



Essential Governance Policies Series: Whistleblower Policies

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Webinar Control Panel



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Webinar Goals:

- Understand the need for whistleblower policies
- Learn what is legally required
- Address scope of policy
- Be ready to adopt or revise policy
- Learn how to implement effective policy

What is a Whistleblower Policy?

- Prohibits retaliation against employees and others who report information about fraud or other complaints
- Describes reporting process

Why Have a Whistleblower Policy?

- Legal requirements
- IRS Form 990 question
- Encourage accountability
- Hotlines, employee and whistleblower reports are most effective way to detect fraud
- May stop smaller problems from becoming larger
- Permits you to address internally first, rather than hearing about in the press or from call from authorities or funder

Examples of Problems Addressed

- Employment practices
 - Identifies problem employee or practice
- Childcare facilities
 - Detects unsafe conditions or child neglect
- Financial fraud
 - Often staff are only ones who know
- Reporting or eligibility fraud
 - Understate income or overstate results

Legal Requirements

- Sarbanes-Oxley Act provision applies to all employers
- Section 1107 of SOX prohibits a person from knowingly retaliating against another for disclosing truthful information to a law enforcement officer regarding an alleged federal offense
- Violation can result in fines or imprisonment up to 10 years

Legal Requirements, cont.

- American Recovery and Reinvestment Act
- State whistleblower acts
 - Usually public employers
- Many employment laws, such as
 - FLSA
 - FMLA
 - Equal Opportunity laws
- Federal False Claims Act - Qui Tam Suits

IRS Form 990

- Recent policy questions
- Does the nonprofit organization have a whistleblower policy?
- Best practice
- Audit question

Key Elements of Policy

- Purpose
- Scope
- Process
- Reporting contacts

Purpose Section

- Encourage openness
- Put potential wrongdoers on notice
- Fraud prevention
- Accountability and protection of government and charitable funds
- Enhance quality of programs
- Build trust with public and funders

Scope

- Intended audience/persons protected
 - Employees/volunteers
 - Vendors
 - Clients
- Subjects of reports
 - Financial fraud, waste, and abuse
 - Violations of program rules
 - Other illegal or harmful activity
 - Quality of programs or client services
 - Workplace safety

Recipient of Protected Report

- Only reports to government authorities?
 - Includes court and administrative claims such filing with EEOC or state
- Also internal reports?
- Disclosure to press or other external non-gov't entity
 - Social media?

Good Faith

- Limit protection to those who make report in good faith
- Prevent use of protection for those who make knowingly false allegations
 - Subject to discipline for doing so

Confidentiality Provision

- Don't guarantee confidentiality
- Better to use language like:
 - *CAA will conduct investigation discretely and only disclose identity or other information when reasonably necessary for purposes of investigation or when legally required; however confidentiality is not guaranteed.*

Anonymous complaints?

- Don't prohibit them
- But encourage disclosure of identity because it permits more complete investigation

No Retaliation

- Clearly state that neither organization nor its employees shall retaliate, or take any adverse action, based on reports made in good faith
- Retaliation includes:
 - Harassment
 - Discipline
 - Termination of employment
 - Termination of business relationship
 - Defamation/slander
- Hold staff who retaliate accountable

Mandatory Reporting?

- Some funding sources require self-reporting of fraud
- Some policies require employees or vendors to report timely report wrongdoing to superiors
- If that is required, ensure it is followed consistently

Reporting Concerns

- State to whom whistleblower should report
- Differentiate depending on nature of complaint and identity of reporter
 - Staff report to supervisor and as necessary up the chain to HR Director and ED
 - Report complaint re ED to Board
 - Vendor reports to Purchasing
 - Client reports to program head

Ensure Alternative Reporting Options

- Permit reporting above and around supervisor if employee uncomfortable reporting to supervisor
- Consider alternate positions/names if primary contact is out of office

Implement Effective Process

- Ensure quick investigation
 - Consult with attorney
 - Two people present at interviews
 - Take notes
 - Collect and prepare with documents
 - Conduct interview off-site or away from whistleblower's office
 - Follow union rules

Ensure Effective Implementation

- Consider using secure email address to receive reports or online "complaint box"
- Consider third-party hotline
- Bring board into the process for serious allegations or those involving upper management
 - Board Audit Committee reviews

Documenting Reports

- Document and log whistleblower reports
- Track to identify patterns or systemic problems

Tone at the Top

- Critical to compliance and avoidance of fraud
- Open door policy
- Reward, rather than punish, whistleblowers



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*****IMPORTANT NOTE: PLEASE READ*****

In drafting this policy, CAPLAW consulted the 2007 Head Start Reauthorization Act, the new Form 990 for the fiscal year ending December 31, 2008, OMB Circular A-110, OMB Circular A-122, the Federal Acquisition Regulations (federal procurement regulations) and whistleblower policies. This policy has not been approved by any outside authority, such as the Internal Revenue Services or the Department of Health and Human Services.

