

Policies in Practice: Complying with the CSBG Organizational Standards
Webinar Four: Record Retention Policy

Thursday, June 4, 2020

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Agenda

- Why does my CAA need a record retention policy?
- What is a record retention policy?
- What does CAPLAW's sample record retention policy cover?
- How should we use CAPLAW's sample record retention policy?

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| 2



Why Does My CAA Need a Record Retention Policy?

Why Have a Record Retention Policy?

- **Comply** with laws
- **Protect** against liability
 - Statute of limitations
 - Litigations and claims
- **Respond** to requests for information
 - E.g., general public, audits, monitoring

Why Have a Record Retention Policy? It's Required!

CSBG Organizational Standard 8.13

Private

The organization has a written policy in place for record retention and destruction.

Public

The department follows local government policies for document retention and destruction.

Why Have a Record Retention Policy? Legal Requirements

- Uniform Guidance
 - 2 C.F.R. § 200.333; 45 C.F.R. § 75.361
- Sarbanes-Oxley Act of 2002
 - Criminal offense to alter or destroy a document with the intent to obstruct or influence an actual, threatened or pending investigation or proper administration of any matter within the jurisdiction of any federal dept. or agency [18 U.S.C. § 1519](#)
 - Punishable by fine and/or imprisonment up to 20 years (18 U.S.C. § 1519)
- Takeaway
 - Nonprofit employers must have a way to identify and retain records and a process for destroying them

Why Have a Record Retention Policy? Legal Requirements

- Other federal laws
 - e.g., Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), Employee Retirement Income Security Act (ERISA), etc.
- State laws
 - e.g., breach of contract, wrongful termination

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| 7

Why Have a Record Retention Policy? IRS Form 990 and Best Practice

- IRS Form 990
 - “Did the organization have a written document retention and destruction policy?”
- Part VI, Sec. B, Line 14
- **Best practice is to plan for:**
 - Future audits and tax assessments
 - Potential claims and litigation
 - What are the statute of limitations?

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| 8



What is a Record Retention Policy?

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9

Record Retention Scenario

Darrell is an assistant program director just about to complete his first year at CAA. He manages aspects of the Weatherization program and has recently been contacted by the state Weatherization office. The state office disputes costs related to 6 service contracts with vendors for weatherization projects 2 years ago, saying those contracts are missing from CAA's file. The state plans to disallow the costs associated with the contracts. Darrell vaguely remembers some mention of record retention during his orientation, but is unsure if records of contracts are kept, and if so, where they might be.

What should Darrell do in this situation?

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10

What is a Record Retention Policy The Basics

- **Introduction/purpose**
- **Scope/Coverage**
 - Applies at least to employees, directors and officers
 - Spells out which records covered
- **Responsibility**
 - Assigns duties
- **Operational procedures**
 - Establishes destruction process, litigation holds, handling of electronic or paper, onsite, offsite, etc.
- **General and specific retention periods**

What is a Record Retention Policy? The Goals

- **Put the organize in organization!**
- Protect organization from liability
- Facilitate effective and efficient operations
- Eliminate uncertainty
- Establish consistency

CAPLAW Sample Record Retention Policy

<https://caplaw.org/resources/modelpolicies.html>



What Does CAPLAW's Sample Record Retention Policy Cover?

What Does It Cover?

- Introduction / Purpose / Scope
- Retention Operational Guidelines
- Record Retention Period
- Document Destruction and Litigation Holds
- Failure to Comply
- Specific Record Retention Periods

What Does It Cover?

Introduction and Purpose and Scope

- What we are doing here
- CAA retains and destroys records
- Scope of coverage
 - Defines “Records”
 - CAA employees, officers, directors

What Does It Cover?

Retention Operational Guidelines

- **What form is used?**
 - Electronic or hard copy; if electronic, consult IT
 - Ensure safety of records and that they're backed up
- **Who is responsible for daily compliance?**
 - Program directors or others
- **Who conducts oversight and monitoring?**
 - Chief Operating Officer or other employee
 - Committee
- **What information and processes do you include?**
 - Identification, labeling, contact info
 - Handling of confidential information (PII)
 - Ongoing review and follow-up

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| 17

What Does It Cover?

