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COMPLIANCE ALERT 11-08

OIG's Authority for Excluding Officers or Managing Employees from Prosecution

A recent "Fact Sheet" from the Office of Inspector General (OIG) summarizes the authority and factors used when deciding on excluding officers or managing employees from criminal prosecution for compliance violations. The OIG gets its legal authority for exclusion from the Social Security Act.

Legal Authority: The Social Security Act grants the OIG, a nonpartisan oversight and enforcement agency, the ability to set its own exclusion enforcement policy and determines whom to exclude without direction from the Secretary (section 11228 (b)(15)). OIG informs the Secretary and the Department of Justice of significant exclusion policy decisions or cases.

Consideration Factors for Excluding Individuals from Prosecution: When determining whether to exclude an officer or managing employee from prosecution, the OIG will consider:

- circumstances of the misconduct and seriousness of the offense,
- individual's role in the company,
- individual's actions in response to the misconduct, and
- information about the company.

According to the May 10, 2011 Fact Sheet.... "The exclusions process includes advance notice and multiple levels of appeal. When OIG is considering excluding someone, OIG sends the person a written notice of intent to exclude. The person has 30 days (this may be extended upon request) to submit a written response, which OIG considers in determining whether to proceed with the exclusion. If OIG decides to exclude, OIG issues a notice of exclusion to the person. If the notice of exclusion is issued, the person has administrative and Federal court appeal rights." It is important to note that criminal convictions authorize the OIG to exclude corporate officers. However, civil settlements with no admission of guilt do not.

Source: http://oig.hhs.gov/publications/docs/press/2011/factsheet_051011.asp
http://oig.hhs.gov/fraud/exclusions/files/permissive_excl_under_1128b15_10192010.pdf (PDF)