

Then and Now: A Dialogue on How Ethics and Compliance Programs for Government Contractors Have Evolved

BY MICHAEL MUTEK AND MICHAEL KRAYCINOVICH



Michael Mutek



Mike Kraycinovich

Ethics and compliance programs are a routine and expected part of corporate governance. That was not always the case. Their emergence, particularly within the defense industry, was neither inevitable nor purely regulatory. Rather, it reflected a convergence of public scandal, government pressure, and voluntary industry action.

As the Defense Industry Initiative (DII)¹ marks its 40th anniversary in 2026, this is an opportune moment not only to reexamine the origins of modern compliance programs, but also to review how these programs evolved from helping restore the reputation of the defense industrial base to a central element of corporate strategy and governance expanding far beyond the defense industry.

This article is structured as a dialogue between two attorneys whose careers bookend ethics and compliance programs:

Michael Mutek, senior counsel, Womble Bond Dickinson, in the firm's Huntsville, Alabama, office. He has practiced government contracts law for many years. A former member of the American Bar Association Board of Governors and a past chair of the Public Contract Law Section, he currently serves as a Section Delegate in the ABA House of Delegates. Michael was involved in ethics and compliance program implementation when the DII was first established.

Mike Kraycinovich, Chief Ethics & Compliance Officer at L3Harris Technologies, located at the company's corporate headquarters in Melbourne, Florida. He has been a prosecutor; an Associate Deputy General Counsel (Acquisition) at the Office of the Army General Counsel; Chief Counsel, Real Property at the Office of General Counsel, Department of Veterans Affairs; and a corporate lawyer. A past member of the Public Contract Law Section's Council, Mike currently is actively engaged in leading an ethics and compliance program at a

large prime contractor.

The authors previously worked together at Aerojet Rocketdyne, now a subsidiary of L3Harris, and chose a conversational format to connect experiences that span the history of the DII.

The Defense Industry Initiative (DII)

Origins

Kraycinovich: The Defense Industry Initiative is turning 40 this year. It seems like a good time to review why it was created and how ethics and compliance programs have evolved. What is the DII?

Mutek: The DII is a voluntary effort to address fraud and promote effective self-governance in corporate America. According to its website, the DII is a nonpartisan, nonprofit organization comprised of representatives from nearly 80 member companies. While most members are from the aerospace and defense industry, some come from other sectors, reflecting the DII's broader mission, which is to promote and advance a culture of ethical conduct.²

To achieve this mission, the DII engages with stakeholders, including government officials, industry professionals, and private practitioners. Additionally, the DII serves as an important resource, offering tools, best practices, and mentoring.

Kraycinovich: I have a feeling that some history would be helpful here. Why did the defense industry create the DII to address fraud concerns and promote self-governance?

Mutek: There is interesting history about the creation of the DII. The defense industry created the DII in 1986 to address widespread allegations of fraud, waste, and abuse in defense procurement. Stories of \$400 hammers and \$600 toilet seats were in the news and the source of jokes during late-night television.³ The allegations gained attention even if some important points about the defense procurement process usually were ignored in the news. For one thing, government contracting rules that impact contractor costs, such as cost accounting rules for limited production runs or military-grade specifications that required, for example, that a coffee maker on the C-5A must be able to survive a crash,⁴ were not explained to the public. The stories generated strong public pressure to rein in defense spending and prosecute perceived abuses.⁵

Another catalyst was Operation Illwind,⁶ a sweeping

investigation into bribery, fraud, and the sale of procurement-sensitive information. The investigation led to numerous convictions, including of a sitting assistant secretary of the Navy. Legislative fallout included the passage of the Procurement Integrity Act⁷ and its mandates pertaining to post-government employment restrictions, requirements for certifications and disclosures, and significant penalties for violations.⁸

The creation of the DII also traces directly to the recommendations of the *President's Blue Ribbon Commission on Defense Management*, better known as the "Packard Commission,"⁹ established by President Ronald Reagan in 1985 and chaired by David Packard, the co-founder of Hewlett-Packard and former Deputy Secretary of Defense in the Nixon administration.

