

Inside the Huddle

Combatting Fraud, Waste and Abuse: A More Proactive Approach Is the Answer

By: **Kenneth M. Donohue**

Fraud and corruption have plagued mankind since our earliest attempts at politics and commerce. While the prevention of fraud and corruption has long been the goal of society, we arguably have been more successful at detecting wrongdoing after it occurs and punishing offenders for their misdeeds. The issues that exist today are, in part, the result of inadequately designed reform efforts. Historically, law enforcement efforts have focused on individual prosecutions; however, when you have easily exploitable vulnerabilities coupled with lucrative incentives, a single prosecution cannot control the tide. Law enforcement actions must be paired with a regulatory strategy that creates a sustainable environment that is inhospitable to fraud and corruption. An effective strategy requires the development of a fraud-prevention program that analyzes the elements of the problem and presents a practical solution: I believe that integrity monitoring is the solution.

A Career Fighting Fraud

A substantial portion of my career has been spent combatting fraud. I have fought this battle on two fronts: one as a public servant protecting consumers against mortgage fraud; the other as a private citizen advising federal, state and local government agencies on how

to protect taxpayer dollars from fraud, waste and abuse.

In the 1990s, I served as assistant director in the Resolution Trust Corporation, Office of Investigations, an off-shoot of the Federal Deposit Insurance Corporation, which was created to address the savings and loan (S&L) crisis. We successfully uncovered fraud and abuse among directors and officers of failed S&L institutions, and brought civil and criminal charges against such household names as Charles Keating of Lincoln Savings and Loan, and Michael Milken, the junk bond king. From 2001 to 2010, I served as the Inspector General for the U.S. Department of Housing and Urban Development, a position that included oversight of the Federal Housing Administration and Office of Federal Housing Enforcement and Oversight (which had oversight of Fannie Mae and Freddie Mac). In 2010, I served on a task force along with Attorney General Eric Holder and FBI Director Bob Mueller to investigate and prosecute individual and corporate fraud in the mortgage industry. This effort, known as "Operation Stolen Dreams," resulted in 1,500 arrests and more than \$198 million in recoveries.

Both the S&L crisis of the 1990s and the mortgage crisis of the 2000s are illustrative of a fraudster's aptitude for eluding legislation and regulations by

modifying existing schemes or devising new schemes to exploit loopholes. These experiences have led me to believe that integrity monitors can be significant game changers in the fight against fraud in both the public and private sectors. Why? Because integrity monitors create an environment of continuous oversight and strong internal controls, and focus on addressing problems before they occur.

What Is an Integrity Monitor?

Over the past few years, the need for integrity monitors has grown substantially, fueled, in large part, by the billions of federal dollars earmarked for major infrastructure programs and reconstruction projects following natural disasters. We are also seeing an increase in the use of integrity monitors in deferred- and non-prosecution agreements by state and federal regulators and law enforcement agencies to settle pending or threatened civil and criminal charges against corporations. Typically, such agreements require an integrity monitor to oversee compliance with the terms of the settlement agreement and the implementation of corrective action to remedy the alleged wrongdoing.

What is an integrity monitor? The International Association of Independent Private Sector Inspectors

General defines an integrity monitor (also referred to as an “independent private sector inspector general”) as “an independent private sector firm with legal, auditing, investigative, management, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations, and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization.” When implemented correctly, an integrity monitor can be extremely cost-effective, especially when weighed against the prospect of lost taxpayer dollars. However, widespread understanding of the role of an integrity monitor has failed to keep pace with the growth of the industry. Unfortunately, this lack of understanding has given rise to several misconceptions, such as the claim that an integrity monitor adds unnecessary ‘red tape’ to programs whose primary purpose is the swift disbursement of funds.

An Effective Strategy for Preventing and Detecting Fraud, Waste and Abuse

Government agencies use integrity monitors to oversee federal and state program funds; provide transparency of these programs and their outcomes; and prevent and detect fraud, waste and abuse. These independent advisors serve as stewards of program and project funds, ensuring funds are used as originally intended.

An integrity monitor’s responsibility includes developing an integrity monitoring program that considers the current internal control environment of the subject program monitored. An integrity monitor assesses the control environment of a project or program to determine whether the controls in place are sufficient to deter and detect fraud, waste and abuse, and achieve compliance with laws, regulations and contractual commitments. The integrity

monitor identifies weaknesses or vulnerabilities in the current internal control environment, makes recommendations on how to address these shortcomings, and monitors the implementation of the recommended solutions.

Since the introduction of the concept to the New York construction industry in the early 1990s, integrity monitors have been used on a number of major disaster-recovery efforts, including the cleanup of Ground Zero in the aftermath of the terrorist attacks, as well as the recovery following Hurricanes Sandy, Katrina, Rita, Gustav and Ike.

An Illustration: As evidence of the important role an integrity monitor has in combatting fraud, in March 2013, the state of New Jersey enacted the Integrity Oversight Monitor Act (P.L.2013, Chapter 37), authorizing the deployment of oversight monitors in the implementation of recovery and rebuilding contracts, resulting from Superstorm Sandy. The Act requires any state agency administering a contract in excess of a \$5 million to use an integrity monitor to oversee administration of these federal funds. In this example, the integrity monitor’s work includes monitoring the agency’s compliance with federal and state laws and regulations in administering the federal funds; monitoring the activities of contractors conducting work on behalf of the agency; monitoring whether the programs are operating accurately, efficiently and effectively; monitoring the effectiveness of the agency’s internal controls; and monitoring the agency’s fraud prevention and detection activities. The integrity monitor is responsible for reporting the results of its monitoring activities to various state and federal government stakeholders.

Integrity Monitoring as a Best Practice

More and more federal and state governments are turning to integrity monitors as a way of managing the risks associated

with overseeing program funds. And for good reason: by employing the services of an integrity monitor, agencies can save significant project or program dollars by preempting and/or uncovering fraudulent and wasteful behaviors. Take, for example, a \$4 billion federally-funded construction project. A modest skim of just 1 percent would result with the fraudster pocketing \$40 million. Moreover, by using integrity monitors, public entities can increase the public’s level of confidence and trust in their programs by demonstrating their commitment to independent oversight, and the protection of public funds from fraud, waste and abuse. The cost of not using an integrity monitor are potentially high in terms of the time and effort expended on audits and investigations, the undue burden placed on the judicial system, and ultimately the potential loss of precious taxpayer dollars.

Unfortunately, headlines remind us on a seemingly daily basis that the imagination of the criminal mind is limitless. Consequently, fraud, waste and abuse will continue to challenge even the most fortified of programs. While we may never be able to prevent fraud, waste and abuse 100 percent of the time, we have an overwhelming duty to citizens to protect their tax dollars by all means possible. To this end, I believe the inclusion of integrity monitoring is essential to effective fraud prevention strategies. ▮



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