You should review this policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any applicable state law requirements and grant terms and conditions. This policy is modeled after a policy originally drafted for a Massachusetts CAA and, as a result, may contain some information specific to Massachusetts laws. Thus, we strongly recommend that when working with this policy, you consult with an attorney from your state that is well versed in the laws affecting CAAs.

This policy is an evolving document since the laws affecting this policy as cited above are constantly changing. We will update this policy as necessary and will post revised versions as soon as we possibly can so we strongly recommend checking the CAPLAW website, www.caplaw.org, for such updates on a regular basis.

Lastly, we would greatly appreciate your contacting us either by email at caplawinfo@caplaw.org or by phone at (617) 357-6915 with feedback your organization may have regarding this policy, modified versions of this policy or other policies that you would be willing to share with the CAA community.



Sample Complaint Resolution Policy for CAAs/Head Start Grantees

In keeping with the policy of maintaining the highest standards of conduct and ethics, Community Action Agency (“CAA”) will investigate complaints of suspected fraudulent or dishonest use or misuse of its resources or property by staff, board members, consultants, volunteers, or clients. In order to maintain the highest standards of service, CAA will also investigate complaints concerning its programs and services.

Staff, board members, consultants, volunteers, clients, and community members are encouraged to report suspected fraudulent or dishonest conduct or problems with services provided, pursuant to the procedures set forth below. This policy supplements, and does not replace, any procedures required by law, regulation, or funding source requirements.

Reporting. A person’s concerns about possible fraudulent or dishonest use or misuse of resources or property, or program operation, should be reported: to the _____ (if an employee or volunteer); to the Chairperson of the CAA Board of Directors (if a board member); to the CAA President/CEO (if a client or community member). If, for any reason, a person finds it difficult to report his or her concerns to such person, s/he may report the concerns directly to the President/CEO and/or the Chairperson of the CAA Board of Directors. Alternately, to facilitate reporting of suspected violations where the reporter wishes to remain anonymous, a written statement may be submitted to one of the individuals listed above.

Investigation. All relevant matters, including suspected but unproved matters, will be promptly reviewed and analyzed, with documentation of the receipt, retention, investigation, and treatment of the complaint. Appropriate corrective action will be taken, if necessary, and findings may be communicated to the reporting person and his or her supervisor if appropriate. Investigations may warrant investigation by independent persons such as auditors and/or attorneys. Investigators will endeavor to maintain appropriate confidentiality, but confidentiality is not guaranteed.

No Retaliation. No director, officer, employee, volunteer, or client who in good faith reports suspected fraudulent or dishonest use or misuse of its resources or property or complaints concerning the services it provides and programs CAA runs shall suffer harassment, retaliation, or adverse employment or other consequence. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment. This Complaint Resolution Policy is intended to encourage and enable employees and others to raise serious concerns within the organization prior to seeking resolution outside the organization. The Policy is in addition to any non-retaliation requirements contained in the CAA Personnel Policies or required by law.

This protection from retaliation is not intended to prohibit supervisors from taking action, including disciplinary action, in the usual scope of their duties and based on valid performance-related factors. Individuals making complaints must be cautious to avoid baseless allegations; employees who intentionally make false allegations are subject to disciplinary action in accordance with the CAA Personnel Policies.



Sample Whistleblower/Complaint Resolution Policy

Please note that this sample policy has not been approved by any government agency. You should review the sample policy carefully, preferably with your local attorney, to determine how to tailor it to meet your CAA's needs and the requirements of current state and federal law and grants and contracts terms and conditions.

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Staff, board members, consultants, volunteers, clients, and community members are encouraged to report suspected fraudulent or dishonest conduct or problems with services provided, pursuant to the procedures set forth below. This policy supplements, and does not replace, any procedures required by law, regulation, or funding source requirements.

Reporting. A person's concerns about possible fraudulent or dishonest use or misuse of resources or property, or program operation, should be reported: to the CAA Vice President for Administration/Human Resources (if an employee or volunteer); to the Chairperson of the CAA Board of Directors (if a board member); to the CAA President/CEO (if a client or community member). If, for any reason, a person finds it difficult to report his or her concerns to such person, s/he may report the concerns directly to the President/CEO and/or the Chairperson of the CAA Board of Directors. Alternately, to facilitate reporting of suspected violations where the reporter wishes to remain anonymous, a written statement may be submitted to one of the individuals listed above.

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No Retaliation. No director, officer, employee, volunteer, or client who in good faith reports suspected fraudulent or dishonest use or misuse of its resources or property or complaints concerning the services it provides and programs CAA runs shall suffer harassment, retaliation, or adverse employment or other consequence. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment. This Whistleblower/Complaint Resolution Policy is intended to encourage and enable employees and others to raise serious concerns within the organization prior to seeking resolution outside the organization. The Policy is in addition to any non-retaliation requirements contained in the CAA Personnel Policies or required by law.

