



Developing a Whistleblower Policy

The heightened focus on nonprofit accountability in recent years has spurred calls for foundations and public charities to have adequate policies and procedures in place to ensure sound governance. One such policy that has become a recommended best practice for the sector is a whistleblower protection policy, yet most nonprofits still don't have one. Here are some basic issues to consider when developing a whistleblower protection policy for your grantmaking organization.

The Push for Whistleblower Protection

A whistleblower protection policy establishes procedures to ensure that your organization's board members, officers, employees and other key individuals can "blow the whistle" by reporting good faith suspicions of illegal, unethical or other inappropriate activity without fear of retaliation. The law does not require a foundation to have a whistleblower protection policy, but having such a policy is becoming increasingly critical to protect an organization from legal liability.

Congress brought renewed attention to the issue of whistleblower protection in 2002, when it passed the Sarbanes-Oxley Act in response to a wave of accounting and governance scandals at such companies as Enron, Tyco and WorldCom. Although the Act was focused on financial controls and financial management for public companies, not the charitable sector, the Act has made it easier for the government to prosecute cases where organizations and individuals (including charitable institutions and their

managers) have obstructed justice by retaliating against whistleblowers.

The nonprofit sector has also seen growing calls at the state level to implement nonprofit versions of Sarbanes-Oxley, sometimes with whistleblower provisions included. In Hawaii, for example, the state senate introduced a bill in 2007 that calls for nonprofits to provide whistleblower protection. Most states provide at least some general whistleblower protection, with some state whistleblower statutes covering both private and public employees and some covering just public employees.

In another indication of the growing importance of whistleblower protection in the nonprofit sector, the draft version of a revised Form 990 for public charities, which the IRS released for comment in June 2007, includes a new question asking nonprofits if they have a written whistleblower policy (the IRS is currently reviewing the Form 990-PF for private foundations).

For all of these reasons, national organizations like the Council on Foundations and Independent Sector recommend that all foundations and public charities adopt a whistleblower protection policy that is appropriate for the organization. However, a 2006 survey by Grant Thornton found that 60 percent of nonprofit organizations do not have a whistleblower policy (compared to just 22 percent that do not have a conflict of interest policy).

Key Elements of a Whistleblower Policy

The details of a whistleblower protection policy can vary based in part on the size of your organization and the type of grantmaking work you engage in, but here are the key elements for all organizations to consider when developing a whistleblower policy:

Persons Covered

All whistleblower policies should provide protections for an organization's directors/trustees, officers and employees who report, in good faith, suspected violations by other board or staff members. Some foundations also include volunteers, grantees, contractors and/or vendors in their whistleblower policies, as persons who are protected for reporting suspected improprieties and/or as persons whose actions should be reported under the policy.

Reporting Complaints

Your policy should describe a clear channel through which a person can report any suspected improper or illegal activity (consider listing some examples of such activities in your policy). The policy should indicate who a person can contact to submit a complaint or concern, and the preferred format for submitting complaints.

If your organization is small, you most likely need to designate just one or two people, who are trusted and easily accessible, to receive complaints. In larger organizations, the policy should provide for several alternative contacts for communication. Whistleblower policies will typically direct employees to contact their supervisory manager

with a complaint, but will list other contact options if employees are not comfortable speaking to their manager or if they feel that the manager has not properly addressed the issue. Other people in your organization to be designated receivers of complaints can include the director of human resources, the general counsel, the president/CEO, the board chair and/or the audit committee chair. You may want to consider designating different reporting channels for employees versus board members, as well as providing an option to contact someone outside the organization (such as outside legal counsel).

