Anti-Fraud Collaboration
WEBCAST

How to Improve Your Whistleblower Program and Address Impediments to Reporting

July 1, 2014

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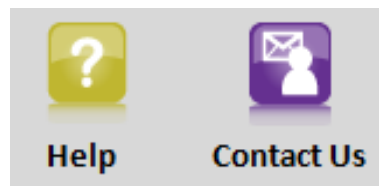
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Today's Program

Goals of the Program

- This program is part of a series of three webcasts examining the financial fraud and misconduct issue from several related perspectives

- Today, we will discuss the importance of having a sound process for receiving and fielding employee reports of misconduct

- Our experts will show us why having an ethical culture is key, and share leading practices for intake and investigation responding to reports of misconduct/fraud

Panelists

Patricia Harned
President
Ethics Resource Center

Janice Innis-Thompson
Senior Managing Director, Chief Compliance and Ethics Officer
TIAA-CREF
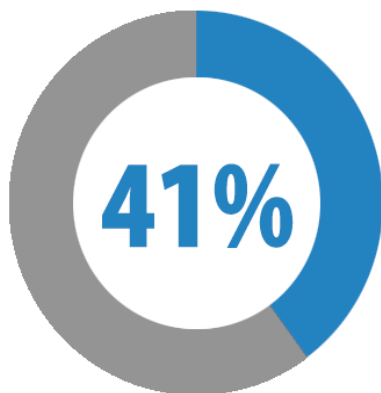
Kristin Rivera
Partner, Forensic Services
PwC

Moderator
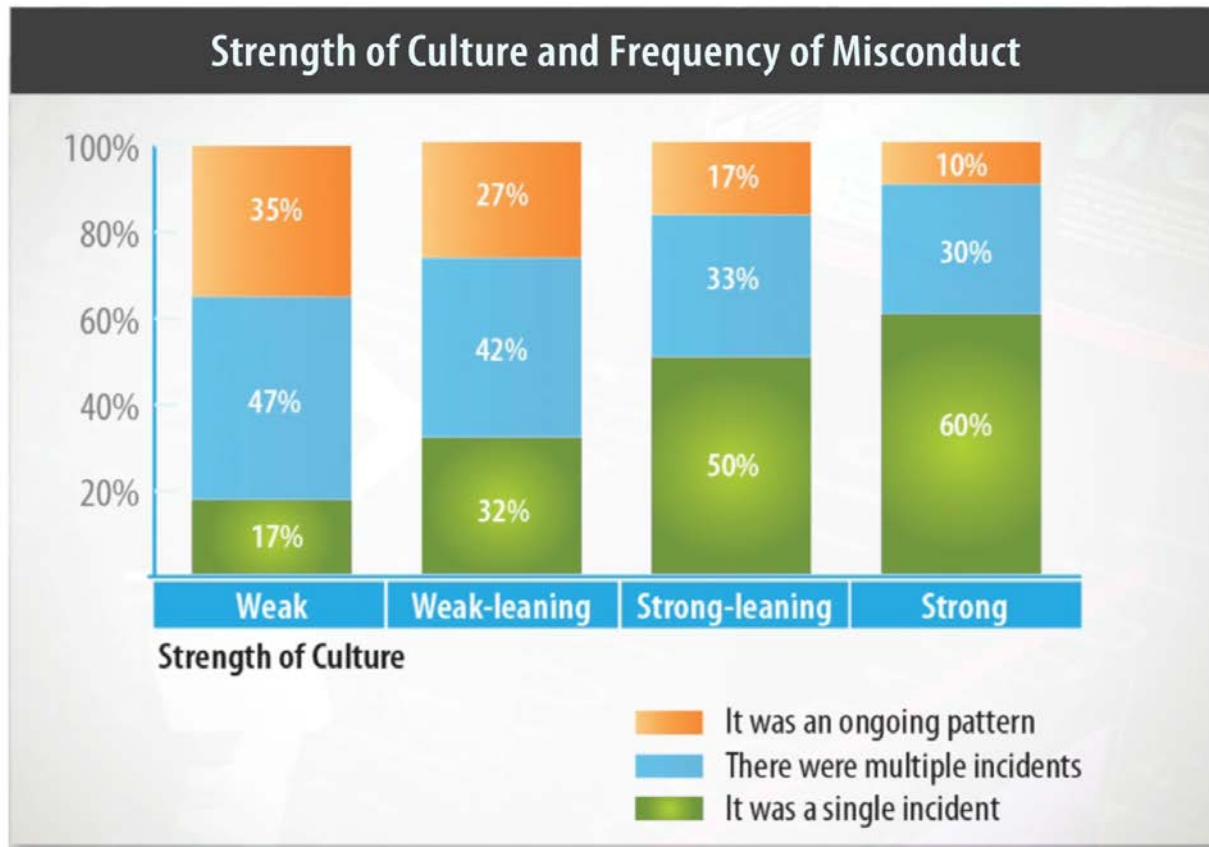
Cindy Fornelli
Executive Director
Center for Audit Quality

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Observed Misconduct Across the U.S.

