

CONTINUOUS MONITORING

Measuring Compliance: How to Measure Quality (Part Three of Four)

By Megan Zwiebel

One of the biggest challenges companies face when evaluating a compliance program is finding ways to measure quality and effectiveness. Often, companies focus on quantitative measures which can be easy to collect but lacking in insight. Many such metrics, like the number of trainings or dollars spent on compliance, offer little information on how effective a program is at achieving its goals. Because quality can be so challenging to measure, many companies just don't do it, which can leave them at risk. This article, the third in a four-part series, provides specific methods companies can use to measure the quality of their program and the strength of their compliance culture.

The [first](#) article in the series discussed how to get started measuring compliance. The [second](#) looked at seven metrics companies might find helpful in measuring their programs' effectiveness. The final article in the series will discuss the logistics of collecting and analyzing compliance data.

See "[Developing Key Performance Indicators and Tracking Metrics Using ISO 37001 \(Part One of Two\)](#)" (Nov. 9, 2016); [Part Two](#) (Nov. 23, 2016).

The Difficulties of Measuring Quality

A company can gather all sorts of data about its compliance program, but some of it is more helpful than others. "Companies are trying to capture data to help them measure their compliance programs, but frequently they are focused on the wrong data," Anne Eberhardt, a director at Gavin/Solmonese, told The Anti-Corruption Report. "I would be cautious of any compliance metrics that are too quantitative," she said. "Those types of measurements are often easy to gather, but they can become a diversion from the real purpose of generating a measurement."

The Problem of Measuring Training

Training is one area of compliance where the challenges of measuring quality are most apparent. Many of the metrics companies use do not give any real information about the effectiveness of a training program. "One metric companies will often focus on with regard to training is the completion rate," Hui Chen, former compliance counsel to the DOJ, told

The Anti-Corruption Report. "But if the completion rate is how you measure a training program, that indicates that training is just an item on a checklist to be completed," she explained. A training completion rate provides information about how many people took a training, but not whether they paid attention or learned anything. For example, for live training, the metrics often simply count how many people showed up. For online training they only measure whether employees clicked a button on a screen. Neither metric gets at the heart of what a company wants to measure.

Eric Feldman, senior vice president and managing director of the corporate ethics and compliance programs at Affiliated Monitors, Inc., who has served numerous times as a compliance monitor, recalled a particularly stark example of how completion rates can inaccurately represent the effectiveness of compliance training. "During a focus group at a company, I asked about the computer-based training program and the employees started to snicker. I always take the online trainings at companies I'm evaluating and thought the program at this company was pretty good. When I asked the employees what was funny about the training program, one explained that they had a game at the company of how fast someone could complete the training without reading anything. In a situation like that, a metric that says 100 percent of employees had completed the training was completely useless."

When Feldman raised the issue with management, a person on the ethics team suggested fixing the problem by making it so that employees could not advance to the next screen without scrolling down first. "That wasn't fixing the underlying issue, it was just making the 'game' harder for the employees," Feldman explained. "They were coming up with a software solution to cure a cultural problem because their focus was on the metrics and not the purpose of the training."

See our interview series on training that works: [Navigant's Joseph Spinelli](#) (Apr. 3, 2013); [Weatherford's Billy Jacobson](#) (Apr. 17, 2013); and [Manatt, Phelps & Phillips' Jacqueline C. Wolff](#) (May 1, 2013).

Measuring Culture

Another key element of a compliance program that can be very difficult to measure is a company's culture, but it is worth putting in the effort so that employees know what the company expects from them. "Culture is a fundamental internal control and without that one control, all others that a company puts in place will be less effective," Feldman said. However, "because measuring compliance and culture is difficult, many companies just don't do it. Instead they rely on easy metrics that are subsequently easy to fudge," he said. But doing so can have real consequences because employees will adjust their behavior to meet the metrics by which they are being measured.

