BUILDING MULTI-YEAR PROGRAMS:
Measurement, Evaluation, and Ongoing Improvement
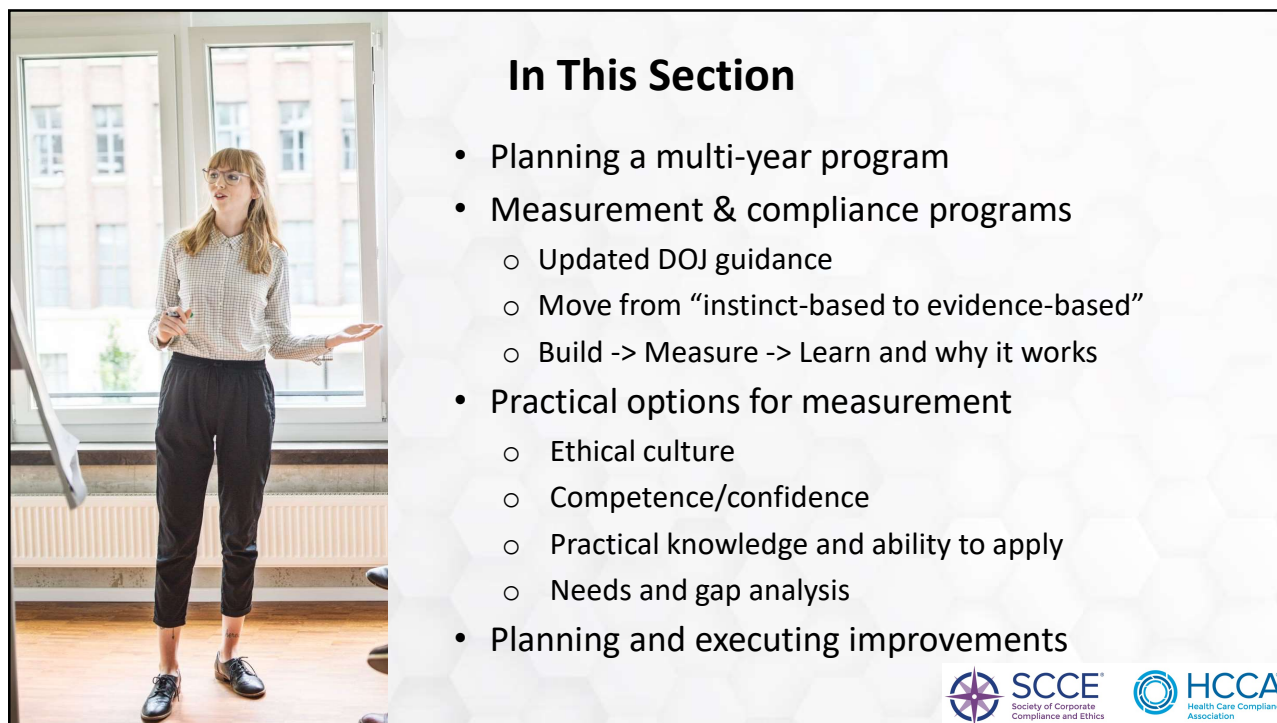
Section Eight

Developing and Delivering Effective Compliance Training

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In This Section

- Planning a multi-year program
- Measurement & compliance programs
  o Updated DOJ guidance
  o Move from "instinct-based to evidence-based"
  o Build -> Measure -> Learn and why it works
- Practical options for measurement
  o Ethical culture
  o Competence/confidence
  o Practical knowledge and ability to apply
  o Needs and gap analysis
- Planning and executing improvements

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Planning Multi-Year Programs

- UK Serious Fraud office: "Effective training is continuous, and regularly monitored and evaluated."
- Consider overall employee time available (about 1-3 hrs)

It will not be possible to hit all of your risks each year!

- A well-thought-out program can cover your risks in priority order, with full coverage over several years.
- Consider a specific plan for high-risk audiences:

   From DOJ guidance 2020: Risk-Based Training – What training have employees in relevant control functions received? **Has the company provided tailored training for high-risk and control employees, including training that addresses risks in the area where the misconduct occurred? Have supervisory employees received different or supplementary training?** What analysis has the company undertaken to determine who should be trained and on what subjects?

