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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

What methods do you use to measure?



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Methods to Measure Ethics and Compliance Program Review Methods

METHODS

- **Self-Assessment**
 - Federal Sentencing Guidelines - Narrative Review
 - OIG/HCCA - Measuring Compliance Program Effectiveness
 - Compliance Area Review
 - Gartner C&E Ignition Diagnostic Survey
 - DOJ Evaluation of Corporate Compliance Programs Guidance
 - Employee Ethics/Compliance Climate Surveys
 - Peer Benchmarking
- **External Assessment**
 - Consultants
 - Law Firms
 - Government Monitors

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Poll

What type of Compliance/Ethics program assessment(s) does your organization use?

1. Self-assessment(s) only
2. External assessment(s) only
3. Both self-assessment(s) and external assessment(s)
4. No assessments

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD

Conduct a Narrative Review of your Ethics and Compliance Program as compared to the Federal Sentencing Guidelines

Method of Review:

Conduct a narrative assessment of an institution/entity/corporation's compliance program structure against the seven elements of an effective compliance program.

E.g., Does your program have an anonymous reporting system? (5)(C)

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD

**OIG/HCCA Model - Measuring Compliance Program Effectiveness:
A Resource Guide***

ISSUE DATE: MARCH 27, 2017 HCCA-OIG Compliance Effectiveness Roundtable

Summary of Resource Guide:

- Includes 7 elements with extensive ways to measure and assess each
 - What to Measure
 - How to Measure
 - E.g., Element 7 - 71 ways to measure and assess

*OIG/HCCA Model, [Full document available via web https://oig.hhs.gov/compliance/compliance-resource-portal/files/HCCA-OIG-Resource-Guide.pdf](https://oig.hhs.gov/compliance/compliance-resource-portal/files/HCCA-OIG-Resource-Guide.pdf)

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD Details – OIG/HCCA Model - Measuring Compliance Program Effectiveness: A Resource Guide

Sample of Element
1 Assessments
and
Measurements
from the [Resource
Guide](#)

Element 1: Standards, Policies, and Procedures	
What to Measure	How to Measure
Access:	
1.1 Accessibility	<ul style="list-style-type: none"> Review link to employee accessible website/intranet that includes the Code of Conduct. Survey - Can you readily access or reference policies and procedures? (Yes/No/Don't know) Survey - How and where do employees actually access policies and procedures? Test key word search (searchable) Audit and interview staff to show policies
1.2 Actual Access	Audit how many actual "hits" on policies and procedures
1.3 Accessible language for code, standards and policies	Flesch Kincaid measuring standard – no more than 10th grade reading level
1.4 Compliance program awareness and communication	<ul style="list-style-type: none"> Survey employees to determine the extent to which the code of conduct and other compliance communications are available to employees Review to ensure the standards, policies, and awareness material is updated and distributed within organization's guidelines
1.5 Impaired or disabled accessibility	Review accessibility options. Look at methods and speak to individuals.
1.6 Policy communication	Communication strategy of policies
1.7 Availability of policy content	Conduct surveys and observation
Accountability:	
1.8 Accountability	Policy Coordinator designated
1.9 Ownership and accountability of policies	Audit process of how policies get enforced by chain of command when compliance is not the final

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD

Compliance Area Review

Summary:

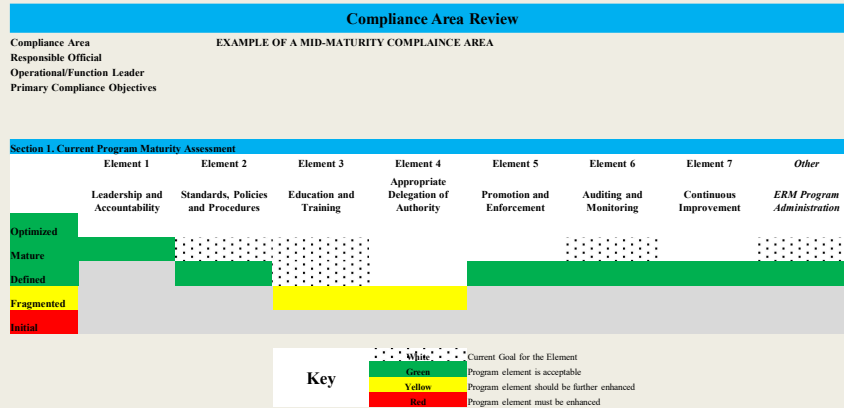
- Conduct a self-assessment using a chart for each compliance subject area.
- The subject area would be reviewed year over year to measure progress.
- Assessment uses a maturity matrix.
- Each subject/area is assessed by reviewing three areas:
 - Section 1: Current Program Maturity Assessment
 - Section 2: Policies to be Updated
 - Section 3: Discussion of Current Status, Initiatives, and Goals