The Packard Commission and Self-Governance

Kraycinovich: Did the Packard Commission mandate ethics codes?

Mutek: No, the Commission did not impose mandates. Instead, its 1986 Interim Report¹⁰ emphasized that waste, fraud, and abuse had eroded public confidence and urged defense contractors to engage in greater self-governance. The Commission's emphasis on self-governance framed ethics not as a compliance obligation imposed externally, but instead as a responsibility internal to corporate leadership. The American Bar Association's (ABA) Public Contract Law Section comments to the Packard Commission's work¹¹ formally endorsed contractor self-governance.

The Packard Commission recommendation resulted in the defense industry examining how to strengthen its self-governance. I recall that industry interpreted the recommendation as an important signal to act quickly. What emerged was the DII as a voluntary, industry-led response to demonstrate corporate responsibility. The industry took this action rather than waiting for Congress to act.

Early Skepticism

Kraycinovich: Was there concern about creating the DII in this environment?

Mutek: There was considerable concern. To begin, there was skepticism about whether companies could meaningfully self-police. Remember, this was before corporate standards of conduct became commonplace. There was also concern that signatories could suffer competitive disadvantages. Another concern was whether anticipated regulatory activity would result in overlap and confusion with the voluntary codes. No one had a crystal ball, but the defense industry had a situation that demanded action. As a result, in 1986, 32 major defense contractors pledged to adopt the DII principles.

Kraycinovich: Did some companies decline to join?

Mutek: Yes, some companies declined to join. Smaller contractors and firms with significant commercial business opted out. Reasons included cost, disclosure risks,

and uncertainty about the Department of Justice (DOJ) enforcement posture.

Looking back, the DII represents an example of industry-driven governance. The defense industry addressed governance concerns before formal mandates emerged from the government.

From Radical to Routine

Mutek: Let me ask you a question. At the time, some viewed the DII and the creation of ethics and compliance programs as radical. From today's vantage point, does it seem that way?

Kraycinovich: Not at all. Ethics codes and compliance programs are now standard expectations for businesses. Having an ethics and compliance program is not a marketing scheme. Prospective employees are well advised to research a company's ethics and compliance function, including questions about staffing and resourcing, before accepting an offer of employment.

Mutek: Why do you think we have seen this evolution?

Kraycinovich: Several forces supported evolution. First, the US Sentencing Guidelines in 1991 introduced a powerful incentive structure known as the "carrot and stick."¹² Effective compliance programs could dramatically reduce penalties; their absence could increase them.

Second, corporate scandals such as Enron and WorldCom demonstrated that ethical failures were not limited to defense contracting.¹³ This led to the Sarbanes-Oxley Act in 2002, which imposed internal control and governance obligations across public companies and increased board-level accountability.¹⁴

In the wake of these scandals, the DOJ, Congress, and the Securities and Exchange Commission (SEC) took various actions. Between 2003 and 2015, the DOJ issued several memoranda that, in summary, credited companies for cooperating with investigations, resulting in the potential for lenient penalties.¹⁵ Additionally, in 2010, the Dodd-Frank Act created the Whistleblower Program,¹⁶ and in 2013, the SEC established the Division of Enforcement's Financial Reporting and Audit Task Force.¹⁷

Mutek: The programs began as an industry response to a problem. Together, these later events transformed ethics and compliance programs into expectations that today are embedded in both regulatory frameworks and corporate governance norms. This gained the attention of companies' boards of directors, which suddenly asked about compliance programs and their effectiveness.

Implementing Ethics and Compliance Programs

Early Challenges

Kraycinovich: Going back to the creation of the DII and the environment at that time, how did companies implement the DII principles?

Mutek: In a word, rapidly. Implementation was

challenging because the industry lacked precedent. When you think about it, the defense industry created the precedent or template that other industries later followed as they developed ethics and compliance programs.

