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April 26, 2016

"Oversight of the False Claims Act"

Testimony of Larry D. Thompson

Chairman Franks, Ranking Member Cohen and Members of the Constitution Subcommittee. My name is Larry Thompson, John A. Sibley Professor of Law at the University of Georgia School of Law. Thank you for inviting me to testify.

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There is no doubt that fraud against the United States Government is a serious problem, resulting in lost taxpayer dollars and the diminished effectiveness of federal programs. The False Claims Act, as this Subcommittee well knows, is the most powerful tool at the government's disposal to fight that fraud. Through its penalties, treble damages, qui tam and other provisions, there is no comparable means of combatting fraud against the government. At the same time, it is critical for individual companies to operate with integrity—to avoid reputational harm; reduce costly investigations and litigation; and because it is the right thing to do. Companies that fail to operate with integrity should feel the full weight of the government's power, through treble damages, penalties, and criminal charges, where appropriate.

Over the course of my career, I have had the opportunity to work on False Claims Act matters from the perspective of both the government and private sector. I had the privilege to serve as the Deputy Attorney General of the United States and as a United States Attorney, charged with enforcing the False Claims Act and other anti-fraud statutes. I left the Department convinced of the importance of the False Claims Act, but also well aware that the FCA is not without its flaws, as it can lead sometimes to unfair and arbitrary results, and its provisions afford the government tremendous (and perhaps undue) leverage against private companies and individuals. Before my tenure as Deputy Attorney General, I was a law firm partner representing clients facing investigations of potential wrongdoing; after my tenure, I worked in the private sector as the General Counsel of a major corporation. My service in the private sector left me firmly persuaded of not only the importance of companies investing in first-class ethics and compliance programs designed to prevent and mitigate fraud and other wrongdoing, but also of the need for incentives for companies to do so. In my experience, the vast majority of companies want to do the right thing with respect to ethics and compliance, but, particularly in times of tight budgets, concrete incentives are needed for the companies to do so.

Given my work, I was very interested when the opportunity arose to participate in the Ethics & Compliance Initiative's Blue Ribbon Panel tasked with identifying the qualities that are indicative of "high quality" ethics and compliance programs. This work confirmed that most corporate Boards of Directors and management feel very strongly about complying with the law and have invested tremendous resources into developing and maintaining cultures of ethics and compliance. However, there is a gap of practical guidance for organizations seeking to implement or improve their compliance programs. There is also a perception that effective compliance programs cannot be quantified. We hope that the ECI Report has addressed these issues, at least in part, without creating another set of check-the-box guidelines. I have included our Final Report as an appendix to this testimony for your convenience. I have set forth below the primary findings of the Blue Ribbon Panel, as well as some thoughts about how those findings may be useful to the Subcommittee in your oversight of the FCA.

My decades of experience have persuaded me that the best way forward in terms of preventing and mitigating fraud is to focus on the development of first-class ethics and compliance programs across industries. We should preserve the core features of the False Claims Act, but think creatively about whether it can be improved in terms of preventing, not just punishing, fraud. I believe the work of the Blue Ribbon Panel can provide some direction moving forward, and I appreciate the opportunity to provide these views to the Subcommittee here and in my oral testimony.

I. ECI Blue Ribbon Panel

Each of the members of the blue ribbon panel share the belief that first-rate ethics and compliance programs are critical to well-functioning organizations. Our task was to contribute to the development of these programs in a concrete way. The development of the report began with an examination of the available literature (including from the practitioner and research community as well as from regulators); included panel discussions of research materials, best practice examples, and drafts of the report; and concluded with request for public comment, panel review of submitted public comments, and review of the final report. In the Final Report, the ECI Blue Ribbon Panel identified the primary functions of high quality ethics and compliance programs, the fundamental principles of high quality programs, supporting objectives for each of the fundamental principles, and concrete, leading practices for each of the supporting objectives.

Although they might vary by context, the primary purpose of high quality ethics and compliance programs is largely the same across the board. These programs reduce the risk of wrongdoing; increase the likelihood that wrongdoing will be discovered and brought to the attention of management; increase the likelihood of an appropriate response to the wrongdoing; and maintain integrity in the company's performance and reputation.

When compliance programs are effectively implemented, they accomplish their purpose. Based on the research we reviewed, misconduct has been shown to be reduced by as much as 66 percent in organizations with effective programs, and reporting of wrongdoing to management increases by 88 percent. These are critical findings that speak to what I believe all parties to this dialogue would consider common ground. To be effective, ethics and compliance programs should encourage reporting of misconduct; protect those who identify wrongdoing (whistleblowers); and facilitate timely responses that remediate misconduct in the event it is reported.

Effective programs, however, must consist of more than simply a set of guidelines or lists of items to check off; in addition, they must be supported through leadership commitment and quality implementation. We also determined that "high quality" ethics and compliance programs are ones that are operating well beyond a minimum framework for compliance. These programs not only meet the legal minimums, but also integrate thinking about ethics and compliance into the everyday operation of an organization. These high quality programs result in assessment of risk mitigation, and prioritize the creation of a culture where concerns can be raised. Accountability—both internally and externally—is another hallmark of these high quality programs. And, finally, these programs implement dynamic anti-fraud strategies that are continually documented, objectively measured, evaluated, and improved.

The Report sets forth the detailed findings for each of our conclusions, providing what we hope will be helpful guidance to companies looking to institute or improve their own programs. For purposes of this hearing, I would like to focus on one aspect of high quality programs: accountability. The necessary governing principle we identified for high quality programs is that an organization takes action and holds itself accountable when wrongdoing occurs. Within this notion, we identified as necessary: a commitment by leaders at all levels throughout an organization to be ultimately accountable for the identification and mitigation of risks; day-to-day priority given to ethics and compliance as part of an organization's efforts to build and maintain a culture of ethics and compliance; and continuous improvement in terms of identifying and allocating resources to emerging priorities, activities and risk.

When misconduct occurs, and it will occur even within companies that operate high quality ethics and compliance programs, these companies respond quickly and responsibly. Investigations are timely, neutral, thorough, competent, and consistent. Wrongdoing is taken very seriously, with appropriate consequences regardless of the level of the violator, but investigations are conducted fairly. The company also holds itself accountable as an entity, maximizing learning from substantiated cases; acknowledging issues and corresponding mitigation; and reinforcing that integrity matters to senior management. In addition, as appropriate, these companies disclose issues early, transparently, and thoroughly to appropriate regulatory and government authorities, and work cooperatively to respond to legal and regulatory concerns. Finally, these companies have well-developed systems for escalation of issues—which can arise and accelerate quickly—with regular testing to ensure that companies respond consistently with their core values.

More specifically, we have identified supporting objectives and specific leading best practices in companies that demonstrate the accountability value, as set forth in the box below.

Supporting Objective:

The organization regularly communicates that individuals who violate organizational standards or the law will be disciplined.

Leading Practices:

- The code of conduct makes clear that there are consequences for violations.
- Each incident of substantiated misconduct is evaluated to determine how it should be communicated, internally and externally, based on the seriousness of the issue, the level of the subject and the need for and appropriateness of public disclosure.
- The ethics and compliance (E&C) program regularly communicates with key stakeholders about its internal monitoring efforts, including enforcement officials (where applicable), investors, donors and/or consumers.

Supporting Objective:

The organization maintains investigative excellence.[1]

Leading Practices:

- Thorough, timely, neutral, competent and consistent investigations are conducted and the organization maximizes learning from every substantiated matter.
- E&C or other appropriate personnel ensure neutrality in investigations through careful oversight and selection of who investigates any matter.
- The E&C office (or appropriate party) is provided access to all relevant information related to the investigation, and the organization supports the investigative effort.
- The organization is transparent about how investigations are conducted, including roles and procedures, timing, quality standards, conflict-of-interest protections, training of investigative personnel, confidentiality and anti-retaliation protections.
- Leaders are briefed on investigatory requirements and support investigative neutrality and confidentiality in their interactions.
- Respectful and proper personal debriefing and closure of the issue with the reporting party, if known, is required in every case.
- Investigations focus on the facts and the underlying concern rather than on defending against the allegation.
- Each investigation includes a discussion of potential root causes. E&C or other personnel, as appropriate, consider whether the incident could have been avoided and ensure that follow-up action is considered and executed.

[1] This supporting objective presumes continuing and proper consultation with counsel to balance privilege and privacy considerations with transparency.

Supporting Objective:

Disciplinary action is consistently taken when violations are substantiated.

Leading Practices:

- E&C ensures that proper consequences result from violations, including convening disciplinary review committees for significant violations.
- Metrics are kept on disciplinary consequences of violations and are periodically reviewed for trends and potential inconsistencies by topic, location and level of employee.

Supporting Objective:

Systems for escalation and response are well-developed and regularly tested, and leaders are held accountable for compliance.

Leading Practices:

- Clear policy is in place regarding the escalation and response of significant matters.
- Escalation and crisis management systems are regularly tested via exercises or audits.

Supporting Objective:

Appropriate disclosures are made to regulatory or other government authorities.

Leading Practices;

- Leaders support responsible, timely disclosure to regulators.
- Leaders ensure robust discussion of the most appropriate avenue for disclosure and promote appropriate transparency regarding failures or violations.
- Escalation procedures ensure that potentially disclosable matters are efficiently and promptly escalated for review and there are consequences for failure to escalate.
- Appropriate processes are in place to ensure relevant senior personnel and E&C consultation on questions about proper disclosure.
- Employees are trained on proper procedures in cooperating with government inquiries and consequences for noncompliance.
- When appropriate, cases are publicized after closure and follow-up action to deter future misconduct.

In sum, my work with ECI and the Blue Ribbon Panel confirmed that companies can and should build first-class compliance and ethics programs. The beneficial impacts of these programs are real and are increasingly quantifiable. Moreover, the components of a state-of-the-art program—one that goes beyond what is adequate and reaches what is excellent—are identifiable.

II. Looking Forward and Incentivizing Top-Notch Compliance Programs

I believe that the work of the ECI Blue Ribbon Panel may also assist this Subcommittee in your oversight of the False Claims Act, by providing us with a way to identify and incentivize high quality ethics and compliance programs. Both the company and the public benefit from incentivizing investment in ethics and compliance: prevention increases; wrongdoing is more likely to be identified, stopped, and disclosed; and the government can focus its efforts on the truly bad actors that are not committed to first-class compliance.

From a company's perspective, misconduct is increasingly expensive. For example, over just a two year period (2012-2014), the average total of monetary resolutions in corporate Foreign Corrupt Practices Act enforcement actions rose from $22 million to $157 million. So as a business matter, not just a moral and legal imperative, preventing wrongdoing is in the interests of a company. Moreover, the public benefits from less wrongdoing, whether it is a bribe that results in an uneven playing field, or fraud that takes funds directly from the public fisc.

At the same time, effective compliance programs allow the government to focus their resources and efforts on the bad actors—and there are bad actors. As noted above, one component of a high quality ethics and compliance program is that it encourages accountability—both internally and externally. In other words, a company with an effective ethics and compliance program is more likely to appropriately disclose wrongdoing to the government. This benefit allows the government to identify and investigate companies that do not demonstrate a commitment to "doing the right thing," and to levy commensurate penalties.

But this shared commitment to prevention and incentivizing investment in compliance is not the current reality. Instead, enforcement agencies rely more on post-hoc enforcement—leveraging significant penalties largely irrespective of a company's investment in compliance and prevention on the front end. The government comes into investigations and enforcement negotiations with tremendous power. Companies often face potentially astronomical penalties; debarment from contracting with the United States; exclusion from federal health care programs; present responsibility determinations that effectively function as a regulatory regime; or criminal indictments that can by themselves destroy a company. Companies are rarely, if ever, in a position to risk fighting the charges in court given the potential consequences (and the immediate reputational harms that occur when and if an investigation or allegation is made public), leaving the decision-making as to the appropriateness or fairness of a particular outcome in the hands of only one party—the government.

The relationship between the government and industry has become unduly adversarial as a result of this emphasis on post-hoc enforcement, which is regrettable. This approach can also lead to an antagonistic relationship between a company and its employees, which can undermine efforts over time to identify and remediate misconduct. There are also basic fairness concerns implicated in the current approach, which makes no distinction between companies that have detected, stopped and self-disclosed violations, and companies that in no way seek to do the right thing. Perhaps worse, the failure to put heads together to see if there is a better way—a prevention-based way—represents a missed opportunity to increase ethics, compliance and prevention across the board, rather than at specific companies under the microscope.

That said, I welcome recent signs that the Government may recognize the need for greater creativity to incentivize ethics and compliance. Earlier this month, the Department of Justice announced a new pilot program aimed at targeting foreign corruption. Pursuant to this pilot program, if companies self-disclose wrongdoing to the government; cooperate with the government; remediate the misconduct; and satisfy the requirements of the Yates Memorandum (which, in turn, sets forth conditions for obtaining credit for cooperation with the Department of Justice) the Department will consider up to a 50 percent penalty reduction below the low end of the guidelines as well as no requirement for a corporate monitor.

Almost a year ago, the head of the DOJ Criminal Division gave a speech emphasizing that when the Criminal Division decides whether and how to prosecute a company, the Division considers the adequacy of the company's compliance program and internal investigation. As part of this speech, she also described the characteristics of effective compliance programs for which the Department is looking. Late last year, the Department of Justice hired a full-time compliance expert in its Fraud Section, who will provide assistance to prosecutors in evaluating the adequacy of compliance programs and in developing benchmarks for evaluating corporate compliance and remediation measures as part of resolution.

For the last few years, Health and Human Services' Office of the Inspector General has had a policy of recommending to DOJ reduced penalties for companies that appropriately disclose wrongdoing. Companies with first-rate ethics and compliance programs should benefit from this program in the event of wrongdoing, as they should be well-positioned to identify, remediate, and disclose wrongdoing. In 2014 the HHS OIG indicated that they were considering revisions to the criteria they use in deciding whether to exercise their authority to exclude entities from federal health care programs. Interesting, the OIG specifically requested comments as to whether and how OIG should consider a company's compliance program when deciding whether to exclude that company. The OIG has not yet issued any revised criteria, but I hope they are still under consideration.

