

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

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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



Fraud Response Planning

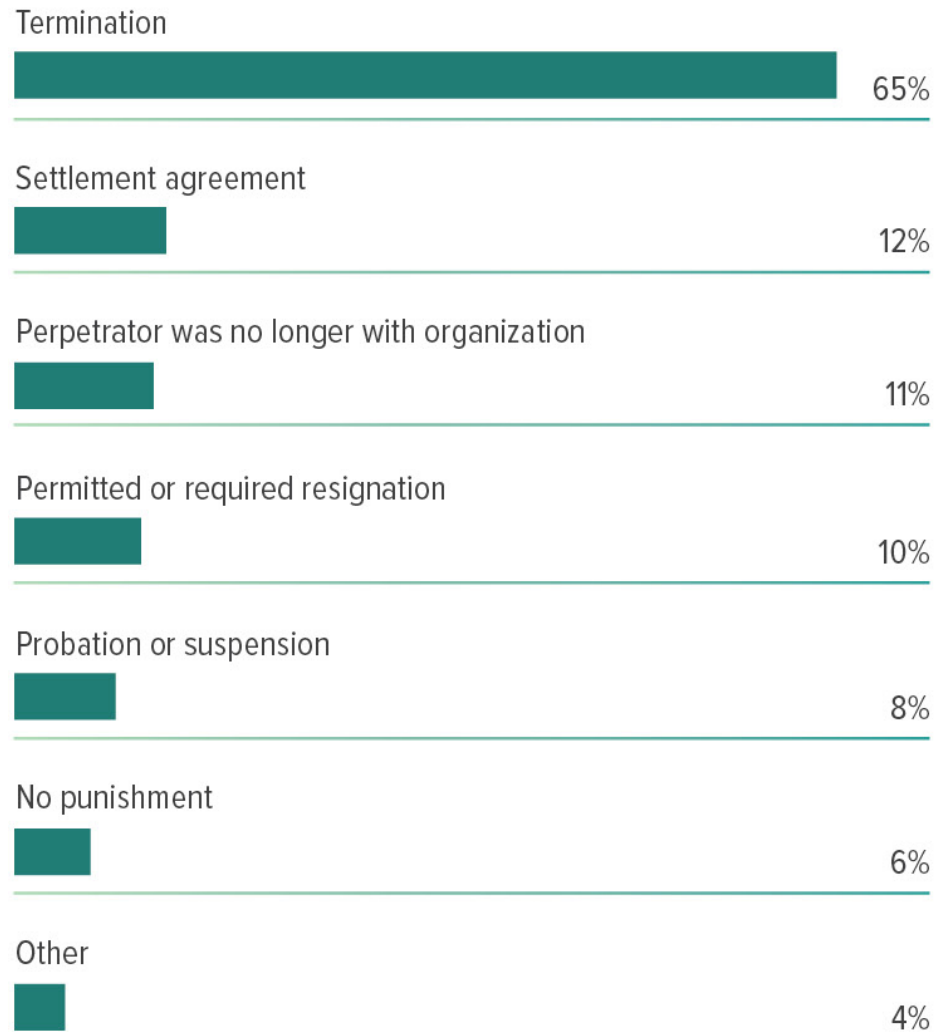
● Discussion Questions

- 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?



Fraud Response Planning

FIG. 41 How do victim organizations punish fraud perpetrators?



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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

FIERCELY FOCUSED >

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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



Fraud Response Planning

- 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



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

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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

