

NADCO TRAINING

Code of Ethics and Adjudication Procedures

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Speakers

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New NADCO Code of Ethics - Agenda

- Introduction
- Why the change?
- New NADCO Code of Ethics - Walk-through
- Adjudication Procedures
- Case Examples
- Next Steps: Implementation and Training
- Q&A

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New NADCO Code of Ethics



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Why the Change?

- Existing “Trade Practice Rules” outdated
- Market has evolved significantly with new and increased pressures
- EDF-RC was our Enron... lingering negative perceptions of our industry
- Disrespectful/inappropriate communications with SBA by some members hurting industry’s relationship
- Recognition that an updated Code of Ethics is needed for a maturing industry and essential for our long term survival

Causes of Unethical Behavior

Unethical behavior can be the result of various factors, for example

- Pressure to perform (e.g. volume goals, competition, financial pressure from high voluntary prepays)
- Pressure from peers, personal loyalties, etc.
- Lack of long term perspective or failure to see it at the time
- Personal costs for doing the right thing too high
- Poor judgement
- Lack of understanding of expected organizational/professional code of conduct
- Improper and/or inadequate training

Establishing guidelines for professional conduct and training are critical

[Source: IEDC Ethics Training]

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B.A. Davis
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“It used to be all about truth and justice.
Now, mostly I fight for market share.”

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New Code of Ethics – Process for Development

- Governance Committee/Working Group formed August 2015
- Surveyed Code of Ethics of other trade organizations, looking for best practices
- Set an objective to make the new NADCO COE value-based, brief and practical/digestible
- Working group presented to NADCO Board Fall 2015, iterated and finalized based on Board feedback

NADCO Code of Ethics

Preamble:

The National Association of Development Companies (NADCO) is an association of economic development professionals who are dedicated to the highest principles of professional practice. The NADCO Code of Ethics embodies principles that are the foundation of NADCO's mission and vision. The actions of employees or agents of a certified development company will be imputed to the certified development company absent compelling evidence that the actions of the employee or agent were unknown to the management of the certified development company and that having become aware of any such action the management of the certified development company took prompt and effective corrective action to address the alleged violation.

NADCO Code of Ethics

Principles:

- *We seek to carry out our duties and responsibilities at all times in a manner that is professional, prudent and beyond reproach. We work to uphold the honor and reputation of our association and industry.*
- *We practice with integrity, honesty, fairness and respect for others.*
- *We recognize our responsibility to SBA to administer the loan programs in a manner which provides access to small businesses and accountability to the SBA.*

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Principles (continued):

- *We conduct business in a manner that is consistent with the spirit and letter of all applicable laws, regulations and rules and endeavor to uphold the trust placed in us by our small business clients, partners, SBA, and the public. We do not knowingly misrepresent facts.*
- *As economic development practitioners and lenders, we are mission-driven and work for the betterment of our small business clients and communities in which we lend.*
- *We recognize and exercise our fiduciary responsibility to our small business clients and seek to provide the highest level of transparency such that they may make informed decisions.*

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Principles (continued):

- *We operate on the basis of equal opportunity and do not deny our services to or discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, military status or gender identity.*
- *We adhere to NADCO's Conflict of Interest Policy and such other policies as may be adopted by NADCO as a condition of membership.*
- *We maintain in confidence the affairs of our clients and do not disclose confidential information without specific consent.*

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Principles (continued):

- *We recognize and accept that NADCO member organizations, including their respective directors, officers, management, employees, attorneys and agents abide and are bound by the NADCO Code of Ethics and all rulings and orders issued pursuant to them.*

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Adjudication Procedures

The Adjudication Procedures were established to:

- Provide Guidance on Reporting of Alleged Violations;
- Establish a Fair and Transparent Process to Determine an Alleged Violation; and
- Establish Consequences as a Result of a Violation.

Adjudication Procedures

Goals:

- Require Specificity for any Allegation;
- Provide a Fair and Thorough Forum;
- Promote Accountability;
- Promote Consistency in Adjudication;
- Graduated Levels of Adjudication/Disposition;
- Preference for Remediation/Training not Sanction;
- Promote Fairness, Integrity and Compliance

Adjudication Procedures

Vice Chair:

- Receives Allegations or Questions
- Maintains Confidentiality
- Informs CDC – President/ ED / Board Chair
- Works to Identify a Resolution – No Action or Address Informally
- Referral to Adjudication Committee

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Adjudication Procedures

Composition of Adjudication Committee:

- Vice Chair;
- Three Board Members; and
- Five CDC Representatives from CDCs not represented on the Board

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Adjudication Committee

Action by Adjudication Committee:

- Investigate Reports/Complaints;
- Maintains Confidentiality;
- Provide an Opportunity to Be Heard;
- Determine Facts;
- Recommend Training; and
- Report Finding and Recommend Sanctions to Board of Directors.

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Adjudication Procedures

NADCO Board Action:

- Reject Report of Adjudication Committee;
- Direct Further Investigation;
- Accept Selected Findings or Recommendations of the Adjudication Committee; and/or
- Determine Sanctions.

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Adjudication Committee

Possible Actions/Sanctions:

- No Sanctions
- Admonition
- Censure
- Suspension of NADCO Membership; and/or
- Revocation of NADCO Membership

Case Examples



Case Example 1

BDO Joe receives a 504 referral from ABC Bank. BDO Joe is having drinks with a former colleague at XYZ Bank and mentions the deal to his banker friend. His friend pitches the borrower and XYZ Bank wins the deal.

Has a violation of NADCO's Code of Ethics occurred?

Case Example 2

BDO Jane is pitching her CDC to a new banking team. When asked how her CDC compares to competing CDCs, Jane describes one of the competing CDCs as way too conservative with their underwriting, another CDC as having an incompetent market rep and a third as having botched a large deal recently that cost the bank partner the customer relationship.

Has a violation of NADCO's Code of Ethics occurred?

Case Example 3

In preparing a 504 deal for loan committee review, an underwriter at CDC-X discovers that one of the operating company owners was involved in a fraud scheme several years ago. Knowing that this may cause the loan to be denied and the BDO on the deal will be unhappy, the underwriter omits this information from the write-up and application.

Has a violation of NADCO's Code of Ethics occurred?

Case Example 4

BDO Jennie works hard to get a 504 deal approved for her catering company borrower. After the deal closes, Jennie books her daughter's wedding reception with the same caterer for a substantial discount.

Has a violation of NADCO's Code of Ethics occurred?

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Case Example 5

Lenny the Loan Packager occasionally provides packaging services for ABC CDC. Lenny pitches to borrowers that he can get them approved in almost all circumstances by showing them how to fill out SBA's forms, including the 912.

Should ABC CDC be concerned about NADCO's Code of Ethics with respect to Lenny's services?

Case Example 6

Becky the BDO with Y-NOT CDC works in a very competitive market. To get an edge, she is offering bankers a part of her commission for referrals they bring her. She rationalizes that it doesn't cost the borrower or her CDC any money, but is simply a way of sharing her own income.

Has a violation of NADCO's Code of Ethics occurred?