But these steps, while laudable, are missing a critical feature: certainty. Concrete incentives are needed in civil as well as criminal fraud programs, and these programs still have yet to offer that. It is important for government to be clear about what constitutes a top-notch compliance program and define it in ways that are achievable. Because achieving this will require substantial investments and proactive disclosure requires leaps of faith, the beneficial consequences must be concrete and certain. I do not believe that a focus on prevention and compliance is a process that can or will happen overnight. And we will not see a greater across-the-board commitment to formalized, first-class compliance/ethics programs until the government provides concrete, predictable, incentives for companies to do so.

One approach that should be considered in providing the right incentives is represented in discussions about a Chamber of Commerce proposal on the False Claims Act, under which companies that achieve and maintain first class compliance programs could obtain reductions in penalties or other consequences when inevitable wrongdoing does occur. While not the purpose of my testimony to opine directly on that approach, I do think it is creative and, when it is combined perhaps with a requirement for self-disclosure of identified concerns, responds to the challenges in this area and so is worthy of close consideration.

* * * * * *

We are much closer today than we ever have been to identifying what constitutes a high quality ethics and compliance program, so we should also be much closer to certainty in the government's response to companies with such a program.

APPENDIX

ECI ethics & compliance initiative™

PRINCIPLES AND PRACTICES OF HIGH-QUALITY ETHICS & COMPLIANCE PROGRAMS

Report of ECI's Blue Ribbon Panel

This report is published by the Ethics & Compliance Certification Institute (ECCI). The certification arm of Ethics & Compliance Initiative (ECI).

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The findings and conclusions of this report are those of the panel members alone and do not represent the views of their organizations.

ABOUT THE ETHICS & COMPLIANCE INITIATIVE

The Ethics & Compliance Initiative (ECI) empowers its members across the globe to operate their businesses with the highest levels of integrity. ECI provides leading ethics and compliance research and best practices, networking opportunities, and certification of practitioners. ECI is a strategic alliance of three nonprofit organizations: the Ethics Research Center (ERC), the Ethics & Compliance Association (ECA) and the Ethics & Compliance Certification Institute (ECCI).

For more information about ECI and its affiliates, please visit www.ethics.org.

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FOREWORD

When media headlines regularly talk of fraud, corruption and other breaches of trust, it is easy to conclude that the leaders of vital institutions are not terribly concerned about complying with the law. The truth is that even the most honorable institutions sometimes struggle with ethics and compliance (E&C) failures. Through those struggles, however, committed leaders and their organizations have identified strategies for protecting business integrity. Driven by a desire to compete in full compliance with the law, organizations invest tremendous resources in the establishment of internal E&C programs designed to prevent wrongdoing from ever taking place. These same organizations also put in place formal systems to encourage employee reporting of suspected misconduct, and they develop procedures for investigating and responding to these reports or other evidence of possible wrongdoing.

But the quality of these programs varies from organization to organization. Organizations just getting started in establishing an E&C program – or businesses that wish to strengthen their existing efforts – cannot always find models for achieving the highest goals of E&C. The majority of guidelines for "effective" E&C programs tend to articulate only the minimum regulatory standards – standards designed primarily to assist judicial evaluation rather than to serve as models for program design and implementation.

Yet, some exemplary organizations of all sizes and from a wide variety of sectors and industries have raised the bar higher than mere compliance with the law. These organizations have *transformed* their workplaces through E&C efforts that set them apart from their peers and create environments in which doing the right thing is standard operating procedure. Referred to in this report as organizations with High-Quality Programs (HQPs) – these trailblazers are not satisfied with the mere compliance or "check the box" E&C efforts. Instead, they assign a larger purpose to E&C, making it central to their business strategy, placing a premium on ethical decision-making and encouraging employees to speak up.

With that reality in mind, in May of 2015 the Ethics & Compliance Initiative (ECI) convened a group of 24 thought leaders and challenged them to identify the qualities that distinguish these "high-quality" ethics & compliance programs. The report that follows is the result of nearly a year of the panel's effort to do just that and is also reflective of public comments received from a cross-section of the E&C industry.

This report aims to advance the dialogue about effective ethics and compliance programs and also to provide practical guidance for organizations that wish to establish a high-quality effort of their own. What we do *not* want to do is provide a new set of boxes for organizations to "check" so that they may believe that their E&C work is done. The central premise of this report is that an HQP is a visible sign that ethics and compliance is central to an organization's business strategy. The report also makes clear that an HQP reflects the unique aspects of the organization, its industry and its risks and must evolve over time to keep pace as an organization changes and shifts.

ECI and our panel members believe that if all organizations adopted the principles and practices described in this report, "check the box" programs would fade away and far fewer headlines would report the kind of organizational wrongdoing that jeopardizes public trust.

This report is intended to be a living document that reflects the continued evolution of the E&C profession and our growing knowledge of what it takes to establish integrity as a core of organization's operational philosophy. In that spirit, we respectfully ask for your feedback and suggestions.

Finally, we wish to remember with great fondness our friend and colleague Michael G. Oxley, who served as a member of our panel until his untimely death on January 1, 2016. We are grateful for his contributions to this report.

Patricia J. Harned, Ph.D.
Chair, Blue Ribbon Panel
Chief Executive Officer, ECI

METHODOLOGY

The development of this report has involved several steps.

- *Review of literature*. To provide context for the Panel's work, a comprehensive document review was undertaken to understand existing efforts to define an effective ethics & compliance (E&C) program. Of specific interest were practices that practitioners, regulators and others have found to produce both cultures of integrity and effective systems to prevent, detect and respond to misconduct in organizations.

  From literature related to the practitioner and research community, background research included a review of recent best practice compendiums and material authored by industry professional organizations and experienced practitioners. A review of independent research on effective practices in E&C was also conducted. Members of the panel and other selected practitioners provided sample codes of conduct, frameworks for their E&C program efforts, risk assessments and other documents related to their programs' designs.

  From the regulator community, the review included U.S. Sentencing Commission history and commentary related to Chapter Eight of the *USSC Guidelines Manual*, as well as recent commentary and publicly available case data from domestic regulators including the Department of Justice; the Securities and Exchange Commission; the Inspector General of Health and Human Services; and the Department of Labor. Additionally, the review included a variety of other domestic and global integrity standards/laws for organizations and related commentary and research, including "B" or benefit organization standards; sustainability standards; the United Kingdom Bribery Act; the Organization for Economic Co-operation and Development (OECD) Anti-Bribery Convention; and International Organization of Standards (ISO) 19600 – Compliance Management System Guidelines.

  Finally, the literature review involved relevant best practices and commentary from other compliance-related disciplines including safety, enterprise risk management, internal audit and human resources.

- *Panel discussion of the principles and review of report drafts*. The Panel convened in three group conference calls to react to research material, best practice examples and drafts of the public report. Additional calls were held with individuals and small groups of panel members in order to gather specific feedback and further refine the document. The full group reviewed and commented on a detailed outline and provided input to four subsequent versions of the full report.

- *Public comment, panel review of comments and review of final report.* The draft report was released to the public for comment, and comments were accepted from organizations and individuals for a period of two months. The Panel convened in one conference call to discuss comments and provide recommendations for refining the report. The full group reviewed the final report before its publication.

INTRODUCTION

Ethics and compliance (E&C) has become an identifiable function in many organizations today. In some cases, E&C programs are born out of necessity in the aftermath of wrongdoing.[1] In many other instances, programs arise from an organization's voluntary investment in the strategic goal of conducting business with integrity. Regardless of why they were created, E&C programs by their very nature play an important role in the viability and ongoing success of any institution.

The size, scope and structure of an E&C program[2] vary with the makeup of an organization. A program in a large, publicly-traded multinational looks altogether different from an effort in a small, privately-held business. Even more different are E&C programs in nonprofit and government entities. Nonetheless, the fundamental purpose of the function is almost universal. An organizational ethics and compliance program exists to:

A. Ensure and sustain integrity in the organization's performance and its reputation as a responsible business;[3]

B. Reduce the risk of wrongdoing by parties employed by or aligned with the organization;

C. Increase the likelihood that, when it occurs,[4] wrongdoing will be made known to management within the organization;

D. Increase the likelihood that the organization will responsibly handle suspected and substantiated wrongdoing; and

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[1] We use the term "wrongdoing" and "misconduct" throughout this report to refer to both illegal conduct that violates law or regulation and conduct that violates organizational values, standards and policies.

[2] In most instances, a compliance program is designed to prevent, detect and deter violations of law and regulation, as externally imposed. An ethics program, by comparison, is designed to encourage the establishment of a set of values and a culture that encourages ethical decision-making consistent with those values. While some organizations (particularly those in highly-regulated industries) separate the compliance program from the ethics program, many other organizations combine them into a comprehensive E&C function. In this report, we refer to the two functions together because high-quality programs have both focuses in some way. Further, as discussed in the report, we find that E&C are interdependent; the successful execution of either function is strongly dependent on successful execution of the other.

[3] This document was written with all types of organizations in mind – corporations, nonprofit organizations, governmental entities, etc. When the word "business" is used, it is intended to refer to the day-to-day operations of the organization. To that end, every entity conducts "business" of some sort.

[4] In 2013 41 percent of an organization's employees observed wrongdoing or misconduct in a given year. See pp. 14-15 of Ethics Resource Center (2014). *National business ethics survey 2013®*. Arlington, VA: Ethics Resource Center.

E. Mitigate penalties imposed by regulatory and governmental authorities for violations, if they occur.

Ethics and compliance programs are designed to achieve this purpose in two primary ways. They:

A. Continuously assess and abate the organization's legal, ethics and other compliance risks; [5] and they

B. Establish and perpetuate an organizational culture that prizes ethical decision-making and the raising of concerns without fear of retaliation.

Research has shown that when they are effectively implemented, these efforts achieve positive results: ethics and compliance programs *do* accomplish their purpose. Misconduct[6] has been shown to be reduced by as much as 66 percent in organizations with effective programs. Reporting of wrongdoing to management increases by 88 percent.[7] Importantly, however, these and other outcomes of an ethics and compliance program are dependent on the quality of the program implementation and the ongoing commitment of business leaders to it. Not all ethics and compliance programs achieve their intended results. The authority, objectives and scope assigned to the program make a profound difference.

Current Understandings

For leaders seeking guidance in building an ethics and compliance program, to date, the de facto standard for "effectiveness" in program design has been largely based on definitions set forth in Chapter 8 of the *Guidelines Manual* (the Guidelines), as promulgated by the United States Sentencing Commission (USSC).[8] Additional insights have been derived from a number of other prominent sources, including the United Kingdom Bribery Act;[9] the Organization for Economic Co-operation and Development (OECD) Anti-Bribery Convention;[10] and the International Organization of Standards (ISO) 19600-Compliance Management System Guidelines.[11]

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[5] The term "risk" when used in the context of organizational risk assessment processes refers to any internal or external event or occurrence that may impair an organization's ability to achieve its objectives. Ethics and compliance risks most frequently involve matters that would suggest that the organization is not in compliance with law, regulation or its own standards and the reputational risks associated with such matters.

[6] Misconduct is defined as a violation of an organization's ethics/compliance standards or a violation of the law.

[7] See pp. 18-19 of Ethics Resource Center (2014). *National business ethics survey 2013®*. Arlington, VA: Ethics Resource Center

[8] United States Sentencing Commission Guidelines Manual, Chapter 8, Section 8B2.1.

[9] Full text of the Act is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf

[10] Full text of the OECD Guide Practice Guidance is available at: http://www.oecd.org/daf/anti-bribery/44884389.pdf

[11] Full text of ISO 19600 (2014) is available at: https://www.iso.org/obp/ui/#iso:std:iso:19600:ed-1:v1:en

While it is widely recognized that the Guidelines and other definitions for effective E&C efforts have had a broad and substantial impact in advancing thought and practice,[12] there are challenges that remain with their adoption as the end goal. First and foremost, these frameworks articulate the minimum (or at least the basic) standard. By their nature, the elements identified within these definitions articulate what constitutes compliance with regulation and/or the law. Organizations with ethics and compliance programs designed solely to conform to these frameworks (a.k.a. "check the box programs") are often limited in their scope, and they struggle to maintain relevance within the organization. By comparison, organizations with programs designed with a much broader understanding of E&C have yielded stronger, more positive results. Organizations who merely follow the minimum standard can and should do more.

Second, the majority of these de facto standards were established as regulatory or judicial responses to increasing evidence of compliance and ethics lapses in organizations. They were intended to be frameworks for evaluation rather than suggestions for program design and implementation. As a result, organizations building programs based on the Guidelines (or other regulatory definitions) do not find in them sufficient detail to fully implement their programs. For example, the portion of the Guidelines concerning organizations (Chapter 8) created a union of two related but qualitatively different outcomes: "an organizational *culture* that encourages ethical conduct and a *commitment* to compliance with the law" and a program "effective in *preventing* and *detecting* criminal conduct." Accordingly, the challenge for most organizations is finding the appropriate balance of systems design and human inspiration that produces *both* a speak-up culture committed to compliance *and* effective, responsible prevention, detection and response to misconduct. The Guidelines (and other subsequent frameworks) were not designed to provide more detail to navigate these gaps and, as a result, they do not.

Why Now?

The time has come to advance the dialogue about effective ethics and compliance programs. After many years of thoughtful implementation, there *are* organizations that have done more than merely comply with the minimum expectation in the design of their programs; they have transformed their workplaces through their ethics and compliance efforts. In these organizations, E&C programs have reached a level of excellence that is worthy of emulation.

Additionally, regardless of their sector and size, the world in which organizations operate is changing rapidly, compelling leaders to *want* to ensure operational integrity. Organizations today face increasing (and accelerating) complexity. Some of these challenges, which have multiplied significantly in just the last few years, include:

[12] See pp. 38-42 of Ethics Resource Center (2012)., *The federal sentencing guidelines for organizations at twenty years: A call to action for more effective promotion and recognition of effective compliance and ethics programs.* Arlington, VA: Ethics Resource Center.