"In one company that I was monitoring, the code of conduct said that the company relied on its front-line managers to interpret its core values and apply them to the day-to-day business," Feldman recounted, by way of example. "However, when I had focus group meetings with employees and asked them how they interpreted and applied the core values, they said that that wasn't something that they were doing." Rather, "the employees explained that their performance appraisals, bonuses and promotions were based on financial metrics." This was problematic, Feldman believed, because it created the impression that the company did not value compliance and ethics. "If the company wanted the employees to spend time promoting ethics, it would incentivize them to do so and then measure their success. Without those incentives, the employees got the message that ethics and compliance were not important."

See "[Six Steps for Converting a 'Paper' FCPA Compliance Program Into a Pervasive Culture of Anti-Bribery Compliance \(Part One of Two\)](#)" (Feb. 20, 2013); [Part Two](#) (Mar. 6, 2013).

Ways to Generate Qualitative Measures

There are ways that companies can measure the quality of their compliance program. However, the methods many companies use for measuring the culture of a company and the quality of its program can be labor intensive both in design and implementation. "Companies can become so data-driven that the most effective ways of assessing a compliance program – which are often not data-driven and require one-on-one interactions – can get lost," Jacqueline C. Wolff, a partner at Manatt, noted.

There are also ways to use quantitative measures as an indication of quality. "It is difficult to measure an employee's integrity or propensity to commit a bad act, but it is possible to look at and measure opportunities for bad acts," Eberhardt noted. "For example, a company could measure the number of potentially risky transactions, such as those that are paid in cash or the number of times gifts are provided to clients."

"The processes of gathering qualitative and quantitative data are not mutually exclusive," Feldman agreed.

Testing

While many online trainings include a short quiz at the end of the program, those quizzes are often just used as proof of completion and do not do much to truly test the efficacy of the training. Tests and quizzes can, however, be a powerful tool for measuring training effectiveness if they are well thought-out and administered correctly.

The first step to creating effective tests is determining what the training is trying to achieve. "Someone asked me once what I thought made for an effective training program and I replied that it depends on what you want the training program to do," Chen recounted. In other words, companies need to ask: "Effective at accomplishing what?"

One purpose of training is to communicate policy. "That is fairly easy to measure because the objective is clear," Chen said. "A quiz at the end of the training just needs to ask whether employees heard and understood the policy." However, Eberhardt warned that in order to provide meaningful feedback, a quiz at the end of a training session needs to be difficult. "If everyone who takes the test scores 100 percent, then it is probably not a robust enough measurement of the success or failure of the training session," she said.

If the purpose of the training is to see whether employees retained that information, Chen suggested administering a quiz 30 or 60 days later, "because that will also measure whether a message stuck." Just knowing that such a test could be administered might make the training itself more effective. "If employees know at the time of a training that there will be a follow-up test or discussion with their manager a month later, they are more likely to pay attention and retain the information," Jonathan Drimmer, vice president and deputy general counsel at Barrick Gold Corp., explained.

See "[Seven Practical Tips for Enhancing Anti-Corruption Training and Four Ways to Measure Its Effectiveness](#)" (Sep. 10, 2014).

In-Person Training

Live training sessions can be a good opportunity for a company to get a sense of how well its compliance program is working. “We don’t keep an official tally, but anecdotal evidence suggests that lightbulbs go off following in-person training in particular,” Lynn Haaland, senior vice president, deputy general counsel and global chief compliance and ethics officer at PepsiCo, noted.

“During in-person training, employees can ask questions and engage in discussions,” Wolff explained. “During those interactions, the trainer can get a much clearer sense of whether the employees truly understand the training and more importantly, can learn whether there are ongoing compliance issues in the field.”

Because live trainings provide these opportunities for employees to air issues, measuring the number of live trainings versus the number of online trainings can be a telling qualitative metric. Companies can also keep track of whether live trainings resulted in issues being raised that the company would not have otherwise known about – another useful metric.

See “[Training Insights From In-House Experts “: \(Part One of Two\)](#)” (Jun. 1, 2016); and [Part Two](#) (Jun. 15, 2016).

Hypothetical Discussions

Either as a part of live training sessions or separately, companies can use hypothetical situations to spark discussions with employees that yield revealing information about the effectiveness of a compliance program. “Rather than giving a simple multiple-choice test at the end of a training session for high-risk employees, a company could give a more in-depth exam with hypothetical situations and narrative answers,” Wolff explained. “That kind of exam would generate a more accurate metric of the effectiveness of the compliance training.”