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD – Compliance Area Review Cart

Chart
Section 1:
Current
Program
Maturity
Assessment



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Methods to Measure Ethics and Compliance Program Review Methods

METHOD – Compliance Area Review Cart

Chart Section
2:
Policies to be
Updated

Section 3:
Discussion
of Current
Status,
Initiatives,
and Goals

Section 2. Policies to be Updated				
Policy #	Policy Name	Last Updated	Anticipated Review Date	Notes

Section 3. Discussion of Current Status, Initiatives, and Goals								
	Element 1	Element 2	Element 3	Element 4	Element 5	Element 6	Element 7	Other
	Leadership and Accountability	Policies and Procedures	Education and Training	Appropriate delegation of Authority	Promotion and Enforcement	Auditing and Monitoring and Risk Assessment	On Going Improvements	Special Project or additional area
Current Status								
Next Steps								
Other Notes:								

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD

Gartner Compliance & Ethics Ignition Diagnostic

Summary:

- Gartner (formerly CEB) Compliance & Ethics Leadership Council (CELC)
- Pay organizational, annual membership
- Detailed survey, 60-90 minutes estimate
- Measures performance across seven areas and 30 discrete activities

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD – Gartner C&E Ignition Diagnostic Path to Maturity Chart

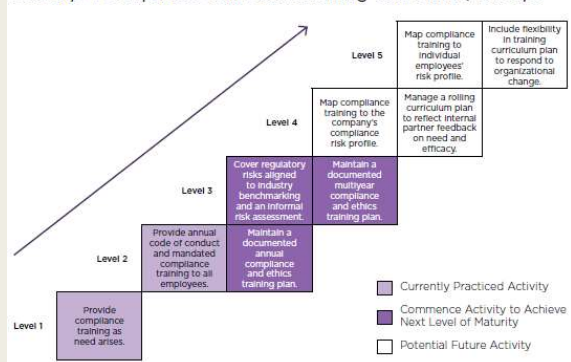
Use it to:

- Understand critical maturity gaps
- Prioritize areas for improvement
- Create action plans to reach desired maturity

Sample Report Excerpt

Path to Maturity

Develop a Compliance and Ethics Training Curriculum, Excerpt



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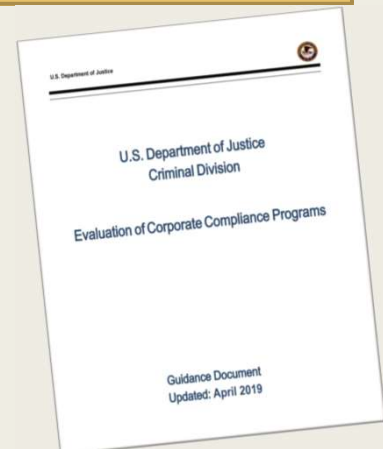
Methods to Measure Ethics and Compliance Program Review Methods

METHOD

DOJ Evaluation of Corporate Compliance Programs Guidance

Summary:

- Assist prosecutors in determining:
 - If compliance program was/is effective
 - Resolution, prosecution, penalty and obligations
- Three fundamental questions:
 - Program well designed?
 - Program being implemented effectively?
 - Does the program work in practice?



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Methods to Measure Measuring Compliance Issues Generally

EMPLOYEE ETHICS/COMPLIANCE CLIMATE SURVEYS

- Annual survey of the right people

Why a survey is beneficial:

- Gives you a snapshot of the climate at your organization;
- Assists in prioritizing resources and messaging.

Sample questions:

- Do employees feel comfortable reporting misconduct?
- Do employees feel protected from retaliation?
- Does the employee know where to find the intuitions' Policies?

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Methods to Measure Measuring Compliance Issues Generally

Peer Benchmarking

Benefits of Peer Benchmarking

- Yardstick to compare to peers (apples to apples).
 - You'll generally want to land somewhere in the middle.
- Help get institutional buy-in.
 - "See what X peer is doing? We need to be doing more."

How do your efforts compare to peer organizations?

- Do other peers have:
 - A Policy or Procedure
 - A position(s) for the Compliance Activity
 - Training
 - Do they produce a report on the compliance program?
 - Risk management efforts

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Poll

To which group(s) do you report on your Compliance/Ethics program effectiveness? (Select all that apply)

1. Compliance Committee of the Board
2. Board of Directors
3. Organization Leadership
4. Government
5. Other

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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

How do you make your reporting meaningful?

