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You Need A Whistleblower Policy

DFS Issues Guidance on
Whistleblowing Programs



You Need A Whistleblower Policy

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DFS GUIDANCE

January 7, 2019

Guidance on Whistleblowing Programs



DFS Guidance on Whistleblowing Activity

DFS Guidance issued January 7, 2019

www.dfs.ny.gov/system/files/documents/2019/02/whistleblower_guidance.pdf





“Whistleblowing”

"Whistleblowing" means the reporting of information or concerns, by one or more individuals or entities, that are reasonably believed by such individual(s) or entity(s) to constitute illegality, fraud, unfair or unethical conduct, mismanagement, abuse of power, unsafe or dangerous activity, or other wrongful conduct, including, but not limited to, any conduct that may affect the safety, soundness, or reputation of the institution. A whistleblower may be any person who has an opportunity to observe improper conduct at a company, including current or former employees, agents, consultants, vendors or service providers, outside counsel, customers, or shareholders.



Scope of Coverage

- Guidance was issued to all entities chartered, licensed, or regulated by DFS
- Applies to all such regulated institutions regardless of industry, size, or number of employees.
- DFS determined that a robust whistleblowing program is an essential component of a comprehensive compliance program for regulated financial services companies.
- Not just applicable to company officers and directors: “individual employees, consultants, vendors, customers, and other stakeholders are often well situated to observe possible wrongdoing at a company and bring it to management's attention.”



Scope of Coverage

- No "one size fits all" model exists for a whistleblowing program.
- The design of a whistleblowing program should be based on factors such as the institution's size, geographical reach, and the specific lines of business in which it engages.
- Certain important principles and practices should be considered in determining whether a licensee has put into place an effective whistleblowing program.
- Guidance designed to enunciate principles that all regulated institutions should account for when designing and implementing a whistleblowing program.



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Best Practices for an Effective Program





1. Reporting channels that are independent, well-publicized, easy to access, and consistent.





2. Strong protections for a whistleblower's anonymity.





3. Established procedures for identifying and managing potential conflicts of interest.





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4. Staff members adequately trained to receive whistleblowing complaints; determine a course of action; and competently manage any investigation, referral, or escalation.





5. Established procedures for investigating allegations of wrongdoing.



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6. Established procedures for ensuring appropriate follow-up to valid complaints.

Dealing with complaints





7. Protecting whistleblowers from retaliation.





8. Confidential treatment.





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9. Appropriate oversight of the whistleblowing function by senior management, internal and external auditors, and the Board of Directors.

BOARD OF
DIRECTORS





10. A top-down culture of support for the whistleblowing function.







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