Drimmer explained that his company presents scenarios to a small group of employees and asks how they would respond. “Unlike a law-school or business-school hypothetical, these scenarios have a right and wrong answer but we try not to make them overly complicated – if the employee understands the basics of the anti-corruption policies and procedures, she will be able to respond to the scenario correctly,” he explained.

It is important to keep the hypotheticals “short and crisp” when testing employees, Drimmer emphasized. If a program is relatively young, he suggested that the scenario can ask fairly simple questions, such as: “What are the applicable policies to this situation?” and “To whom should you report this type of problem?” For a more mature program, he recommended a scenario that layers in more nuanced elements of an anti-corruption compliance program, such as situations involving non-cash payments.

An example of a hypothetical Drimmer might use at his mining company is the following: A government auditor comes into a mine and is there all day long. He doesn’t bring lunch and wants to eat in the company mess hall. What is the appropriate response under our policies?

“These conversations can give a good sense of how well the employees understand the policies, which is a qualitative way to measure the success of trainings,” Drimmer explained. “You can turn that into a quantitative measure by reporting the percentage of employees that came to the correct conclusion about the hypothetical.”

See “[Twenty Tips for Creating an Effective Training Program](#)” (Oct. 8, 2014).

Employee Interviews

Interviews with employees can be useful as well. However, they need to be done in such a way that they are not disruptive to the business nor make employees feel like they are under investigation.

“Employee interviews can be extremely helpful in measuring the effectiveness of a compliance program but they have to be done in a way that is sensitive to employee concerns,” Lucinda A. Low, a partner at Steptoe & Johnson, cautioned. “It’s best if there is a champion on the board, management or in the business who can help employees feel comfortable with the process and underscore its importance.” The interviews don’t have to be lengthy, as a lot of ground can be covered in a short period of time, she explained.

“One way to make interviews less intrusive is to time them for when management will all be in the same place at the same time, such as during board meetings or other management gatherings,” Low suggested.

See "[Employee Interviews in Internal Investigations After Yates: A Conversation With Quinn Emanuel and EY](#)" (May 4, 2016).

Surveys

Surveys are a less intrusive way to get information directly from employees about how effective a compliance program is and survey results translate well into metrics.

"A survey could ask employees whether they understand key elements from the anti-corruption policies and training," Drimmer suggested. With regard to messaging, "the survey could ask whether employees believe the company is committed to preventing and detecting bribery. The survey could even present employees with hypothetical situations to assess how well they understand the company's policies and procedures," he said.

Feldman noted that how employees feel about a company is an important internal control itself, and he suggested that survey data could be used to measure how loyal employees are to the company. However, while engagement surveys can be a helpful way to assess culture at a company, Feldman has been told by employees "that they will just say what they think the company wants to hear because they are afraid their answers can be traced back to them."

Third-Party Assessments

Finally, a company can generate metrics about the effectiveness of its program as part of a third-party program assessment. "In a gap assessment, we look at the DOJ's Evaluation of Corporate Compliance Programs, and other statements the government has made about its expectations for compliance programs, and then look at a company's compliance program to see where there might be gaps between the expectation and reality," Low said.

Having this assessment performed by a third party can bring some much-needed perspective and can encourage employees to be more candid. "Employees are generally more open with an independent third party that can promise non-attribution," Feldman explained. Additionally, "an outside resource brings experience with other companies and may have more experience with assessing systems and procedures than a company will have internally," Low noted. And, according to Feldman, that outside perspective can be more persuasive to the DOJ or other regulators if there is ever an investigation.

"At the end of the assessment we grade the various elements of a company's program so they can see what areas need improvement," Low said. Those grades are useful measures of the compliance program and can be used to demonstrate improvement when next an assessment is performed.

See our interview series on compliance program assessments: [Kaplan & Walker's Jeffrey Kaplan](#)

(Nov. 4, 2015); [AlixPartner's Susan Markel](#) (Feb. 24, 2016); and [CREATe.org's Pamela Passman](#)

(Apr. 6, 2016).