Record Retention Period

- Address different retention periods that may apply to same record
 - Easier and potentially safer to follow most stringent
- Acknowledge programmatic/business (non-legal) retention permissible
- General record retention periods applicable to CAAs
- Consider adding additional year to retention periods required by law

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| 18

What Does It Cover? Record Retention Period

- **Federally funded projects**
 - Dictated by Uniform Guidance (+ 1)
 - Records pertinent to federal award
 - Permanently for records prior to December 26, 2014
 - Exceptions include written notice from funding source/
pending litigation/audits/investigations

- **State funded projects**
 - Retention period will be based on state law and/or
grant/contract provision (+1)

Record Retention Scenario

Three years have passed since Darrell resolved the issue with the Weatherization program. Since that time, he has been promoted to Weatherization program director at CAA. He recently received a call from the Legal department. One of the vendors CAA last contracted with 5 years ago has claimed it was underpaid and has sued CAA for a breach of the contract. Legal would like Darrell to submit to them all documentation related to the contract, but Darrell seems to remember that records related to federal awards need only be retained for 3 years. He is worried the records have been destroyed.

What should Darrell do in this situation?

What Does It Cover? Record Retention Period

- **Contracts with consultants, businesses, and other private parties**
 - Consult state contract law
 - Statute of limitations

What Does It Cover? Document Destruction

- Records are meant to be broken
- Unnecessary CAA records are meant to be destroyed
- Unnecessary CAA records that contain PII are meant to be shredded
 - PII includes names, SSN, bank information, birth dates, etc.
- Remember, this is a record retention policy, **not a record hoarding policy**

What Does It Cover? Litigation Holds

- Sarbanes Oxley and the Uniform Guidance
- No record that relates to any threatened or pending litigation, claims, audits, or investigations involving the CAA may be destroyed
- Potential for criminal liability

**FAILURE TO COMPLY WITH A LITIGATION HOLD MAY
RESULT IN SIGNIFICANT RISK, EXPOSURE OR LIABILITY
TO CAA.**

What Does It Cover? Failure to Comply

- Pros/Cons of failure to comply provision
 - Adds weight to policy
 - But consider enforcement potential, resources
 - If included, follow through with appropriate disciplinary action

What Does It Cover?

Specific Record Retention Requirements

- Includes periods for the following types of records:

Corporate/Operational	Human Resources
Financial/Accounting	Public Information
Legal	Proposals and Fundraising
Insurance	Executive Office
Property	IT/Office Services/Administration

What Does It Cover?

Specific Record Retention Requirements

- Best practices and legal requirements
- Common records
- Responsible party
- Permanent vs. other retention periods
- Beginning of period
- Must customize with assistance of local counsel!**

What Does It Cover? Specific Record Retention Requirements

Human Resources Records

The following Records shall be retained in the Human Resources department. The Record retention period shall begin after the termination of employment (T) of the following, unless noted otherwise.

	Retention Period
Discrimination and wage claims	P
Pension Records	P
Personnel file*	T+7 ²⁶
Benefits Records	T+7 ²⁷
Criminal background check Records for hired employees	T+7
Job descriptions	T+7

What Does It Cover? Specific Record Retention Requirements

- NOT and exhaustive list
- Consider what to expand upon and what to remove
- **Must customize with assistance of local counsel!**



How Should We Use CAPLAW's Sample Record Retention Policy?

Use the Sample to Revise Your Existing Policy

- Modify based on unique needs of your CAA
- State laws matter - **consult a state attorney!**
- **[Bracketed text]** – Customize for your CAA and then delete brackets
- Annotations¹
 - ¹**Read them! – And then delete them**
- Remember, if multiple retention periods apply to the same record, consider using longer period

Implementing the Policy Takeaways

- Consider a committee to oversee policy development process
- Designate one person at the organization to oversee and monitor compliance with the policy
- After implementation, seek feedback from those doing the work

Implementing the Policy

- Set the tone at the top
- Communicate about it
- Train on it

Follow AND Enforce!

Questions?

This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0467-03.

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