- Increasingly intense regulatory environment—Trends show an increase in both enforcement activity and enforcement budgets, particularly with regard to criminal activity in organizations. Regulators continue to emphasize the importance of effective E&C programs that are "thoughtfully designed," consistently implemented, not only in preventing misconduct but also in mitigating penalties if wrongdoing occurs.[13]

- Increasing global standards—In addition, a number of countries have recently passed legislation strongly incenting organizations to adopt comprehensive compliance programs.[14] For multi-national organizations in particular, E&C programs must be attentive to an ever-growing number of standards and regulations.

- Rapidly expanding public scrutiny and reputation risk—From board rooms to chat rooms, organizations are under increased scrutiny. Expectations for organizational conduct are rising, while access and reach of information is moving at an unprecedented rate. A single piece of bad news about an organization, distributed via the internet, can do substantive harm to an organization's reputation in a matter of hours.

- Rising costs of misconduct —A single incident of misconduct is increasingly expensive for an organization. For example, the average total of monetary resolutions in corporate FCPA enforcement actions rose from $22 million to $157 million in just two years (between 2012 and 2014).[15] Securities class action settlements had a median cost of

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[13] On September 10, 2015, a Memorandum was issued from Deputy Attorney General Sally Q. Yates to all DOJ attorneys announcing that any consideration of credit for corporate cooperation in matters before DOJ requires the complete disclosure of all relevant facts about individual wrongdoing of company employees. While commentary about the Memorandum continues as we issue this report, this statement further confirms DOJ's commitment to more vigorously pursue individual prosecutions in both civil and criminal matters when individual company employees are found responsible. For more information, see US Dept. of Justice. (2015). *Deputy Attorney General Sally Quillian Yates delivers remarks at New York University School of Law announcing new policy on individual liability in matters of corporate wrongdoing* [Press release]. Retrieved from http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school. Additionally, in November, the DOJ Fraud Section in the Criminal Division hired a Compliance Counsel, Hui Chen, who will guide prosecutors as they evaluate corporate compliance programs in matters before them for prosecution. In publicly addressing the new counsel, Assistant Attorney General Leslie Caldwell, stated that the hire will enable examination of compliance programs "on a more global and a more granular level," including consideration of "whether the compliance program truly is thoughtfully designed and sufficiently resourced to address the company's compliance risks, or essentially window dressing." For more information, see US Dept. of Justice. (2015). *Assistant Attorney General Leslie R. Caldwell speaks at SIFMA Compliance and Legal Society New York Regional Seminar* [Press release]. Retrieved from http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-sifma-compliance-and-legal-society

[14] Spain recently passed legislation creating a compliance defense concept in its anti-bribery and anti-corruption legal scheme for companies being prosecuted for violations, following a trend begun by the United Kingdom and including a number of other countries, including Australia, Korea, Japan and others. For further information see Debevoise & Plimpton (May 2015). *FCPA Update, volume 6, number 10*. Retrieved from http://www.debevoise.com/~/media/files/insights/publications/2015/05/fcpa_update_may_2015.pdf

[15] Gibson Dunn, LLP, *2014 Year-End FCPA Update,* at www.gibsondunn.com. Gibson Dunn, LLP (2015). *2014 Year-end FCPA update.* Retrieved from http://www.gibsondunn.com/publications/pages/2014-Year-End-FCPA-Update.aspx.

$10.2 million per incident. Although these and other direct costs of misconduct (damages, settlements and fines) get the most attention, they only represent a part of the fully-loaded costs of wrongdoing. Beyond these direct costs, research shows large indirect costs resulting from misconduct, including employee turnover, lost productivity, external legal and consultant fees, decreased share price and reputational harm. For example, employee engagement drops by 11 percent and intent to stay decreases by as much as 23 percent when workplace misconduct is observed.[16]

In this environment, organizations need guidance on how best to navigate these challenges, as cost effectively as possible. Indeed, organizations with high-quality programs (HQPs) not only reduce misconduct and lower their costs but also are at a competitive advantage.

Purpose of this Report

The purpose of this report, therefore, is to articulate the principles and key practices that are common to high-quality ethics and compliance programs in order to offer actionable ideas that other organizations can adopt. What follows is a description of five critical principles that characterize these program efforts. After our general description, we offer supporting objectives and leading practices for each principle that further detail the path to a high-quality ethics and compliance program, including case examples and common pitfalls.

We acknowledge that any high-quality ethics and compliance program must be tailored to the organization and industry in which it exists and that size, complexity and degree of regulation of the industry will drive the design and function of any program. Further, we do not intend to suggest that there is a group of organizations that have implemented every one of the practices described herein or that any organization has achieved such success that it does not have room for improvement. Rather, this document is meant to suggest the features that are common to organizations that have raised the bar for their ethics and compliance programs. It is our desire to highlight the perspective and the practices that many of these organizations have adopted. As discussed below, we strongly believe that there are fundamental characteristics essential to high-quality programs that are scalable and apply in any setting, large or small, highly regulated or not.

In essence, the report that follows describes high-quality programs as set apart because they:

- Make every effort to comply with all relevant legal and regulatory expectations *and* integrate E&C thinking and practice into everyday operation of the organization;
- Are not satisfied with a mere "check the box" effort;
- Assess and mitigate risk and prioritize the creation of a culture where concerns can be raised and where retaliation is not only prohibited but prevented;
- Hold themselves accountable – both internally and externally – for prompt, responsible action when misconduct occurs; and

[16] Corporate Executive Board, *Risk Clarity Quarterly: Understanding the True Costs of Misconduct*, (Arlington, VA: Corporate Executive Board, 2013). For more information, see www.executiveboard.com.

- Implement strategies that are continually documented, objectively measured, evaluated and improved.

PRINCIPLES OF HIGH-QUALITY E&C PROGRAMS (HQPS)

Organizations with high-quality ethics and compliance programs make every effort to comply with all the legal and regulatory expectations that are relevant to their organizations; this priority is reflected in the design of their programs. Additionally, these organizations expect their programs to achieve an even higher purpose – establishing and perpetuating a high standard of integrity that becomes part of the DNA of the organization. The following principles are common to these organizations and this higher purpose.

Principle 1: Ethics and compliance is central to business strategy.

In organizations with high-quality E&C programs, the program is not an "add-on" feature of the organization; rather, it is designed to complement and support the organization's strategic objectives. While E&C can be found as a function on the organizational chart, it is also considered to be an essential element within every other operation. As a result, the ethics and compliance function assumes responsibility for the organization's compliance with law and regulation, but it does so by serving as a resource and advocate to help leaders across the organization understand their critical role in setting the standard for integrity. Leaders across the organization are expected to drive ethics/compliance forward as a routine but essential part of daily operations. With this role in mind, in HQPs the E&C program reflects a willingness to be bold in promoting integrity as central to the organization's mission.

At the same time, the E&C program is expected to provide an independent voice in the organization. To that end, staff of the program – as headed by a chief ethics and compliance officer (or the equivalent)[17] – are visible participants and contributors to high-level discussions of strategy; crisis management; high level discussions about the day-to-day operations of the organization; and briefings to the board[18] (or the equivalent). In order to support the integration of E&C into all these operations, the program is afforded the resources (in terms of staff and funding) to do its work.

Along the same lines, just as leaders across the organization commit to innovation, staff in HQPs also dedicate themselves to continuous improvement when it comes to E&C. One path

[17] In determining how to structure and define the role of the HQP leader, organizations should carefully consider the details of the chief ethics and compliance officer (CECO) role as well as the essential roles culture and risk assessment play in building the E&C program. See Ethics Resource Center (2007). *Leading corporate integrity: Defining the role of the chief ethics & compliance officer (CECO).* Arlington, VA: Ethics Resource Center.

[18] Reference to the "board of directors" is made throughout this document. We acknowledge that some organizations do not have boards of directors – particularly government entities. In that instance, organizations should consider the equivalent to be the person or persons who maintain the highest level of oversight or governance for the organization.

used to ensure consistent innovation is using a "whole process" approach, in which every significant program element and compliance area (policies, training, controls, monitoring, auditing and remediation/modification) is "mapped" in order to see the gaps to be filled as well as the synergies between E&C and other areas. This "whole process" view is used as a monitoring tool or dashboard for tracking improvements or developments in the E&C program over time. When new organizational priorities arise and business shifts take place, the E&C program shifts in alignment with the opportunities, activities and issues of the organization itself. HQPs drive continuous improvement through engagement with stakeholders, including other E&C professionals who promote understanding of emerging issues and effective methods for creating impact with employees. HQPs also carefully and consistently consider employee feedback about leaders' behaviors and the ways in which the E&C program can be improved.

Through its actions, the board of directors in HQPs also demonstrates that at the highest level, ethics and compliance is central to the organization's strategy. The board is aware of and actively monitors the design, operation and outcomes of the E&C program, as well as the strategy for its integration across operations. In HQPs, the E&C leader regularly provides the board information not only about any material frauds or other serious misconduct, but also the state of the organizational culture and relevant data on the integration of E&C across the business.

This principle is demonstrated through the following supporting objectives and leading practices.

Supporting Objective:

The E&C program is designed to integrate with business objectives.

Leading Practices:

- Strategic goals for the organization include goals related to E&C.
- Senior leaders articulate the ways E&C relates to their operational areas.
- Oral and written communications by leaders, both internally and externally, highlight values, E&C practices and stakeholder response to E&C performance.
- Strategy meetings include discussion of organizational priorities based on their alignment with core values.
- Proposals for new business strategies are measured, in part, by their alignment with the organization's values.
- Regular reporting is provided to executive leadership on compliance performance and audit results with regard to priority compliance areas (e.g., workplace safety, product safety, anticorruption, financial controls, conflicts of interest, etc.).

Supporting Objective:
E&C is given the resources and access needed to ensure both proper integration with operations and an independent voice to leaders.
Leading Practices:
• E&C staffing is sufficient and intentionally designed to have reach into the business structure, and it is benchmarked by organization size and industry. • E&C is represented in strategic teams including the executive or management committee; enterprise risk assessment committee; disclosure committee; etc. • Resources provided to the program are sufficient to allow E&C staff to innovate and tailor content to specific audiences in various functions. • The E&C structure ensures independence and regular access to the board and/or the audit committee.

Supporting Objective:
E&C personnel are consistent participants in key strategic discussions.
Leading Practices:
• E&C leaders are visible and prominent, sending a strong message that compliance and ethical conduct are high priorities for the organization. • E&C leaders participate in high-level strategic discussions and are frequently asked to offer input to ensure decision-making aligns with values. • E&C issues, data and priorities are discussed along with other business results in staff meetings, operational reviews and similar meetings.

Supporting Objective:
The organization continuously improves the impact of its E&C program through leadership, innovation and continuous feedback loops.
Leading Practices:
• Baseline measures are in place to assess improvement over time in rates of misconduct; effectiveness of response and detection; and control effectiveness. • E&C metrics on progress include impact on misconduct, reporting, detection and prevention as well as a broad range of leadership behaviors linked to a strong ethical culture (e.g., survey data, leadership integration of E&C into staff, operational meetings, E&C training and awareness efforts, reporting and responsiveness, etc.). • Leaders make time for "town hall" give-and-take sessions during which E&C issues

are addressed.

- Failures, near misses and all investigations, audits and reviews are mined for lessons learned to prevent or detect future issues. All include clear processes for follow-up, including proper communication of findings and accountability for remediation.
- Senior leaders probe for new insights and improvements by asking hard questions of E&C leaders, risk owners and others accountable for E&C performance. The organization continuously asks and answers the questions: Does the program make a difference? How? Why?
- The organization seeks feedback from employees on leaders' behavior as well as E&C program tools and resources.
- E&C collaborates with internal audit, risk management and other partners to ensure that the program takes into account emerging information about the business and its E&C priorities.
- E&C ensures the organization is aware of and leverages advancements in technology and research that drive innovation in the E&C program.
- The organization periodically submits its entire E&C program to an independent review from neutral, knowledgeable experts, internally or externally.

Supporting Objective:

The board of directors is knowledgeable about the impact of the E&C program and actively monitors its implementation across the business.

Leading Practices:

- Board leaders and members seek and are provided comprehensive information about the organization's E&C program.
- The board maintains a relationship with E&C through regular contact with the E&C leader and his/her team.
- The board receives regularly scheduled briefings on risk assessment processes, E&C metrics and significant matters and outcomes in the E&C area.
- The organization recruits and maintains board members with E&C expertise.
- The board receives periodic E&C training tailored to their responsibilities as board members and any special issues of relevance.

Supporting Objective:

The organization shares its learning externally in order to positively influence other organizations toward responsible practices and a commitment to integrity.

Leading Practices:
• E&C staff participate in forums that create dialogue with stakeholders and enforcement officials and seek pathways to contribute to the broader understanding of the value of their efforts. • E&C staff are active in industry organizations - engaging with peers to exchange ideas, identify emerging issues and share best practices.

Principle 2: Ethics and compliance risks are identified, owned, managed and mitigated.

Risk assessments are the foundation upon which HQPs are built. Every organization has a unique risk profile based on industry, history, maturity, marketplace and more. In HQPs, the E&C program is recognized as a key component of the enterprise risk management effort, providing management and the board with critical information that can help to avoid severe business disruption and loss. E&C – in collaboration with many other functions and operations – is well-integrated into the organization's risk assessment practices and procedures. This integration ensures that risk owners are clearly identified, resources are targeted to the most significant risks and controls, and prevention activities align with changes in the risk profile of the organization.

An important characteristic of HQPs is that responsibility for risk is *shared* across the organization, as leaders assume ownership for the ongoing identification and mitigation of risks that are relevant to their areas. To support the effort, the E&C program is attuned to the most serious risks as they change over time. Risk assessment is an ongoing process which serves as a critical early warning system for current and emerging issues. Moreover, both the ethics and compliance program and current state of the organization from an E&C perspective are evaluated as risk areas. Accordingly, compliance performance, strength or weakness of organizational culture, employee willingness or fear to report and other key E&C areas are evaluated as potential risks to the organization.