Kraycinovich: What did defense industry companies do to implement their programs?

Mutek: Companies had to identify who would run the programs, design reporting structures, create hot-lines, develop training, and implement voluntary disclosure procedures. Prior to this, “ethics and compliance” rarely appeared on organizational charts. But as part of the rollout of their new ethics and compliance programs, companies appointed or designated specific “ethics officers” to manage daily compliance programs, conduct training, and oversee internal investigations. My recollection is that early ethics officers were often HR managers, lawyers who had little background in ethics and compliance programs, or executives given an additional task. We essentially invented the role. HR typically managed the dissemination of the DII-required written code of conduct and ensured all new and existing employees received mandatory ethics orientation and training.

At Hughes Aircraft, which was an early DII signatory, I was one of the first senior ethics officials. One factor that assisted implementation was the way the industry worked together and shared best practices through the DII and other groups including the ABA, which provided training on ethics and compliance programs.

It was a different world then. Today, you have the benefit of technology in running your ethics and compliance programs. How are you leveraging technology to manage your ethics and compliance program?

Kraycinovich: Today, companies are leveraging technological advances from information gathering to conducting interviews and writing investigation reports—all with an eye toward further evolving and strengthening their ethics and compliance programs. This leveraging increases operational efficiency and reduces costs. This leveraging also addresses a common corporate concern that ethics and compliance programs are too much of a cost center.

Ethics Training

Kraycinovich: Training is an important part of any ethics and compliance program. How did the first ethics training efforts go?

Mutek: They were challenging at times, partly because they were new. Employees questioned why ethics training was necessary and why it was required only in the defense industry by the companies that signed up to the DII. Some dismissed programs as mere public relations exercises.

But, over time, acceptance grew. Acceptance was driven by improved training quality and an understanding of the value of ethics and compliance programs. The industry was in a steep learning curve, and the DII

played a key role in this regard.

Kraycinovich: How did the industry learn what type of training works best?

Mutek: Initially, the training was on ethics and the company code of conduct. It was classroom-type training. Over time, more interactive training became the norm.

My preference moved to management-led training tied to current industry issues, open discussion, and real company scenarios. There is great value in having management provide their view on the importance of ethics and compliance programs to the company, its shareholders, and employees.

The DII was and still is an important source of material to help contractors develop training plans and in implementing training.

Kraycinovich: What were some best practices that industry learned?

Mutek: We examined what needed to be done and learned the importance of regular and clear communication of the messages. Ethics and compliance messages throughout the year are important to reinforce the point and show that ethics is not just a once-a-year, check-the-box type drill.

Also, we learned that the effectiveness of the training is directly tied to how relevant that training is for the specific audience. Tailoring should consider the location of the operation and the type of work the audience is engaged in. Examining what issues have occurred in that specific workplace can give important relevance to the training.

Training provided in international locations introduced additional complexity and required significant tailoring. One memorable session in Moscow extended well into the evening as participants discussed ethical norms and their place in the international business world. After the building closed, we found a suitable Moscow venue to continue the discussions.

What are you seeing now in terms of training and best practices?

Kraycinovich: Leaders play a key role, and their involvement is important. Training needs to ensure that employees are aware of the program and its value to the company, its shareholders, and all its employees. It is more than providing training material. One best practice is to embed ethics messages in regular leadership communications.

Voluntary and Mandatory Disclosure

Kraycinovich: Let’s talk about disclosure. I know that it was a controversial topic at first. At least initially, disclosure of ethical misconduct was voluntary. Why was disclosure controversial?

Mutek: Voluntary disclosure was the most controversial DII principle. Contractors feared privilege waiver, reputational harm in making a confession, and a potential for lack of government leniency—meaning

that suspension or debarment could be the result of self-reporting.

Kraycinovich: I can see the concern whether this was more confession than compliance.

Mutek: Correct. I recall attending presentations where panelists posed the question whether a voluntary disclosure was tantamount to handing the government a roadmap to prosecute the company.

