# Governing Body's Role In Program Integrity
# Webinar # 19
## December 10, 2013

# The Fine Print

❑ OMIG acknowledges that this presentation contains ideas and some materials from many sources.

❑ OMIG assumes that you are here to learn what the right thing is, so we should try to help.

❑ These slides are not intended to provide legal advice.

# Today's Agenda

❑ As a Board Member, Why Should I Be Interested in Program Integrity and Compliance?

❑ Governing Board's Role in Program Integrity

❑ What is a Compliance Program, Anyway?

❑ How the Governing Board Can Have a Positive Impact

❑ Touch Points Between the Governing Body and Compliance

# OMIG BACKGROUND

Fighting Fraud.  Improving Integrity and Quality.  Saving Taxpayer Dollars.

# OMIG's Mission Statement

Our mission is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high-quality patient care.

# AS A BOARD MEMBER, WHY SHOULD I BE INTERESTED IN PROGRAM INTEGRITY AND COMPLIANCE?

# Some Statutory – Regulatory Reasons

NYS Social Services Law Section 363-d subd. 2 and 18 NYCRR Section 521.3(c) require:

❑ Periodic reports must be made directly to the governing body on the activities of the compliance program.  This reporting should be completed by the compliance officer.

❑ Governing body members must be oriented and educated on compliance.

❑ Communication lines must exist for the governing body members to the compliance officer.

# Some Statutory – Regulatory Reasons (Continued)

Federal Sentencing Guidelines at §8B2.1(a) require that to have an effective compliance program, the organization shall:

(1) exercise due diligence to prevent and detect criminal conduct; and

(2) promote an organizational culture that encourages ethical conduct and commitment to compliance with the law.

# Some Statutory – Regulatory Reasons (Continued)

Federal Sentencing Guidelines at §8B2.1(b) require:

(1) the organization to establish standards and procedures to prevent and detect criminal conduct

(2) (A) the organization's governing authority to be knowledgeable about the content and operation of the compliance and ethics program and exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program

# Some Statutory – Regulatory Reasons (Continued)

Federal Sentencing Guidelines at §8B2.1(b) require:

(3) the organization to use reasonable efforts to bar from positions of substantial authority, individuals whom the organization knew, or should have known through due diligence, have engaged in illegal activities or conduct inconsistent with an effective compliance and ethics program

(4) the organization to take reasonable steps to periodically communicate to the governing board, executives, employees and agents, its standards and procedures  and other aspects of its compliance program

# GOVERNING BOARD'S ROLE IN PROGRAM INTEGRITY

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# Governing Board's Duties Related to Program Integrity

Governing boards have many legal and contractual duties, among them:

Fiduciary Duty:  This means that the board member will act for the financial benefit of the organization.

Duty of Care:  The board member will use a level of care that an ordinarily prudent person would exercise in a similar position when faced with similar circumstances.

Duty of Loyalty:  This is an expectation that the governing board member will act in a manner he/she reasonably believes to be in the best interests of the organization.

# Characteristics of Strong Board Members

Among the characteristics of a governing board member who is meeting these duties are:

- ❑ Honesty, openness, and fairness
- ❑ Curiosity – asking why
- ❑ Objectivity – considering all perspectives or explanations

# Compliance Function Reporting Structure Should Be Meaningful

Establish a meaningful compliance function and reporting structure:

❑ Reporting to board or appropriate board committee

❑ Limiting conflicts of interest in reporting/oversight

❑ Using compliance management committee with appropriate high-level management to address compliance issues

❑ Identity of the compliance officer should not be a corporate secret

# Participate in Development of Assessment and Work Plan

Some Best Practices:

❑ OMIG recommends an annual assessment to determine gaps between requirements and program.

❑ Make sure that results of assessment and issues being reported during the year will drive the work plan.

❑ Ask questions – If it does not make sense, it may be senseless.

# Develop Compliance Program Performance Milestones

Establish milestones:

❑ Milestones should be based upon the assessment and a gap analysis.

❑ Use concepts in strategic planning to address compliance initiatives, improvements, and opportunities for enhancement.

❑ Measure what you do:  Things that get measured get done.

# Address Compliance-Related Issues with Management

Ensure executive session with compliance officer takes place to address compliance-related issues with management:

❑ Scheduled executive board sessions with compliance officer allow for a free flow of information without potential for conflict.

❑ Meaningful and rigorous conflict-of-interest process can maximize board knowledge of possible issues.

❑ Organizational support of compliance function can be tested.