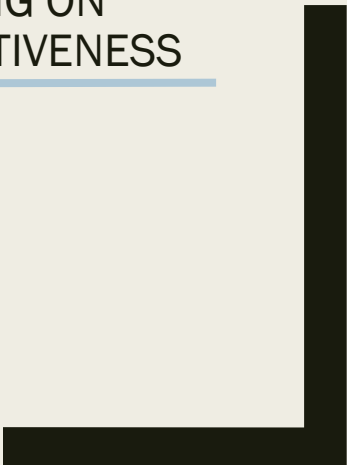
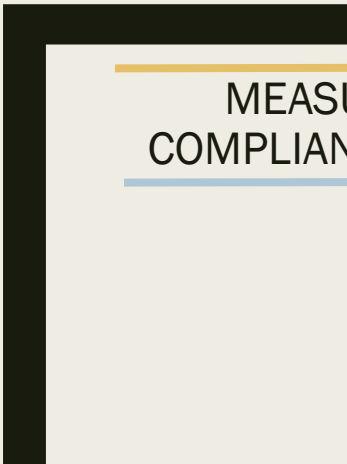


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How do you make your reporting meaningful?

- Target to your audience
 - Board – Align with government expectations
 - OIG – Annual Report: program, accomplish goals, enhancements
 - Monitor – Report on deficiencies, improvements, check back
- Engage your audience
 - Dive deep into different KPIs each quarter
 - Engaged discussions on different topic areas
 - Ask what your audience wants to hear
- How critical should you be?
 - Be accurate – not about perfection, but continuous improvement

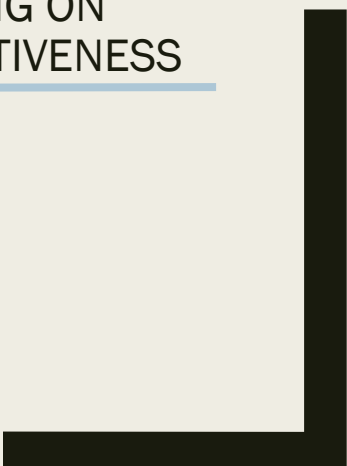

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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

Questions?

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MEASURING AND REPORTING ON COMPLIANCE PROGRAM EFFECTIVENESS

Appendix

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We come from different sectors, but our Compliance Programs have common ground

Definition of a Compliance and Ethics Program*

"A program designed to prevent and detect criminal conduct" that consists of seven key elements needed to form an effective compliance program.

- (1) standards and procedures—defined as "standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct;"
- (2) organizational leadership and culture; reasonable efforts to exclude bad actors from managerial ranks;
- (3) training and education;
- (4) monitoring, auditing, and evaluation of program effectiveness; (5) performance incentives and disciplinary measures;
- (6) appropriate remedial action; and
- (7) risk assessment.

* Source: Federal Sentencing Guidelines

SOURCES OF COMPLIANCE:

- Law and Regulation
 - Federal Statute
 - State Statute
 - State Executive Order
- Institutional
 - Policy
 - Procedure
 - Contract Obligation
- 3rd Party oversight (Accreditation, enforcement)
- Other

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1

Conduct a Narrative Review of your Ethics and Compliance Program as compared to the Federal Sentencing Guidelines

Background of the Federal Sentencing Guidelines:

- A publication of the United States Sentencing Commission.
- Original intent of Congress in creating the *Guidelines* was to develop a "fair sentencing system" with more consistency and uniformity.
- Section of the *Guidelines* on 7 elements of "effective compliance and ethics program" initially, meant to provide a framework for federal judges who were determining culpability of a corporation that was convicted of wrongdoing under the premise that the more robust a compliance and ethics program, the less severe the corporation's punishment should be, in light of their efforts to follow the rules.
- 7 elements are now the blueprint for an effective compliance program.

Method of Review:

Conduct a narrative assessment of an institution/entity/corporation's compliance program structure against the seven elements of an effective compliance program.

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1 Details – Federal Sentencing Guidelines Review

Effective Compliance and Ethics Program*

Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law minimally requires 7 steps.

In implementing the seven steps, an organization must “periodically assess the risk of criminal conduct” and “take appropriate steps to design, implement, or modify each requirement ... to reduce the risk of criminal

- Periodic risk assessments regarding criminal conduct?
- Risk assessment used to improve each element?

1 (1) The organization shall establish standards and procedures to prevent and detect criminal conduct.

- Standards and Procedures to Prevent?
- Standards and Procedures to Detect?

*§8B2.1.(b) - - EFFECTIVE COMPLIANCE AND ETHICS PROGRAM

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1 Details – Federal Sentencing Guidelines Review

2 (2) (A) The organization's governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

- Knowledgeable?
- Exercise reasonable oversight?

(2)(B) High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.

- Specific High-Level Individual(s) with overall responsibility?