Once risks are properly identified and ranked, organizations with HQPs provide targeted outreach to enable employees to prevent risks from materializing and to respond to them should they occur. E&C ensures that employees have easy access to the information they need to do their jobs and mitigate risks. Policies, standards and guidance relevant to an employee's job category are easily accessible and systems for raising concerns are well understood and trusted. The E&C program serves as a supporter, facilitator and guardian for the organization, ensuring that early-warning opportunities from employees at all levels are not missed.

Failures, breaches and near-misses are also considered to be part of the organization's early warning system. HQPs ensure that these events are handled responsibly and continuously monitored for data and insights which could prevent a recurrence and that follow-up action is taken when necessary.

Notably, HQPs do not limit assessment and mitigation of risk to the confines of their internal operations. For instance, in the area of diligence processes for vetting and integrating third parties, E&C plays an essential role. HQPs ensure that beginning on day one, third party agents, vendors and acquisitions are held accountable to the organization's standards with respect to responsible ethical conduct and compliance. Diligence processes are rigorous in content, well-documented, tested and monitored for effectiveness just like any other critical business process. Additionally, HQPs include explicit processes for the integration period following acquisition, including testing and monitoring to confirm timely integration of new entities. HQPs ensure processes are updated to stay current with the laws of various jurisdictions and the likely risks and "red flags" that emerge from various countries.

Finally, in a rapidly changing world, HQPs lead the way in engaging with professional organizations inside and outside the organization's industry to bring back to the organization new insights about emerging risks and the strategies that can aid in their prevention.

This principle is demonstrated through the following supporting objectives and leading practices.

Supporting Objective:
The E&C program is calibrated to key risk areas identified through a robust, continuous risk assessment process.
Leading Practices:

• The organization's risk assessment process includes identifying and tasking risk owners for every key risk area, including their responsibility for reporting and coordinating mitigation progress (policy, training, operating processes and controls, mitigation and resolution of issues).
• E&C develops and regularly updates a process map which includes the identification of key risk areas and risk owners.
• The organization's risk assessment process:
    o Includes broad and deep participation - not just senior leaders.
    o Includes processes and deliverables that are integrated into the business calendar throughout the year - not just a one-time event.
• The E&C program is nimble and adjusts regularly to identified and prioritized risks.

Supporting Objective:
Leaders across the organization are assigned responsibility for the ongoing identification and mitigation of risks that are endemic to their operations.

Leading Practices:

- Leaders ensure that their teams understand the risk assessment processes of the organization and the key risks that are relevant to their unit and the organization.
- Each key risk area is assigned to risk owners for coordination and mitigation.
- Risk owners, whatever their other roles, are held accountable for and recognized for their performance as risk owners and their collaboration with E&C and other relevant functions in executing this role.
- Future strategies and emerging issues are identified early in their development through the risk assessment process.

Supporting Objective:

Self-assessment, early issue spotting and prompt remediation of compliance gaps are recognized and rewarded.

Leading Practices:

- The organization tracks performance outcomes and metrics on risk identification and mitigation and holds individuals accountable for performance in these areas.
- Assessment and monitoring features are required for initiatives so that risks will be identified during execution.
- The organization maintains cross-functional teams in its risk assessment and quarterly disclosure review processes to promote insights and issue-spotting.

Supporting Objective:

Ethics and compliance, both the program and the state of the organization from an E&C perspective, are regularly monitored as risk areas.

Leading Practices:

- Compliance performance, strength or weakness of organizational culture, employee willingness or fear to report and other key E&C areas are evaluated as potential risks to the organization.
- E&C processes for the prevention and detection of misconduct are reviewed and assessed for effectiveness and efficiency, just as with any other business process.
- E&C metrics across the organization are reviewed to detect "high risk" areas that may require intervention or further monitoring.
- Investigative and audit results are reflected in risk assessment reviews, ratings and mitigation plans.

Supporting Objective:
Guidance and support for handling key risks are provided to employees according to their role.
Leading Practices:
• Policies and the code of conduct are maintained, updated to reflect prominent risk areas and made readily available to employees at every level and location - without exception. • Continuous learning on E&C topics is required of employees based on their role and risk exposure; such training is continuously evaluated for effectiveness and relevance. • The organization actively works to make training and guidance relevant to the user in a timely and current fashion.

Supporting Objective:
The organization maintains rigorous third party due diligence processes that screen for integrity.
Leading Practices:
• E&C is significantly involved in diligence processes for mergers and acquisitions. • The due diligence process for mergers and acquisitions is designed to ensure reasonable consideration of E&C risks prior to deal closure. • Effective and timely implementation of E&C standards is expected of the acquired or contracted entity. • E&C contributes to and monitors third party diligence processes and standards for agents, vendors and others in collaboration with functional partners.

Principle 3: Leaders at all levels across the organization build and sustain a culture of integrity.

While the identification and abatement of risk provides a foundation for compliance, organizations with HQPs also know that the minimization of risk does not, by itself, result in greater integrity. Culture is understood to be the largest influencer of business conduct; therefore, developing and sustaining a strong ethical culture is essential for protecting and sustaining the organization. Leaders are recognized as primary drivers of that culture. In HQPs, leaders throughout the organization are expected – and held to – a shared responsibility for making ethical conduct and ethical decision-making a central part of the organization's DNA.

This means leaders ensure that ethics and compliance is enforced in good faith for every employee, consistently and scrupulously.[19]

Organizational culture is best understood as "the way we do things around here."[20] Culture includes the values and behaviors that define any organization's activity in the marketplace. As a whole, culture is built over time, the sum of behaviors that are initiated and reinforced on a daily basis. In HQPs, the ethics and compliance function provides support to senior leaders so that they can, in turn, help build a culture of integrity by personally demonstrating an organization-wide commitment to ethics and compliance. From the highest tiers to the business unit level and throughout, in HQPs, senior leaders are accountable for ethics and compliance culture metrics as an element of business unit performance. Further, these leaders are personally evaluated for their efforts in this area as a part of their annual performance reviews.

In addition to senior leaders who set the "tone" by prioritizing an ethical culture, managers and supervisors throughout an organization also have a substantial impact on culture.[21] Employees are keenly attuned to the actions of their direct supervisors and the extent to which they walk their talk. [22] Employees who perceive that their leaders act with integrity are more likely to speak up and act with integrity as well.[23] Therefore, HQPs equip managers and supervisors with a set of organizational core values and provide support to help them connect the values to priorities and decisions in daily operations. Further, managers and supervisors are held

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[19] "[DOJ and SEC] do not hold companies to a standard of perfection...Rather, they employ a common-sense and pragmatic approach...related to three basic questions: Is the company's compliance program well designed? Is it being applied in good faith? Does it work?...A well-designed compliance program that is not enforced in good faith, such as when corporate management explicitly or implicitly encourages employees to engage in misconduct to achieve business objectives, will be ineffective." Excerpt from pp. 56-57 of: Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission (2012). *A resource guide to the U.S. Foreign Corrupt Practices Act*. Washington, D.C.: U.S. Government Printing Office. 56-57. Retrieved from https://www.documentcloud.org/documents/515229-a-resource-guide-to-the-u-s-foreign-corrupt.html

[20] Deal, T.E., & Kennedy, A.A. (1992, 200). *Corporate cultures: The rites and rituals of corporate life*. Harmondsworth: Penguin, Perseus. Edgar Schein, the noted organizational development thinker, elaborates that culture is "the pattern of basic assumptions that a group has invented, discovered or developed, to cope with its problems of external adaptation or internal integration that have worked well and are taught to new members as the way to perceive, think, feel and behave." Schein, E.H. (1992). *Organizational culture and leadership: A dynamic view*. San Francisco: Josey-Bass.

[21] Ethics Resource Center (2012). *National business ethics survey® 2011: Workplace ethics in transition*. Arlington, VA: Ethics Resource Center.

[22] See pp. 35-36 of Heineman, B.W., Jr. (2008). *High performance with high integrity*. Cambridge: Harvard Business Review Press.

[23] Ethics Resource Center (2012). *National business ethics survey® 2011: Workplace ethics in transition*. Arlington, VA: Ethics Resource Center. Most of us share a set of common values or goals, namely, honesty, fairness, respect, compassion, responsibility. See pp. 39-76 of Kidder, R.M. (2005). *Moral courage: Taking action when your values are put to the test. (*New York: William Morrow, HarperCollins. Cited on pp. 6-7 of Gentile, M.C. (2010). *Ways of thinking about values in the workplace*. Babson Park, MA: Babson College. Retrieved from http://www.babson.edu/Academics/teaching-research/gvv/Documents/Ways-of-Thinking-About-Our-Values.pdf Appeals to these shared values and their importance to organizational survival and thriving are more likely to be accepted than rule-based mandates.

accountable for their efforts to inspire their direct reports to act in accord with those organizational values in their daily work as well.

Finally, HQPs seek to provide guidance to non-management employees, in order to help them deal with the myriad of ethics and compliance situations they may encounter in their varied roles. Many E&C challenges are the result of pressure or perceived compulsion to undertake a questionable action or a belief by employees that the company's objectives permit or require them to do so. While rules and guidelines are necessary and may prevent some failures, HQPs recognize that through the culture-building effort and emphasis on acting in alignment with shared organizational values, they can most effectively strengthen the ability of every employee to uphold organizational values despite pressure, duress, or apparently conflicting business objectives. In HQPs, training and awareness programs are implemented and tailored to employees by role and function, emphasizing the importance of acting in accord with shared values, seeking guidance and providing peer support to act ethically and speak up.

This principle is accomplished through the following supporting objectives and leading practices.

Supporting Objective:

Leaders are expected and incentivized to personally act with integrity and are held accountable if they do not.

Leading Practices:

- Leaders at all levels model integrity by:
    - Talking about the importance of ethical conduct and referencing organizational values as a framework for their decisions;
    - Exemplifying the conduct they expect of their employees; and
    - Holding subordinates accountable for ethical behavior.
- Leaders' behaviors (as above) are a significant consideration in employment and promotion decisions.
- No "waivers" of integrity standards are given to more senior personnel.
- E&C performance affects compensation, advancement and retention of all employees.
- A high-level committee reviews significant matters and cases involving senior leaders to ensure neutral investigation and consistency in consequences.

Supporting Objective:

Leaders across the organization own and are accountable for building a strong ethical culture.

Leading Practices:
• In everyday activities, leaders act and speak in alignment with the organization's values. • Leaders are knowledgeable about and assume responsibility for their role as ethical leaders in the organization. • Culture metrics are an element of business unit performance. • Employee feedback is sought regarding leaders' efforts to build and sustain a strong ethical culture. • Annual performance reviews for leaders include evaluation of their efforts to build and maintain the culture.

Supporting Objective:
Values and standards are communicated effectively through many channels.
Leading Practices:
• Enterprise communications tools are regularly leveraged for E&C messaging, not merely once a year. • The organization's values, its code of conduct, important policies and other procedures are explained to all employees. When needed, they are translated according to language, culture or other demographics to ensure understanding. • Senior managers directly communicate values and standards to employees at all company business gatherings.

Supporting Objective:
All employees are supported and expected to act in line with company values and are held accountable if they do not.
Leading Practices:
• Code/training/communications: All materials begin with a connection to organizational values, then explain various rules within that context. Training also emphasizes seeking guidance, being conscious of acting in alignment with values, and consequences for not doing so. • Discipline/Incentives: For all employees, expectations are set and performance is judged on employees' actions in alignment with organizational values - not merely technical rule compliance.

Principle 4: The organization encourages, protects and values the reporting of concerns and suspected wrongdoing.

Perhaps the greatest E&C risk to an organization is an environment where employees are unwilling or unable to make management aware of their knowledge of or suspicions that wrongdoing is taking place. Fear or reluctance to report erodes the culture of an organization, not only impeding the flow of information that leads to detecting misconduct; it chills employees' motivation and confidence to take action in support of the organization's integrity.[24] In order to mitigate this condition, in HQPs, leaders create an environment of openness where employees are encouraged, prepared and empowered to raise concerns. Leaders are also equipped to respond appropriately if/when employees do come forward.

A "speak-up" culture requires both a conducive atmosphere and leaders who possess and use effective interpersonal skills. HQPs focus on establishing an environment where issues can be raised long before situations are elevated to the level of misconduct. HQPs provide resources to managers and supervisors to help them understand how their behaviors impact the perceptions of their team members; and they hold managers and supervisors accountable if employee feedback indicates that they are contributing to an intimidating atmosphere. HQPs also build skills in employees at all levels on how to act in alignment with the organization's values, even in times of stress.[25]

HQPs value and set the expectation that employees will raise their concerns. Therefore, they recognize the courage of employees who speak up, especially those who report or successfully encourage reporting. At meetings and through the range of communication channels and other forums available, speaking up on difficult issues is recognized and encouraged at the highest levels.

Leaders in HQPs also take very seriously any claims of retaliation against employees who report wrongdoing.[26] Leaders are helped in their effort to live up to this standard by departments that support the infrastructure; including vigilant human resources, E&C, and legal functions. In addition to sending consistent and meaningful messaging to employees about the organization's stance against retaliation, HQPs institute efforts to monitor the well-being and success of employees who come forward to report suspected wrongdoing. Organizations with HQPs take careful steps to investigate potential retaliatory behaviors against those individuals. HQPs ensure that frank discussions of the consequences of retaliation are integrated into every investigative interview and that instances of retaliation or intimidation during the investigative process are promptly reviewed and appropriate follow-up action is taken. Whenever retaliation is substantiated, it is considered to be an act of misconduct unto itself; HQPs therefore require a commitment to follow-through and consequences for retaliators.

[24] See pp. 26-33 of Ethics Resource Center (2013). *National business ethics survey 2013®*. Arlington, VA: Ethics Resource Center. Also Ethics Resource Center (2012). *Inside the mind of the whistleblower.* Arlington, VA: Ethics Resource Center.

[25] See, Gentile, M.C. (2010). *Giving voice to values: How to speak your mind when you know what's right.* New Haven: Yale University Press. Associated curriculum and training tools are available at http://www.babson.edu/Academics/teaching-research/gvv/Pages/curriculum.aspx.