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Use multiple years to build a program that addresses the full range of your risks and audiences

Topic	Year 1	Year 2	Year 3
Code	Full course with certification (20 min)	Short refresher with attestation (5-7 Min); extra module for supervisors	Shorter course highlighting COI; Code attestation + COI disclosure (8-12 min)
Bribery	Foundational course to full population (20 min)	Live course to high-risk population; follow up test (1 hr)	Shorter refresher course to full population (8-12 min)
Respect	Short video (3-5 min)	CA/multi-state harassment (1-2 hrs)	Shorter refresher course
Privacy	Targeted training for people in high-risk roles (1 hr)	Shorter "basics" course to full population (7-12 min)	Foundational course to full population (20-30 mins)
Elective 1 (targeted)	Export controls	Insider trading	Gifts & entertainment
Elective 2 (targeted)	Antitrust	Contact with competitors	Records management
Communication campaigns	• Speak up/helpline	• Ethical decision-making	• Why we have a Code

SCCE Society of Corporate Compliance and Ethics   HCCA Health Care Compliance Association

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Measurement & Compliance Programs

- Early on, compliance programs were structured defensively
- In courses, this meant:
    - ○ Mandatory courses; focus on 100% completion rates
    - ○ Test to 100%—only option, no info collected on failures
    - ○ NO evidence collected on lack of knowledge or awareness
    - ○ But...without true gap analysis, how can you improve?
- Government has been signaling need for measurement & proof, plus reward/leniency for good faith efforts
    - ○ Morgan Stanley & Ralph Lauren cases

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Recent DOJ Guidance

- Feb 2017, released guidance for evaluating programs
    - ○ Stakeholders included in compliance program? Have input into controls?
    - ○ Is compliance operationalized? (Commitment of whole company, especially leadership?)
    - ○ Are compliance materials working? Is there a culture of compliance? Do you audit for effectiveness?
    - ○ If wrongful conduct, is there root cause analysis and response?
- Guidance updated in April 2019 and June 2020
    - ○ 2019: Structured around three questions: Is the program well designed? Is it implemented effectively? Does it work in practice
    - ○ 2020:
        - - Question 2 updated: Is the program adequately resourced and empowered to function effectively?
        - - Is program examined, tested, updated on a continual basis?
        - - Does the program have access to data? Is it being used to monitor for risks & test policies and procedures?

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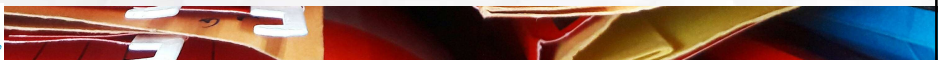
2020 DOJ Guidance Re: Measurement

- "Is the risk assessment current and subject to periodic review? Is the periodic review limited to a **"snapshot" in time** or based upon **continuous access** to operational data and information across functions? Has the periodic review **led to updates** in policies, procedures, and controls?

- "[E]xamine whether the compliance program is being disseminated to, and understood by, employees in practice in order to decide whether the compliance program is "truly effective."

  - "What analysis has the company undertaken to determine who should be trained and on what subjects?"

  - "How has the company measured the effectiveness of the training? How has the company addressed employees who fail all or a portion of the testing? Has the company evaluated the extent to which the training has an impact on employee behavior or operations?"

  - "What resources have been available to employees to provide guidance relating to compliance policies? How has the company assessed whether its employees know when to seek advice and whether they would be willing to do so?"

  - "Does the company take measures to test whether employees are aware of the hotline and feel comfortable using it?"

  - Do 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 policies, controls, and transactions? Do any impediments exist that limit access to relevant sources of data and, if so, what is the company doing to address the impediments?

  - Has the company reviewed and audited its compliance program in the area relating to the misconduct? More generally, what testing of controls, collection and analysis of compliance data, and interviews of employees and third parties, does the company undertake? How are the results reported and action items tracked?

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Hui Chen (Original Author of DOJ Guidance)

- 2018 Harvard Business Review article ("Why Compliance Programs Are a Million Dollar Waste of Time")

  - "Many executives are rightly frustrated about paying immense and growing compliance costs without seeing clear benefits. And yet they continue to invest—not because they think it's necessarily productive but because they fear exposing their organizations to greater liability should they fail to spend enough. Employees, too, often resent compliance programs, seeing them as a series of box-checking routines and mindless training exercises."