Voluntary disclosure was not invented by the DII. It was identified as a part of ethics and compliance programs in the Packard Commission.¹⁸ To aid in understanding the disclosure process and its issues, the ABA's Public Contract Law Section published its Voluntary Disclosure monograph in November 1987.¹⁹ Also, to better explain the process, the Department of Defense published its manual on the Voluntary Disclosure Program in 1988.²⁰ This manual was helpful.

Of course, this voluntary framework later changed with the 2008 FAR Mandatory Disclosure Rule,²¹ which transformed disclosure from voluntary to a regulatory obligation for most types of ethical misconduct.

A company's ethics and compliance report structure can impact the program and its ability to detect and prevent wrongdoing. If the chief ethics and compliance officer is not seen as a member of senior management, the ethics and compliance function may be perceived as lacking sufficient authority to address certain matters.

Ethics and Compliance: One Function or Two?

Kraycinovich: We often combine ethics and compliance, but the two are not the same. Was combining ethics and compliance in a single program controversial?

Mutek: Yes, because an ethics program is values-based and a compliance program is rules-based. I do recall discussions on the benefits and risks of combining a values-based system with a rules-based system. However, experience has shown that the combination does work.

Kraycinovich: For an ethics and compliance program,

does the reporting structure within the company matter?

Mutek: It can. While many programs still reside in legal departments, which is where compliance responsibility is commonly found, factors including independence, access to the board of directors, and tone from the top may matter more than formal reporting lines. Some programs operate as stand-alone entities.

Regardless of the functional reporting structure, companies can demonstrate their commitment to ethics and compliance by appointing a senior leader with a commensurate title to head the function, while also empowering him or her to take the lead and providing adequate resources.

Kraycinovich: It appears that reporting structures can raise issues. Reporting to the company's general counsel could be argued to constrain independence. Sometimes, this is stated as looking only at the *legal* aspect and not the *ethical* aspect. The legal aspect asks whether conduct violates relevant legal requirements, but the ethical aspect asks whether conduct is right, even if legal.

Mutek: I have noticed that today it is very common for the chief ethics and compliance officer to be a vice president. That gives the function a leader with a title indicating corporate authority. But that was not the case early on and often ethics and compliance were given to an executive as an added responsibility. What have you noticed?

Kraycinovich: A company's ethics and compliance report structure can impact the program and its ability to detect and prevent wrongdoing. If the chief ethics and compliance officer is not seen as a member of senior management, the ethics and compliance function may be perceived as lacking sufficient authority to address certain matters.

Additionally, companies need to ensure sufficient resources—such as investment in human capital, technology, and travel—are available to manage dynamic workloads, which encompass outreach, education, communications, and investigations.

Supply Chain and Flow-Down

Kraycinovich: It seems the DII originally focused on primes. What about suppliers?

Mutek: In 1986, the DII focused on prime contractors because prime contractors had privity of contract with the government. Prime contractors were the focus of the Packard Commission and the scandals that existed at the time that led to the creation of the DII. The initial signatories were all prime contractors, I recall.

Although suppliers were largely unaddressed at the beginning, the focus of ethics and compliance programs has broadened. Over time, scandals involving suppliers, statutory changes such as the Anti-Kickback Act,²² and the 2008 Mandatory Disclosure Rule²³ made ethics and compliance mandatory throughout the supply chain.²⁴

Kraycinovich: Did extending coverage of ethics and compliance programs to the supply chain cause issues?

Mutek: Yes, coverage of the supply chain created tension, particularly for small businesses with limited resources, and led to issues such as the “battle of the ethics codes.”

Kraycinovich: Explain that.

Mutek: A simple way to address the flow-down of ethics requirements would be to simply require that companies in the prime contractor’s supply chain agree to adopt and implement the prime contractor’s code of ethics. But attempting to flow down ethics and compliance codes developed by a prime contractor to its suppliers raised numerous issues. There were some interesting negotiations over this.

