

## CEP Magazine – October 2021

# Do you account for the ‘uncontrollable’ costs of government enforcement?

---

By Doyle Mullis

**Doyle Mullis** ([abraggiag@yahoo.com](mailto:abraggiag@yahoo.com)) is a consultant, trainer, and a retired special agent with the United States Department of Defense.

Controlling costs is important to maintaining a healthy company or nonprofit. Executives and managers frequently ask, “How much is this going to cost us, and what will we get for what we paid?” This concept is known in business management as return on investment (ROI).

The mathematical representation of ROI is to divide expected amounts of anticipated new revenues, cost savings expected to result from the original expenditure made, or cost-quantifiable improvements resulting from the expenditure by the amount of the future expense the decision-maker is considering spending now. ROI is one of the various metrics that management uses to determine if proposed action meets organizational goals by using a “what do we win for what we spend” analysis.<sup>[1]</sup>

Sometimes, however, the future revenues, costs savings, or empirical data on quantifiable improvements are not readily available when considering a proposed solution to implement compliance, which can cause management frustration.<sup>[2]</sup> Compliance professionals are often asked by a decision-maker to demonstrate ROI for money spent to implement a compliance solution and the projected money to be saved after adoption. Demonstrating this ROI may be difficult to do because data may not be available on the number of instances of noncompliance the proposed solution will potentially prevent or bring to the awareness of management.

Corporate and other organizational decision-makers regularly seek financial information on which to base a decision, but because this information may not be available due to a lack of data, consider this question: While not easily quantifiable, can the “uncontrollable” costs of a government enforcement action be considered when deciding to implement a policy or a compliance solution?

These out-of-control costs occur when noncompliance leads to a government investigation against the organization. Once a government investigation starts, even before it finds anything, the target of the inquiry will have investigation-related expenses that can be difficult to quantify. Yet, the expenses are necessary to avoid serious sanctions for not responding to the investigation; these sanctions include jail time for contempt for not complying with a federal grand jury and being charged with obstruction of a federal audit.<sup>[3]</sup> And if the investigation finds something, more uncontrollable costs will be incurred to respond to the findings and deal with the potential consequences.

### Potential outcomes of a government investigation

A government investigation in the US, whether a criminal investigation that is conducted by one of the inspector general offices or a regulatory enforcement action—such as an investigatory audit by the U.S. Department of Labor’s Wage and Hour Division—usually results from a complaint, although sometimes an agency can act upon information it gathers from surveillance, data analytics, or something else that alerts the agency to begin an

---

inquiry.

US federal investigations are coordinated with an assistant US attorney (AUSA) or, sometimes, a state prosecutor when the matter involves indicia of criminal activity. Sometimes, the investigation begins to show support for a violation of a civil statute providing authority for the government to sue the target and/or its decision-makers for civil damages. This is usually because the matter includes one or more claims made to the government for payment to the organization. Civil AUSAs then work these cases, working parallel to Criminal Division AUSAs.

If the matter is affecting a government program or contract, it is also an administrative matter, which can also result in sanctions other than an incarceration, or a civil suit against the organization by the government. The government investigators first coordinate with an attorney-adviser for the affected agency, with findings of the investigation presented to a different agency attorney, to opine on whether an administrative sanction will be imposed. This is separate from any efforts of the prosecutor's office, and findings that trigger these sanctions usually are the basis for a determination of nonresponsibility against the organization or its decision-makers pertaining to the agency program or contract.

This document is only available to members. [Please log in or become a member.](#)

[Become a Member Login](#)