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## ESSENTIAL ELEMENTS OF AN EFFECTIVE ETHICS COMPLIANCE PROGRAM

Establishing an effective Ethics Compliance Program has become a necessity to protect any regulated organization. At its core, an effective program protects an organization by detecting and preventing improper conduct and promoting adherence to the organization's legal and ethical obligations.

Although a "one-size-fits-all" ethics compliance program for every organization does not exist, the following are the key elements of an effective ethics compliance program:

1. WRITTEN STANDARDS OF CONDUCT AND POLICIES AND PROCEDURES
2. DESIGNATION OF A CHIEF COMPLIANCE OFFICER AND OTHER APPRORIATE STAFF
3. EFFECTIVE EDUCATION AND TRAINING
4. RISK ASSESSMENTS, MONITORING AND AUDITING
5. ESTABLISHMENT OF REPORTING PROCESSES AND PROCEDURES FOR COMPLAINTS
6. APPROPRIATE DISCIPLINARY MECHANISMS
7. ONGOING PROGRAM IMPROVEMENT

1. WRITTEN STANDARDS OF CONDUCT AND POLICIES AND PROCEDURES

**Ethics Code**

An organization should have an established ethics code of conduct and set of ethics compliance standards procedures.

The code of conduct should be directed at all employees and representatives of the organization, which includes the executive management, supervisors, all employees, vendors, suppliers, and independent contractors. These standards should not be a "paper only" document, but a living document that promotes an organizational culture that encourages "ethical conduct" and a commitment to compliance with applicable regulations and laws system-wide. The code should also identify clear channels for reporting misconduct or violations of the code, and make clear that disciplinary action will be taken if an employee violates the code.

**Substantive and Structural Compliance Policies and Procedures**

Substantive policies and procedures define applicable regulations that apply to an organization and how to operate compliantly within those regulations. Substantive policies and procedures delineate the applicable risk areas to an organization and appropriate and inappropriate behavior in regard to those risk areas.

Structural policies and procedures create the framework or the "nuts and bolts" of how the ethics compliance program will operate. For example, the role of the compliance director, monitoring practices, method for anonymous reporting and non-retaliation for reporting.

2. DESIGNATION OF A CHIEF COMPLIANCE OFFICER AND OTHER APPRORIATE STAFF

The chief compliance officer and staff should have accountability as

to the success or failure of the ethics compliance program. Adequate resources must be dedicated to implementing the program. The board of directors (ethics commission) must exercise reasonable oversight of the implementation and effectiveness of the program.

The primary responsibilities of the chief compliance officer's duties according to the US Office of Government Ethics should include the following:

- Designing, implementing, overseeing, and monitoring the ethics compliance program
- Reporting on a regular basis to the organization's governing body, CEO and ethics commission.
- Revising the ethics compliance program periodically as appropriate
- Developing, coordinating and participating in a multifaceted educational and training program
- Ensuring that independent contractors and agents are aware of the organization's ethics compliance program requirements
- Serving as a source of information for employees, management, contractors and the ethics commission
- Ensuring that appropriate background checks are done to eliminate sanctioned individuals and contractors
- Assisting with internal ethics compliance review and monitoring activities
- Independently investigating and acting on matters related to compliance

### 3. EFFECTIVE EDUCATION AND TRAINING

Ethics education and training are the first and foremost lines of defense for an ethics compliance program. An organization should include periodic education, communication and awareness of its ethics compliance program in its everyday organizational structure.

General training sessions are meant to heighten awareness among all employees and communicate and emphasize (and then update and reiterate) the organization's commitment to ethical behavior, which affects all employees. The US Office of Government Ethics urges that employees be required to have a specific number of educational hours annually for basic training in ethics compliance areas.

Specific training in high-risk areas is critical for specialized personnel. These employees should be given ethics training specific to these employees' job functions.

Government guidance recommends that at the end of ethics trainings, every employee, as well as contracted consultants and service providers are required to sign and date a statement that confirms his or her knowledge of and commitment to the standards of conduct.

**See Appendix: Policy and Procedure: Education Plan Elements and Documenting Educational Efforts**

## 4. RISK ASSESSMENTS, MONITORING AND AUDITING

An effective ethics compliance program is a process of constant evaluation. The key is to strive for and demonstrate a process for continually improving on ethics compliance activities. An organization should have in place in a system and schedule for routine monitoring and auditing of organizational transactions, business risks, controls and behaviors. An organization's system should use a consistent process and generate consistent data. Monitoring/auditing reports should include a review of the response and resolutions applied during the period, both proactive and reactive.

**Risk Assessments**

A risk assessment will provide a broad baseline risk platform, a

snapshot or laundry list of all the issues that need to be addressed.

**There are certain risk areas common to many types of organizations that should be assessed:**

- Anti-kick back and vendor referrals
- Financial reporting
- Ethics Compliance program processes;
- Contract term appropriateness and compliance with contract terms
- Record retention
- Cost tracking and reporting
- Revenue tracking and reporting
- Claim/ invoice development and submission

Other risk areas to be reviewed will depend on the type of the organization; government contractors should include in their risk assessment the examination of whether illegal kickback arrangements have been entered into.

**See Appendix 3D Compliance Program Risk Inventory**


**Monitoring and Auditing**

Monitoring and auditing will identify and address potential ethical concerns in the organization as they arise and before they cause harm to another party. If a problem does exist, the compliance officer is required to correct the related process and any policies or procedures and communicate the change to affected parties. The compliance officer must return in three- six months to review the process and resulting documents to ensure the problem has been resolved. It may be determined that further corrective action may be necessary, including disciplinary action against employees who continually fail to correct the problem after repeated retraining.

