


Policies in Practice: Complying with the CSBG Organizational Standards
Webinar One: Whistleblower Policy

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Nonprofit Justice Organizing Agency, 501(c)(3)

 <p>Webinar One: Whistleblower Policy Today's Webinar</p>	 <p>Webinar Two: Conflict of Interest Policy Thursday, March 19, 2020</p>
 <p>Webinar Three: Procurement Policy Thursday, April 30, 2020</p>	 <p>Webinar Four: Record Retention Policy Thursday, June 4, 2020</p>

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Agenda

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



Why Does My CAA Need a Whistleblower Policy?

Whistleblower Scenario

Lewis is a vendor who has been contracted to work on all of CAA's home weatherization projects. Yesterday, while reviewing paperwork at a jobsite with the CAA's weatherization program manager, Rob, he noticed an error in the number of total home weatherizations recorded for the year. Though his records show that he invoiced the CAA for 15 home weatherization projects, the CAA's records claimed 24. When he brought it to Rob's attention, Rob simply said with a wink, "Let's not make trouble, it looks right to me." Rob then quickly packed up his things and left. Since the exchange, Lewis has been concerned about the inaccurate recording and Rob's unwillingness to set the record straight. He's worried about what it could mean for his business as well as the CAA and its work. He also doesn't want to damage his business relationship with the organization. He has little contact with others at the organization, however, and is uncertain about who to convey his concerns to.

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Whistleblower Scenario Poll #1

- **As the CAA's vendor, how should Lewis handle this situation?**
 - A. Report his concerns to the press.
 - B. Repeat his concerns to Rob.
 - C. Consult CAA's whistleblower policy.
 - D. Send an email to the CAA's ED outlining his concerns.
 - E. Threaten to report Rob for fraud unless he gets a cut.

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Why Have a Whistleblower Policy?

Encouraging and protecting whistleblowers strengthens organizations.

- Important governance tool
- Fosters openness and accountability
- Stops small problems from becoming big ones, such as:
 - Problem employees and practices
 - Unsafe conditions or child neglect
 - Fraud or misappropriation
- Addresses an issue internally first, before it hits the press or you get a call from the authorities

Why Have a Whistleblower Policy?

It's Required!

CSBG Organizational Standard 7.7

Private

The organization has a whistleblower policy that has been approved by the governing board.

Public

The department provides a copy of any existing local government whistleblower policy to members of the tripartite board/advisory body at the time of orientation.

Why Have a Whistleblower Policy?

Legal Requirements

- Sarbanes-Oxley Act of 2002
 - Makes retaliation against all corporate (including private nonprofit) whistleblowers a federal criminal offense
 - Punishable by fine and/or imprisonment up to 10 years (18 U.S.C. § 1513(e))
- Takeaway
 - Nonprofit employers must have a way to protect whistleblowers from retaliation

Why Have a Whistleblower Policy?

Legal Requirements

- State whistleblower laws
- Federal laws protect individuals who report violations:
 - Fair Labor Standards Act (FLSA)
 - Family and Medical Leave Act (FMLA)
 - Occupational Safety and Health Act (OSHA)
 - Americans with Disabilities Act (ADA)
 - Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Why Have a Whistleblower Policy?

IRS Form 990

- IRS asks:
 - “Did the organization have a written whistleblower policy?” (Part VI, Sec. B, Line 13)
- Best practice
- Audit question



What is a Whistleblower Policy?

What is a Whistleblower Policy?

Written policies and procedures of an organization for resolving complaints and protecting whistleblowers.

- Whistleblowers may be:
 - Employees
 - Contractors
 - Volunteers
 - Board members
 - Clients
 - Others?

What is a Whistleblower Policy?

- The Basics:
 - Encourages individuals to report wrongdoing/fraud
 - Prohibits retaliation
 - Describes processes for reporting and investigating complaints

CAPLAW Sample Whistleblower Policy Updated September 2019



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

CAPLAW Sample Whistleblower Policy



https://caplaw.org/resources/modelpoliciesDocuments/CAPLAWSampleWhistleblowerPolicy_Sept2019.docx

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SAMPLE WHISTLEBLOWER POLICY

This sample whistleblower policy was developed by Community Action Program Legal Services, Inc. ("CAPLAW") and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services. You should review this sample whistleblower policy thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization. CAPLAW strongly recommends that when working with this sample whistleblower policy, you consult with an attorney in your state who is well-versed in state or local whistleblower laws.

