The Art and Science of Measuring Program Effectiveness

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How Do I Prove My Ethics & Compliance Program Is Effective?

The Art & Science of Effectiveness Measurement

Presented by: Bruce Anderson and Carrie Penman

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Agenda

- Debrief Keynote Session

- Brief Review of Some Effectiveness Models

- Art vs. Science

- Assessment Barriers

- Culture's Impact on Meeting Your Goals

- Telling the Effectiveness Story

- Key Takeaways

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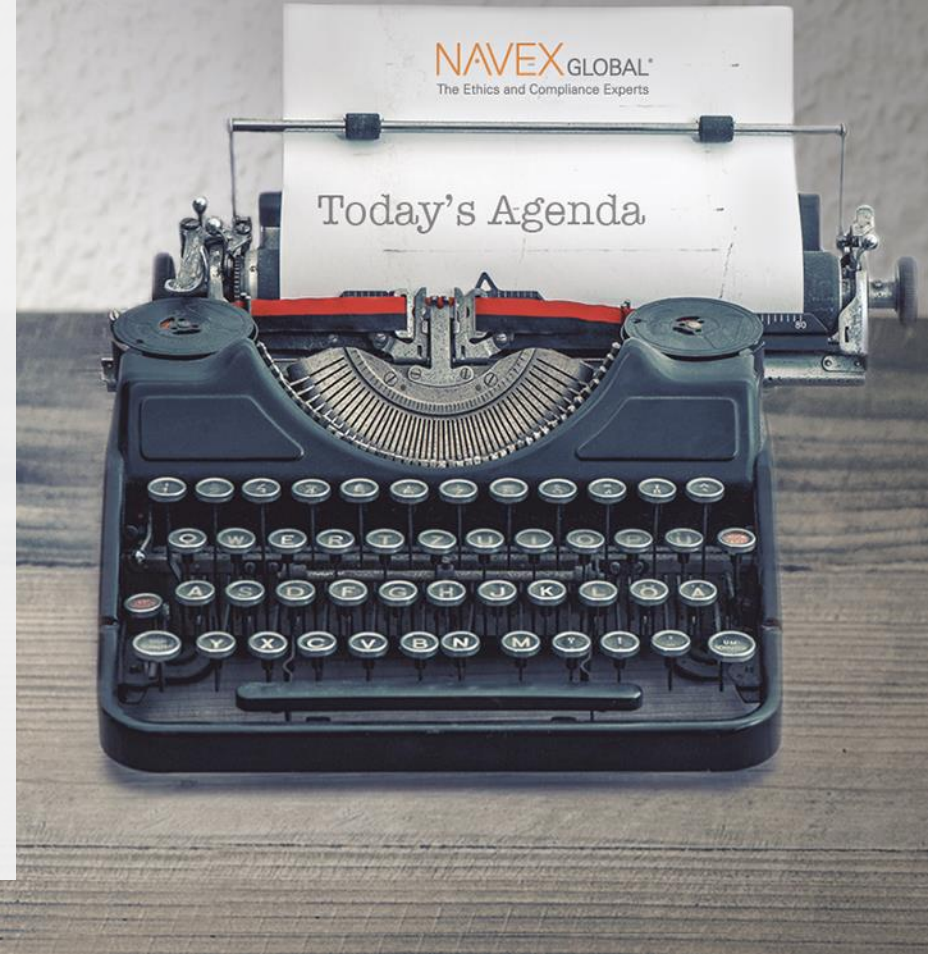
Quick Debrief on Keynote Session

- Any surprises?

- Anything that you will do differently as a result of the session?

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Vote Question

Assessment experience: Has your organization conducted a comprehensive ethics/compliance program assessment?

1) Yes, more than once

2) Yes, once

3) I don't know

4) No

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Vote Question

Reasons for not doing an assessment: If you haven't done a program assessment recently, why not?