The fact that prime contractors also serve as subcontractors at different times facilitated some needed and thoughtful consideration of the requirement to flow down a prime contractor’s ethics and compliance program. As a result, the consensus was to allow subcontractors to create their own programs if the programs comply with the substance of FAR 52.203-13, which mandates a written code of business ethics and an internal control system for subcontracts—although the rule does partially exempt small businesses and commercial suppliers from the requirement to have an internal control system.²⁵ But they still need to have a code of conduct. Also, the development of tools such as the DII Small Business Toolkit helped.

Additional Benefits of Ethics and Compliance Programs

Mutek: Do you see ethics and compliance programs providing your company with benefits beyond compliance?

Kraycinovich: I do see benefits beyond the avoidance of legal and compliance problems. I believe that a strong ethical culture created by an effective program with management support can create better employee engagement. That could translate to a better reputation and greater trust. Do you agree?

Mutek: Absolutely. I recall an ethics training class a few years ago that included a discussion with attendees about how people seeking a job evaluate potential employers based on ethical reputation. In summary, a company with a record of ethical lapses could be viewed as a less-attractive employer.

Also, investors view ethics failures, including failures that could lead to suspension or debarment, as a risk factor. Ethics and compliance programs are now a standard part of M&A due diligence, and I know from experience that ethics issues have derailed at least one transaction.

Role of the ABA Public Contract Law Section

Kraycinovich: We have been discussing the DII’s role in the development of ethics and compliance programs. What role did the ABA play?

Mutek: A key one. Through programs, monographs, task forces, and comments, the Section served as a key

resource for government and industry. Fraud, waste, and abuse topics and the development of the DII were addressed in Public Contract Law Section programs during this period.

Examples of Section programs included one called the “Hazards of Contracting with the Government”; another was the “Government Crackdown on Waste, Fraud and Abuse.” Then there was a program with a catchy title of “Clean Hands ... Pure Heart ... and Confession—The New Morality in Government Contracts”; and another one was called “Procurement Integrity and Compliance: What Does It Take to Be Good?”

Kraycinovich: You mentioned the monograph created to address voluntary disclosure. Did the Section also address mandatory disclosure?

Mutek: Yes. The concept of voluntary disclosure transformed with the issuance in November 2008 of the final rule on Contractor Business Ethics Compliance Program and Disclosure Requirements.²⁶ This represented a significant governance change for contractors.

The issuance of the final rule occurred the week of the Section’s 2008 Fall meeting in Napa, California. That was during my year as Section chair. We saw the need for guidance on mandatory disclosure. At a reception during that meeting, I discussed with Robert Huffman and Frederick Levy the need for a work product to assist in compliance with the new rule. I invited them to co-chair a task force.²⁷ My invitation included two requests: first, that the task force be comprised of individuals from the public *and* private sectors so different stakeholders to this new process would be represented; and second, that the task force seek to promote a better understanding of the issues to be faced during the rule’s implementation through the creation of a work product to assist in the implementation process. Bob and Fred exceeded expectations, and the work product, *Guide to the Mandatory Disclosure Rule: Issues, Guidelines, and Best Practices*, continues to assist the public contracting community.²⁸

Kraycinovich: I believe there were comments submitted by the Section and programs on the final Mandatory Disclosure Rule as well. Correct?

Mutek: Yes. The drafts of the FAR rule on Contractor Business Ethics Compliance Program and Disclosure Requirements generated a great deal of interest. During its drafting, the Section’s programs presented experts from both the public and private sectors to facilitate an understanding of the rule, its purpose, and compliance.

The Section’s involvement included comments submitted before the issuance of the final rule. These comments were discussed at several Public Contract Law Section Council meetings as well as at Section committee meetings. The involvement of the Section in the rule’s development and implementation was extraordinary. The first proposed Mandatory Disclosure Rule was issued on November 14, 2007,²⁹ and the Section submitted

comprehensive comments that addressed key issues including the issue of statutory authority.³⁰ Several of the Section's comments were discussed in the commentary section of the second proposed rule, which was issued on May 16, 2008.³¹

The Section's *Guide to the Mandatory Disclosure Rule* remains an important publication for the public contracting community. Members of the task force provided a well-attended presentation on the Mandatory Disclosure Rule at the 2009 Section Annual Meeting.