OVERALL OBSERVED MISCONDUCT

41%

18%	Abusive behavior or behavior that creates a hostile work environment
17%	Lying to employees
12%	A conflict of interest – that is, behavior that places an employee's interests over the company's interests
12%	Violating company policies related to Internet use
12%	Discriminating against employees
10%	Violations of health or safety regulations
10%	Lying to customers, vendors, or the public
10%	Retaliation against someone who has reported misconduct
10%	Falsifying time reports or hours worked

Data from the 2013 NBES®

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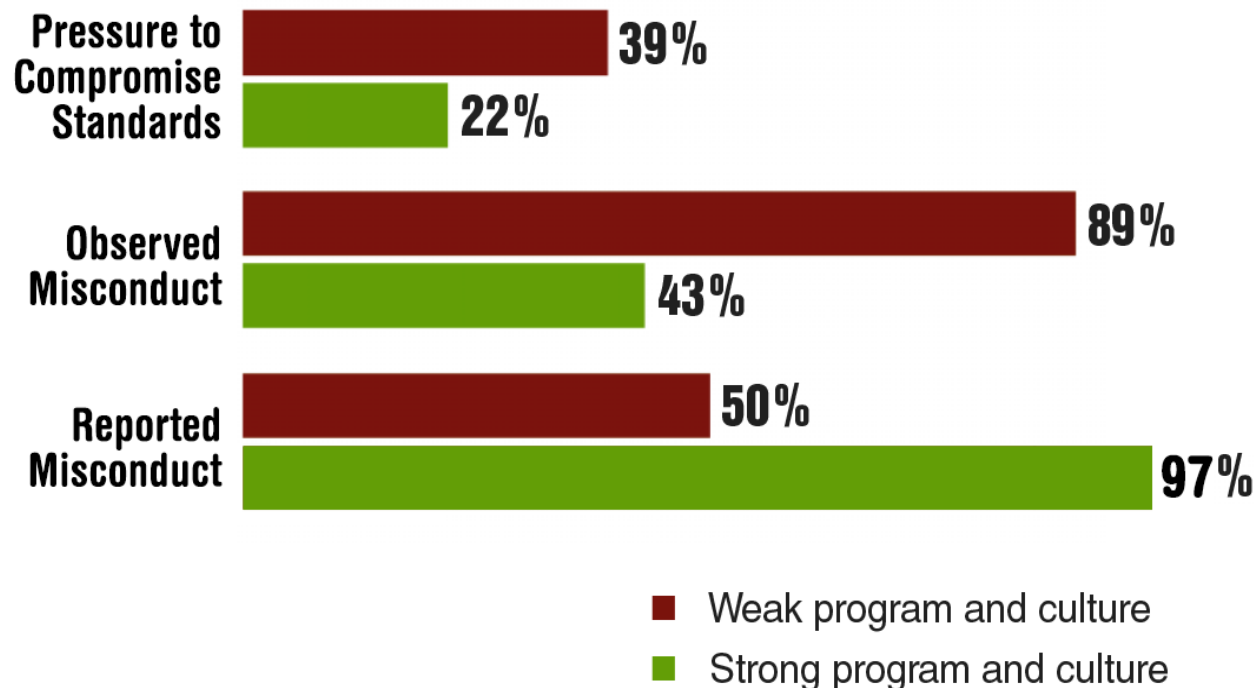CORPORATE DIRECTORS