1) It is not a priority

2) Budget

3) Won't tell me anything new

4) May tell me something I don't want to know

5) Other

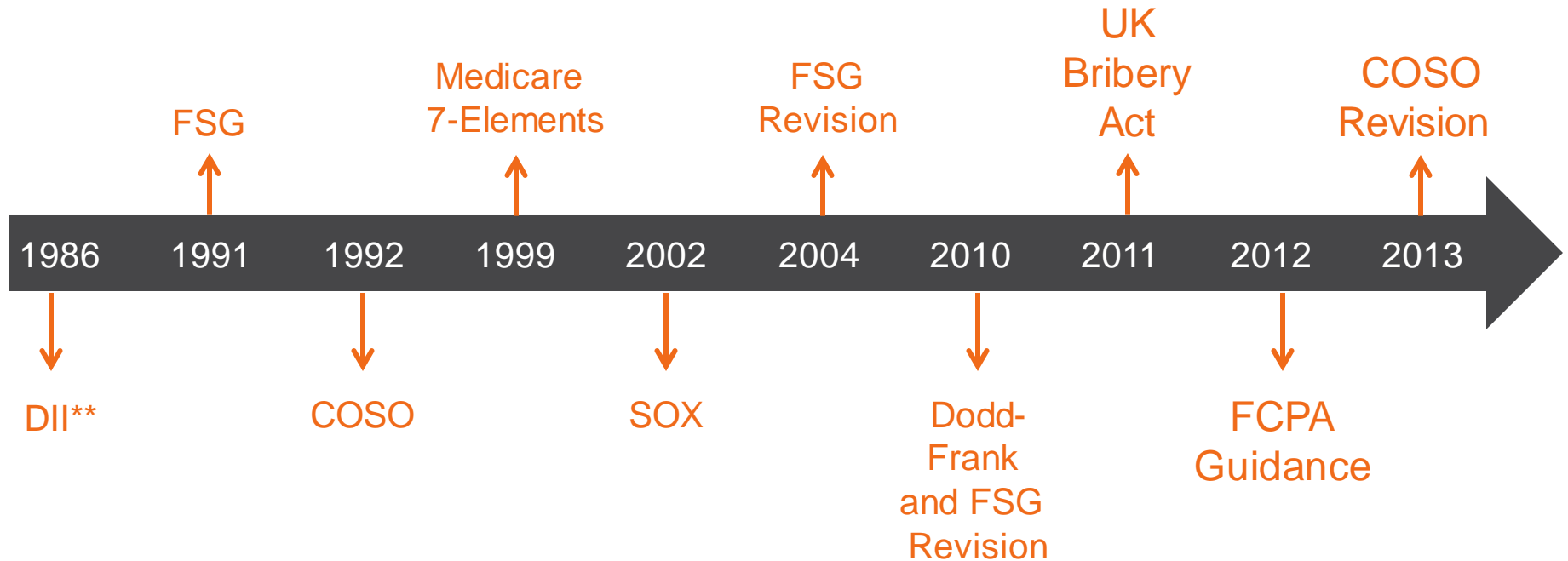NAVEX GLOBAL®
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Standards

Some Effectiveness Models

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Ethics and Compliance Effectiveness Models*