[26] Fear of retaliation remains a consistent barrier to reporting. In 2013, 56 percent of those who chose not to report misconduct cited fear or knowledge of retaliation as the reason for their silence. See pp. 27 of Ethics Resource Center (2013). *National business ethics survey 2013®*. Arlington, VA: Ethics Resource Center.

Finally, HQPs demonstrate an openness to hearing difficult news, and they are committed to follow through by sharing the outcomes of reports of substantiated wrongdoing that are brought forward to management.[27] This transparency in reporting investigative outcomes builds trust and confirms accountability among employees and third parties in a powerfully direct manner. HQPs also provide a forum for sharing positive developments and successes in the responsible, consistent handling of E&C issues.[28]

This principle is demonstrated through the following supporting objectives and leading practices.

Supporting Objective:
Leaders create an environment where employees are prepared and empowered to raise concerns and resources are provided to support employees in ethical decision-making.
Leading Practices:
• Questions from employees are solicited and listened to; raising difficult issues is expected and recognized as excellent performance. • Employees are made aware of available resources to support their speaking up. Awareness training addresses making ethical decisions in alignment with shared organizational values; seeking guidance; and the process that takes place when a report is made. • Employees are aware of the organization's policy on "no retaliation." • Leaders are skilled at responding well to issues raised by employees, and their employee feedback measures and case resolutions demonstrate this. Leaders are required to complete training and have easy access to guidance on responding to issues raised by employees consistently and fairly and creating a speak-up culture. • Leaders' performance in creating a speak-up culture is measured and managed. • Leaders speak regularly with employees about – and formally recognize the value of – raising issues. • Courage in raising concerns is broadly and publicly recognized and individually rewarded in employee performance reviews.

[27] In smaller organizations, summary reports may not be feasible or appropriate. Even in these organizations, however, it is helpful to find ways to communicate about substantiated instances of misconduct.
[28] A growing trend outside the ethics and compliance field is the creation and certification of "B" or Benefit Organizations, which includes practices and principles that are relevant to the subject of transparency. "B Corps" voluntarily meet higher standards of transparency, accountability and performance through submitting and being scored on an assessment. In the "B Corp" certification assessment tool, organizations that seek to earn the Governance B standard for "benefit to community" must indicate whether they publicly disclose breaches of their Code of Conduct and resulting remedies. The assessment also asks whether the firm publishes the conflicts of interest disclosures of its executives. The "B Corp" certification tool was developed by B Lab, a 501(c)(3) nonprofit. Additional information about the B Corp Handbook and certification is available at https://www.bcorporation.net.

Supporting Objective:
The organization respects all employees' rights to report to government authorities.
Leading Practices:
• All communication materials concerning reporting channels are vetted to ensure that there is no implication that reporters cannot (or should not) also report to government. • The organization's confidentiality agreements with employees and partners make clear that organizational policy does not hinder or discourage reporters' rights to report to the government. • The organization seeks to dispel whistleblower stereotypes and expects leaders to responsibly and consistently respond to reports from all employees. • If an employee opts to make a report to government authorities, he/she is protected from all forms of retaliation.

Supporting Objective:
The organization provides a broad and varied number of reporting avenues, each with effective tracking for escalation and response of significant matters.
Leading Practices:
• The organization provides means for employees to anonymously, where permitted by law, and safely report via the phone and the internet, at minimum. When appropriate, these channels include global coverage, including accommodation of those who require translation services. • The organization's policy is clear about its standards for escalating and tracking significant issues.

Supporting Objective:
The organization treats all reporters the same – with consistency and fairness – throughout the entire process.
Leading Practices:

• The focus is on investigating allegations, not the motives of the reporter.
• Discipline is never imposed against an employee for taking action to report an issue.
• Disciplinary processes are regularly reviewed to ensure the following:
    o Actions taken do not involve any retaliation or the appearance of it (e.g., taking into account the past reporting history of the employee reporter).
    o Mitigation of any risk that disciplinary actions taken might discourage future reporting.

Supporting Objective:
The organization has proactive processes in place to prevent retaliation; including awareness training for leaders; monitoring of employee reporters; and demonstrated consequences for violations.
Leading Practices:
• All leaders are trained to be aware of the organization's policy on retaliation and the behaviors that may be perceived as retaliation. • Over an extended period of time, the organization periodically touches base with reporters to ensure that they have not experienced retaliation. • In addition to the feedback from individual reporters, the organization recognizes that employees may not feel comfortable reporting retaliation; therefore, it continues to monitor the long-term success of employees who report suspected violations. • Investigations of retaliatory behaviors receive special handling and priority to ensure responsiveness and neutrality. Substantiated retaliation cases are reviewed by senior management and are reported to the organization and the board.

Supporting Objective:
The organization communicates directly with individual reporters and more broadly with all employees when cases are closed.
Leading Practices:
• The organization makes every effort to personally thank reporters for their courage in coming forward. • Where possible, employee reporters are directly informed of the outcome of investigations based on their reports. • Outcomes of reported misconduct and the consequences that resulted in substantiated cases are regularly shared with all employees. The organization prepares an annual public reporting of E&C activities, including reporting trends and responses to issues.

Principle 5: The organization takes action and holds itself accountable when wrongdoing occurs.

Woven throughout these principles is a notion of accountability that is central to the success of HQPs. It takes shape in several ways. First, even though staff members are assigned to the E&C program function, leaders at all levels throughout the organization are ultimately accountable for the identification/mitigation of risks and for the day-to-day priority given to E&C as part of a culture building effort. In the same way, the E&C program is accountable for continuous improvement – ensuring that the resources and support provided to leaders and employees are a reflection of the emerging priorities, activities and risks of the organization.

Yet despite these concerted efforts, misconduct will still occur. While less wrongdoing is likely to occur in organizations with HQPs, it is unreasonable to expect that it can be eradicated altogether.[29] When it does surface – or is alleged to have taken place – organizations with HQPs demonstrate another form of accountability by responding quickly and acting responsibly.

Investigations of reports of alleged wrongdoing in HQPs are timely, neutral, thorough, competent and consistent. Nevertheless, because there are consequences for wrongdoers, appropriate time is given to ensure accurate and fair results. In these organizations, investigations of significant matters may not be closed until proper referrals are made for issues that need further review or fact finding. When a violation is confirmed, the organization responds with appropriate consequences, regardless of the level of the violator. No exceptions are made because of an implicated person's senior level or some other special status in the organization.[30]

The organization also holds itself accountable when wrongdoing occurs. It maximizes learning from every substantiated case and it acknowledges issues and corresponding mitigation to employees in order to reinforce the message that integrity matters. When appropriate, organizations with HQPs disclose issues early, transparently and thoroughly to appropriate regulatory and government authorities and work cooperatively to respond to their concerns.[31]

Finally, HQPs are mindful that in an increasingly digital age, issues can quickly surface and escalate into very public matters. Reputations can be threatened in an instant. Therefore, HQPs include well-developed systems for escalation of issues, with regular testing for crisis management and response. When these incidents occur, the organization maintains its commitment to making decisions based on its values.

This principle is demonstrated through the following supporting objectives and leading practices.

[29] In 2013, one in five workers (20 percent) reported seeing misconduct in companies where cultures are "strong" compared to 88 percent who witnessed wrongdoing in companies with the weakest cultures. See p. 18 of Ethics Resource Center (2014). *National business ethics survey 2013®*. Arlington, VA: Ethics Resource Center.
[30] See p. 11 of Ethics Resource Center (2015). *Ethical leadership: Every leader sets a tone*. Arlington, VA: Ethics Resource Center. When supervisors/management are held accountable for violating a company's ethics standards, employees are less likely to feel pressure to compromise standards and less likely to observe misconduct.
[31] At the time of the release of this report, The Department of Justice (DOJ) has announced a one year pilot program that will increase incentives for companies to voluntarily disclose and fully cooperate with the government regarding violations of the Foreign Corrupt Practices Act (FCPA). DOJ will continue to ensure that there is a "meaningful gap" between treatment of those companies who voluntarily disclose and cooperate and those that do not. "Justice Department could give firms a pass on foreign bribery if they confess," (Nov. 11, 2015, Washington Post).

Supporting Objective:
The organization regularly communicates that individuals who violate organizational standards or the law will be disciplined.
Leading Practices:
• The code of conduct makes clear that there are consequences for violations. • Each incident of substantiated misconduct is evaluated to determine how it should be communicated, internally and externally, based on the seriousness of the issue, the level of the subject and the need for and appropriateness of public disclosure. • The E&C program regularly communicates with key stakeholders about its internal monitoring efforts, including enforcement officials (where applicable), investors, donors and/or consumers.

Supporting Objective:
The organization maintains investigative excellence.[32]
Leading Practices:
• Thorough, timely, neutral, competent and consistent investigations are conducted and the organization maximizes learning from every substantiated matter. • E&C or other appropriate personnel ensure neutrality in investigations through careful oversight and selection of who investigates any matter. • The E&C office (or appropriate party) is provided access to all relevant information related to the investigation, and the organization supports the investigative effort. • The organization is transparent about how investigations are conducted, including roles and procedures, timing, quality standards, conflict-of-interest protections, training of investigative personnel, confidentiality and anti-retaliation protections. • Leaders are briefed on investigatory requirements and support investigative neutrality and confidentiality in their interactions. • Respectful and proper personal debriefing and closure of the issue with the reporting party, if known, is required in every case. • Investigations focus on the facts and the underlying concern rather than on defending against the allegation. • Each investigation includes a discussion of potential root causes. E&C or other personnel, as appropriate, consider whether the incident could have been avoided and ensure that follow-up action is considered and executed.

[32] This supporting objective presumes continuing and proper consultation with counsel to balance privilege and privacy considerations with transparency.

Supporting Objective:
Disciplinary action is consistently taken when violations are substantiated.
Leading Practices:
• E&C ensures that proper consequences result from violations, including convening disciplinary review committees for significant violations. • Metrics are kept on disciplinary consequences of violations and are periodically reviewed for trends and potential inconsistencies by topic, location and level of employee.

Supporting Objective:
Systems for escalation and response are well-developed and regularly tested, and leaders are held accountable for compliance.
Leading Practices:
• Clear policy is in place regarding the escalation and response of significant matters. • Escalation and crisis management systems are regularly tested via exercises or audits.

Supporting Objective:
Appropriate disclosures are made to regulatory or other government authorities.
Leading Practices:
• Leaders support responsible, timely disclosure to regulators. • Leaders ensure robust discussion of the most appropriate avenue for disclosure and promote appropriate transparency regarding failures or violations. • Escalation procedures ensure that potentially disclosable matters are efficiently and promptly escalated for review and there are consequences for failure to escalate. • Appropriate processes are in place to ensure relevant senior personnel and E&C consultation on questions about proper disclosure. • Employees are trained on proper procedures in cooperating with government inquiries and consequences for noncompliance. • When appropriate, cases are publicized after closure and follow-up action to deter future misconduct.

CONCLUSION

At even the most basic level, the design and implementation of an E&C program is not easy. It requires significant time, resources and attention by management to a function that does not – at face value – appear to directly impact the bottom line. Nevertheless, it is the finding of the ECI Blue Ribbon Panel that when leaders in an organization recognize and adopt a broader and deeper view of their E&C effort and invest accordingly, they see effective and transformational results.

Organizations with high-quality E&C programs align with five key principles which inform the design and day-to-day execution of not only the program, but the organization itself.

- Ethics and compliance is central to business strategy. Leaders and E&C personnel partner to ensure that ethics and compliance is an integrated and essential element in the successful operation of the organization and in its message and actions externally.

- Ethics and compliance risks are identified, owned, managed and mitigated. Risk assessment is a foundational activity that involves and leverages every employee in early understanding and mitigation of risk and E&C programs have an important role to play in those efforts.

- Leaders across the organization build and sustain a culture of integrity, a daily habit and expectation of openness. Leaders walk the talk of integrity as a value and the organization consciously builds the capacity and confidence of every employee to speak up when something does not seem right.

- The organization encourages, protects and values reporting of concerns and suspected wrongdoing. The organization's processes and actions are designed to demonstrate to employees that reporting is valued and to ensure retaliation for reporting is detected, punished and prevented going forward, so chilling effects are mitigated.

- The organization takes action and holds itself accountable when wrongdoing occurs. The organization handles wrongdoing in alignment with its values by responsible, timely and thorough action that transparently deals with those responsible and focuses on prevention going forward.

As organizations work to align themselves with these principles, the outcomes are not limited to ensuring that wrongdoing is reduced, prevented and handled responsibly. In focusing on ethics and compliance, the organization and its partners are energized and transformed by the resulting trust, collaboration and pride that comes daily – even when no one is watching – because enterprise-wide stakeholders are doing the right thing.

APPENDIX

The following table presents examples in action and common pitfalls to avoid for each principle and supporting objective of a high-quality ethics & compliance program. Case examples describe the exemplary practices that have been adopted by individual organizations, but this is not meant to imply that only one organization engages in such activity. While industry, sector and size of organization is detailed to show the scalability of the principles and objectives, the formal names of organizations have been omitted.

