

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	Title	
	Policy for Detecting and Deterring Fraud and Promoting Ethical Conduct within the FCC	
	Directive Number: FCCINST 1102.6	Effective Date: July 2020

1. **PURPOSE:** This directive sets forth the Federal Communications Commission’s (“Commission” or “FCC”) policies, procedures, and responsibilities relating to fraud and promoting ethical conduct within the Commission. The overall objective of the directive and the Commission’s anti-fraud program is to ensure public confidence in the Commission by (1) preventing fraud; (2) detecting and removing existing fraud; and (3) promoting ethical conduct among Commission employees.
2. **CANCELLATION:** This directive supersedes FCCINST 1102.5 dated July 30, 2011.
3. **SCOPE:** This directive applies to all Bureaus and Offices within the FCC.
4. **AUTHORITY:**
 - A. Federal Managers' Financial Integrity Act of 1982 (FMFIA), Pub. L. No. 97-255, 96 Stat. 814, 31 U.S.C. § 3512;
 - B. Payment Integrity Information Act of 2019 (PIIA), Pub. L. No. 116-117, 134 Stat. 133, 31 U.S.C. §§ 3351-3358;
 - C. Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Sept. 10, 2014) (Green Book);
 - D. Government Accountability Office, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (July 28, 2015); and
 - E. Office of Management and Budget, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, OMB Circular A-123 (July 15, 2016).
5. **FRAUD:**
 - A. **DEFINITIONS:**

Fraud: Fraud involves obtaining something of value through willful misrepresentation. Whether an act is in fact fraud is a determination to be made through the judicial or other adjudicative system and is beyond management’s professional responsibility for assessing risk.¹ Types of fraud include:²

 - (1) Fraudulent financial reporting - Intentional misstatements or omissions of amounts or disclosures in financial statements to deceive financial statement users. This could include intentional alteration of accounting records,

¹ GAO’s Green Book at 40 at fn. 25.

² *Id.* at 40.

misrepresentation of transactions, or intentional misapplication of accounting principles.

- (2) Misappropriation of assets - Theft of an entity's assets. This could include theft of property, embezzlement of receipts, or fraudulent payments.
- (3) Corruption - Bribery and other illegal acts.

Waste and Abuse: Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. This includes the misuse of authority or position for personal gain or for the benefit of another. Waste and abuse do not necessarily involve fraud or illegal acts.³

B. POLICY:

This directive establishes an internal control framework to prevent, detect and respond to fraud within and against the Commission. In conjunction with the Commission's implementation of FMFIA, PIIA, OMB Circular A-123, and GAO's Green Book, the FCC will also incorporate the concepts from GAO's *Framework for Managing Fraud Risk in Federal Programs* to ensure program integrity at the FCC by continuously and strategically mitigating the likelihood and impact of fraud. The Commission's fraud risk management efforts are intended to facilitate achievement of the FCC's broader mission and strategic goals by helping to ensure that funds are spent effectively, services fulfill their intended purpose, and assets are safeguarded.

The following points are Commission policy:

- (1) Managing Fraud Risk in FCC Programs. The FCC will:
 - a. Commit to combating fraud by creating an organizational culture and structure conducive to fraud risk management;
 - b. Plan regular assessments of fraud risk;
 - c. Design and implement a strategy with specific control activities to mitigate assessed fraud risks and collaborate to help ensure effective implementation; and
 - d. Evaluate outcomes using a risk based approach and adapt activities to improve fraud risk management.

Additionally, the FCC shall establish financial and administrative controls to identify and assess fraud risks, and design and implement control activities, in order to prevent, detect, and respond to fraud, including improper payments.

As part of this effort, the Commission shall:

- periodically evaluate fraud risks with the goal of designing and implementing financial and administrative control activities to mitigate identified fraud risks related to the Universal Service Fund (USF), the Telecommunications Relay Services Fund (TRS), auction related

³ *Id.*

activity, payroll, contracts, information technology and security, asset safeguards, and purchase, travel and fleet cards, as well as any other permanent or temporary programs involving large disbursements such as the COVID-19 Telehealth Program;

- collect and analyze data from reporting mechanisms on detected fraud to monitor fraud trends and use that data and information to continuously improve fraud prevention controls; and
- use the results of monitoring, evaluations, audits, inspections, and investigations to improve fraud prevention, detection, and response.