1986	1991	1992	1999	2002	2004	2010	2011	2012	2013

FSG — 1991

Medicare 7-Elements — 1999

FSG Revision — 2004

UK Bribery Act — 2011

COSO Revision — 2013

DII** — 1986

COSO — 1992

SOX — 2002

Dodd-Frank and FSG Revision — 2010

FCPA Guidance — 2012

* Based on effective dates
** DII – Defense Industry Initiative

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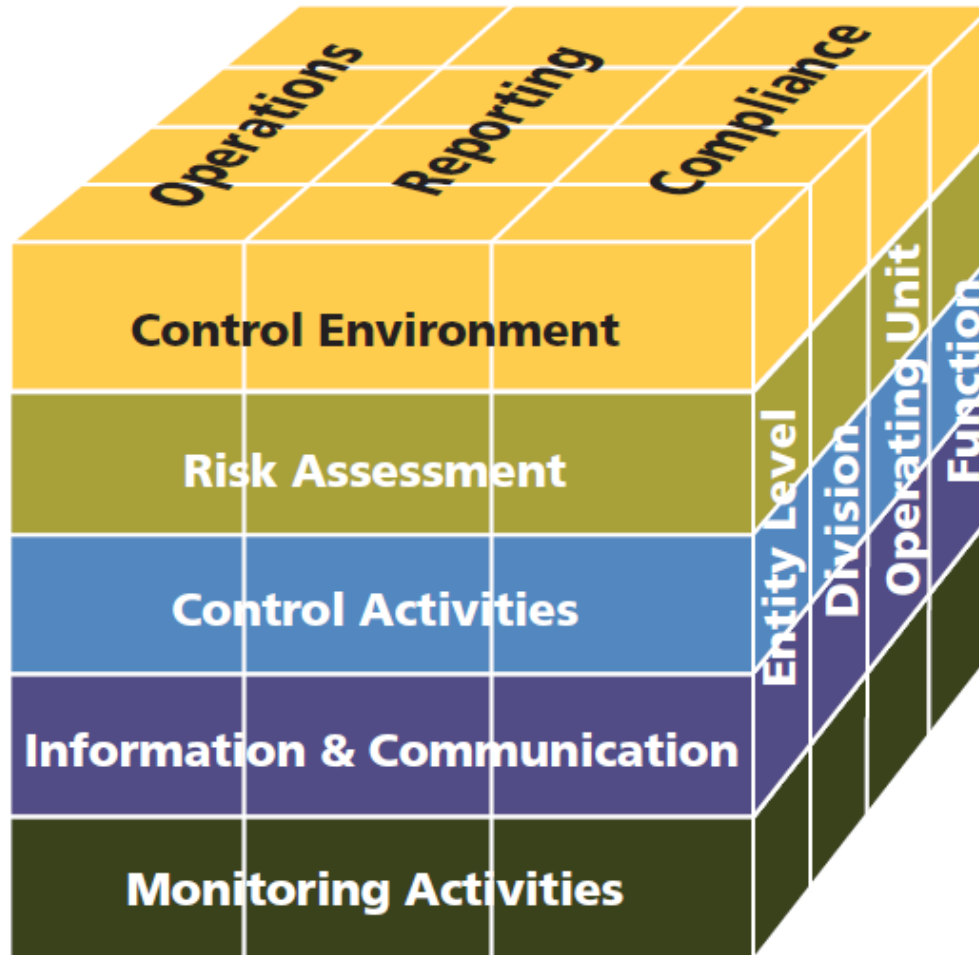# 7 Elements of an Effective Compliance Program

Medicare 7 Elements

1. Written Policies, Procedures & Standards of Conduct
2. Compliance Officer & Compliance Committee
3. Training & Education
4. Effective Lines of Communication
5. Enforcement of Standards
6. Monitoring & Auditing
7. Prompt Responses to Detected Offenses

FSG 7 Elements (Based on risk and addresses organizational culture)

1. Standards & procedures to prevent and detect criminal conduct
2. Leadership and oversight of the program with appropriate resources and authorities
3. Deny leadership positions to people who have engaged in misconduct
4. Communicate standards and procedures of compliance program
   Conduct effective and relevant training
5. Monitor and audit; maintain reporting mechanism
6. HR alignment: incentives/discipline
7. Respond quickly to allegations and modify program

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COSO May 2013 Framework – 17 Principles

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Hui Chen's Four Important Factors When Assessing the Effectiveness of a Compliance Program

1. Does the compliance program demonstrate thoughtful design?

2. How operational is the program (not a paper program)?

3. How well do stakeholders communicate with each other?

4. How well is the program resourced?

https://www.youtube.com/watch?v=pRTGZmmbc5o&feature=youtu.be

(November 13, 2015, NYU School of Law)

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Some Basic Definitions

1. Program Effectiveness—Did we take the right actions?

2. Program Efficiency—Did we execute them well?

3. Program Improvement—Organizational learning put into action

4. What is the Demonstrated Value—proof points will vary by stakeholder.

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Effectiveness Measurement is a Process

IDENTIFY YOUR GOALS

» Begin With The End In Mind: Define Effectiveness

» Determine What Metrics (from Art & Science) You Will Use

» Identify Possible Barriers

» Do the Work: Measure, Evaluate & Create Plan

TELL THE STORY: Report on outcomes & action plans to key audiences

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And, You Don't Have to Eat the Whole Elephant at Once

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Examples of Effectiveness Goals

- Drive awareness of E&C expectations/requirements

- Change behaviors around particular issues (workplace harassment, retaliation, etc.)

- Assess strength of risk controls

- Evaluate program resources

- Ensure compliance with policies and the law

- Identify education needs and impacts

- Measure the impact of program on culture

- Set priorities and develop work plan

- Demonstrate progress

- Defending your organization against key financial, reputational risks (bribery & corruption, etc.)