Severity of Misconduct Linked to Ethics Culture Strength

Data from the 2013 NBES®

Why Programs and Culture Matter

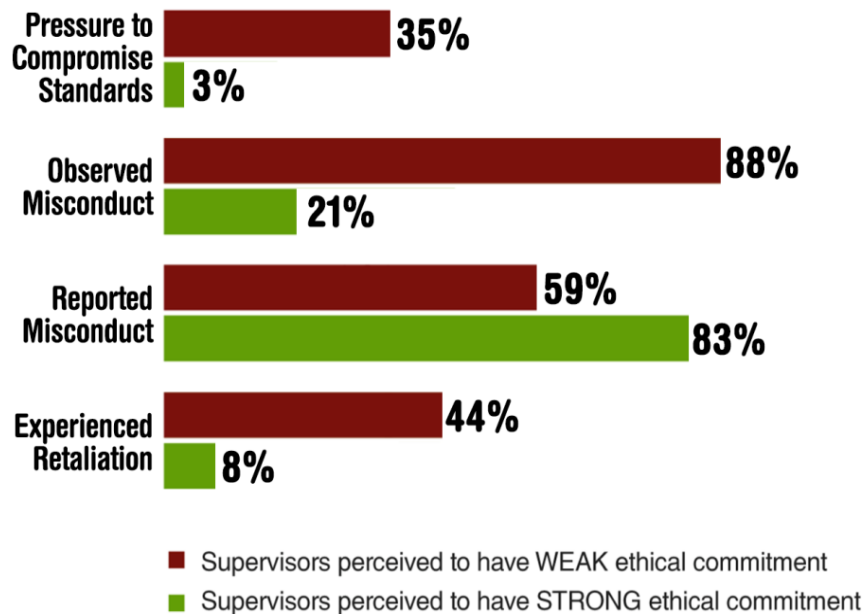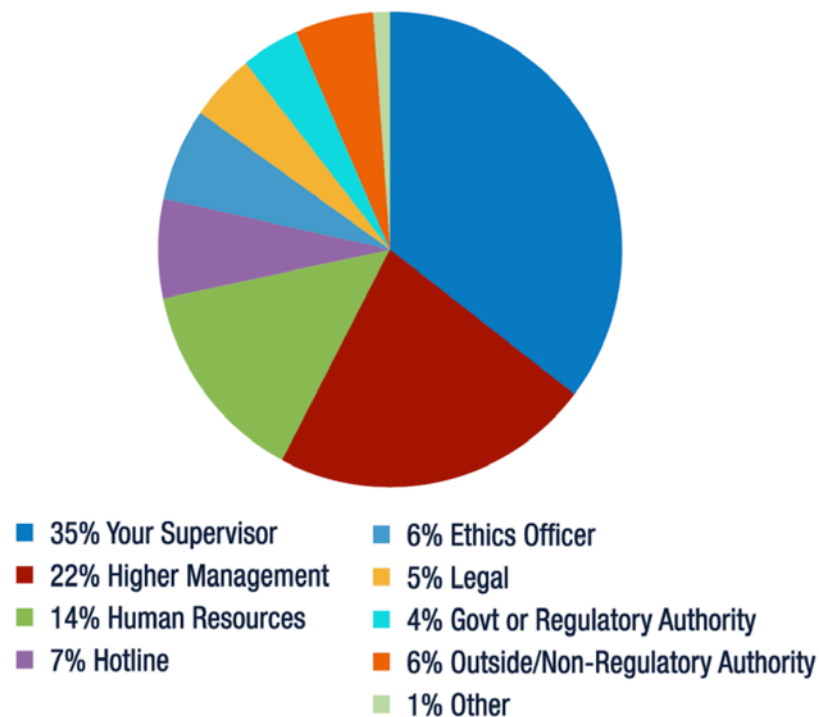**Impact of Programs & Culture on Conduct**

	Weak program and culture	Strong program and culture
Pressure to Compromise Standards	39%	22%
Observed Misconduct	89%	43%
Reported Misconduct	50%	97%

Data from the 2011 NBES®

The Critical Role of Supervisors

Impact of Supervisors on Conduct

Category	WEAK	STRONG
Pressure to Compromise Standards	35%	3%
Observed Misconduct	88%	21%
Reported Misconduct	59%	83%
Experienced Retaliation	44%	8%

- Supervisors perceived to have WEAK ethical commitment
- Supervisors perceived to have STRONG ethical commitment

Recipients of Employee Reports

- 35% Your Supervisor
- 22% Higher Management
- 14% Human Resources
- 7% Hotline
- 6% Ethics Officer
- 5% Legal
- 4% Govt or Regulatory Authority
- 6% Outside/Non-Regulatory Authority
- 1% Other

Data from the 2013 NBES®

SEC Whistleblower Program

- Required under the Dodd-Frank Act

- Initiated in FY 2011, [update report issued November 2013](#)

- Received 3,238 tips, complaints, and referrals in FY 2013; 3,001 in 2012

- Subject of complaints received (2012 and 2013)
  - Corporate disclosures and financials: 17% - 18% of tips
  - Offering fraud: 17% - 15%
  - Manipulation: 16% - 15%

