

Evaluation of FCPA Compliance Training

One of the key goals of any Foreign Corrupt Practices Act (FCPA) compliance program is to train company employees in awareness and understanding of the FCPA; your specific company compliance program; and to create and foster a culture of compliance. The testing and evaluation of your FCPA compliance training program is recognized under the US Federal Sentencing Guidelines as a key component in the overall effectiveness of a FCPA compliance program. Indeed the overall effectiveness of a FCPA compliance program is one of the factors that the Department of Justice (DOJ) reviews in determining whether or not to charge a company. In their book entitled, “Foreign Corrupt Practices Act Compliance Guidebook”, authors Martin and Daniel Biegelman explore some techniques which can be used to inform a company’s FCPA compliance training.

The authors suggest an approach, which is formulized by the acronym SMART, which is defined as follows:

- **Specific:** clear and concise training which can be understood by all employees;
- **Measurable:** the training has defined metrics requirement such as post-training testing and pass rates;
- **Achievable:** reachable, sustained and reasonable results such as training attendance;
- **Relevant:** a program which will inform and/or measure the desired behavior; and
- **Timed:** a realistic time frame for completion.

The authors also list several other considerations in the delivery of FCPA compliance training. What is the most effective type of training for your organization? Obviously live training is an important method of delivery. But this may not always be possible so computer based training, video training, web-based training or a combination of these different types of training can be useful to your organization.

While most people tend to overlook the issue of attendance at training, it is an issue that should also be considered. You should determine that all senior management and company Board members have attended FCPA compliance training. You should review the documentation of attendance and confirm this attendance. Make your department, or group leaders, accountable for the attendance of their direct reports and so on down the chain. Evidence of training is important to create an audit trail for any internal or external assessment or audit of your training program.

The authors encourage post-training measurement of employees who participate in training. A general assessment of those trained on the FCPA and your company’s compliance program is a

starting point. They list five possible questions as a starting point for the assessment of the effectiveness of your FCPA compliance training:

1. What does the FCPA stand for?
2. What is a facilitation payment and does the company allow such payments?
3. How do you report compliance violations?
4. What types of improper compliance conduct would require reporting?
5. What is the name of your company's Chief Compliance Officer?

The authors set out other metrics which can be used in the post-training evaluation phase. They point to any increase in hot-line use; are there more calls into the compliance department requesting assistance or even asking questions about compliance. Is there any decrease in compliance violations or other acts of non-compliance?

In addition to the training and the evaluation you perform on your company and its employees, you should also consider the FCPA compliance training of your business partners. Companies need to consider the FCPA compliance training of its supply chain vendors, contractors, agents, resellers, distributors, joint venture partners and others with which it does business or in some way represent your company. This requirement for training of third party business relations is becoming a more critical component of a *best practices* FCPA compliance program.

The DOJ has made clear that it believes that both assessment and evaluation of FCPA compliance training as a *best practice*. This overall evaluation should become a standard part of your FCPA compliance program. The authors Martin and Daniel Biegelman have provided a valuable resource to guide you in following this *best practice*.

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