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If Only It Was This Easy

Data Entry → **Effective or Not Effective**

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THE ART & SCIENCE OF MEASURING PROGRAM EFFECTIVENESS

Science vs. Art

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Science

What are some examples of objective, data-driven information that are helpful in measuring effectiveness?

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Science: Objective, Data-Driven Information

- Benchmarking with peers
- Code and policy attestations
- Client issued corrective action plans
- Documentation aligning incentives with acceptable business practices
- Employee surveys
- Employee focus group data
- Executive communications
- Exit interview feedback
- Helpline call tracking, trending and benchmarking
- HR statistics
- Incidents of non-compliance
- Internal audits
- Investigations data

- Legal actions
- Organizational structure
- Quality metrics
- Regulatory agency findings
- Responses to issues found
- Retaliation reports and findings
- Risk assessment
- Standards and procedures
- Training completions
- Training evaluations
- Third party audits
- Third party evaluations
- Third party training
- Others…

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Art

What are some examples of experiences or intuition that, when applied to the science, help craft a credible and actionable effectiveness story?

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Art: creating the credible & actionable effectiveness story

- Management willingness to allow the E&C office to present at department meetings

- Intuition and gut reaction

- Management response to issues raised or audit findings

- "Flavor" of the calls or interactions with reporters

- Off-hand remarks by employees or leaders

- The "grapevine" or "water cooler" conversations

- Elevator behavior

- Management attitude toward program objectives

- Narrow focus on legal compliance rather than a broader definition that includes organizational culture

- Employee feedback about fears

- Management by walking around—what are you learning?

- Location of the E&C office (with leadership or in the "back 40"?)

- Interactions with the board of directors

- Out-of-the-box insights

- Others?

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Culture's Impact On Meeting Your Goals

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2016: Compliance Reality

"Culture eats strategy for breakfast."

Peter Drucker
(1909-2005)

The compliance reality is that it isn't (and never was) really about compliance.

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Sentencing Guidelines: Culture Expectations

- Consistency and clarity on limits of acceptable behavior

- Board and all managers act to build and sustain a commitment to E&C

- Whether E&C (including the people responsible for it) are marginalized

- Whether goals/incentives encourage and put unreasonable pressure on employees to violate standards

- Ease with which employees can ask questions/raise issues

- Is bad conduct tolerated—especially at the senior level?

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Culture Assessment Objectives:

- Is the ethics/compliance message actually reaching employees?

- Do employees believe that it is possible to behave ethically and achieve objectives at the company?

- Is unethical behavior clearly seen as out of bounds?

- Do employees know about and trust the upward communications channels available to them?

- Is the ethics and business conduct program viewed as a paper program or as a genuine commitment?

Some Things We Ask About

- Priorities of the organization?

- Who would you talk to?

- Can you raise an issue without fear of retaliation?

- Do you feel pressure to violate the code of conduct?

- What happens to great performers who violate the code?
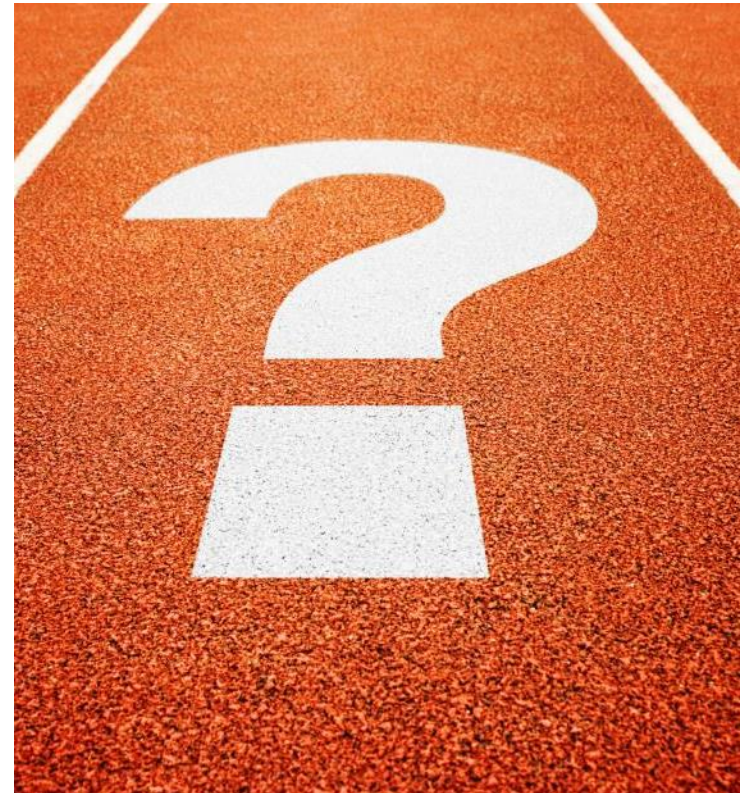
HOW DO YOU EVALUATE THESE SCENARIOS?
Do the Work: Measure (Science) & Evaluate (Art)