- SEC has posted over 430 Notice of Covered Actions of enforcements that resulted in over $1 million in sanctions
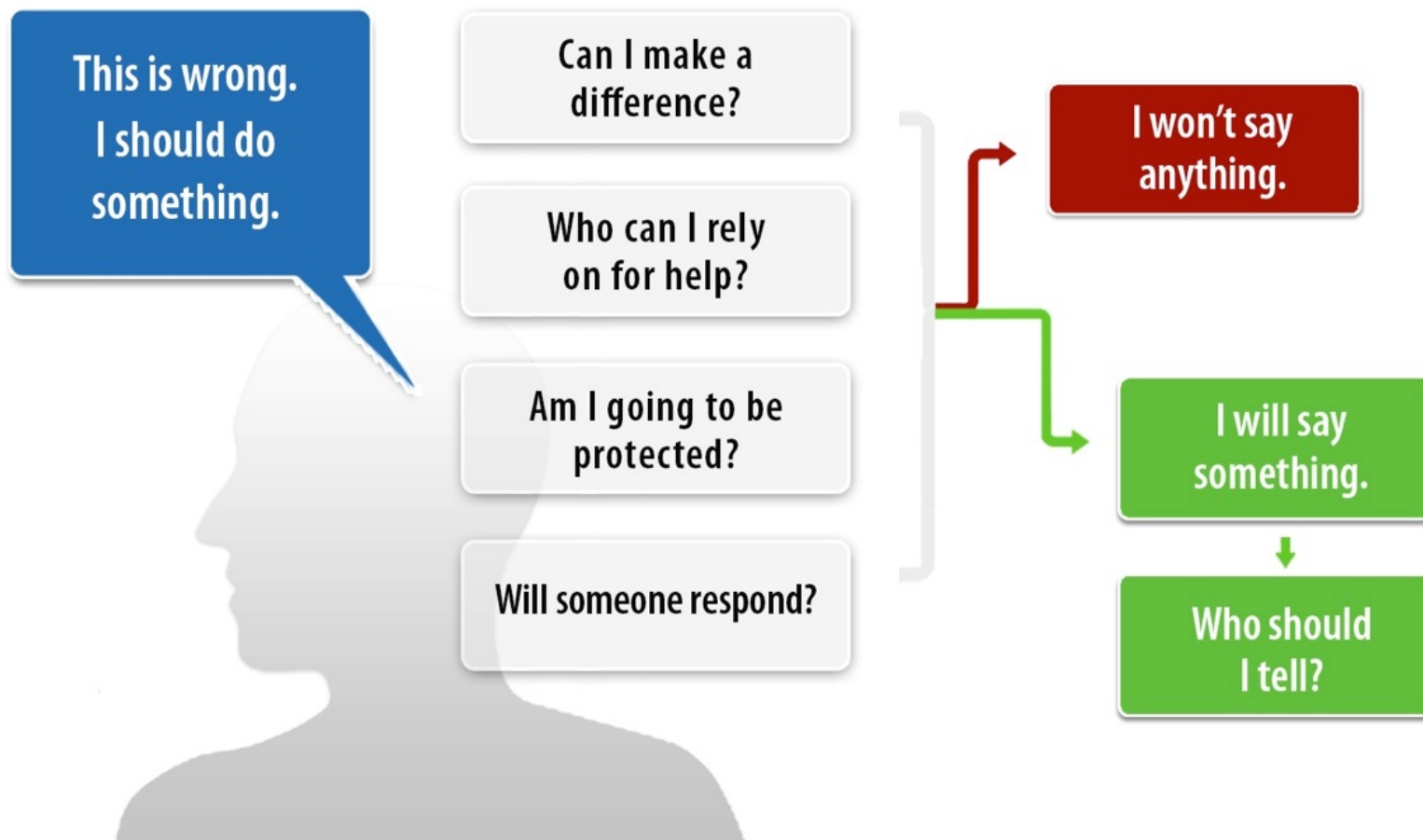
Important Aspects to Consider

- A strong ethical culture is a competitive advantage

- Create a culture that encourages open dialogue

- An ethical culture is a major deterrent to fraud

- Create a culture where bad news is not only accepted, but also encouraged

- Provide multiple avenues for reporting misconduct

- Listen to what people are reporting

Mechanisms for Reporting Misconduct

- Whistleblower programs more than just an 800 number
  - Includes online, telephone, fax, in-person reports, informal reporting
- Preferred method of reporting will vary by country and culture
- Aggregating reporting data across the organization and across methods is critical
- Be knowledgeable about regulatory restrictions in other countries

Inside the Mind of a Whistleblower

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Fear, Distrust, and Dissatisfaction Drive External Reporting

50%   The problem was ongoing and I thought someone from outside could stop it.