- (2) Commission Whistleblower Program. The Commission shall maintain a Whistleblower Program to provide employees and others a means of communicating concerns about actual or suspected fraud, including potential violations of the Code of Conduct (see section 6.B. below), without fear of retribution. The program shall include a hotline that shall be administered by the Office of Inspector General (OIG) and shall be prominently displayed on the OIG's web page. Reports of potential violations of the Code of Conduct should be made to OIG's Hotline at (202) 418-0473, toll-free to (888) 863-2244, or through e-mail at hotline@fcc.gov. For additional information about the OIG's hotline, see: <https://www.fcc.gov/office-inspector-general-hotline>.
- (3) Investigation of Alleged or Suspected Fraud, Waste and Abuse, or Misconduct. All allegations of fraud, waste and abuse, or misconduct, involving programs, persons, and organizations affiliated with the Commission shall be thoroughly and timely investigated. All allegations of fraud or other criminal acts involving programs, persons, and organizations affiliated with the Commission, including those discovered during reviews or audits, shall be referred to OIG immediately. Simultaneously, all allegations of fraud involving the USF, TRS, and auctions programs being referred to OIG shall also be referred to the Enforcement Bureau, with the exception of allegations already contained in *qui tam* filings. This directive is not intended to supplant existing Commission rules or procedures governing the actions or activities undertaken by third parties in the course of participating in Commission proceedings or processes (*e.g.*, spectrum auctions).
- (4) Fraud Risk Assessment. Consistent with GAO's *Framework for Managing Fraud Risk in Federal Programs*, the Commission will ensure that its Office of Managing Director follows leading practices related to a dedicated entity's management of its antifraud activities, including: (1) serving as a repository of knowledge on fraud risks and controls; (2) managing the fraud-risk assessment process; (3) leading or assisting with training and other fraud-awareness activities; and (4) coordinating antifraud initiatives across the FCC's programs. Additionally, the Commission will closely tailor its annual fraud-risk assessments to assess the risks to its various functions. Finally, the FCC will develop an anti-fraud strategy with specific control activities, based upon the results of its annual fraud-risk assessments and corresponding fraud risk profiles.

(5) Monitoring. Ongoing monitoring and periodic evaluations of FCC activities provide assurances to managers that they are effectively preventing, detecting, and responding to potential fraud. Monitoring and evaluation activities can also support managers' decisions about allocating resources and help them to demonstrate their commitment to effectively managing fraud risks. The FCC's fraud prevention, detection, and response controls shall be subject to ongoing and periodic performance assessments. Changes within the FCC, the experience of individuals implementing the controls, and the results of ongoing monitoring shall all be considered in evaluating the effectiveness of these controls. The FCC will collect and analyze data on detected fraud to monitor fraud trends and use that data and information to continuously improve its controls for fraud prevention, detection, and response.

6. ETHICAL CONDUCT:

A. POLICY:

To ensure the public has complete confidence in the integrity of the Commission, each Commission employee shall adhere to the Code of Conduct.

B. EMPLOYEE CODE OF CONDUCT:

The Code of Conduct summarizes the general principles of ethical conduct set forth in the Uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 of the Office of Government Ethics regulations. Section 2635.101(b)(1)-(14) lists these fourteen principles of ethical conduct to which Commission employees are already subject under Office of Government Ethics regulations. The Code of Conduct does not replace other laws, regulations, directives, or Commission rules, *see, e.g.*, 47 CFR pt. 19; 5 CFR pt. 2635, that establish ethical responsibilities for employees.

These principles are listed here to emphasize their importance to the Commission's anti-fraud program. In this context, these principles shall govern employee conduct expressly to prevent fraud against the Commission, such as in avoiding instances of conflict of interest or unauthorized disclosure of non-public or proprietary and source selection information relating to procurement and any decisions or other actions in any proceeding before the Commission.

Specifically:

- (1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (3) Employees shall not engage in financial transactions using non-public Government information or allow the improper use of such information to further any private interest.

- (4) Employees shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the Commission, or whose interests may be substantially affected by the performance or nonperformance of employee duties.
- (5) Employees shall put forth honest effort in the performance of their duties.
- (6) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (7) Employees shall not use public office for private gain.
- (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (9) Employees shall protect and conserve Commission property and shall not use it for other than authorized activities.
- (10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Commission duties and responsibilities. (For example, under the FCC's supplemental regulation, professional employees, e.g., attorneys, investigators, engineers, economists, auditors, and accountants, of the Commission shall obtain approval before engaging in the outside practice of the same profession as that of their official FCC position whether or not for compensation, in accordance with the standards and procedures set forth in 5 CFR § 3901.102. In no event shall an employee engage in approved outside employment during his or her official tour of duty.)
- (11) Employees shall disclose waste, fraud, abuse, and corruption to the appropriate authorities as identified herein (and shall be afforded all safeguards allowed by law in so doing).
- (12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes imposed by law.
- (13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, sexual orientation, national origin, age, or disability.
- (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the Code of Conduct set forth in this directive. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

C. Employee Awareness of the Code of Conduct. To promote the use and effectiveness of the Code of Conduct, the Office of General Counsel shall communicate the fourteen ethical principles of the Code of Conduct at least annually to all employees.