This sample whistleblower policy contains bracketed text as well as endnote annotations that correspond to specific provisions. These are intended to help CAAs better understand some key options available when modifying the sample policy and when adapting it to meet the different needs of individual CAAs. Any bracketed text and endnotes should be reviewed and deleted when finalizing the whistleblower policy.


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https://caplaw.org/resources/modelpoliciesDocuments/CAPLAWSampleWhistleblowerPolicy_Sept2019.docx

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Tools for Top-Notch CAAs



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https://caplaw.org/resources/PublicationDocuments/CAPLAW_TopNotchToolkit_october2011_section6.pdf

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What Does CAPLAW's Sample Whistleblower Policy Cover?

What Does It Cover?

- Introduction / purpose
- Good faith
- Reporting
- Confidentiality
- Investigation
- No retaliation

What Does It Cover?

Introduction and Purpose

Introduction and Purpose. In keeping with the policy of maintaining the highest standards of conduct and ethics, [Name of Community Action Agency] (“CAA”) will investigate complaints of suspected wrongdoing occurring within its programs and services; fraudulent or dishonest use or misuse of its resources or property; violations of agency policy; and violations of local, state, and federal law (each, “Suspected Wrongdoing”). Employees, contractors, board members, volunteers, clients, and community members are encouraged to report all suspected wrongdoing pursuant to the procedures set forth below.

This policy supplements, and does not replace, the CAA's unlawful harassment and discrimination policy and/or any other complaint resolution/grievance policy, and any procedures required by law, regulation, or funding source requirements.

What Does It Cover?

Introduction and Purpose

- Introduce what the policy covers, define scope
- Encourage openness from the outset
- Put potential wrongdoers on notice
- Promote accountability and protection

What Does It Cover?

Good Faith

Good Faith. A person reporting concerns under this policy must act in good faith and have reasonable grounds for believing that the information reported indicates that Suspected Wrongdoing has occurred. A person who makes an allegation maliciously or with good reason to believe that the allegation was false will be subject to disciplinary action, up to and including termination of employment.

- Reports should be made in good faith and based on reasonable grounds.
- Frivolous and malicious complaints:
 - Consume time and resources and deflate morale
 - May subject reporters to disciplinary action

Whistleblower Scenario Revisited

- Assume that Lewis is an employee in the CAA's home weatherization program, not a vendor. Yesterday at the jobsite, he overheard Rob and the CAA's executive director laughing about changing the records to claim 24 home weatherization projects instead of 15.
- Lewis has decided that he needs to report the misconduct but is unsure to whom he should report. How could the CAA's whistleblower policy help him?

Whistleblower Scenario Poll #2

- How could a whistleblower policy help Lewis report his concerns?
 - A. Allow employees to report alleged ED misconduct to the board.
 - B. Designate a compliance officer to accept reports.
 - C. Encourage whistleblowers to report at staff meetings.
 - D. Require complaints be submitted anonymously to the ED's office.
 - E. Both A. and B.

What Does It Cover?

Reporting

Reporting. A person's concerns about Suspected Wrongdoing [we use the defined term "Suspected Wrongdoing" from the Introduction above, but a CAA could choose to describe or provide specific examples of wrongdoing here as well] should be reported to his/her immediate supervisor. If a person is not comfortable reporting to his/her supervisor, concerns may be reported to the CAA's Director of Human Resources [or specify another individual in the Human Resources Department], the CAA's Executive Director, or the CAA's designated compliance officer [if the CAA has designated a compliance officer].

If the Suspected Wrongdoing concerns a board member or the Executive Director, the report should be made to the Chairperson of the CAA's Board of Directors. If the Suspected Wrongdoing concerns the Chairperson of the CAA's Board of Directors, the report should be made to the Chairperson of the Board's Audit Committee [or another similarly-situated board member/committee].