**WHAT IS A COMPLIANCE PROGRAM ANYWAY? (WHAT SHOULD I BE LOOKING FOR?)**

18

# Components of a Compliance Program

The Compliance Plan Document:

❑ Sets out compliance expectations as embodied in a code of conduct or code of ethics

❑ Provides guidance on how compliance issues are identified, investigated, and resolved

❑ Identifies reporting and communication lines to and from the compliance officer to the governing board, management, employees, and critical contractors

❑ Addresses the eight elements of a compliance program

# Evidence that Compliance Program is Operational

Evidence of an operational program:

❑ Self assessments and risk assessments of compliance/program integrity weaknesses

❑ Useful tool in developing work plans

❑ Regular review and updating of compliance documents and policies

❑ Self disclosures

❑ Reports on the results of investigations and status of plans of correction

❑ Regular training and communication on compliance

# Elements of Mandatory Compliance Programs
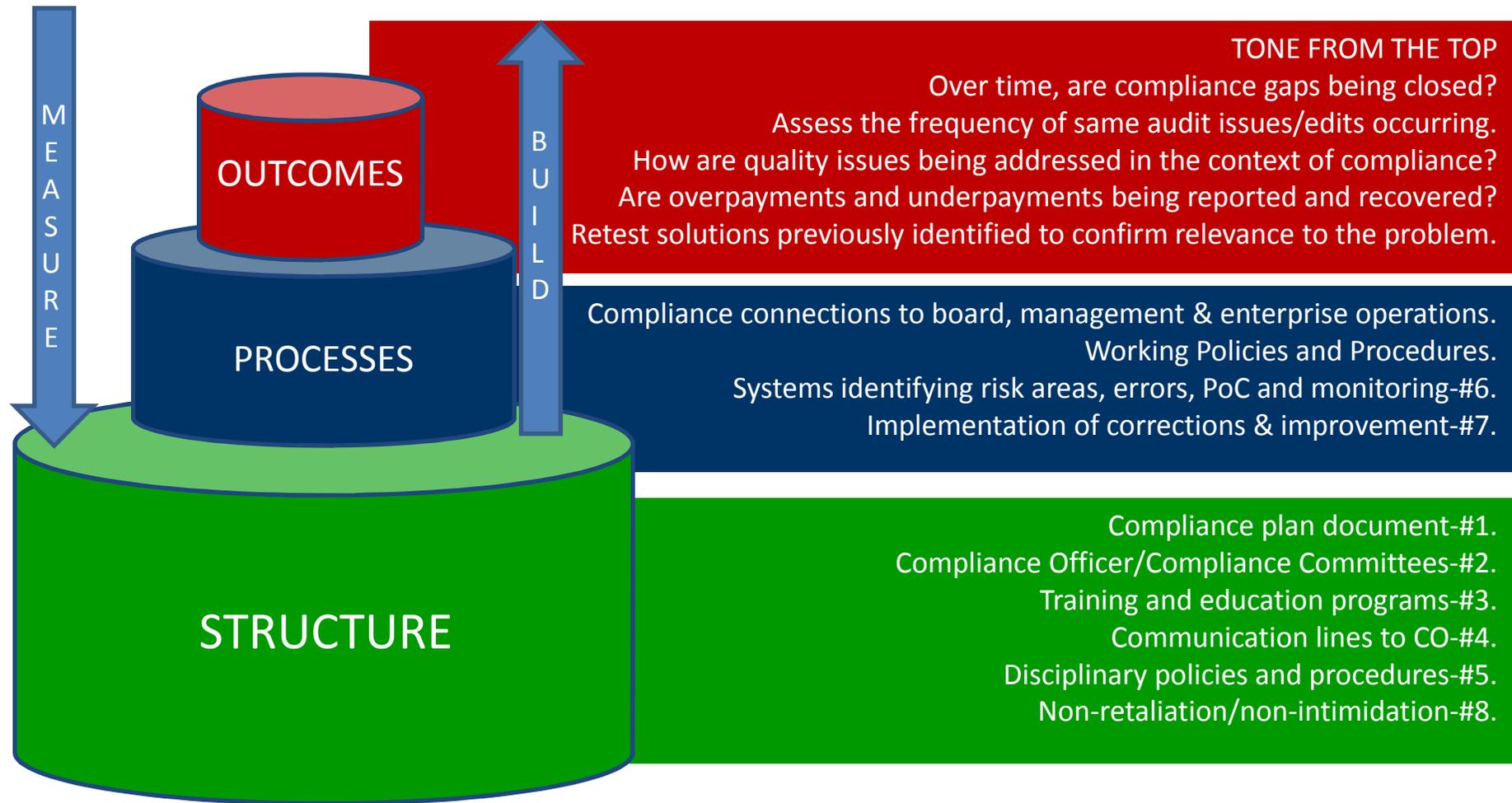
Compliance Programs shall include the following eight elements: SSL §363-d. sub 2 and 18 NYCRR § 521.3 (c)

