We Have Fraud – Now What?

Wisconsin Counties Association
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Objectives

- Better practices for responding to fraud allegations
  - How do you plan for this?
  - How can you respond to this?

- Ask Questions!
Agenda

- Fraud Response Planning
- Responding to a Fraud Allegation
- Catch Our Breath (whew!)

- Additional Resources
- Contact Information
Fraud Response Planning
Fraud Response Planning

- Incidents of fraud can impact an organization and disrupt its operations just as severely as commonly planned for critical events such as fires, floods, and other disasters.

- Potential Impacts
  - Loss of assets
  - Damage to reputation
  - Loss of funding, client, stakeholder trust
  - Litigation
  - Failure of organization

- While many organizations are making fraud prevention and detection a priority through the implementation of anti-fraud controls, even the best control systems cannot eliminate the risk of fraud.
Discussion Questions

• Should an organization always investigate suspected fraud?
• What are the pros and cons of investigating suspected fraud?
• What is the objective of your fraud investigation?
### FIG. 41 How do victim organizations punish fraud perpetrators?

<table>
<thead>
<tr>
<th>Punishment</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Termination</td>
<td>65%</td>
</tr>
<tr>
<td>Settlement agreement</td>
<td>12%</td>
</tr>
<tr>
<td>Perpetrator was no longer with organization</td>
<td>11%</td>
</tr>
<tr>
<td>Permitted or required resignation</td>
<td>10%</td>
</tr>
<tr>
<td>Probation or suspension</td>
<td>8%</td>
</tr>
<tr>
<td>No punishment</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
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</table>
Types of Internal Investigations

- Internal investigations are not created equal and may be triggered by any number of circumstances:
  - HR-related complaints
  - Anonymous, whistleblower or “hotline” allegations
  - Audit findings
  - Media reports
  - Subpoenas
  - Lawsuits
Fraud Response Planning

• An organization may have a duty and responsibility to investigate and resolve allegations of fraud
  – Statutory requirements
  – Common law requirements

• Directors and managers may have a personal responsibility to ensure fraud is investigated

• Statutory requirements
  – Sarbanes-Oxley: §§ 301, 302, 404, 906
  – Foreign Corrupt Practice Act of 1977 (FCPA)
  – Anti-Kickback Act of 1986
  – Other federal and state laws requiring the preparation and filing of accurate financial statements and public reports

• Duties of reasonable care and loyalty
  – Responsibility to use same reasonable care in conducting affairs of organization as used in conducting personal affairs
  – Directors and officers with fiduciary responsibilities
Fraud Response Planning

Discussion Question

• What risks can arise from the conduct of a fraud investigation?
Fraud Response Planning

• Criminal and civil liability for fraud
  – Liability for organization’s actions
  – Liability for employee’s actions

• Public disclosure of fraud

• Public disclosure of sensitive information

• Violation of Electronic Communications Privacy Act of 1986
  – Interception of wire, oral, or electronic communications
  – Access to employees’ e-mail, v-mail, social media

• Increased risk of criminal, regulatory, or civil sanctions
Fraud Response Planning

- Mismanaged investigations
  - Legal action by employees
    - Invasion of privacy
    - Intentional infliction of emotional distress
    - False imprisonment
    - Defamation
    - Breach of good faith and fair dealing
    - Breach of implied contract
    - Trespass
    - Lost wages
    - Discrimination
Discussion Questions

- Which key people should participate in fraud response?
- What is their role?
- Why?
Fraud Response Planning

- The Fraud Response Team
  - No single person can effectively address every issue arising during a fraud investigation
  - Identify key people—and define their responsibilities—before a fraud occurs
    - Legal counsel - Internal/External
    - Management representative
    - Fraud investigator - Certified Fraud Examiner/Forensic Accountant
    - Computer forensic specialist/consultant
    - Internal auditors
    - IT/system administrators
    - Security staff
    - Human resources
    - Public relations
Using Investigators

- As a general rule, counsel should assist the internal investigation because issues regarding whether particular conduct is a violation of law and the protection of confidential information are best handled by attorneys.
  - Interviews conducted by non-lawyer investigators may not be privileged (if counsel is not in attendance) so notes, memos and reports may need to be produced if requested through civil or criminal discovery.
- If investigators are used, make sure they are being properly supervised by counsel.
- Irresponsible use of investigators can have harmful consequences.
Confidentiality Concerns