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As approved by CAA, Inc. Board of Directors on _____

Sample Whistleblower Policies

The following are links to whistleblower policies that nonprofits have posted to the web. CAAs will benefit most by examining these policies to see the ways that organizations approach the different issues posed in designing and implementing any whistleblower policy.

American Institute of CPAS (AICPA) Sample Whistleblower Policy and Tracking Tool in AICPA Not-for-Profit Audit Committee Toolkit Downloads Part III: Audit Committee- Internal Control and Internal Audit

<http://www.aicpa.org/InterestAreas/BusinessIndustryAndGovernment/Resources/NotForProfitResourceCenter/Pages/AICPANot-for-ProfitAuditCommitteeToolkit.aspx>

Blue Avocado Model Whistleblower Policy for Nonprofits

<http://www.blueavocado.org/content/model-whistleblower-policy-nonprofits>

Cumberland Community Action Program Anti-Fraud Policy and Procedure

<http://www.ccap-inc.org/anti-fraudpolicy09.pdf>

Epilepsy Foundation Whistleblower Policy /Policy on Reporting and Investigating Allegations of Suspected Improper Activities

<http://www.epilepsyfoundation.org/aboutus/whistleblowerpolicy.cfm>

Inland Regional Center Whistleblower Policy

<http://inlandrc.org/wp-content/uploads/2011/05/whistleblowerletter.pdf>

Kimmel Housing Development Foundation Whistleblower and Protected Disclosure Policy

http://kimmelhousing.org/resources/KHDF_Whistleblowing_Policy.pdf

Missouri Ozarks Community Action Personnel Policy, See Section V. Standards of Conduct

<http://www.mocaonline.org/PDF/PERSONNEL%20POLICY%20MANUAL%202009.pdf>

National Council of Nonprofits Whistleblower Protection Policies/Samples

www.councilofnonprofits.org/resources/resources-topic/boards-governance/whistleblower-protection-policies

Nonprofit Risk Management Association Whistleblower Protections in the Nonprofit Sector/Sample

www.nonprofitrisk.org/library/articles/employment091005.shtml

SIEDA Community Action Whistleblower Policy

<http://www.sieda.org/Complaints-Fraud.htm>

St. Bede's School Pupil Safeguarding and Welfare (Child Protection) Policy

<http://www.stbedeschool.org/assets/3--pupil-safeguarding-and-welfare-policy-oct-2010.pdf>

West Central Community Action Agency Whistleblower Policy

<http://www.westcentralca.org/Whistleblower.html>

Whistleblower Online Resources

The following are websites that users of this toolkit may find helpful. CAPLAW offers these websites as resources that might be of interest, but does not warrant the accuracy of the information presented, nor does it endorse the sample policies or any products or services offered by these organizations.

Association of Certified Fraud Examiners (ACFE)

ACFE's biennial surveys of fraud examiners that demonstrate the importance of whistleblower policies in any program designed to curb fraud. <http://www.acfe.com>

Government Accountability Project (GAP)

GAP is a nonprofit organization that promotes corporate and government accountability. It receives funding from the Carnegie Foundation, the Ford Foundation, and the Rockefeller Family Fund, among other donors. This site addresses issues that go far beyond the ones that are of concern to nonprofits, but much of the material should be of interest to CAAs.

<http://www.whistleblower.org>

Independent Sector Panel on the Nonprofit Sector

Independent Sector convened a panel of national nonprofit leaders to develop recommendations to improve the governance of nonprofit entities. The Panel's final report, *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundation* and supplemental materials address the importance of whistleblower policies. <http://www.nonprofitpanel.org>

Internal Revenue Service Whistleblower Office

The IRS allows anyone to file a report alleging violations of federal tax laws. This website explains program details and how to file a claim. <http://www.irs.gov/irs/article/0..id=179207.00.html>

National Conference of State Legislatures (NCSL)

NCSL maintains a website listing whistleblower laws on a state-by-state basis. The listing includes a citation, coverage, and a brief summary of the provisions. The list was compiled in 2005 and was updated in November 2009. In several cases, the citations are out of date, but the list is a good starting point for identifying whistleblower laws for a particular state.

<http://www.ncsl.org/?tabid=13390>

Taxpayers Against Fraud

Taxpayers Against Fraud is a nonprofit organization that maintains a website providing information about Federal False Claim Act and *qui tam* litigation. <http://www.taf.org>

United States Department of Labor

This site includes compliance materials prepared by the DOL and other agencies and a list of applicable federal laws and regulations pertaining to whistleblowers.

<http://www.dol.gov/compliance/laws/comp-whistleblower.htm>