What Does It Cover? Reporting

- Define and/or offer examples of wrongdoing
- Two main options for where and to whom to make a report:
 1. Designated compliance officer
 2. Differentiate depending on nature of complaint and identity of reporter:
 - a. Staff report to supervisor and as necessary up the chain
 - b. Reports about the executive director should go to the board
 - c. Client reports to program head
 - d. Vendor reports to Purchasing

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What Does It Cover? Reporting

- Mandatory reporting?
- Considerations:
 - Pressures related to reporting wrongdoing by colleagues or supervisors
 - Perceived risks to reporter's job, salary, relationships
 - Capacity to enforce a mandate
 - Potential funding source requirements to report fraud
- If required, be consistent and enforce

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What Does It Cover? Confidentiality

Confidentiality. The CAA encourages anyone reporting Suspected Wrongdoing to identify himself or herself when making a report to facilitate the investigation of the Suspected Wrongdoing. However, reports may be submitted anonymously by mailing a written statement to [insert address, such as the main address of the CAA] or depositing the form at [describe a designated dropbox, if the CAA chooses to offer this option]. Reports of Suspected Wrongdoing will be kept confidential to the extent possible, but confidentiality cannot be guaranteed in light of the need to conduct an adequate investigation, to comply with all applicable laws, and to cooperate with law enforcement.

What Does It Cover? Confidentiality

- Confidentiality not guaranteed
- When to identify the whistleblower?
- Consider offering a way to report anonymously:
 - Tip line
 - Email address
 - Physical drop-off location

What Does It Cover? Investigation

Investigation. Reports of Suspected Wrongdoing will be promptly reviewed and analyzed by the CAA's designated compliance officer [consider designating a compliance officer at the CAA and identifying this person in the policy]. Appropriate corrective action will be taken if warranted by the investigation, and findings may be communicated to the reporting person, to the extent reasonably possible and consistent with any privacy and confidentiality limitation. Investigations may be conducted by independent persons such as auditors and/or attorneys at the discretion of the compliance officer, with the approval of the CAA's Executive Director or the Chairperson of the CAA Board of Directors (if the investigation involves a board member).

What Does It Cover? Investigation

- Designated compliance officer
- Investigate thoroughly
- Ensure responsive investigation
 - Consult with an attorney
 - Two people present at interviews
 - Take notes
 - Collect documents
 - Conduct interview off-site or away from whistleblower's office
 - Follow union rules

What Does It Cover? Investigation

[Investigation (continued)]

Upon receipt of a good faith report, the compliance officer shall promptly notify the individual who reported the Suspected Wrongdoing (to the extent that the individual's identity is disclosed or a return address is provided) that he/she has received the report and will investigate it.

What Does It Cover? Investigation

- Respond promptly and investigate in good faith
 - Notify the whistleblower
 - Take reports seriously
 - Conduct due diligence
- Document and log whistleblower reports
- Track to identify patterns or systemic problems

What Does It Cover?

No Retaliation

No Retaliation. No employee, contractor, board member, volunteer, client, or community member who in good faith reports Suspected Wrongdoing, or who cooperates in the investigation of Suspected Wrongdoing, shall suffer harassment, retaliation, or adverse employment or other consequences. Any such retaliation should be reported, and the CAA will promptly investigate the report, consistent with the procedures contained in this policy.

Anyone within the CAA who retaliates against another individual for reporting Suspected Wrongdoing or cooperating with an investigation of suspected wrongdoing is subject to discipline up to and including termination of employment.

What Does It Cover?

No Retaliation

- State it clearly
- Protect those who come forward and those who cooperate with investigations
- Retaliation could include:
 - Harassment
 - Discipline
 - Termination of employment
 - Termination of business relationship
 - Defamation/slander
- Hold those who retaliate accountable



How Should We Use CAPLAW's Sample Whistleblower Policy?

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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

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Implementing the Policy

- Consider a committee to oversee policy development process
- Remember CSBG Organizational Standard 7.7
 - ☑ Board review and approval

Implementing the Policy

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

Enforce!

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