- You are evaluating your program effectiveness. Upon reviewing the hotline metrics, you find that one location has a spike in reports—some founded and some not.

- You call the president of the business unit to discuss why this may be happening.

- After explaining your reason for calling, the business president retorts, "*What are you gonna do? Send me to ethics prison? You're telling me 60% of the cases are unfounded. What do you want me to do about it?*"

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HOW DO YOU EVALUATE THESE SCENARIOS?
Do the Work: Measure (Science) & Evaluate (Art)

- You are attending a big meeting of all upper and middle management. The meeting is run by the CEO to review culture evaluation work conducted in focus groups led by some of the managers.

- After a couple of debrief reports of the focus group data, all identifying fear of retaliation as an inhibitor to speaking up, the agitated CEO interrupts the speaker and angrily says, *"This is a waste of time. Nobody's afraid. If any of you are scared to speak up, raise your hand!"*

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Vote Question

Do you believe that there is value to the "Art" of measuring effectiveness?

1. Yes, and I use it often.

2. Yes, but it won't be accepted by leadership as a defensible measure.

3. No, I think that everything that is important can be measured.

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Effectiveness Assessment Barriers

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Barriers to Development

- Lack of time or resources

- Uncertainty about what the standards are

- Normal silos and turf battles

- Uncertainty about how best to conduct the assessment

- Concern that data would be used adversely in litigation

- Concern about negative results

- Lack of commitment from the organization to respond to results

- Some skepticism about precisely "measuring ethics"

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Overcoming the Barriers

- Best practices help from other ethics officers and outside advisors

- Involve others in the development of the assessment

- Leadership and management attention in setting the right tone

- Prioritization of assessments

- React "well" to problems found

- Communications are key—solicit and provide feedback throughout the process

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Telling The Effectiveness Story

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Vote Question

How confident are you that your company measures it's ethical dealings appropriately and accurately?