45%   I did not trust anyone in my company.

40%   I was retaliated against after I made my first report inside the company.

40%   I was afraid I would lose my job if I did not get outside assistance.

36%   My company acted on my report, but I was dissatisfied.

29%   My company did not act on my report.

22%   I was afraid for my safety.

14%   I had the potential to be given a substantial monetary reward.

1 in 5 Employees Report
Outside the Company

Helpline Must-Haves

- 24/7 access

- Compliant with regional and national laws

- Native language reporting

- Global consistency

- Two-way communication capable of providing guidance

- Available to company-wide constituencies

  - Customers, vendors, shareholders, competitors, acquaintances of perpetrators, etc.

Leading Practices

- Avoid using loaded terms like "whistleblower"

- Incentivize employees to report issues; disincentivize false reporting

- Train management on how to handle information that employees bring to them

- Clear and frequent communication of ethics and policies

- Aggregating concerns across the entire company, including foreign subsidiaries

- Be prepared to respond thoughtfully and consistently, while recognizing that every matter is unique

Triage: The Critical First Step

Consider the following:

- What is the nature of the potential fraud or illegal act?

- Could the issue have a material impact on the company's financial statements or operations?

- Does it point to a potential significant deficiency or material weakness in internal controls?

- Could the potential fraud or illegal act implicate a member of the organization's senior management or those charged with governance?

- What is the significance of the potential business and legal consequences posed?

Responding to Allegations

1. Identify implicated parties
2. Consider the quality of preliminary information
3. Assess possible materiality
4. Consider expertise necessary to investigate
5. Mind the logistics – language, resources, and timing
6. Consider the perspectives of others
7. Investigate objectively
8. Report findings to appropriate stakeholders

Evaluating Your
Ethics Reporting Program

- Anonymous employee surveys

- Benchmark against industry standards

- Feedback from helpline users

- Employee interviews (e.g., during internal audit scheduled visits)

- Is there a mechanism that allows you to log all incidents not received through the helpline?

- Create focus groups

- Poll employees during exit interviews

Feedback and Communication

- Feedback loop to the reporting individual
  - Track progress of complaints/investigations
- Communicating the helpline across the company
  - Live and online training for employees, vendors, and other third parties
  - Does this differ for multinational jurisdictions
- Legal requirements for outward communication from boards and SEC

Mistakes to Avoid

- Concentrating on the wrong issue

- Ignoring chronic complainers

- Retaliation against those who report misconduct

- Not reassuring the person who brought a complaint forward that the organization is investigating and addressing the issue

- Thinking that "no news is good news"

Retaliation Takes Many Forms

RETALIATION AGAINST SOMEONE WHO HAS REPORTED MISCONDUCT

Observed by Employees		10%
Reported by Observers		53%
Reporters Who Experienced Retaliation		21%
Forms Experienced by Reporters Who Were Retaliated Against	Supervisor intentionally ignored or began treating differently	69%
	Other employees intentionally ignored or began treating differently	59%
	Supervisor or management excluded from decisions and work activity	54%
	Verbally abused by supervisor or someone else in management	49%
	Not given promotions or raises	47%
	Verbally abused by other employees	43%
	Almost lost job	38%
	Hours or pay were cut	29%
	Relocated or reassigned	28%
	Demoted	21%
	Harassed at home	18%
	Experienced physical harm to person or property	16%
	Experienced online harassment	15%

Data from the 2013 NBES®

Employee Fear of Retaliation

Steps to mitigate retaliation against employees who report misconduct

- Assign compliance and ethics officer to monitor career progression, compensation, and disciplinary actions

- Understanding the mind of the reporter

- Positive corporate attitude towards reporters

- Corporate messaging around ethics reporting program

Key Takeaways

- Be thoughtful at the outset, design a comprehensive and appropriate response, and be flexible to new information.

- View your company's ethics reporting program as a positive asset and not just a compliance tool.

- Focus on culture: Educate employees about the process, and equip managers to receive reports.

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As a reminder, you may access your CPE certificate by clicking the "Get CPE" icon if you have fulfilled the attendance check requirements.

If you do not have an opportunity to obtain your CPE certificate during today's presentation, you may obtain your certificate *after* 24 hours by logging back into the event and clicking the "Get CPE" icon. Please note that you will not be able to respond to the attendance checks in the archive, and you must fulfill the attendance requirements during the actual presentation to receive your CPE certificate.

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