- One of the most important factors to consider when developing an internal investigation is how to maintain confidentiality.
- Difficulties arise in establishing and maintaining confidentiality if counsel is not involved.
- By using counsel during the investigation, sensitive and confidential information gathered during the investigation can be protected by the attorney-client privilege.
- That means that individuals who are seeking to publicize facts underlying the internal investigation will not have the ability to do so – thereby potentially protecting the reputations of those involved in the investigation.
- Interviewees are more willing to discuss confidential matters if they know that what they say won’t be made available to others.
Responding to a Fraud Allegation
Responding to a Fraud Allegation

- Fraud response plan outlines the actions your organization will take when potential fraud has been identified

- Do not attempt to define how an actual investigation will be conducted
  - Rely on legal counsel and experienced fraud investigators to conduct investigation

- Focus fraud response planning on managing organization’s overall actions
  - Help create conditions for successful investigation
  - Help manage associated risks
Responding to a Fraud Allegation

Discussion Questions

• What elements should be included in fraud response?
• Why?
Responding to a Fraud Allegation

• Confirm predication of fraud
  – Totality of circumstances that would lead a reasonable, professionally trained, and prudent individual to believe that fraud has occurred
  – Consider alternative actions if predication is not confirmed

• Engage legal counsel
  – Engage legal counsel
  – Engage legal counsel
  – Engage legal counsel

• Activate fraud response team

• Determine potential impact
  – Financial – Estimate loss from fraud
  – Other impacts – Reputational, loss of funding
  – Cost of effective fraud investigation and response
Responding to a Fraud Allegation

• Determine the objectives of fraud response
  – Find out what happened
  – Discipline/prosecute fraudsters
  – Protect organization’s reputation
  – Recover lost assets
  – Minimize risk of litigation or prosecution of organization

• Develop communication strategy
  – Legal or regulatory reporting obligations
  – Communications with management
  – Balance investigative considerations with employee needs
  – Manage communications to external audiences
Catch our Breath
Catch Our Breath

Pressure

Opportunity

Fraud Triangle

Rationalization
Internal Controls Modified or Implemented in Response to Fraud

- Increased Segregation of Duties: 61.2%
- Management Review: 50.6%
- Surprise Audits: 22.5%
- Fraud Training for Employees: 16.4%
- Fraud Training for Managers/Executives: 14.8%
- Job Rotation/Mandatory Vacation: 13.5%
- Internal Audit/FE Department: 12.3%
- Anti-Fraud Policy: 11.7%
- Code of Conduct: 8.7%
- External Audit of F/S: 8.7%
- Hotline: 7.9%
- External Audit of ICOFR: 7.8%
- Independent Audit Committee: 6.0%
- Management Certification of F/S: 5.9%
- Rewards for Whistleblowers: 4.0%
- Employee Support Programs: 1.8%

Source: Association of Certified Fraud Examiners 2010 Report to the Nations
Questions & Answers
## Additional Resources

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<td><a href="http://www.acfe.com">www.acfe.com</a></td>
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<tr>
<td>Transparency International (Corruption Perception Index)</td>
<td><a href="http://www.tranparency.org">www.tranparency.org</a></td>
</tr>
<tr>
<td>The Institute of Internal Auditors</td>
<td><a href="http://www.theiia.org">www.theiia.org</a></td>
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<td>Open Compliance and Ethics Group</td>
<td><a href="http://www.oceg.org">www.oceg.org</a></td>
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<td>International Association of Financial Crimes Investigators</td>
<td><a href="http://www.iafci.org">www.iafci.org</a></td>
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<td>Society of Corporate Compliance and Ethics</td>
<td><a href="http://www.corporatecompliance.org">www.corporatecompliance.org</a></td>
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<tr>
<td>American Institute of Certified Public Accountants – Forensic and Valuation Services</td>
<td><a href="http://www.fvs.aicpa.org">www.fvs.aicpa.org</a></td>
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<tr>
<td>Chartered Institute of Management Accountants</td>
<td><a href="http://www.cimaglobal.com">www.cimaglobal.com</a></td>
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<tr>
<td>ASIS International</td>
<td><a href="http://www.asisonline.org">www.asisonline.org</a></td>
</tr>
<tr>
<td>The Serious Fraud Office (UK)</td>
<td><a href="http://www.sfo.gov.uk">www.sfo.gov.uk</a></td>
</tr>
<tr>
<td>Information Systems Audit and Control Association</td>
<td><a href="http://www.isaca.org">www.isaca.org</a></td>
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<tr>
<td>U. S. Department of Justice</td>
<td><a href="http://www.usdoj.gov">www.usdoj.gov</a></td>
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Contact Information

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