- ❑ Element 1: Written Policies and Procedures - Code of Conduct/Ethics

- ❑ Element 2: Designation of Compliance Officer – Employee vested w/ responsibility

- ❑ Element 3: Training and Education

- ❑ Element 4: Communication Lines to the Compliance Officer/Function

# Elements of Mandatory Compliance Programs (Continued)

❑ <u>Element 5</u>: Disciplinary Policies

❑ <u>Element 6</u>: Identification of Compliance Risk Areas and Non-Compliance

❑ <u>Element 7</u>: System of Responding to Compliance Issues

❑ <u>Element 8</u>: Policy of Non-Intimidation and Non-Retaliation

# How to Build and Measure a Compliance Program for Effectiveness

MEASURE

BUILD

OUTCOMES

PROCESSES

STRUCTURE

**TONE FROM THE TOP**
Over time, are compliance gaps being closed?
Assess the frequency of same audit issues/edits occurring.
How are quality issues being addressed in the context of compliance?
Are overpayments and underpayments being reported and recovered?
Retest solutions previously identified to confirm relevance to the problem.

Compliance connections to board, management & enterprise operations.
Working Policies and Procedures.
Systems identifying risk areas, errors, PoC and monitoring-#6.
Implementation of corrections & improvement-#7.

Compliance plan document-#1.
Compliance Officer/Compliance Committees-#2.
Training and education programs-#3.
Communication lines to CO-#4.
Disciplinary policies and procedures-#5.
Non-retaliation/non-intimidation-#8.

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# HOW THE GOVERNING BOARD CAN HAVE A POSITIVE IMPACT

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# ACEES

Tone from the Top is Critical to Any Program Integrity Activity

The Board should lead with the ACEES:

Accountability

Communication

Ethical Business Practices

Engagement

Supportive

# Board Accountability in Compliance

Accountability goes both ways:

❑ Holding appropriate constituencies accountable for program integrity and compliance failure

❑ Expecting transparency in program integrity operation

❑ Board action taken in appropriate and measured fashion as necessary

# Board Communication in Compliance

Communication goes both ways:

❑ Expect communication from compliance officer and management on compliance issues

❑ Expect transparency in program integrity operations

❑ Board interaction in communication

# Board Ethics in Compliance

Ethical business practices must be part of the organizational culture:

❑ Delivering a clear and consistent message that "The right way is the only way."

❑ Understanding why it occurred is different from Rationalizing why it occurred.

❑ Written rules and unwritten rules must create a climate of trust where everyone knows decisions are made based upon a set of shared values.

# Board Engagement in Compliance

Engagement is active:

❑ Reasonableness – Does the action proposed make sense? Is the investigation complete?

❑ Due care – Is decision-making fully informed/is reasonable care being brought to the oversight function?

❑ Concern for the legitimate goals of the organization – Does a conflict of interest exist with the governing board members' or other executive's or board member's personal self-interest?

❑ Expectations – Are expectations clear, reasonable, communicated and checked?

# Board Support for Compliance

Support is not limited to affirming investigations and plans of correction, it also includes:

❑ Establishing a clear realistic budget for compliance – compliance supports a Board's control structures

❑ The compliance budget should be realistic and include more than just the salary of the compliance staff:

- Education materials
- Audits, as appropriate

# TOUCH POINTS BETWEEN THE GOVERNING BOARD AND COMPLIANCE

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# Know the Compliance Officer

❑ Establish a reporting relationship to the Board

❑ Create a Board committee charged with regular interaction with the compliance officer and the compliance program

❑ Get trained on compliance and ask questions

❑ Know the staff compliment of the compliance function

❑ Know the qualifications of the compliance officer and staff

# Document Review

❑ Review the existing compliance plan document(s) against existing requirements (document review)

❑ Conduct or review a gap analysis of the documentation, including the compliance plan document, all supporting policies, procedures, and connection points

# Self Assessment

❑ Conduct or receive the results of a comprehensive self assessment of the entire compliance program (not just the documentation):

- Compliance program assessment form
- Insufficiencies, best practices, and enhancements
- Organization's program integrity history

# Testing

❑ Receive a report on the results of input from all internal and external constituencies (from governing board to line staff and medical staff to vendors) to inquire of the scope and efficacy of the implementation and operation of the compliance program.

# Work Plan

Using results of above items, approve the compliance work plan **and** budget:

❑ Do management's priorities close the gaps and promote operation of the compliance program at the most appropriate levels.

- Ideally, involve the governing board in approving/adopting the work plan.

- Maximize "buy-in" from all constituencies.

# Reporting and Fine Tuning

❑ Receive and comment on regular reports on the progress of successes and delays on the work plan

❑ Assess if all constituencies are included in the program

❑ Determine if the process should recycle.