For an added level of confidentiality or anonymity, some larger organizations have begun contracting with third parties to operate a hotline that people can use to report issues and

Sample Whistleblower Policies

Grantmakers:

- **Greater Cincinnati Foundation**
www.greatercincinnati.org/page24407.cfm
- **Bill & Melinda Gates Foundation**
www.gatesfoundation.org/aboutus/policies/unethicalconduct
- **The David and Lucile Packard Foundation**
www.packard.org/assets/files/about_the_foundation/how_we_operate/governance/PFPolicyForReportingConcerns.pdf
- **Rose Community Foundation**
www.rcfdenver.org/reports/Whistleblower.pdf
- **Surdna Foundation**
www.surdna.org/resources/resources_show.htm?doc_id=328617

Associations:

- **Council on Foundations**
www.cof.org/Council/content.cfm?ItemNumber=4826
- **Donors Forum of Chicago**
donorsforum.org/publictrust/WhistleblowerPolicy_sample.doc
- **Independent Sector**
www.independentsector.org/about/finresp.html
- **National Council of Nonprofit Associations (Template)**
www.ncna.org/?pageID=430

concerns about possible unethical or illegal activities. EthicsPoint is one such company that operates both a toll-free hotline number and an online system for handling complaints and concerns, and it currently has more than 350 nonprofit clients. The fee for EthicsPoint's hotline service for nonprofits averages \$1,500 per year, according to the company, with the fee based on the number of employees in an organization.

Investigating & Resolving Complaints

A typical whistleblower policy will identify the compliance officer or other person who is responsible for leading the investigation and resolution of all complaints. This person is typically the president/CEO, board chair, legal counsel or the audit committee chair (with a designated back-up in case the complaint involves the compliance officer). In the Grant Thornton survey of nonprofits, three out of 10 respondents have designated a board member (31 percent) or member of executive management (30 percent) to handle complaints in their organization, while 8 percent use legal counsel. Among the 31 percent who responded "other," the most common responses were the audit committee or audit committee chair, an internal audit or compliance officer, and a third party.

Be sure to describe in the policy when and how suspected violations will be documented, investigated and resolved. Consider providing a maximum turnaround time within which the compliance officer (or other person investigating the complaint) will notify the complainant and acknowledge receipt of the reported violation (if the complainant's identity is known).

Your policy should specifically mention how your organization will handle any concerns or complaints about accounting or auditing issues. Such matters are typically referred to the audit committee, if one exists, or to the finance committee or the board.

Key concepts to incorporate in a good whistleblower protection policy include:

- **Anonymity & confidentiality:** Your policy should provide a way for people to express complaints anonymously, while pointing out that anonymity can hinder an investigation of the complaint. Otherwise, the policy should promise confidentiality to the extent possible.
- **Good faith:** Be clear in explaining that the policy is based on people acting in good faith to report concerns that they have reason to believe are true, while noting that the organization could take disciplinary action against anyone who makes unfounded allegations that are proven to have been made recklessly, maliciously or with the foreknowledge that the allegations were false.
- **No retaliation:** The policy should assure employees that your organization has a zero-tolerance policy for retaliation, and that any employee who reports possible violations in good faith will not experience abuse, harassment, threats, discrimination or any

Resources

- **How Whistle-Blower Policies Protect Charity Workers Who Report Ethics Lapses**
Chronicle of Philanthropy, April 15, 2004
philanthropy.com/jobs/2004/04/29/20040429-293229.htm
- **The Sarbanes-Oxley Act and Implications for Nonprofit Organizations**
BoardSource and Independent Sector, revised January 2006
www.boardsource.org/clientfiles/Sarbanes-Oxley.pdf
This document includes an explanation of the Act's provisions regarding nonprofits' whistleblower protection policies and procedures.

adverse employment consequences as a result. The policy can also state the possible consequences for anyone who retaliates against an individual who reports a suspected violation.

After you have completed your whistleblower protection policy, take some time to review and discuss it with your board, staff and other key individuals covered in the policy. Add the policy to your human resources and board manuals and make it a standard part of any new

board or staff orientation. Remember to review and update the policy periodically. For an added level of transparency, a growing number of grantmakers are posting their whistleblower policies on their websites.

For more information and guidance on developing a whistleblower protection policy, consult the resources on page 3 and the sample whistleblower policies on page 2.



*This article made possible by the Forum of Regional Associations of Grantmakers and its members, with valuable technical assistance provided by Andras Kosaras of the Council on Foundations. **Legal Disclaimer:** This article is not intended to provide legal, tax or other professional advice; organizations should seek expert legal, tax and/or other professional advice for their specific circumstances.*

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