Principle 1: Ethics is central to business strategy.		
Supporting Objective: The E&C program is designed to integrate with business objectives. **Leading Practices:** • Strategic goals for the organization include goals related to E&C. • Senior leaders articulate the ways E&C relates to their operational areas. • Oral and written communications by leaders, both internally and externally, highlight values, E&C practices and customer response to E&C performance. • Strategy meetings include discussion of organizational priorities based on their alignment with core values. • Proposals for new strategies are measured, in part, by their alignment with the organization's values. • Regular reporting is provided to executive leadership on compliance	**Examples from HQPs:** At one private-sector organization in the healthcare industry, each business unit leader is assigned to and accountable for an array of ethics and compliance measures related to reporting, investigation, reducing misconduct and ensuring compliance. The organization ensures each business unit leader in its system has a set of metrics and a scorecard (identifying and grading the priority items) for E&C matters. The leader as well as the responsible regional compliance director are accountable for those measures, and they work together to monitor progress and address risks throughout the year. In a large global conglomerate, a regular forum is held at the highest level to discuss business strategies, current and future, and their alignment with core values. E&C leaders are included and address how new initiatives may support or undermine the company's values and what actions could be taken to mitigate	**Common Pitfalls to Avoid:** Only the CECO is familiar with important E&C metrics by unit and enterprise such as reporting rates, misconduct by compliance area, retaliation, significant investigative outcomes and remediation. E&C is too decentralized, assigning responsibility for program staffing and design to business units. Each program operates independently, lacking central oversight and a singular voice at high-level meetings. Strategic goals and plans do not reference E&C, indicating that E&C performance is either not a priority or will happen without focus and effort. The code of conduct in an organization is limited to rules. Business decisions are made based (in part) on observance of

performance and audit results with regard to priority compliance areas (e.g., workplace safety, product safety, anticorruption, financial controls, conflicts of interest, etc.).	risk. The committee's charter acknowledges that withdrawal is an option if values cannot be supported. At a small organization in the extractive industry, safety is stated as one of the essential core values. It is stated in the mission, vision and values of the organization. In every staff meeting, leaders refer to the core values and reinforce that if they are not observed, accidents occur. Decisions about new projects are considered on the basis of core values.	the law/regulation but do not account for E&C issues and values.
Supporting Objective: E&C is given the resources and access needed to ensure both proper integration with operations and an independent voice to leaders. **Leading Practices:** • E&C staffing is sufficient and is intentionally designed to have reach into the business structure, and it is benchmarked by organization size and industry. • E&C is represented in strategic teams including the executive or management committee; enterprise risk assessment committee; disclosure committee; etc. • Resources provided to the program are sufficient to allow E&C staff to innovate and tailor content to specific audiences	**Examples from HQPs:** In one organization in the defense industry, the chief ethics & compliance officer reports directly to the board and the senior management team. A "steering committee" is assembled regularly, comprised by members of the various businesses to provide oversight to the E&C program and to discuss emerging issues. The E&C program is designed to embed E&C staff in every business unit and geographic region. The program is resourced sufficiently to permit gathering E&C staff regularly for in-person training and idea sharing and utilizing new technologies to disseminate the code of conduct and training to targeted groups of employees. One accounting/auditing firm structures its E&C program in a matrix fashion, parallel with the	**Common Pitfalls to Avoid:** E&C resources are borrowed from individual compliance functions. Reporting responsibilities to board and executive leadership are not well-defined. The chief ethics & compliance officer (or the equivalent) is a title assigned to a senior leader, who on a day-to-day basis has little to no involvement in the program. The chief ethics & compliance officer (or the equivalent) reports too far down in the organization to be effective among senior leaders.

in various functions. • The E&C structure ensures independence and regular access to the board and/or the audit committee.	structure of its business. E&C staff form "lines of service" teams, which organize and focus on the E&C issues associated with the various functions of the business. E&C staff are situated in global regions throughout the company. The chief ethics & compliance officer reports regularly to the management team of the company, as well as the audit committee of the board.	E&C tools and technology lag behind other functions giving appearance of a lack of organizational commitment, especially in contrast to other functions or operations.
Supporting Objective: E&C personnel are consistent participants in key strategic discussions. **Leading Practices:** • E&C leaders are visible and prominent, sending a strong message that compliance and ethical conduct are high priorities for the organization. • E&C leaders participate in high-level strategic discussions and are frequently asked to offer input to ensure decision-making aligned with values. • E&C issues, data and priorities are discussed along with other business results in staff meetings, operational reviews and similar meetings.	**Examples from HQPs:** At a multi-national construction firm, the chief ethics and compliance officer is considered a part of the management team and is present at meetings when strategic decisions are being made. E&C is a part of the regular meeting agenda of the management team. The same individual is part of the crisis management team of the organization and is expected to point out values dimension to decisions being made.	**Common Pitfalls to Avoid:** Ethics and compliance issues are only on the agenda after a failure. Ethics and compliance matters are discussed in side meetings or briefings, not in the presence of the full leadership at regular meetings.
Supporting Objective: The organization continuously improves the impact of its E&C program through leadership, innovation and continuous feedback loops.	**Examples from HQPs:** As they initiated a values-based ethics and compliance program, one department within a federal government agency fielded a survey of all employees in order to gauge perceptions	**Common Pitfalls to Avoid:** Gaps identified in reviews, audits and investigations are noted, but remedial action is not implemented.

Leading Practices: • Baseline measures are in place to assess improvement over time in rates of misconduct; effectiveness of response and detection; and control effectiveness. • E&C metrics on progress include impact on misconduct, reporting, detection and prevention as well as a broad range of leadership behaviors linked to a strong ethical culture (e.g., survey data, leadership integration of E&C into staff, operational meetings, E&C training and awareness efforts, reporting and responsiveness, etc.). • Leaders make time for "town hall" give-and-take sessions during which E&C issues are addressed. • Failures, near misses and all investigations, audits and reviews are mined for lessons learned in an effective closed-loop process to prevent or detect future issues. All include clear processes for follow-up, including proper communication of findings and accountability for remediation. • Senior leaders probe for new insights and improvements by asking hard questions of E&C leaders, risk owners and others accountable for E&C performance. The organization continuously asks and answers the	and gather baseline data about the issues and outcomes that should be addressed by the new E&C initiative. One health care organization conducts periodic compliance process reviews at hospitals, surgery centers and physician practices to identify opportunities for improvement. Visits involve reviewing documentation, testing and coaching sessions with key personnel to support improved compliance performance. In the defense industry, a group of companies (of many different sizes) have periodically fielded employee surveys that contain common questions. A third party collects the data and provides findings back to each participating organization. Reports contain individual company results and benchmarks to peer organizations. As a group the companies compare notes about the areas where they have performed well and areas of challenge. One multinational provides a smartphone app providing access to the organization's code; key policies; and an interactive guidance tool for employees' questions about E&C issues. The app provides just-in-time guidance on basic questions in six to eight key compliance areas. The tool also permits daily blogging by E&C staff to employees with ethics and compliance trends and tips.	The E&C program objectives and activities are not responsive to real-time changes in risk and results of E&C monitoring and investigations. E&C operates in a silo rather than connecting to key compliance partners (e.g., internal audit, safety, finance, operations). The organization does not ask for input from employees regarding E&C issues or the usefulness of the program. Any effort to evaluate the effectiveness of the program includes only a review of program elements and the extent to which they comply with regulation. No effort is undertaken to examine the impact of the program, particularly on employees. The program remains largely unchanged from its first implementation.

questions: Does the program make a difference? How? Why? • The organization seeks feedback from employees on leaders' behavior as well as E&C program tools and resources. • E&C collaborates with internal audit, risk management and other partners to ensure that the program takes into account emerging information about the business and its E&C priorities. • E&C ensures the organization is aware of and leverages advancements in technology and research that drive innovation in the E&C program. • The organization periodically submits its entire E&C program to an independent review from neutral, knowledgeable experts, internally or externally.	An organization in the insurance industry is experimenting with the use of gaming software as a means for training employees on E&C. Several "best practice" forums exist within the E&C industry, allowing organizations to share resources and to learn about innovative practices in E&C program implementation.	
Supporting Objective: The board of directors is knowledgeable about the impact of the E&C program and actively monitors its implementation across the business. **Leading Practices:** • Board leaders and members seek and are provided comprehensive information about the organization's E&C program. • The board maintains a relationship with E&C through regular contact with E&C	**Examples from HQPs:** In one mid-sized corporation, the audit committee of the board is not only briefed quarterly about the E&C program; the full board is regularly informed about the program. The board also receives ethics & compliance training on issues that pertain to its role. In a large multinational firm, the chair of the audit committee personally meets periodically with the chief ethics & compliance officer, in order to discuss the status of the program and any concerns that need to be brought to the	**Common Pitfalls to Avoid:** The board does not maintain a relationship with the chief ethics and compliance officer and it is not regularly briefed on the E&C program, its strategies or its outcomes. In cases where the full board delegates oversight of E&C to the audit committee, the audit committee does not regularly brief the full board on the substance of the program or emerging E&C issues.

leader and his/ her team. • The board receives regularly scheduled briefings on risk assessment processes, E&C metrics and significant matters and outcomes in the E&C area. • The organization recruits and maintains board members with E&C expertise. • The board receives periodic E&C training tailored to their responsibilities as Board members and any special issues of relevance.	board's attention. At a publicly-traded corporation, one of the members of the board of directors is the chief ethics & compliance officer from a different organization. The CECO serves as an independent director to the organization.	The board does not receive periodic ethics and compliance training.
Supporting Objective: The organization shares its learning externally in order to positively influence other organizations towards responsible practices and a commitment to integrity. **Leading Practices:** • E&C staff participate in forums that create dialogue with stakeholders and enforcement officials and seek pathways to contribute to the broader understanding of the value of their efforts. • E&C staff are active in industry organizations- engaging with peers to exchange ideas, identify emerging issues and share best practices.	**Examples from HQPs:** At a large state university, E&C program staff regularly deliver public presentations on their work. The university also hosts visitors from peer universities, companies and even the military in order to bring them "in house" to see the inner workings of their program. After experiencing compliance challenges and developing a revitalized E&C program, the chief ethics & compliance officer for a company in the technology sector delivered speeches at several industry events, offering the lessons learned of the organization as a case study for other practitioners. In the energy sector, groups of E&C staff meet regularly in person to discuss common issues and to share best practices.	**Common Pitfalls to Avoid:** E&C staff are disconnected from the industry and do not participate in educational and networking events hosted by various associations, nonprofits and for-profit consultants/solutions providers. Staff of the E&C program are largely consumers – attending industry events to gather as much information as possible, without sharing information about the successes and challenges of their own program efforts.

Principle 2: Ethics and compliance risks are identified, owned, managed and mitigated.		

Supporting Objective:
The E&C program is calibrated to key risk areas identified through a robust, continuous risk assessment process.
 	
Leading Practices:
• The organization's risk assessment process includes identifying and tasking risk owners for every key risk area, including their responsibility for reporting and coordinating mitigation progress (policy, training, operating processes and controls, mitigation and resolution of issues).
• E&C develops and regularly updates a process map which includes the identification of key risk areas and risk owners.
• The organization's risk assessment process:
  ○ Includes broad and deep participation- not just senior leaders.
  ○ Includes processes and deliverables that are integrated into business calendar throughout the year- not just a one-time event.
• The E&C program is nimble and adjusts regularly to identified and prioritized risks.
	Examples from HQPs:
	A global manufacturer ensures that one leader has primary responsibility for risk assessment, policies and procedures, training/communication, monitoring/auditing/modification in each of 14 key compliance areas such as antitrust, intellectual property, conflicts of interest, lobbying, etc. This ensures that a "big picture" view of each risk area is maintained and gaps or issues can be addressed and mitigated, often in alignment with other areas.
	
	At one small, privately-held organization, risks are identified as part of the process of identifying and quantifying business opportunities. Training on related risks and periodic review of mitigation are a part of regular measurement of business progress.
		Common Pitfalls to Avoid:
		Risk assessment team members do not reach out for feedback in their operations or functions in preparation for risk assessment meetings; risk assessment is siloed and shallow.
		
		Significant risks are noted in the risk assessment process, but the organization is slow to allocate resources to monitor and begin remediation of the risk.
		
		The organization does not prioritize risks and spends excessive resources on low risk matters versus higher risks (e.g., lower-level gratuities versus third party diligence).

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<td>Supporting Objective:
Leaders across the organization are assigned responsibility for the ongoing identification and mitigation of risks that are endemic to their operations.

Leading Practices:
Leaders ensure that their teams understand the risk assessment processes of the organization and the key risks that are relevant to their unit and the organization.
Each key risk area is assigned to risk owners for coordination and mitigation.
Risk owners, whatever their other roles, are held accountable for and recognized for their performance as risk owners and their collaboration with E&C and other relevant functions in executing this role.
Future strategies and emerging issues are identified early in their development through the risk assessment process</td>
<td>Examples from HQPs:
A highly regulated firm ensures fast-changing emerging issues are monitored daily, and future strategies are included in risk assessment process very early in consideration phase. The firm discovered that assigning resources to daily risk monitoring in key areas is a competitive advantage as it leads to early business intelligence and better preparation for failures.

In the energy sector, leaders of a mid-sized organization routinely evaluate and identify risks – particularly with regard to safety – in order to identify any areas for attention. Once identified, leaders and managers are expected to address any concerns and regularly monitor for changes.</td>
<td>Common Pitfalls to Avoid:
Risks are identified and memorialized, but ownership is not assigned to ensure that they are mitigated.

Leaders at high levels of the organization are not tasked with – or held accountable for – the mitigation of risks. Rather, it is assumed that risk owners at lower levels will raise concerns to senior leaders if a problem arises.</td>
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<td>Supporting Objective:
Self-assessment, early issue spotting and prompt remediation of compliance gaps are recognized and rewarded.

Leading Practices:
The organization tracks performance outcomes and metrics on risk identification and mitigation and holds</td>
<td>Examples from HQPs:
One large multinational organization has established a senior-level risk assessment oversight committee comprised of leaders in the major lines of business and critical support functions (E&C, human resources, IT, etc.). On an ongoing basis, employees at varying levels identify and classify risk areas. The oversight committee ensures that the</td>
<td>Common Pitfalls to Avoid:
The organization develops a culture of punishing those who raise challenging issues or speak up to address problems.

