

Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

Work Group Recommendations to the Panel on the Nonprofit Sector Posted for Public Comment January 24, 2005

#18: Whistleblower Protection

I. Governance and Fiduciary Responsibility Work Group Recommendations

A. Statement of Problem

Timely information regarding internal controls and financial procedures is essential to responsible nonprofit governance, yet few nonprofits have established a process for handling anonymous concerns and complaints from employees regarding questionable accounting or auditing matters. As a result, nonprofits may never correct these problems or may only address them when they are discovered under audit or when they become the subject of media attention.¹

B. Recommendations

1. All organizations should establish policies and procedures that encourage individuals to come forward with credible information on illegal or unethical practices and that protect such individuals from retaliation.
2. To facilitate the establishment of these policies and procedures, a sector-wide education initiative is recommended to educate individual nonprofit organizations about establishing such policies and procedures and to develop model whistleblower policies, as well as model notification and reporting procedures, for use by nonprofit organizations. Nonprofit organizations that have successfully implemented whistleblower policies can provide valuable guidance to other organizations.

C. Rationale

Existing legal provisions protecting individuals working in charitable organizations from retaliation for engaging in whistleblowing activities are appropriate and encourage increased transparency within charitable organizations. Violation of these provisions will subject organizations and responsible individuals to civil and criminal sanctions. Thus, it is imperative that organizations implement policies and procedures that will enable them to provide the necessary protections for whistleblowers in their organizations

¹ The Sarbanes-Oxley Act of 2002 prohibits employment-related retaliation by nonprofit organizations against whistleblowers who provide information on certain financial crimes delineated under federal law. Organizations are subject to civil penalties for violations, and individuals are subject to criminal sanctions.

Note: These recommendations have not yet been reviewed by the Panel on the Nonprofit Sector. They will be part of the deliberations by the Panel as it prepares its interim report.

Because of the great diversity of organization structure, governance and capacity within the charitable sector, whistleblower policies and procedures will be more effective if they are tailored to the needs of individual organizations rather than broadly defined by law. One size does not fit all.

D. Other Considerations

None.

II. Expert Advisory Group Comments

The Expert Advisory Group agreed with the recommendation of the Working Group but wanted to emphasize that the Sarbanes-Oxley penalties reach only employment-related retaliation for reporting on a narrow range of financial crimes defined under federal law. The Expert Advisory Group noted that state employment laws also protect whistleblowers in some situations; thus each organization's whistleblower policy needs to reflect the appropriate state(s) laws. Because the state and federal laws provide rather narrow protections for whistleblowers, the Expert Advisory Group recommends that each charitable organization adopt a policy encouraging communications about a broader category of illegal or unethical practices that address the special requirements of nonprofit organizations generally and the adopting organization particularly.