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You Need A Whistleblower Policy

DFS Issues Guidance on Whistleblowing Programs



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DFS GUIDANCE

January 7, 2019
Guidance on Whistleblowing Programs





DFS Guidance issued January 7, 2019

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







"Whistleblowing"

"Whistleblowing" means the reporting of information or concerns, by one or more individuals or entities, that are <u>reasonably believed</u> by such individual(s) or entity(s) to constitute illegality, fraud, <u>unfair or unethical conduct</u>, <u>mismanagement</u>, 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 <u>reputation</u> of the institution. A whistleblower may be any person who has an opportunity to observe improper conduct at a company, including current <u>or former</u> employees, agents, <u>consultants</u>, vendors or service providers, outside counsel, customers, or shareholders.





Scope of Coverage

- Guidance was issued to <u>all entities</u> chartered, licensed, or <u>regulated</u> by DFS
- Applies to all such regulated institutions <u>regardless of industry, size, or</u> <u>number of employees.</u>
- DFS determined that a robust whistleblowing program is an <u>essential</u> <u>component</u> of a comprehensive compliance program for regulated financial services companies.
- Not just applicable to company officers and directors: "individual employees, consultants, vendors, <u>customers</u>, 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 <u>size</u>, <u>geographical reach</u>, <u>and</u> the specific lines of business in which it engages.
- Certain important <u>principles and practices</u> should be considered in determining whether a licensee has put into place an effective whistleblowing program.
- Guidance designed to enunciate <u>principles</u> that all regulated institutions should account for when designing and implementing a whistleblowing program.





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.







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







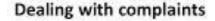
5. Established procedures for investigating allegations of wrongdoing.







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









7. Protecting whistleblowers from retaliation.







8. Confidential treatment.







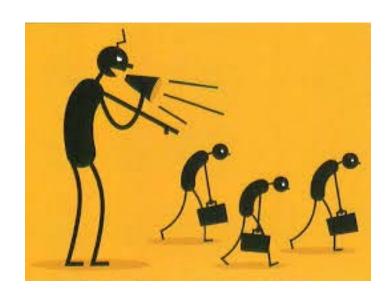
9. Appropriate oversight of the whistleblowing function by senior management, internal and external auditors, and the Board of Directors.







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













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