Employees are encouraged to stay in their “swim lane” and not ask questions outside their area of responsibility; as a result, issues are missed.</td>
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individuals accountable for performance in these areas. • Assessment and monitoring features are required for initiatives so that risks will be identified during execution. • The organization maintains cross-functional teams in its risk assessment and quarterly disclosure review processes to promote insights and issue-spotting.	terminology and ratings are consistently used across the organization, allowing for universal understanding of key risk areas. Risks are quantified and periodically assessed in order to track performance in mitigation.	
Supporting Objective: Ethics and compliance, both the program and the state of the organization from an E&C perspective, are regularly monitored as a risk areas. **Leading Practices:** • Compliance performance, strength or weakness of organizational culture, employee willingness or fear to report and other key E&C areas are evaluated as potential risks to the organization. • E&C processes for the prevention and detection of misconduct are reviewed and assessed for effectiveness and efficiency, just as with any other business process. • E&C metrics across the organization are reviewed to detect "high risk" areas that may require intervention or further monitoring.	**Examples from HQPs:** A medium-sized organization in the utilities industry assesses and quantifies E&C as a risk category. Risk attributes for E&C include organizational culture, employee conduct and employee willingness to report concerns. Data informing risk metrics include trends in employee reports, substantiations and disciplinary actions; employee survey data measuring perceptions of culture, engagement and reporting patterns; 360 reviews of managers; training effectiveness; results of investigations; and audit results. High-risk areas are identified and prioritized for management and mitigation.	**Common Pitfalls to Avoid:** E&C is wholly overlooked as a risk area. Compliance is examined as a risk, but ethical conduct is not included in the risk assessment – particularly the presence of actions that support the establishment of a culture where concerns can be raised. E&C risks are identified based on management perceptions, but quantitative measurements are not taken. Risk are classified according to level (high, medium, low), but are not quantified to allow for validation of perception and measurement of progress.

• Investigative and audit results are reflected in risk assessment reviews, ratings and mitigation plans.		
Supporting Objective: Guidance and support for handling key risks are provided to employees according to their role. **Leading Practices:** • Policies and the code of conduct are maintained, updated to reflect prominent risk areas and made readily available to employees at every level and location--without exception. • Continuous learning on E&C topics is required of employees based on their role and risk exposure; such training is continuously evaluated for effectiveness and relevance. • The organization actively works to make training and guidance relevant to the user in a timely and current fashion.	**Examples from HQPs:** An organization in the retail industry utilizes the results of their risk assessment to implement training. Online training methods are utilized to deliver topic-specific training material, based on employees' exposure to specific risk areas. A highly regulated firm includes flags in its expense system that prompt users to assess gifts/gratuities against organizational policy and require approval as needed. The tool also permits risk owners to track trends and issues in gratuities approvals for follow-up and monitoring. At a small, privately-held company in the manufacturing industry, the code of conduct is annually updated to reflect key risk areas. Risks are identified by managers, employees and through monitoring of the regulatory environment.	**Common Pitfalls to Avoid:** Risks are identified at high levels within the organization, but training and support is not provided to employees throughout the organization. As a result, employees' risk exposure continues and they are inadequately equipped to address them. Employees are trained once per year on the code of conduct and systems for reporting wrongdoing. No further education is provided – even for employees in roles with exposure to substantive risk areas. Employees that are difficult to directly reach (due to remote locations or lack of access to the internet) are not provided sufficient access to the code of conduct and E&C resources to help mitigate risks.
Supporting Objective: The organization maintains rigorous third-party due diligence processes that screen for integrity.	**Examples from HQPs:** In one multinational, a broad cross-functional team is included in all diligence reviews, and a project leader is assigned to take accountability for the full integration of the	**Common Pitfalls to Avoid:** Ethics and compliance information is not included in diligence data requests to entities targeted for acquisitions.

Leading Practices: • E&C is significantly involved in diligence processes for mergers and acquisitions. • The due diligence process for mergers and acquisitions is designed to ensure reasonable consideration of E&C risks prior to deal closure. • Effective and timely implementation of E&C standards is expected of the acquired or contracted entity. • E&C contributes to and monitors third-party diligence processes and standards for agents, vendors and others in collaboration with functional partners.	acquisition to organization requirements, including ethics and compliance, by a stated date. The diligence integration process is reviewed periodically to capture whether issues were detected, at which stage and whether they were mitigated so the process can be improved. One nonprofit organization, comprised of a group of organizations committed to sharing best practices, has developed a third party and supply chain code of conduct. One defense contractor has developed a set of standards for third parties, and it requires third parties to attest to their compliance with the organization's standards. Periodically, the company brings in leaders from third-party organizations to provide training on the organization's standards of integrity. Periodic reviews are also conducted of third parties, to ensure compliance.	Integration of the acquired entity into the primary organization's E&C standards is delayed or diluted. Third parties and supply-chain organizations are not expected to abide by organizational E&C standards.

Principle 3: Leaders across the organization build and sustain a culture of integrity.		
Supporting Objective: Leaders are expected and incentivized to personally act with integrity and are held accountable if they do not.	**Examples from HQPs:** The CEO of a global multinational regularly discusses integrity and compliance at meetings of the top leaders of the organization, specifically discussing	**Common Pitfalls to Avoid:** Executives speak about ethics but are not visible in E&C awareness activities. Their actions do not mirror their words.

Leading Practices:
• Leaders at all levels, including managers and supervisors, model integrity by:
  o Talking about the importance of ethical conduct and referencing organizational values as a framework for their decisions;
  o Exemplifying the conduct they expect of their employees; and
  o Holding subordinates accountable for ethical behavior.
• Leaders' behaviors (as above) are a significant consideration in employment and promotion decisions.
• No "waivers" of integrity standards are given to more senior personnel.
• E&C performance affects compensation, advancement and retention of all employees.
• A high-level committee reviews significant matters and cases involving senior leaders to ensure neutral investigation and consistency in consequences.
	expectations and making clear that, at this level, failures related to integrity will result in termination. This discussion is mirrored in subsequent individual meetings with business unit leaders and their teams and ethical failures are discussed and reported in routine business performance discussions throughout the year.
	
	In one conglomerate, performance metrics for all senior executives and managers include talking about the importance of ethics; modeling ethical conduct; holding employees accountable to the organization's standards; and providing support for the E&C function. Compensation for these leaders and managers is affected by sub-standard evaluation on these E&C areas.
	
	In one publicly-traded organization, an E&C steering committee convenes regularly to provide guidance to the E&C program. When issues arise involving senior leaders, the issue is reviewed by the steering committee, to ensure that appropriate action is taken.
		Leadership tolerates ethical misconduct in "big producers."
		
		Succession and promotion decisions do not take into account unfavorable ethics and compliance track records.
		
		Performance metrics for leaders do not include any expectations for ethical conduct, or responsibility for the E&C effort.

Supporting Objective: Leaders across the organization own and are accountable for building a strong ethical culture. **Leading Practices:**	**Examples from HQPs:** In one organization in the energy sector, leaders are expected to "own" the perpetuation of an ethical culture. E&C staff provide ongoing resources to leaders, including talking points for speeches; cases	**Common Pitfalls to Avoid:** Leaders and managers expect that organizational culture is the responsibility of E&C and/or human resource professionals.

• In everyday activities, leaders act and speak in alignment with the organization's values. • Leaders are knowledgeable about and assume responsibility for their role as ethical leaders in the organization. • Culture metrics are an element of business unit performance. • Employee feedback is sought regarding leaders' efforts to build and sustain a strong ethical culture. • Annual performance reviews for leaders include evaluation of their efforts to build and maintain the culture.	for use in training with their management teams; training on setting the tone from the top; and regular communications about the means by which leaders can influence the culture. A pharmaceutical firm requires regular training for all managers in receiving and responding appropriately to issues raised by employees. Managers receive useful tools, scripts and information on their profound influence on employees and the fact that they are the most valuable "hotline" the company has.	Leaders and managers are not exposed to studies and research that show their pivotal role in employee's perceptions and what they can do to build culture. Culture is not a factor in consideration of business unit performance. Leaders and managers say one thing but do another.
Supporting Objective: Values and standards are communicated effectively through many channels. **Leading Practices:** • Enterprise communications tools are regularly leveraged for E&C messaging, not merely once a year. • The organization's values, its code of conduct and other procedures are explained to all employees. When needed, they are translated according to language, culture, or other demographics to ensure understanding. • Senior managers directly communicate values and standards to employees at all company business gatherings.	**Examples from HQPs:** A small organization in the retail industry communicates the organization's values/standards through a code of conduct that is made available to employees in both print and online fashion. The organization leverages staff meetings and formal communications to reinforce the presence and importance of organizational values. One multinational provides an app for use on smartphones, containing the organization's code, key policies and interactive guidance tool to all employees through smart phone. A global pharmaceutical firm simplified policies to ensure clarity, readability and	**Common Pitfalls to Avoid:** Annual ethics training is not engaging and E&C permits a "check the box" attitude to permeate the organization. Policies are abundant, but irrelevant and unhelpful. Employees cannot locate them and are not clear about expectations conduct in their everyday roles. Company values and code of conduct are not translated or tailored to ensure understanding by employees globally.

	effective translation to a global audience and instituted clear executive ownership of each policy to ensure future sustainability and to avoid "policy proliferation."	
Supporting Objective: All employees are supported and expected to act in line with company values and are held accountable if they do not. **Leading Practices:** • Code/Training/Communications: All materials begin with a connection to organizational values and then explain various rules within that context. Training also emphasizes seeking guidance, being conscious of acting in alignment with values, and consequences for not doing so. • Discipline/Incentives: For all employees, expectations are set and performance is judged on employees' actions in alignment with organizational values-not merely technical rule compliance.		Code of Conduct does not mention consequences for misconduct. Performance evaluations do not include discussion of alignment with values or how objectives were achieved. Company values are adopted but not communicated effectively; employees could not recite them if asked.

Principle 4: The organization encourages, protects and values the reporting of concerns and suspected wrongdoing.		
Supporting Objective: Leaders create an environment where employees are prepared and empowered to	**Examples from HQPs:** An organization in the energy sector invests in a robust employee concerns program	**Common Pitfalls to Avoid:** Leaders do not recognize their responsibility for the creation of an

raise concerns and resources are provided to support employees in ethical decision-making. **Leading Practices:** • Questions from employees are solicited and listened to; raising difficult issues is expected and recognized as excellent performance. • Employees are made aware of available resources to support their speaking up. Awareness training addresses making ethical decisions in alignment with shared organizational values; seeking guidance; and the process that takes place when a report is made. • Employees are aware of the organization's policy on "no retaliation." • Leaders are skilled at responding well to issues raised by employees, and their employee feedback measures and case resolutions demonstrate this. Leaders are required to complete training and have easy access to guidance on responding to issues raised by employees and creating a speak-up culture. • Leaders' performance in creating a speak-up culture is measured and managed. • Leaders speak regularly about – and formally recognize the value of – raising issues.	(ECP), which focuses on providing employees avenues by which they can raise issues and be treated consistently and fairly by the organization. Among its tasks, the ECP provides resources to managers to help them encourage the raising of concerns. A mid-sized company in the utilities industry has developed an ombuds program, designating individuals throughout the organization who serve as resources to employees who have issues to raise. A defense firm provides its managers special training on building employees' capacity and willingness to speak up. Managers reflect on their own history with speaking up and discuss when speaking up was easy and why, and when it was difficult and why. The training also addresses effective ways to respond to employees when they come forward to report suspected violations. A number of organizations ensure ethics and compliance awareness training is led by leaders with their teams. Training is scenario-based, tailored to their organizations and permits employee interaction and discussion about the material. When leaders facilitate, they demonstrate their commitment to the activity and learn firsthand how employees view situations and what questions come up.	environment where concerns can be raised. They are, therefore, ill-equipped to encourage employee reporting. The organization is silent on the process that takes place when employees raise suspected violations. No communication takes place around the organization's intolerance for retaliation against employees who raise concerns. When employees come forward to report wrongdoing, they are not treated respectfully and are isolated or in some other way ostracized for coming forward. E&C training is exclusively online with little assessment of effectiveness or leader involvement in dissemination. Employee survey data indicating a fear of reporting or lack of trust in supervisors is not addressed. Individuals who come forward to report are viewed as problem employees, rather than being treated with respect and rewarded for demonstrating courage. Human resources or other support

• Courage in raising concerns is broadly and publicly recognized and individually rewarded in employee performance reviews.		functions are disconnected or misaligned with respect to ensuring reporting and preventing retaliation and may be perceived as untrustworthy in handling retaliation claims.
Supporting Objective: The organization respects all employees' rights to report to government authorities. **Leading Practices:** • All communication materials concerning reporting channels are vetted to ensure that there is no implication that reporters cannot (or should not) also report to government. • The organization's confidentiality agreements with employees and partners make clear that organizational policy does not hinder or discourage reporters' rights to report to the government. • The organization seeks to dispel whistleblower stereotypes and expects leaders to responsibly handle reports from employees. • If an employee opts to make a report to government authorities, he/she is protected from all forms of retaliation.	**Examples from HQPs:** An organization in the auditing/accounting industry has initiated a comprehensive program to encourage speaking up. Communications are regularly sent to employees to reinforce that raising concerns is vital to the success of the organization. A committee of E&C professionals oversee reporting trends and develops resources to encourage managers to respond effectively when concerns are raised. Any individual who reports to management – or to the government – is monitored to ensure that no retaliation occurs. In an organization in the media/entertainment industry, E&C professionals work closely with the general counsel to ensure that policies and communications materials related to reporting do not discourage employee reporting to government authorities.	**Common Pitfalls to Avoid:** Organizational policies convey that employees should not (or may not) report suspected wrongdoing to government authorities. When an employee reports to the government, the organization takes management action to isolate the individual, thereby initiating a process that is ultimately retaliation against the whistleblower. Employees are not familiar with anonymous reporting options and do not understand the organization's process for handling concerns. Leaders and managers communicate (however subtly) that whistleblowers are problem employees.