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Catch Our Breath

Pressure

Opportunity

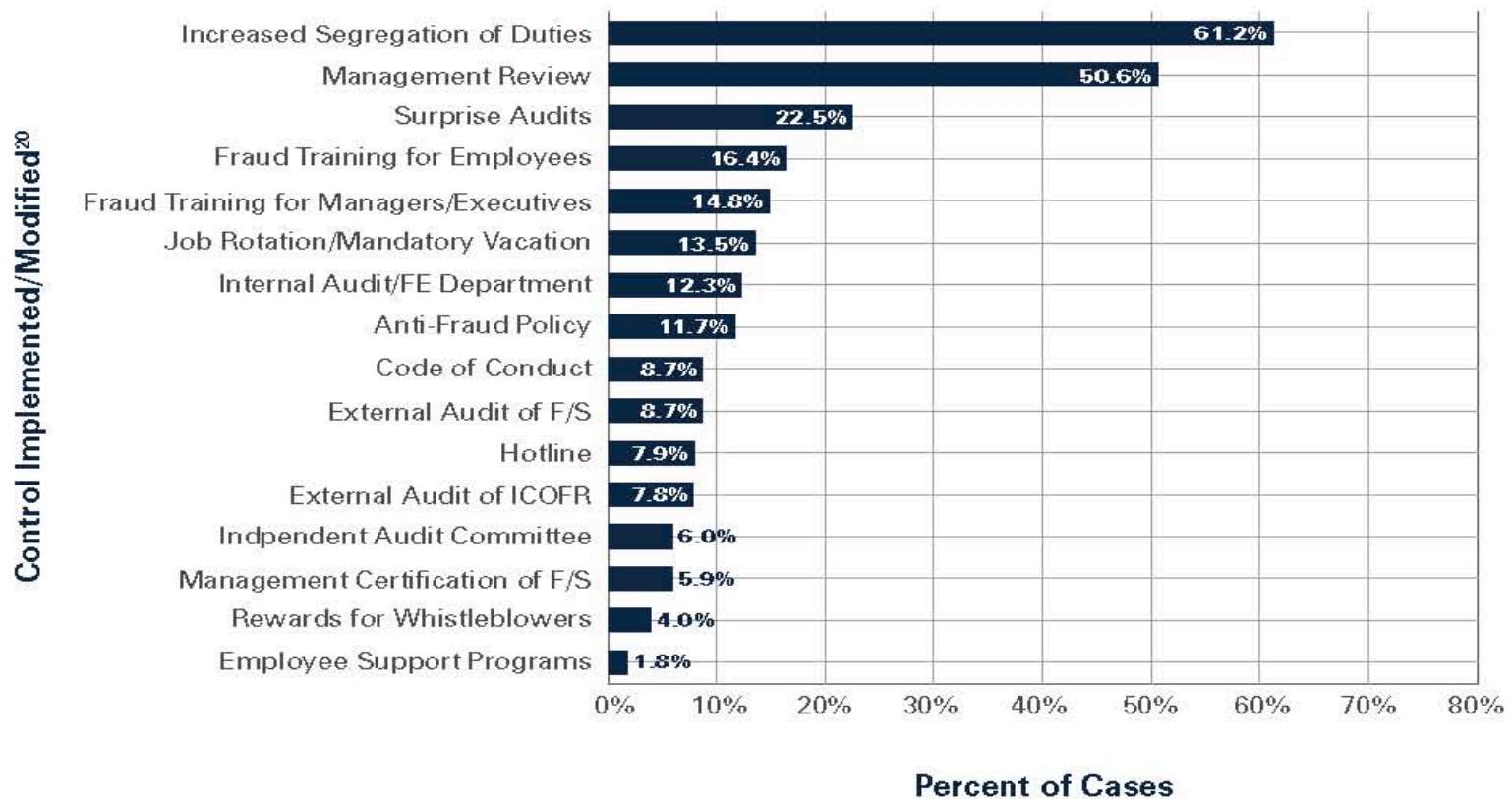
*Fraud
Triangle*

Rationalization



Catch Our Breath

Internal Controls Modified or Implemented in Response to Fraud



Questions & Answers



Additional Resources

Resources	Websites
Association of Certified Fraud Examiners	www.acfe.com
Transparency International (Corruption Perception Index)	www.transparency.org
The Institute of Internal Auditors	www.theiia.org
Open Compliance and Ethics Group	www.oceg.org
International Association of Financial Crimes Investigators	www.iafci.org
Society of Corporate Compliance and Ethics	www.corporatecompliance.org
American Institute of Certified Public Accountants – Forensic and Valuation Services	www.fvs.aicpa.org



Additional Resources

Resources	Websites
The Committee of Sponsoring Organizations of the Treadway Commission (COSO)	www.coso.org
Chartered Institute of Management Accountants	www.cimaglobal.com
ASIS International	www.asisonline.org
The Serious Fraud Office (UK)	www.sfo.gov.uk
Information Systems Audit and Control Association	www.isaca.org
U. S. Department of Justice	www.usdoj.gov
U.S. Securities and Exchange Commission	www.sec.gov



Contact Information

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