  - "For many firms, appropriate measurement can spur the creation of leaner and ultimately more-effective compliance programs. Put simply, better compliance measurement leads to better compliance management."

- Speaker at 2019 Conference

  - "We need to move from instinct-based compliance programs to evidence-based compliance programs."

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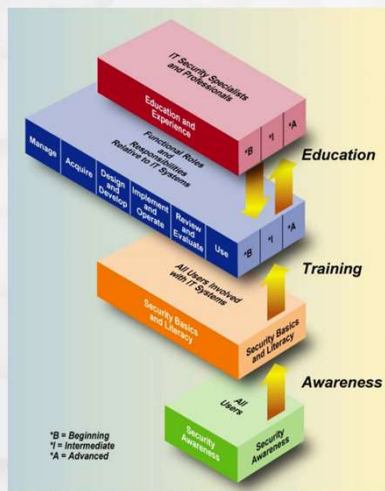
- Awareness = "designed to **change behavior or reinforce good practices**"

- **Frequent, engaging communication**s are ideal

- **Evaluation and feedback** aimed at ongoing **improvement**

Practical Options For Measurement

- **Knowledge**: Do you know the COI gift limit? How to call the helpline? (etc.)
- **Applied knowledge**: How would you handle "x" situation?
- **Ethical culture**: Does respect seem like a top company priority? Who sets the ethical tone at our company?
- **Competence/confidence**: How confident you do feel about handling "x" situation?
- **Training needs self-assessment**: Which of these topics would you like to know more about?

"It's Amazing What People Will Tell You If You Just Ask"

- Measurement & evaluation have been part of compliance from the beginning
  - o Risk/program/culture assessments, large & small
  - o In-course testing & follow-up quizzes
  - o Training needs assessment
  - o Test-out learning and role-based training
- Traditionally, these efforts have been more informal—"compliance by walking around"
  - o Formal can be expensive & time consuming
  - o First: lack of good data collection tools
  - o Now: lack of familiarity with data collection tools and strategies for collecting useful data

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Getting Started On Measurement

1. You already assess/measure many areas of the program, often on an ongoing basis.
   - o **Ask**: Are there ways to collect data to support/test/substantiate the what you're already evaluating?
   - o Can you tie it to training somehow?
2. Find easy opportunities to collect more.
   - o **Ask**: Where do you already connect with people where you can gather more information? (Data doesn't have to be complicated!)
3. Broaden from there.
   - o **Ask**: Does another person or department in the organization collect relevant info you could use or review? If not, what data, if known, would be of most value to training strategy?

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Practical Options For Data Collection

1. **Desk audits:** Compare your program to the Sentencing Guidelines, new DOJ guidance, and other standards. Gaps? Document & close them.
2. **Quiz/test performance:** Tests reinforce learning AND give you concrete information about your audience's competency. Don't collect test results? Start there. Not possible to fail your tests? Build ones you can fail.
3. **Focus groups, surveys & individual/exit interviews:** Gather more intensive insight on anything from course format preference to ethical culture perceptions to retained knowledge.
4. **End of course surveys:** Want to know if your audience found a course helpful? Ask!
5. **Learning needs assessment:** Within a course, ask your audience what else they want to know on the same topic. Give them specific options. Then focus your next training there.

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A Caution About Analytics & "Big Data"

Many organizations struggle to get business value from their analytics!

According to Gartner:

- Only 20% of analytic insights deliver business outcomes
- 80% are "alchemy, run by wizards whose talents will not scale in the organization"
- In other words: Setting up analytics projects does not guarantee getting value from analytics

Key take-away: You don't necessarily need BIG data. You need USEFUL data.

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Activity: Collecting Audience Feedback

- What steps could you take right now, with the tools you have, to measure your program?
- What channels can you use to connect to your audience to gather feedback?
- What specific questions could you ask to collect useful information (e.g., interest, culture, competencies, needs, and opinions)?

Planning & Executing Improvements

- Look for practical, defensible, reasonable steps
- Plan to move the needle, not 100% close the gap
  - Given what you know about your audience, what could help?
  - Treat improvements as experiments—you don't know what will work until you try something and measure the result
- Then plan:
  - Pair type of training/communication with audience need and the best channel for reaching your audience
    - What approach, information, or insight might be most persuasive to your audience?
    - What are the best channels and formats to reach those people?
- Document, document, document