

# Evidencing Compliance Culture

“How often and how does the company measure its culture of compliance?”  
(DOJ Compliance Guidelines)<sup>1</sup>

**D**eveloping a culture of compliance within an organization should be a major goal for any compliance officer. The underlying premise for this is that an organization in which management understands the workplace culture and tries to make improvements with each passing year will perform better than organizations that are unaware or take very little interest in this. It is also important to realize that a strong compliance culture can only exist where there is an alignment of interest of the compliance office, executive leadership, operational managers, and the workforce.

No compliance program can be considered effective without knowing the degree employees and management have bought into the program. The United States Sentencing Commission (USSC)<sup>2</sup> recognized the significance of “culture” by stating that businesses must “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.” The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) Compliance Program Guidance for Hospitals<sup>3</sup> stated that “fundamentally, compliance efforts are designed to establish a culture that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as ethical and business policies.”

The new U.S. Department of Justice (DOJ) Guidelines,<sup>4</sup> issued in June of this year, puts considerable emphasis on assessment of the compliance culture, noting, “The effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the middle and the top...(and) prosecutors should also assess whether the company has established policies and procedures that incorporate the culture of compliance into its day-to-day operations...Beyond (this), it is important for a company to create and foster a culture



**Richard P. Kusserow** is the president and chief executive officer (CEO) of Strategic Management. He can be reached at 703/683-9600, ext. 411 or by email at [rkusserow@strategicm.com](mailto:rkusserow@strategicm.com).

of ethics and compliance with the law at all levels of the company.” Prosecutors are instructed to review the “company’s culture of compliance” and give consideration to “whether the company has...surveyed employees to gauge the compliance culture.”

### **COMPLIANCE CULTURE SURVEYS<sup>5</sup>**

In its Compliance Program Guidance for Hospitals,<sup>6</sup> the OIG also noted that compliance officers “should consider techniques...questionnaires developed to solicit impressions of a broad cross-section of the hospital’s employees and staff.” In other compliance guidance documents, the agency reinforced this by stating it “recommends that organizations should evaluate all elements of a compliance program through “employee surveys, management assessments, and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments, and employee feedback.”<sup>7</sup> The most direct guidance on this subject, however, is found in the DOJ Guidelines. In making determinations about the compliance culture, the DOJ is telling its prosecutors to ask several questions that compliance officers should be prepared to answer with results from compliance culture surveys.<sup>8</sup> These questions include:

- How often and how does the company measure its culture of compliance?
- Does the company seek input from all levels of employees to determine whether they perceive senior and middle management’s commitment to compliance?
- Have surveys of employees been used to gauge the compliance culture and evaluate the strength of controls?
- What steps has the company taken in response to its measurement of the compliance culture?

Employing survey methods to collect data regarding compliance culture is an excellent way to gather lots of

information from many people. This is the best method to use when one hopes to gain a representative picture of the attitudes and perceptions of employees. The availability and use of compliance culture surveys geared toward the health care provider community has long been available and used.

Jillian Concepcion reported that the Compliance Resource Center (CRC) has been employing the Compliance Benchmark Survey<sup>9</sup> that has been measuring health care organizations compliance cultures since 1993. It is supported by a database of hundreds of health care organizations with over a half million employees. She explained that “this type of survey measures outcomes or the ‘impact’ of their compliance program activities. It can be extremely useful tools for assessing how well-aligned the compliance culture is with its propagated values and ethics; and provides a means to collect insights from employees regarding their attitudes and perceptions concerning the compliance program.”

### **FACTORS DETERMINING CREDIBLE COMPLIANCE CULTURE SURVEY RESULTS**

Survey instruments must be both reliable and valid for results to be credible. Survey reliability and validity must be examined and reported for each assessment instrument used to measure study outcomes. Using an instrument with high reliability is not enough; other measures of validity are needed to establish the credibility of survey results. The following are factors to consider in assessing the value of survey results.

#### **Validity**

For outcome measures from a survey, validity refers to the *accuracy* of measurement and how well the assessment tool measures the underlying outcome of interest. This depends on asking questions that truly measure what is supposed to be measured.

## Reliability

Surveys tend to be a *reliable* method of inquiry in that they use the same questions, phrased in exactly the same way for all participants, and provide *consistent* or *dependable* results. For *internal consistency*, two to three questions or items may be created that measure the same concept, and the difference among the answers is calculated.

## Content

Content validity pertains to the degree to which the instrument fully assesses or measures the information of interest. This involves asking the right question, which relies upon those that created the instrument (national experts would confer greater validity than in-house staff) and other steps that support the instrument has the appropriate content.

## Likert Scale<sup>10</sup>

This is the most widely used approach to scaling responses in surveys. Unlike a dichotomous (yes-no) question, used in compliance knowledge surveys, respondents specify their level of agreement or disagreement to a question or statement, thus capturing the intensity of their feelings for a given item. As such, using this type of survey applies when trying to gauge attitudes and perceptions of employees regarding the compliance program.