Looking Forward

Kraycinovich: Are there still issues that remain about mandatory disclosures?

Mutek: Even though we have been living with the Mandatory Disclosure Rule and the requirements of FAR 52.203-13 for almost two decades, there are interpretation issues that still exist. The requirement to disclose hinges on whether there is "credible evidence" of violations and the "significance" of any overpayments. The problem is neither term is well defined, at least in my experience. The result is a need to engage in good judgment.

Kraycinovich: We deal with that on a regular basis.

Mutek: Today, we are seeing ethics and compliance issues that were not known when the DII was created, for example, cyber and AI-related issues. I believe that you are or will be spending time on those issues as part of your day job.

Kraycinovich: Yes, and this demonstrates that further evolution is expected.

Let's conclude by looking forward and considering where ethics and compliance programs are headed. I see that programs are shifting from defensive compliance to more strategic value creation. Predictive analytics, AI-enabled monitoring, algorithmic accountability, and behavioral science may redefine the field. The chief ethics and compliance officer is moving closer to the boardroom. Any comments or reactions?

Mutek: Ethics and compliance programs are now woven into the very fabric of corporate governance. Our industry's efforts, as seen with the creation of the DII back in 1986, provided a framework for ethics and compliance programs. That framework still exists today and continues to evolve.

I agree with you and believe that analytics and AI will play a greater role in ethics and compliance monitoring. In fact, with this technological boost, we may see the ethics and compliance function play a greater role in corporate decisions. One reason is there is more board of director review of ethics and compliance metrics. Are you seeing that?

Kraycinovich: Yes. In fact, the future may focus more on *anticipating* risk before it materializes. That shift from reactive compliance to proactive governance may define the future of ethics and compliance.

Mutek: We have discussed the evolution of ethics and compliance programs over the past 40 years. Although the tools, structures, and regulatory expectations have changed, it seems to me that the underlying objective has remained remarkably consistent. Forty years ago, the industry faced different pressures and challenges. There were issues that threatened confidence in the procurement system itself. Today's environment is different, but the central commitment still is to preserve integrity, promote accountability, and maintain trust.

Kraycinovich: One of my key takeaways is that ethics and compliance programs have evolved from reactive mechanisms designed primarily to address misconduct into proactive systems intended to cultivate an ethical culture, support sound decision-making, and mitigate organizational risk. The lessons of the past continue to shape how companies approach compliance today. As new technologies, business models, and pressures emerge, ethics and compliance programs will continue to adapt. But the core principle remains unchanged: Organizations succeed over the long term only when integrity remains central to their operations and culture. 

Endnotes

1. *About DII*, DEF. INDUS. INITIATIVE ON BUS. ETHICS & CONDUCT, <https://www.dii.org/about/about-dii> (last visited May 13, 2026).

2. *Id.*

3. Jack Smith, *\$37 Screws, a \$7,622 Coffee Maker, \$640 Toilet Seats: Suppliers to Our Military Just Won't Be Over-sold*, L.A. TIMES (July 30, 1986), <https://www.latimes.com/archives/la-xpm-1986-07-30-vw-18804-story.html>; Richard C. Gross, *Pentagon: Days of Buying \$435 Hammers Over*, UPI (June 1, 1984), <https://www.upi.com/Archives/1984/06/01/Pentagon-Days-of-buying-435-hammers-over/5904054501042/>.

4. See Airon A. Mothershed, *The \$435 Hammer and \$600 Toilet Seat Scandals: Does Media Coverage of Procurement Scandals Lead to Procurement Reform*, 41 Pub. Cont. L.J. 855 (2012).