Supporting Objective: The organization provides a broad and varied number of reporting avenues, each with effective tracking for escalation and response of significant matters. **Leading Practices:** • The organization provides means for employees to anonymously, where permitted by law, and safely report via the phone and the internet, at minimum. When appropriate, these channels include global coverage, including accommodation of those who require translation services. • The organization's policy is clear about its standards for escalating and tracking significant issues.	**Examples from HQPs:** A large organization in the food/beverage industry encourages employees to raise concerns and report suspected wrongdoing to their immediate supervisors. Additionally, the organization provides a web- and telephone-based system for reporting either confidentially or anonymously. Services are provided 24 hours a day, globally and in multiple languages for global locations. Employees also have the option to contact the E&C office directly or the offices of human resources. Regardless of the means by which employees report, concerns that pertain to violations of the code of conduct are documented and forwarded to the E&C office for aggregation and tracking.	**Common Pitfalls to Avoid:** The organization does not provide a means for reporting anonymously or confidentially, or if it does, employees are not made aware of it. Managers are not equipped to receive reports of suspect violations. When employees raise such concerns, they do not escalate the report to higher levels of management. In global organizations, communications materials regarding resources for reporting are not translated into multiple languages, and helpline support is provided at times that effectively preclude employees in other countries from raising concerns.
Supporting Objective: The organization treats all reporters the same – with consistency and fairness – throughout the entire process. **Leading Practices:** • The focus is on investigation of allegations, not the reporter. • Discipline is never imposed against an employee for taking action to report an issue. • Disciplinary processes are regularly	**Examples from HQPs:** In an organization in the energy sector, leaders and managers observe very clear guidelines for handling employee concerns. Regardless of the nature of the issue raised and also irrespective of the substantiation of the case, all employees who come forward to raise concerns are treated in the same way to ensure that no individual perceives that they have been retaliated against by the organization. All employees are able to make a full report; they are listened to; and	**Common Pitfalls to Avoid:** Employees who report suspected wrongdoing are not taken seriously or are ignored. Company response to employees who report substantive wrongdoing is different from the response for other employees who raise concerns. Incidents of retaliation are dismissed as "too difficult to prove."

reviewed to ensure the following: ○ Actions taken do not involve any retaliation or the appearance of it (e.g., taking into account the past reporting history of the employee reporter). ○ Mitigation of any risk that disciplinary actions taken might discourage future reporting.	opportunities are provided for reports to check back to find out what is happening with the case they raised. In the accounting/auditing field, one organization considers retaliation against employees who report to be a violation of organization as standards. When employees come forward to report, E&C staff periodically follow-up with the individual to be sure that they do not perceive that they are experiencing retaliation. Instances of reported retaliation are investigated and escalated to the attention of senior management and the board.	
Supporting Objective: The organization has proactive retaliation-prevention processes including awareness training for leaders; monitoring of employee reporters; and demonstrated consequences for violations. **Leading Practices:** • All leaders are trained to be aware of the organization's policy on retaliation and the behaviors that may be perceived as retaliation. • Over an extended period of time, the organization periodically touches base with reporters to ensure that they have not experienced retaliation.	**Examples from HQPs:** A global consulting firm tracks reporters to ensure that no retaliation takes place, immediately following the investigations process and over a longer period of time. The organization does so by doing planned data-gathering at intervals after the reporter acted. The firm has protocols for addressing possible issues, including follow up with human resources and managers when appropriate. The firm also provides continuing training to managers in skills to effectively receive reports from employees, being sensitive to how their reaction might be perceived as leading to fear of retaliation.	**Common Pitfalls to Avoid:** Reporters do not receive close-out communication from the organization after reporting concerns. Leaders are permitted to create environments in which employees understand that raising issues elsewhere is unacceptable and will be found out and punished. Once employees report a concern and the investigation is complete, the case is considered closed. No further contact is made with the employee reporter.

• In addition to the feedback from individual employees, the organization recognizes that employees may not feel comfortable reporting retaliation; therefore, it continues to monitor the long-term success of employees who report suspected violations. • Investigations of retaliatory behaviors receive special handling and priority to ensure responsiveness and neutrality. • Substantiated retaliation cases are reviewed by senior management and are reported to the organization and the board.	In a mid-sized manufacturing organization, managers are regularly trained on response to employee concerns. E&C professionals provide guidance to leaders if an employee concern is raised and the manager needs support.	
Supporting Objective: The organization communicates directly with individual reporters and more broadly with all employees when cases are closed. **Leading Practices:** • The organization makes every effort to personally thank reporters for their courage in coming forward. • Where possible, employee reporters are directly informed of the outcome of investigations based on their reports. • Outcomes of reported misconduct and the consequences that resulted in substantiated cases are regularly shared with all employees.	**Examples from HQPs:** A multinational regularly publishes a comprehensive report on ethics and compliance performance, including aggregate data and trends as well as new initiatives and learnings. Upon conclusion of the reporting and investigations process, one organization in the energy sector makes every effort to follow up in person with the employee who reports. Even if the report is not substantiated, the purpose of the meeting is to close the loop with the employee and to thank him/her for coming forward. In an organization in the extractive industry,	**Common Pitfalls to Avoid:** Employees learn of failures or violations through external media rather than through organizational communications. Employees who report are not informed of the outcome of their report (if they wish to know). No effort is made by the organization to thank employees for their courage in coming forward to raise concerns.

• The organization prepares an annual public reporting of E&C activities, including reporting trends and responses to issues.	information is shared with all employees on a regular basis, to communicate the reports that have been received and the actions that were taken. When instances of substantiated wrongdoing are very public, the organization acknowledges to employees that the wrongdoing occurred, and the company took action.	

Principle 5: The organization takes action and holds itself accountable when wrongdoing occurs.		
Supporting Objective: The organization regularly communicates that individuals who violate organizational standards or the law will be disciplined. **Leading Practices:** • The code of conduct makes clear that there are consequences for violations. • Each incident of substantiated misconduct is evaluated to determine how it should be communicated internally and externally, as applicable, based on the seriousness of the issue, the level of the subject and the need for and appropriateness of public disclosure. • The E&C program regularly communicates with key stakeholders	**Examples from HQPs:** In a mid-sized company, the code of conduct not only outlines organizational values and rules, it also describes the process that takes place when a report is made. This description includes the types of disciplinary actions that can be taken, depending on the severity of the incident. The CEO and other senior leaders regularly talk in meetings, speeches, emails and other communications about instances that have taken place and the actions that were taken to hold violators accountable. This effort is further supported by managers in meetings that they hold with employees. One large domestic organization in the defense industry includes E&C in its annual social responsibility report. Description of	**Common Pitfalls to Avoid:** Out of too much concern for privacy and litigation, the organization remains silent about reports of wrongdoing that are brought forward and substantiated. Employees are unaware of the processes in place to respond to reports of wrongdoing and therefore they distrust that any action is taken if they raise concerns to management. The code of conduct addresses rules and regulation for employee compliance, but it does not explain the process that takes place when a violation is suspected. The organization does not periodically evaluate the disciplinary actions taken

about its internal monitoring efforts, including enforcement officials (where applicable), investors, donors and/or consumers.	statistics for reports of misconduct are provided, as well as summary reports of actions taken against violators.	in order to ensure consistency across cases.
Supporting Objective: The organization maintains investigative excellence. **Leading Practices:** • Thorough, timely, neutral, competent and consistent investigations are conducted and the organization maximizes learning from every substantiated matter. • E&C or other appropriate personnel ensure neutrality in investigations through careful oversight and selection of who investigates any matter. • The E&C office (or appropriate party) is provided access to all relevant information related to the investigation, and the organization supports the investigative effort. • The organization is transparent about how investigations are conducted, including roles and procedures, timing, quality standards, conflict-of-interest protections, training of investigative personnel, confidentiality and anti-retaliation protections. • Leaders are briefed on investigatory	**Examples from HQPs:** A firm in the audit/accounting field has a flowchart of its investigative system that confirms the critical elements of their process from intake to case closure, including considerations of legal oversight, escalation, investigative protocols, retaliation prevention actions and notifications and reporter follow-up. Investigators track progress consistent with the flow chart, and a higher level chart is available to employees so they understand how the system operates. A government contractor dedicates staff resources to the team tasked with response and investigation of reported incidents brought forward by employees. No report is ignored. Investigative staff have goals to close cases in a reasonable timeframe; however, the quality of the investigation and the treatment of employees is equally important. For more serious concerns, third-party resources are brought in to ensure neutrality and thoroughness. Each case is revisited by investigative staff as a team, in order to maximize learning and improve	**Common Pitfalls to Avoid:** Investigative reports do not include recommendations for improved controls or follow-on actions for prevention. Investigative processes are inconsistent, and reporting documentation is not complete. No attempt is made by the organization to learn from cases that are handled. Investigative excellence is determined by the length of time it takes to close a matter. Less attention is paid to the quality of the process and the perceptions of employees who are involved (both those that report and those under investigation). Senior leaders are not regularly briefed on the kinds of reports that are coming forward, and they are not informed about the investigations that are underway. No effort is underway to ensure consistency, neutrality and

requirements and support investigative neutrality and confidentiality in their interactions. • Respectful and proper personal debriefing and closure of the issue with the reporting party, if known, is required in every case. • Investigations focus on the facts and the underlying concern rather than on defending against the allegation. • Each investigation includes a discussion of potential root causes. E&C or other personnel, as appropriate, consider whether the incident could have been avoided and ensure that follow-up action is considered and executed.	processes. One large multinational company asks all parties in an investigation to complete an evaluation of the investigative process. This includes the individual who reported the problem, as well as the individual(s) under investigation. Metrics for employee satisfaction have been developed, and E&C staff have goals to improve investigative excellence each year. In a government agency, when the Office of the Inspector General (or the equivalent) requests that its agency provide documents to assist an audit that is underway, the request is granted without difficulty.	respectful treatment of individuals involved. The organization does not conduct a root cause analysis after each investigation, to better understand the factors that resulted in wrongdoing.
Supporting Objective: Disciplinary action is consistently taken when violations are substantiated. **Leading Practices:** • E&C ensures that proper consequences result from violations, including convening disciplinary review committees for significant violations. • Metrics are kept on disciplinary consequences of violations and are periodically reviewed for trends and potential inconsistencies by topic, location and level of employee.	**Examples from HQPs:** In one organization, the E&C leader convenes and facilitates a committee tasked with reviewing significant violations. This includes violations involving high-level employees. The committee convenes when significant issues surface and reviews details of the matter, in order to ensure that investigation is thorough and consequences are consistently applied, regardless of level of employee. The group is chartered with clear protocols for receiving investigative reports, maintaining neutrality (not expecting briefings before the case is concluded, etc.) and ensuring robust discussions.	**Common Pitfalls to Avoid:** The organization is inconsistent in response to substantiated violations, particularly when senior level employees or high performers are involved. No systems are in place to review substantive cases, or to ensure that the investigative process is fair, consistent and respectful of those involved. The organization does not review data collected throughout the process to identify trends, or to spot emerging

	An organization in the retail industry compiles comprehensive metrics on the receipt, investigation and outcome of all reports of suspected wrongdoing. Data is regularly reviewed to identify trends and emerging E&C risks.	issues. The investigative and disciplinary process is disconnected from the risk assessment process; therefore, emerging issues are missed.
Supporting Objective: Systems for escalation and response are well-developed and regularly tested, and leaders are held accountable for compliance. **Leading Practices:** • Clear policy is in place regarding the escalation and response of significant matters. • Escalation and crisis management systems are regularly tested via exercises or audits.	**Examples from HQPs:** One mid-sized and highly-regulated entity has developed multiple channels for the reporting of suspected violations. While the organization provides a helpline channel to receive reports, they recognize that managers are most likely to be the initial recipients, and therefore they are the first line for the identification of issues. To escalate significant matters in a timely and accurate fashion, the organization has created a formal system for managers to notify E&C if an issue has surfaced. Organizational policies and performance expectations of managers further emphasize their responsibility to spot issues and escalate matters as appropriate. E&C is tasked with raising matters to the attention of senior executives and the board, if suspected violations warrant their attention. An organization in the insurance industry leverages its internal audit, and also its E&C program evaluation effort, to closely	**Common Pitfalls to Avoid:** The organization does not have a protocol for escalating significant matters, so critical cases may be overlooked or mishandled. Formal policies and performance expectations for managers do not address their responsibility and accountability to escalate issues that signal the potential for significant violations. Little to no effort is made to periodically review existing systems for identifying and escalating issues. Therefore, gaps in the system perpetuate.

	examine the effectiveness of its systems for identifying and escalating significant issues. A third party is also periodically engaged to test the system and to identify any areas of concern.	
Supporting Objective: Appropriate disclosures are made to regulatory or other government authorities. **Leading Practices:** • Leaders support responsible, timely disclosure to regulators. • Leaders ensure robust discussion of the most appropriate avenue for disclosure and promote appropriate transparency regarding failures or violations. • Escalation procedures ensure that potentially disclosable matters are efficiently and promptly escalated for review, and there are consequences for failure to escalate. • Appropriate processes are in place to ensure relevant senior personnel and E&C consultation on questions about proper disclosure. • Employees are trained on proper procedures in cooperating with government inquiries and consequences for noncompliance. • When appropriate, cases are publicized after closure and follow-up action to	**Examples from HQPs:** While investigating a reported incident that could result in a false claims violation, one medium-sized government contractor uncovered evidence that a separate incident had taken place, constituting a violation of the Foreign Corrupt Practices Act. The organization quickly sought both internal and external counsel, in order to ensure that the matter would be handled appropriately. Leaders of the organization disclosed the incident to the appropriate authorities and committed to full cooperation with government officials in the resulting enforcement process. One large manufacturer conducts periodic simulations, in which the crisis management team is asked to consider the issues and company response to situations as they escalate into significant events. Senior leaders from E&C are part of the crisis response team. The crisis management plan involves the consideration of corporate values and organizational responsibility to disclose to proper authorities as appropriate.	**Common Pitfalls to Avoid:** Disclosure decisions are made in a vacuum without proper consultation and consideration of responsibility, transparency and consequences. The organization does not take time to outline and memorialize their intended response, should significant issues arise. Therefore, when problems surface, the assembly of a crisis management team is ad hoc, and leaders involved are ill-prepared. Employees are not trained on procedures for cooperating with government inquiries; therefore, organizational response is slow. E&C staff are not formal members of a crisis management team. Organizational values and corporate responsibility are not significant factors in decision-making when problems arise. The organization does not disclose as

deter future misconduct.	After the simulation concludes, lessons learned are shared more broadly among senior leaders. A small supplier in the retail industry regularly monitors regulatory and enforcement activity, utilizing communications from government officials about the factors that influenced their enforcement decisions. This information is used as content for discussions at senior management meetings and also for board training on the importance of compliance.	appropriate, thereby increasing the likelihood of significant consequences for substantiated violations.