Monitoring and review is also necessary to determine whether compliance elements such as dissemination of standards, training

and disciplinary action have been fulfilled. It will also target potential program deficiencies and areas where modification might be in order.

The US Office of Government Ethics recommends the ethics compliance officer or reviewer consider the following monitoring techniques:

- Onsite visits
- Interviews with personnel involved in management, operations, contracting, marketing, finance and other related activities
- Reviews of written materials and documentation prepared by the different divisions of the organization
- Reviews of internal and external complaints
- Inclusion of ethics compliance related language in job descriptions and job evaluations
- Inclusion of ethics compliance related questions in exit interviews (responses should be reported to ethics compliance officer

## 5. ESTABLISHMENT OF REPORTING PROCESSES AND PROCEDURES FOR COMPLAINTS

An organization should have policies and procedures in place to effectively enforce the organization's ethics compliance program and provide incentives to its employees to perform in accordance with the ethics compliance program, including the obligation to report potential ethical concerns.

There are a variety of methods to report potential problems or to raise concerns.

**Government Ethics Information Helpline**

Whether an ethics helpline is provided internally or externally, anonymity must be promised to the greatest extent possible. Helpline numbers and procedures must be clearly and readily communicated

to employees by permanent and prominent bulletin board postings to ensure that everyone ethical concerns are to be reported and which employees understand how to report them.

**Non-retaliation policy**

For any reporting method to be effective, employees must know that there will be no retaliation or retribution for coming forward with good faith complaints. The concept of non-retaliation is fundamental to an ethics compliance program and a clearly stated policy regarding non-retribution is the first step.

**Issue Escalation and Investigations**

Once a complaint is received it must be investigated. All complaints must be logged in and tracked. Documentation of the specifics of the issue, the departments involved, findings and actions taken are also necessary. Specific steps for an investigation should be enumerated such as a policy to limit distribution of information to protect confidentiality and non-retaliation commitments.

## 6. APPROPRIATE DISCIPLINARY MECHANISMS

Fair, equitable and consistent are the watchwords for enforcing the ethics standards of conduct and the policy and procedures. A policy of enforcement should include five main points:

- Noncompliance will be subject to a disciplinary action
- Failure to report non-compliance will be subject to a disciplinary action
- An outline of disciplinary procedures
- The parties responsible for imposing the appropriate disciplinary action
- A promise that discipline will be fair and consistent.

Thorough documentation of a an investigation is critical and should include the following:

- A description of the potential misconduct and how it was

reported
- A description of the investigative process
- List of relevant documents reviewed
- List of employees interviewed
- Employee interview questions and notes
- Changes to policies and procedures
- Documentation of any disciplinary actions
- Investigation final report with recommended remedial actions

## 7. ONGOING PROGRAM IMPROVEMENT

Continued improvements and changes must be made as the ethics compliance program matures. If within an organization, new risks, issues and violations have been identified, the ethics compliance director should improve whatever part of the ethics compliance program "failed' or fell short. The ethics compliance director must address the issue or violation consistently within the program policies and procedures and ensure that a particular risk, issue or violation will not occur in the future. This may require implementing a new monitoring control or audit to catch such an issue or violation immediately.

**Government Ethics Program: Continuous Improvement Model**
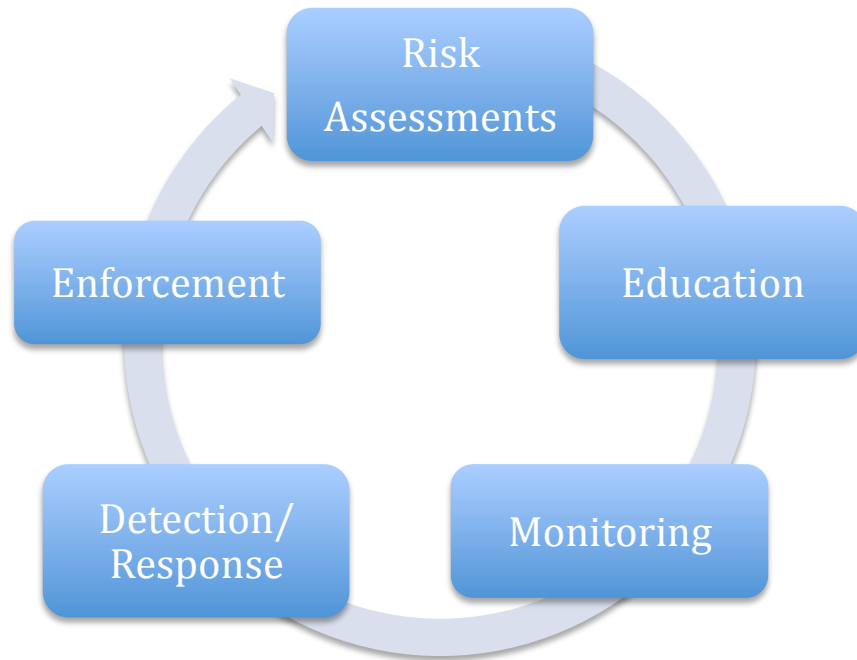
Executive management should continuously improve its compliance and ethics program. This will enable it to better prevent, detect, and respond to malfeasance in the future.

A comprehensive ethics compliance program supports an organization's mission and objectives, identifies the boundaries of legal and ethical behavior, and establishes a system to alert management when the organization is getting close to (or crossing) a boundary or approaching an obstacle that prevents the achievement of a business objective.