  ▪ Establish reasonable goals for performance.

  ▪ Revisit earlier steps as appropriate.
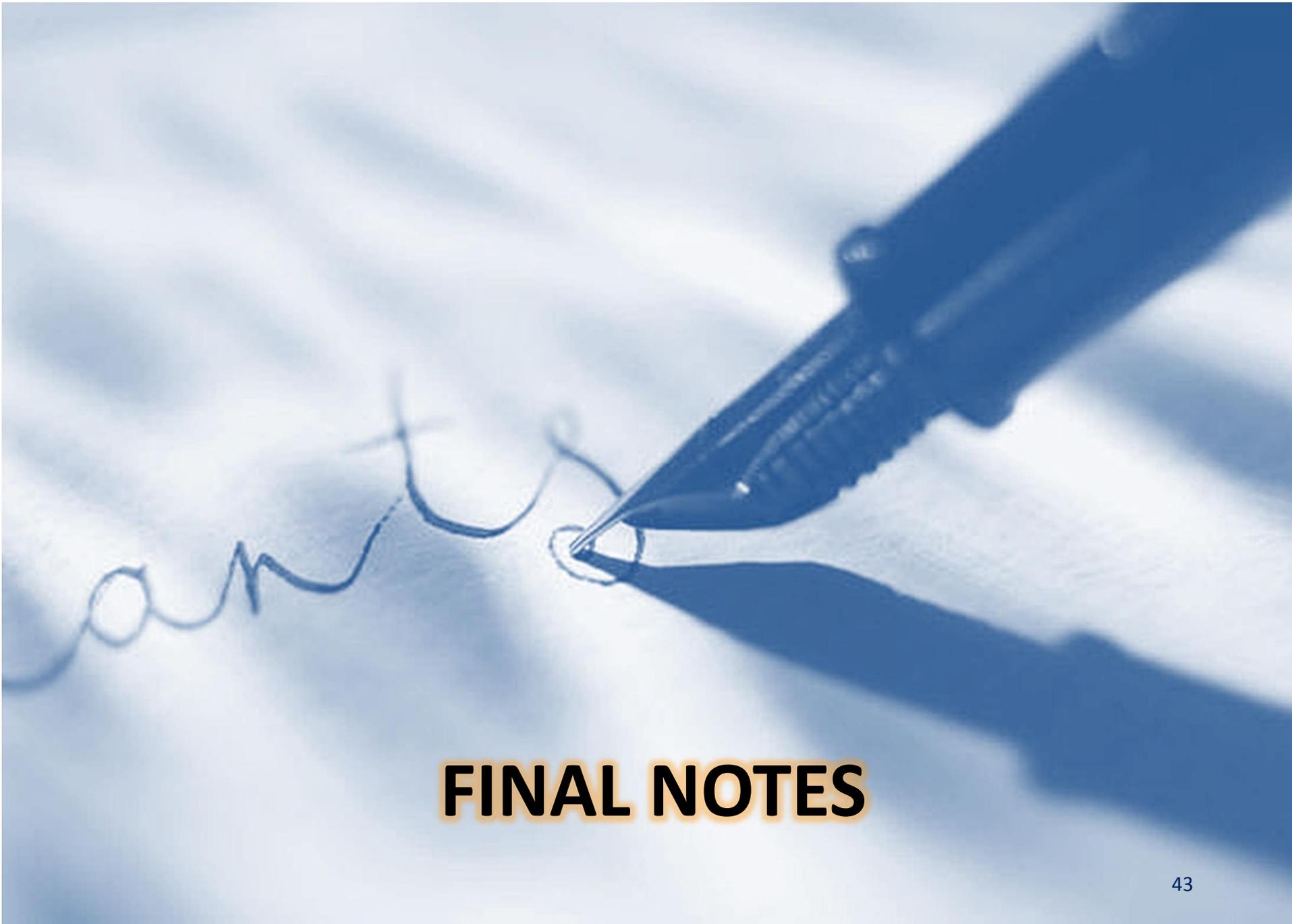
# FINAL NOTES

# How You Can Work With Us

## Fraud Hotline

Fraud Hotline
1-877-87-FRAUD

## E-mail

bmfa@
omig.ny.gov

## U.S. Mail

800 N. Pearl Street,
Albany, NY 12204

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# We Want to Hear from YOU

❑ Our new, improved Web site: www.omig.ny.gov

❑ Join our Listserv

❑ Follow us on Twitter: @NYSOMIG

❑ "Like" us on Facebook

❑ Dedicated e-mails:  information@omig.ny.gov

                                            compliance@omig.ny.gov

❑ Compliance Library
❑ More than 4,500 final audit reports
❑ Audit protocols

# Thank You

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