5. *It Cost \$600, but It's Not Just Any Toilet Seat*, CHI. TRIB. (Feb. 5, 1985), <https://www.chicagotribune.com/1985/02/05/it-cost-600-but-its-not-just-any-toilet-seat/>.

6. *Operation Illwind*, FBI, <https://www.fbi.gov/history/famous-cases/operation-illwind> (last visited May 13, 2026); see also Michael Lev, *Guilty Pleas in Pentagon Fraud Case*, N.Y. TIMES (Jan. 16, 1991), <https://www.nytimes.com/1991/01/16/business/guilty-pleas-in-pentagon-fraud-case.html>.

7. 41 U.S.C. §§ 2101–2107.

8. 18 U.S.C. § 207.

9. Exec. Order No. 12,526, President's Blue Ribbon Commission on Defense Management, 50 Fed. Reg. 29,203 (July 18, 1985) (establishing the President's Blue Ribbon Commission on Defense Management); Exec. Order 12,542, President's Blue Ribbon Commission on Defense Management, 51 Fed. Reg. 587 (Jan. 7, 1986) (adjusting the delivery date for the Commission's report to December 31, 1985); see also Packard Comm'n (President's Blue Ribbon Comm'n on Def. Mgmt.), WARFIGHTING ACQUISITION UNIV., <https://www.waru.edu/glossary/packard-commission>.

10. Accession No. ADA165901, Letter from David Packard, President's Blue Ribbon Comm'n on Def. Mgmt., "An Interim Report to the President" (Feb. 28, 1986), <https://apps.dtic.mil/sti/citations/ADA165901>.

11. Letter from Pub. Cont. L. Section, Am. Bar Ass'n (Mar. 18,

1986), reprinted in *Report by the Special Committee on Voluntary Disclosure* (Aug. 1994) (Exhibit 1).

12. US SENT'G COMM'N, GUIDELINES MANUAL (establishing mitigation credit for effective compliance programs).

13. Betsy George, *Fraudulent Accounting and the Downfall of WorldCom*, UNIV. OF S.C. (Aug. 11, 2021), https://sc.edu/about/offices_and_divisions/audit_and_advisory_services/about/news/2021/worldcom_scandal.php.

14. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (imposing internal control and governance requirements on public companies).

15. See Memorandum from Larry D. Thompson, Deputy Att'y Gen. (Jan. 20, 2003); Memorandum from Paul J. McNulty, Deputy Att'y Gen. (Dec. 12, 2006); Memorandum from Mark Filip, Deputy Att'y Gen. (Aug. 28, 2008); Memorandum from Sally Q. Yates, Deputy Att'y Gen. (Sept. 9, 2015). This series of memoranda provided guidance for evaluating corporate cooperation and offering leniency.

16. *Whistleblower Program*, US SEC. & EXCH. COMM'N, <https://www.sec.gov/enforcement-litigation/whistleblower-program> (last visited May 13, 2026).

17. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010); Press Release, US SEC. & EXCH. COMM'N, No. 2013-121, SEC Announces Enforcement Initiatives to Combat Financial Reporting and Microcap Fraud and Enhance Risk Analysis (July 2, 2013), <https://www.sec.gov/newsroom/press-releases/2013-2013-121.htm>.

18. Exec. Order No. 12,526, President's Blue Ribbon Commission on Defense Management, 50 Fed. Reg. 29,203 (July 18, 1985).

19. AM. BAR ASS'N, REPORT BY THE SPECIAL COMMITTEE ON VOLUNTARY DISCLOSURE (Aug. 1994).

20. DEP'T OF DEF., OFF. OF INSPECTOR GEN., THE DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM: A DESCRIPTION OF THE PROCESS (Sept. 1988).