1) High

2) Medium

3) Low

4) Not at all

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Telling the Story

1. Determine how you will you link the data with your insights and experience to create the story of effectiveness.

2. Define the culture and how it will tolerate change.

3. Identify how you will you satisfy the board and leadership that your insights and experiences are credible.

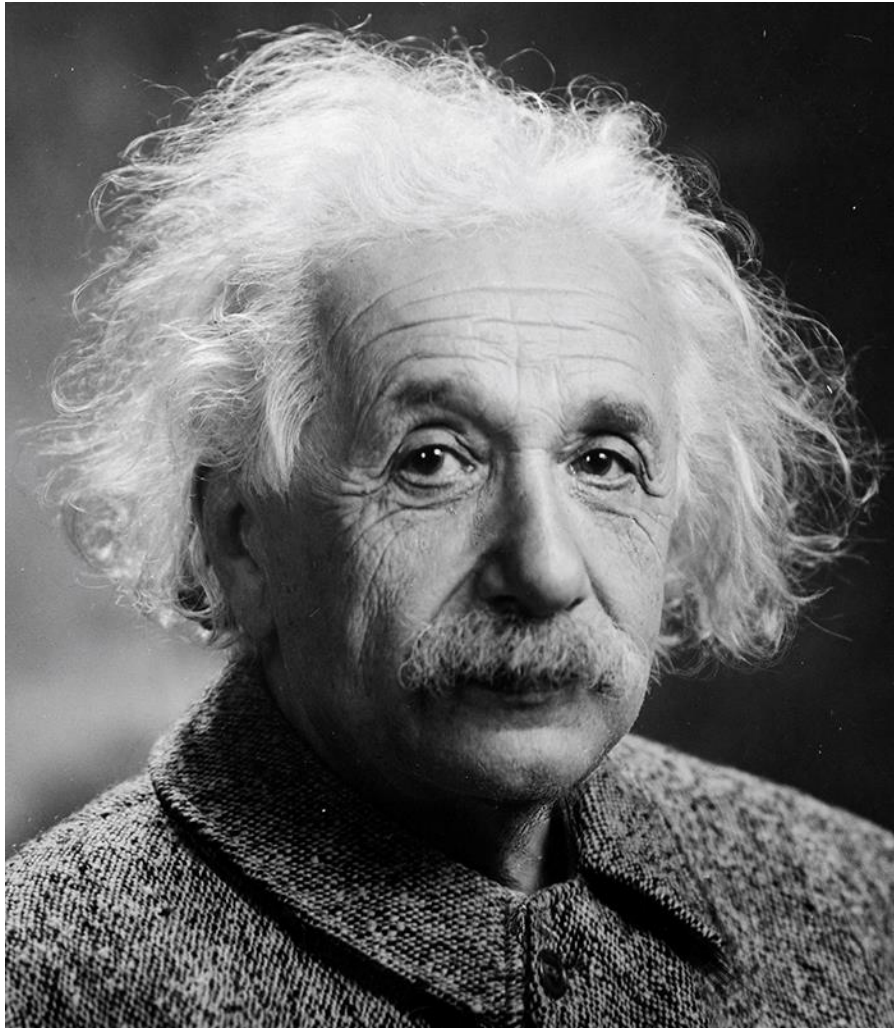4. Present the information in a way that is meaningful for leadership and other key stakeholders.

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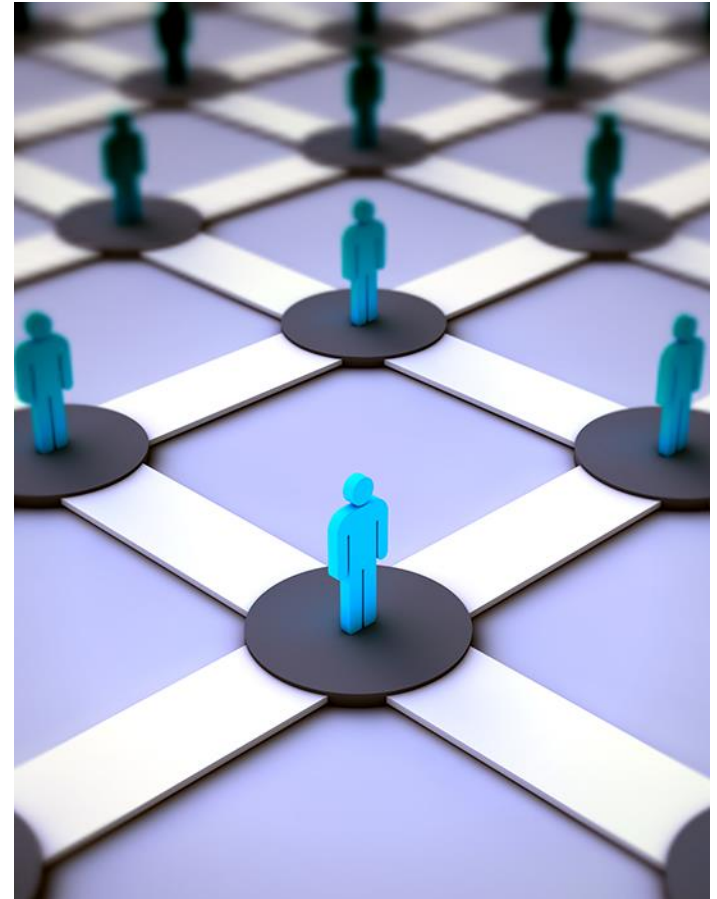
THE ART & SCIENCE OF MEASURING PROGRAM EFFECTIVENESS

Key Takeaways

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How It Really Is...

"Not everything that counts can be counted, and not everything that can be counted counts."

Albert Einstein

More Takeaways...