7. RESPONSIBILITIES:

A. The Office of Managing Director will:

- (1) Work with relevant Bureaus and Offices to ensure that fraud risk management, including fraud prevention, detection, and response, is a continuous process at the Commission that results in fraud monitoring and internal control improvements as necessary;
- (2) Maintain and update this directive as necessary due to changes at the FCC or as new government-wide guidance becomes available;
- (3) Establish and take part in the FCC's Senior Management Council (SMC); and
- (4) Ensure that employees are notified annually of their rights under the Whistleblower Protection Act, as amended, and what constitutes a prohibited personnel practice under the Civil Service Reform Act of 1978, as amended.
- (5) In addition to the ethics training administered by the Office of General Counsel, will ensure that employees complete annual training on the following topics:
 - a. Fraud, Waste, Abuse and Mismanagement Training;
 - b. Cybersecurity Awareness;
 - c. No FEAR Act;
 - d. Prohibited Personnel Practices; and
 - e. Whistleblower Protection Act.

B. The Chief Financial Officer will:

- (1) Oversee the FCC's annual enterprise wide risk assessment process, including the assessment of fraud risk;
- (2) Chair the SMC and organize its meetings; and
- (3) Provide to the Commission's senior management an analysis of the results of the annual risk assessment process, including any information related to fraud risks.

C. Within the discretion of the Inspector General, and consistent with the Inspector General Act of 1978, as amended, the Office of Inspector General will:

- (1) Assess all allegations of fraud and investigate those allegations to the extent appropriate, including those involving or impacting:
 - a. The Commission and its programs and field activities;
 - b. The Chairman and the Commissioners;
 - c. All contract and procurement actions awarded by the agency;
 - d. All kickbacks or bribery involving Commission employees, the Chairman, or the Commissioners;
 - e. Agency finances or accounting services; and
 - f. Any other matters that the Inspector General considers appropriate for investigation.
- (2) In addition, the Office of Inspector General will:
 - a. Review allegations of contract fraud in Commission programs and activities, corruption, antitrust, collusive bidding, conflicts of interest, and standards of conduct violations reported to the Commission and ensure that the allegations are promptly referred to the appropriate agency when there are reasonable grounds to believe that a violation of law may have occurred;

- b. Ensure that suspected criminal misconduct affecting or involving Commission operations or activities, including theft of government property and computer fraud, is promptly and thoroughly investigated;
- c. Promptly review and, if warranted, investigate significant security and criminal incident reports involving suspected fraud, corruption, antitrust, conflicts of interest, and standards of conduct violations;
- d. Serve as the principal point of contact with the Government Accountability Office, Department of Justice, and other criminal investigative agencies for cases involving program fraud, contract fraud, corruption, violations of antitrust, conflicts of interest, and laws pertaining to employee standards of conduct such as the Whistleblower Protection Act and the No FEAR Act; and
- e. To the extent authorized by statute and consistent with generally accepted law enforcement practices, keep the Chairman advised of all significant program or contract fraud, antitrust violations, and standards of conduct cases as appropriate.

D. Bureaus and Offices will:

- (1) Promptly notify the OIG of any allegation involving potential fraud, waste and abuse, or misconduct and take prompt corrective action only after consultation with the OIG and Office of General Counsel, as appropriate.
- (2) Ensure that employees are effectively detecting, reporting, and following this Directive regarding suspected fraud, employee misconduct, anticompetitive contractor practices, or criminal acts when identified.

E. Employees will:

- (1) Remain alert for deficiencies in internal control and instances of employee misconduct, suspected fraud, and criminal conduct. Employees shall report all instances of suspected fraud, waste and abuse, employee misconduct, or criminal acts directly to the OIG. In addition, employees are also encouraged to make such reports directly to their supervisor or manager and to other appropriate officials such as the FCC's Office of General Counsel as necessary. Reports to OIG can be made by contacting the OIG's hotline at (202) 418-0473, or toll free at (888) 863-2244. In addition, such reports may be e-mailed to the OIG at hotline@fcc.gov; and
- (2) Complete annual ethics training as well as the trainings described in section 7.A.5 above.

8. EFFECTIVE DATE AND IMPLEMENTATION. This directive is effective immediately and shall be implemented promptly upon distribution.



Mark Stephens
Managing Director