(2)(C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

- Specific Individual with operational responsibility?
- Individual periodically reports to high-level personnel, or governing authority?
- Individual has adequate resources?
- Individual has appropriate authority?
- Individual has direct access to Governing authority?

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1 Details – Federal Sentencing Guidelines Review

3 (3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.

- Check for illegal activities? When Hired? When Promoted?
- Check for other inconsistent conduct? When Hired? When Promoted?

4 (4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

- Periodic communication by effective training?
- Disseminating information?

(4) (B) The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1 Details – Federal Sentencing Guidelines Review

5 (5) The organization shall take reasonable steps—
(A) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;
(B) to evaluate periodically the effectiveness of the organization's compliance and ethics program; and
(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

- Steps to ensure program is followed?
- Program monitoring?
- Program auditing?

- Periodic evaluation of effectiveness?

- Reporting System?
- Includes anonymity?
- Publicized?
- Whistleblower protection?

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 1 Details – Federal Sentencing Guidelines Review

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(6) The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through

(A) appropriate incentives to perform in accordance with the compliance and ethics program; and

(B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

• Incentives in Program?

• Discipline for engaging in criminal conduct?
• Discipline for failing to take reasonable steps to prevent or detect?

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(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.

• Take steps to respond to criminal conduct?
• Take steps to prevent further similar conduct?

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Methods to Measure Ethics and Compliance Program Review Methods

METHOD 2

OIG/HCCA Model - Measuring Compliance Program Effectiveness: A Resource Guide*

ISSUE DATE: MARCH 27, 2017 HCCA-OIG Compliance Effectiveness Roundtable

Summary of Resource Guide:

- The document provides an extensive framework of elements that can be used for a self-assessment.
- The document includes 7 elements to assess, with extensive ways to measure and assess each element. For instance, element 7 includes 71 ways to measure and assess that particular element.

Background/Origin of the Document:

In January 2017, "a group of compliance professionals and staff from the Department of Health and Human Services, the Office of Inspector General (OIG) met to discuss ways to measure the effectiveness of compliance programs" meant "to provide a large number of ideas for measuring the various elements of a compliance program. The list provides "measurement options to a wide range of organizations with diverse size, operational complexity, industry sectors, resources, and compliance programs." The creators of the document explained that the list is "not a "checklist" to be applied wholesale to assess a compliance program" and that "An organization may choose to use only a small number of" the elements to assess "in any given year."

*OIG/HCCA Model, [Full document available via web https://oig.hhs.gov/compliance/compliance-resource-portal/files/HCCA-OIG-Resource-Guide.pdf](https://oig.hhs.gov/compliance/compliance-resource-portal/files/HCCA-OIG-Resource-Guide.pdf)

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Methods to Measure Measuring Compliance Issues Generally

EMPLOYEE ETHICS/COMPLIANCE CLIMATE SURVEYS

- Annual survey of the right people

- Do employees feel comfortable reporting misconduct?
- Do employees feel protected from retaliation?
- Is the company/institution fostering a culture of compliance and ethics?
- Has the employee observed misconduct? Did they report that misconduct? Does the employee know how to report misconduct?
- What compliance priorities does the employee feel need more attention, resources, or leadership messages on?
- Is the employee aware of the Code of Conduct and Conflict of Interest Policies?
- Does the employee know where to find the intuitions' Policies?
- Is training on Policies and conduct expectations sufficient?

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Methods to Measure Measuring Compliance Issues Generally

EMPLOYEE ETHICS/COMPLIANCE CLIMATE SURVEYS

Why a survey is beneficial:

- Gives you a snapshot of the climate at your organization;
- Assists in prioritizing resources and messaging.

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Methods to Measure Measuring Compliance Issues Generally

Peer Benchmarking

Comparing your
compliance efforts,
activities, and structures
to peer organizations

How do your compliance efforts and activities compare to peer organizations?

- Do other peers have:
 - A Policy or Procedure
 - An Office for administering Compliance Activity
 - A position(s) for the Compliance Activity
 - How many FTEs?
 - Where does the position report up to?
- Training
 - Which employees get training on the compliance issue?
 - How is it delivered? (online, in person, other)?
 - How often is the training completed?
- Do they produce a report on the compliance area or program?
 - Is that report public?
- Risk management efforts
 - Background checks?
 - Insurance?

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Methods to Measure Measuring Compliance Issues Generally

Peer Benchmarking

Benefits of Peer Benchmarking

- Helps create a yardstick with which to compare your efforts to those of peer organizations (apples to apples).
 - You'll want to land somewhere in the middle – you don't want to be doing the least, but you also don't do the most (unless you had some unprecedented issue at your organization that warrants more structure).
- Help get institutional buy-in.
 - "See what X peer is doing? We need to be doing more."

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