- Try to address a few key areas at a time: don't try to do too much

- If you don't have the right culture, no program changes will work

- Challenge the theory that it is all about metrics

- Don't just check off the steps—
  it's about how you identify and
  manage the biggest gaps
  between risk and current mitigation

- Culture and good risk management
  are what matter most

- Credible communications with
  leadership will help make the case

"The most successful compliance officers I know are the ones who can effectively apply intuition, experience and good judgment to a set of data points to determine and communicate effectiveness."

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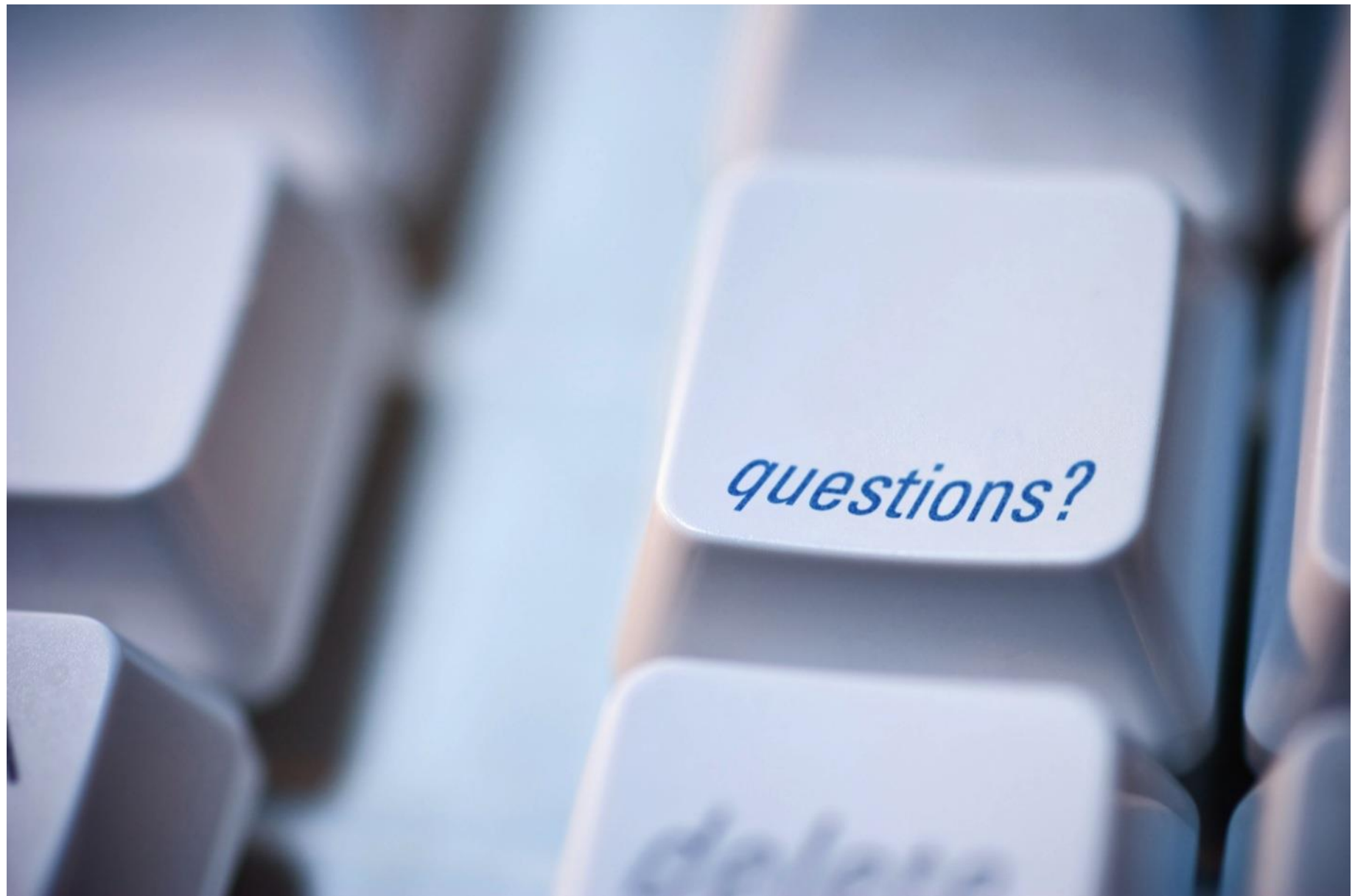
Thank you!

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Thank you

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