

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)

Ethics and Compliance in a Consolidating Market

David Robbins

Rachel Fleischer, Anthem, Inc.

Sean Hoffman, KPMG LLP

Laura Baker

Stephanie Crawford

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)

Topics to be Covered

- 1) Updates on Issues of Ethics & Compliance (20 min)
- 2) Questions & Answers with Panel (30 min)

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)



Updates on Issues of Ethics & Compliance

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)



Suspension & Debarment

- Trends in Fiscal Year 2017 & What to Expect in 2018

	Total Exclusions	Firms	Individuals	Special Entities
FY 2016 SAM Data	2,229	284	1,738	207
FY 2017 SAM Data	1,878	262	1,415	201
Change	(351)	(22)	(323)	(6)

- New SAM Registration Requirements After Fraudulent Activity

DOJ Guidance on Compliance

Evaluation of Corporate Compliance Programs

(Feb. 2017)

- Provides a list of compliance-focused topics and questions DOJ believes are relevant to its evaluation of corporate compliance programs.
- DOJ will take into account whether companies:
 - (i) have adequate compliance programs;
 - (ii) cooperate and self-disclose any wrongdoing; and
 - (iii) take suitable steps to remediate problems.

New FCPA Corporate Enforcement Policy

(Nov. 2017)

- To increase the volume of voluntary disclosures from corporations.
- To enhance DOJ's ability to identify and punish culpable individuals.
- A company must implement "an effective compliance and ethics program."

OFCCP Developments

- OFCCP Issues Notices in Advance of Annual Compliance Review
 - no more than 10 establishments of an individual contractor will be on the scheduling list, and
 - no more than four establishments of an individual contractor will be audited by a particular district office.
 - no establishment with a review closed in the last five years will be scheduled for a compliance review this year, an increase from the previous two-year reprieve.
- OFCCP Issues Directive 2018-01
 - Requires OFCCP to adopt a uniform approach to Predetermination Notices in compliance evaluations.
 - OFCCP is now required to:
 - inform the contractor of the agency’s preliminary findings of employment discrimination; and
 - provide the contractor with 15 days to rebut OFCCP’s preliminary findings.

FAR Council Semi-Regulatory Agenda

- Violation of Arms Controls Treaties or Agreements
 - Certify no activity that contributes to determination that a country is not in compliance with arms control, nonproliferation, or disarmament agreements
- Whistleblower Protection for Contractor Employees
 - Make permanent
 - Apply legal fees prohibition to subcontractors

FAR Council Semi-Regulatory Agenda (cont'd)

- Breaches of Personally Identifiable Information
 - Contract terms for PII breaches when a contractor has access to or maintains PII on behalf of an agency
- Controlled Unclassified Information (CUI)
 - Implements NARA CUI program for designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI

FY2018 NDAA

- § 889 Report on Defense Contracting Fraud
 - Report of DoD contracts in previous 5 years with contractors with fraud connection
 - Recommendations on penalizing contractors
- § 1045 Prohibition on Lobbying Activities
 - 2-year preclusion (O-9 officers/SES Tier III and above); 1-year preclusion (O-7 and O-8 officers/SES Tier I and II)
 - Banning behind the scenes work intended for use in contact and coordination with lobbying activities of others

Other Developments

- DoD OIG Missile Defense Agency Contractors
 - Failed to properly protect classified information
- DFARS Sources of Electronic Parts Amendment
 - Review when identifying a contractor-approved supplier of electronic parts
- DFARS Promoting Voluntary Post-Award Disclosure of Defective Pricing
 - CO discretion to request limited-scope or full-scope audit



DIVING INTO
UNCHARTED WATERS

Ounce of Prevention Seminar (OOPS)

State and Local

- Increased emphasis on vendor responsibility/front end compliance
- In some instances, new disclosures and certifications came into existence:
 - Port Authority New Ethics Code for Vendors
 - Requires vendors to certify compliance
 - Port Authority also implementing past performance evaluations for all construction projects



**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)

Discussion Topics

- Key trends keeping experts up at night
- Ethics/compliance as a valuable asset
 - importance of culture/ethics/compliance in vetting corporate transactions in the consolidating marketplace

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)

Discussion Topics - continued

- How do you train your workforce about the differences in expectations when dealing with public customers (governments) as opposed to private customers?
- How can you reinforce training so the learning isn't lost?

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)



Discussion Topics - continued

- Scope creep as an ethical issue – when giving more at no cost creates problems

**DIVING INTO
UNCHARTED WATERS**

Ounce of Prevention Seminar (OOPS)

QUESTIONS?

Laura Baker

(202) 624-2581

lbaker@crowell.com

Stephanie Crawford

(202) 624-2811

scrawford@crowell.com

David Robbins

(202) 624-2627

[drobbins@crowell.com](mailto:d Robbins@crowell.com)