## Anonymous Surveys

A key assumption of any successful employee survey is that all employees will complete it and provide honest answers to all questions. Many employees worry when completing surveys that their answers will be seen by managers and potentially used against them. In order to collect honest feedback, employees must know that they can share feedback in a confidential way that prevents leaders or stakeholders from tying that feedback directly to their name. If you cannot guarantee that that won't

happen, you can't count on their open, honest participation.

## Pilot Testing

Culture surveys need to be tested for the quality of the data obtained from the questions, as well as to test the viability of the survey as a whole. Failing to do this means you really do not know whether the questions being asked are being interpreted as intended by the respondents. This includes scale wording, instructions, question sequence, appropriateness and meaning of sections, etc. Without doing this, the evidence of the instrument's reliability becomes questionable, as would be for validity of results.

## Survey Costs

The cost of a medium-scale professionally developed and independently administered survey is between \$5,000 to \$7,000 for a detailed report of "deep-dive" data analysis and interpretation of results for individual questions, panels and overall scoring, along with suggested actions for making improvements. This is far less than would be for an organization to develop, test, and administer their own internally generated survey. Cost of surveys with only statistical results cost less but provide much less valuable and actionable information.

If considering using a professionally developed and administered survey, give consideration to those that provide (a) in-depth analysis of the findings and not just statistical results; (b) identification of opportunities for improvements with suggested means for achieving this; and (c) data anchored in a universe of users of the same instrument for comparison of results.

## USING SURVEY RESULTS

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### Benchmarking

Both the DOJ and OIG make it clear that compliance programs are always a work in progress and must respond to changing

regulatory and enforcement environment, as well as organization changes. This underscores the importance of being able to benchmark progress in the program.

When you set benchmarks, you are essentially setting a baseline or standard that you can use to find where you need to improve, set goals, and measure your performance over time. Surveys are a great way to benchmark performance metrics. The results survey can be used for *internal benchmarking* with current results being a baseline against which future surveys can be benchmarked; however, this provides only part of the picture, as it would be far more useful to know how the results compare against similar organizations in the same sector through *external benchmarking*.<sup>11</sup>

This involves comparing data collected against the universe of other organizations in the same sector using the same survey instrument. For example, if an organization had a score of 72 percent on a survey item, it may appear to be very positive; however, if other organizations had significantly higher scores, the result may not be so comforting. External benchmarking better enables identification of strengths as well as areas of opportunity for making improvements. It should be noted that raw number results from a survey may be difficult to interpret, especially those from an internally generated process.

### **Evaluation of Compliance Program Effectiveness**

Compliance culture and knowledge surveys are often used by outside consultants in conducting independent compliance program evaluations. They can help focus attention on relative weak areas identified in a survey and add support to findings. Steve Forman, CPA, has been employing compliance culture surveys for his clients for over 20 years, as part of evaluating compliance programs, and “finds results very useful in measuring attitudes, behavior

and impressions that gauge how well an organization has adopted and accepted the compliance program principles.” He believes that for those organizations just getting their program underway, the survey can establish a benchmark that can be used to measure progress of the program. For mature programs, he sees it to gain insights into the strengths and weaknesses.

Tom Herrmann, JD, has provided compliance advisory services since his retirement from the OIG. He noted, “Results from compliance survey can assist in identifying the current compliance culture with the goals and objectives of the compliance program. These results can identify strengths as well as opportunities for improvement which can provide a ‘road map’ for making improvements and enhancements in making the compliance program more effective.”

Carrie Kusserow has been using surveys in connection with program evaluations, both as compliance officer and as a consultant evaluating the status of compliance programs. She has found that “executive leadership and board find survey results as powerful evidence in understanding the status and needs for the compliance program.”

### **SUMMARY COMMENTS**

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Compliance culture has been a theme in compliance program guidance going back to early USSC guidelines and OIG compliance guidance. More recently, the DOJ Guidelines underscores the importance of evidencing a positive compliance culture. For many, evidencing compliance culture has been a challenge. The answer as to how to satisfy this standard has always been there. The OIG in its original Compliance Program Guidance of Hospitals<sup>12</sup> and subsequent guidance documents refers to surveying employees with questionnaires; however, the more recent DOJ Guidelines<sup>13</sup> has made it clear that prosecutors should ask for evidence on how an organization is measuring the compliance culture, as

well as when and how often they survey employees for determining compliance culture. The challenge is finding the best method by which a compliance culture survey can be administered and analyzed, keeping in mind the importance of having the results be convincing and credible to those that review them.

### Endnotes

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3. Publication of the OIG Compliance Program Guidance for Hospitals, [oig.hhs.gov/authorities/docs/cpghosp.pdf](http://oig.hhs.gov/authorities/docs/cpghosp.pdf).
4. Op. Cit. DOJ Guidelines.
5. "Tips on Using Compliance Culture as a Key Measure of Program Effectiveness, [compliance.com/industry-news/tips-using-compliance-culture-key-measure-program-effectiveness](http://compliance.com/industry-news/tips-using-compliance-culture-key-measure-program-effectiveness).
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12. Op. Cit. OIG Guidance for Hospitals.
13. Op. Cit. DOJ Guidelines.

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