21. Federal Acquisition Regulation; FAR Case 2007-006, Contractor Business Ethics Compliance Program and Disclosure Requirements, 73 Fed. Reg. 67,064 (Nov. 12, 2008) (implementing the Close the Contractor Fraud Loophole Act, Pub. L. No. 110-252, §§ 6101-6103, 122 Stat. 2386 (June 30, 2008), and amplifying existing ethics and compliance programs); see also Federal Acquisition Regulation; FAR Case 2006-007, Contractor Code of Business Ethics and Conduct, 72 Fed. Reg. 65,873 (Nov. 23, 2007) (establishing the requirement for most contractors to have

a code of business ethics and conduct and creating a new FAR Subpart 3.10 and FAR clause 52.203-13).

22. Anti-Kickback Enforcement Act of 1986, Pub. L. No. 99-634, 100 Stat. 3523 (now codified at 41 U.S.C. §§ 8701-8707).

23. See *supra* note 21.

24. FAR 52.203-13 must be flowed down to subcontractors. See FAR 52.203-13(d); see also FAR 52.244-6 (listing 52.203-13 as a mandatory flow-down for all subcontracts, including subcontracts for commercial products and commercial services).

25. See FAR 52.203-13(c).

26. See *supra* note 21.

27. Anecdotal accounts (on file with author). The reception held during the PCL Section meeting in Napa just days after release of the final rule contributed to the rapid formation of the task force. Informal discussions among practitioners at the Section's Napa meeting quickly evolved into a coordinated effort to develop implementation guidance. This illustrates how rapidly the PCL Section could mobilize and respond to regulatory change.

28. See, GUIDE TO THE MANDATORY DISCLOSURE RULE: ISSUES, GUIDELINES, AND BEST PRACTICES (2010) (Robert K. Huffman & Fredric M. Levy, principal eds., Pub. Cont. L. Sec., ABA 2009). The Guide is available for purchase at <https://www.americanbar.org/products/inv/book/215207/>.

29. Federal Acquisition Regulation; FAR Case 2007-006, Contractor Compliance Program and Integrity Reporting, 72 Fed. Reg. 64,019 (Nov. 14, 2007) (proposed rule).

30. Letter from Patricia A. Meagher, Chair, Sec. of Pub. Contr. Law, to Gen. Serv. Admin., FAR Case 2007-006, Contractor Compliance Program And Integrity Reporting, 72 Fed. Reg. 64019 (Nov. 14, 2007) (Jan. 18, 2018), https://www.americanbar.org/content/dam/aba/administrative/public_contract_law/comments/ethics_contractor_compliance_program_and_integrity_reporting_nov_14_2007.pdf.

31. Federal Acquisition Regulation; FAR Case 2007-006, Contractor Compliance Program and Integrity Reporting (2nd Proposed Rule), 73 Fed. Reg. 28,407 (May 16, 2008); see also Letter from Patricia A. Meagher, Chair, Sec. of Pub. Cont. Law, to Gen. Serv. Admin., FAR Case 2007-006, Contractor Compliance Program And Integrity Reporting (Second Proposed Rule), 73 Fed. Reg. 28407 (May 16, 2008) (dated July 15, 2008) (providing comments on the Second Proposed Rule), https://www.americanbar.org/content/dam/aba/administrative/public_contract_law/comments/ethics_far_case_and_integrity_reporting_may_16_2008.pdf.

Help shape the first major revision to the ABA Model Procurement Code's ethics article since 1979

The Model Procurement Code Revision Project—a joint effort of the ABA Sections of Public Contract Law and State & Local Government Law, NASPO, and Partners for Public Good—is opening Article 12 (Ethics) for public comment.

This draft covers three areas that procurement professionals deal with constantly: restricted communications during a solicitation, vendor endorsements and the line between affiliation and endorsement, and post-employment restrictions for procurement staff. The draft has already been shaped by input from practitioners from countless organizations, government agencies, and private entities—and now it's your turn to weigh in before it gets finalized!

Whether you agree with the approach, think something's missing, or see a provision that won't work for your jurisdiction, we want to hear it.

Comment by November 30, 2026, at <https://modelprocurementcode.com/article-12-public-comment/>.