

# OFFICE OF THE STATE INSPECTOR GENERAL



## THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT *REGULATIONS, POLICIES, AND PROCEDURES MANUAL*

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OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	POLICY NO. 1000.1
Topic: Introduction	Date: August 1, 2014

## ***POLICY 1000.1: FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT PROGRAM***

### *Introduction*

#### **I. Authority**

*Code of Virginia (Code)*

*Title 2.2—ADMINISTRATION OF GOVERNMENT.*

*Chapter 30.1—The Fraud and Abuse Whistle Blower Protection Act*

[§ 2.2-3009](#) et seq.

#### **II. Objectives**

- i. Encourage state agency employees and citizens of the Commonwealth of Virginia (Commonwealth) to report instances of fraud, abuse, or other wrongdoing or other wrongdoing committed within executive branch agencies and non-state agencies.
- ii. Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed by independent contractors of state agencies.
- iii. Provide resources to pay monetary rewards to state agency employees and citizens who provide relevant information to the OSIG that results in recovery of funds on behalf of the Commonwealth.
- iv. Provide statutory protection for state employees and citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

#### **III. Definitions and Terms**

<b>Abuse</b>	An employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.
<b>Employee</b>	Any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable by, no more often than biweekly, in whole or in part, a state agency.
<b>Employee Suggestion Program (ESP)</b>	A Department of Human Resources Management (DHRM) program that encourages, recognizes, and rewards state employees for suggestions proposed that are adopted and lead to reduction in state expenditures, improvement in productivity or quality of state services, increase in state revenues, or improved or safer working conditions. The ESP is a separate DHRM initiative and is not connected with the WBPA.

<b>Employer</b>	A person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the state agency.
<b>Fraud</b>	Fraud is the intentional deception perpetrated by an individual or individuals or an organization or organizations, either internal or external to state government, which could result in a tangible or intangible benefit to themselves, others, or the Commonwealth or could cause detriment to others or the Commonwealth. Fraud includes a false representation of the facts, whether by words or by conduct. Fraud also includes false or misleading statements, or by the concealment of essential information, or information or actions that deceive or is intended to deceive.
<b>Fund</b>	Fraud and Abuse Whistle Blower Reward Fund enacted by <i>Code § 2.2-3014</i> .
<b>Good Faith Report</b>	A report of conduct defined in this chapter as wrongdoing or abuse which is made without malice and which the person making the report has reasonable cause to believe is true.
<b>Hotline Coordinator</b>	Qualified state employee, designated by a state agency director or chief administrator, responsible for conducting State Fraud, Waste, and Abuse Hotline investigations referred to the agency by the OSIG.
<b>Internal Audit Director/ Executive</b>	Director of a state agency internal audit program.
<b>Misconduct</b>	Conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.
<b>Office of the State Inspector General (OSIG)</b>	State agency charged with administration of the WBPA Fund and promulgating regulations for the Fund including determining reward eligibility requirements and procedures for filing reward claims.
<b>Reward</b>	Monetary benefit payable from the Fraud and Abuse Whistle Blower Reward Fund by the OSIG to an eligible whistle blower.
<b>Screening Process</b>	OSIG internal review procedure to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA.
<b>State Agency</b>	Any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.
<b>State Fraud Waste and Abuse Hotline (Hotline)</b>	Program established within the OSIG by Executive Order of the Governor which provides state employees and citizens with a confidential and anonymous method to report suspected occurrences of fraud, waste and abuse in state agencies and institutions, and to investigate such occurrences to determine their validity and make appropriate recommendations to address deficiencies.
<b>Whistle Blower</b>	State employee or citizen of the Commonwealth who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open and public, report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.
<b>Wrongdoing</b>	A violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	POLICY NO. 1001.1
Topic: Office of the State Inspector General Whistle Blower Protection Act Program Responsibilities	Date: August 1, 2014

## ***POLICY 1001.1: OFFICE OF THE STATE INSPECTOR GENERAL WHISTLE BLOWER PROTECTION ACT PROGRAM RESPONSIBILITIES***

- A. The Office of the State Inspector General (OSIG) is responsible for Whistle Blower Protection Act Program (WBPA Program) administration and manages the following tasks:
- Notifying agencies of WBPA Program regulations and procedures for submitting information regarding abuse or wrongdoing.
  - Conducting appropriate investigations and preparing official reports.
  - Managing the Fraud and Abuse Whistle Blower Reward Fund (Reward Fund) as mandated in *Code § 2.2-3014*.
  - Receiving and evaluating Reward Fund claims.
  - Ensuring payment of approved Reward Fund monies to whistle blowers.
  - Submitting an annual report on WBPA Program activities to the General Assembly.
- B. The OSIG's Investigative and Law Enforcement Services division is responsible for investigating alleged abuse, fraud, or other wrongdoing reported to the OSIG under the WBPA Program. The OSIG may work with executive branch agency Internal Audit Directors or Hotline Coordinators when performing WBPA Program investigations.

OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	PROCEDURE NOS. 1002.1–1002.3
Topic: Office of the State Inspector General OSIG-Specific WBPA Program Notification and Intake Procedures	Date: August 1, 2014

## ***PROCEDURES 1002.1-1002.3: OSIG-SPECIFIC WBPA PROGRAM NOTIFICATION AND INTAKE PROCEDURES***

### ***Procedure 1002.1: Notification***

1. **Annually**—The State Inspector General will send a letter via the state email directory announcing and publicizing the WBPA Program to all state executive branch agency heads and notifying them of any relevant statutory amendments or program changes.
2. **January of Each Year**—The OSIG will publicize the WBPA Program through an electronic communication to all state employees and citizens. The communiqué will:
  - Contain the requirements for reporting allegations to the OSIG under the WBPA Program.
  - Clarify pertinent differences between the WBPA Program and the State Fraud, Waste, and Abuse Hotline (Hotline) regarding the rules governing anonymity and confidentiality.
  - Explain that state employees (and citizens) may be asked to decide whether they wish to report information or concerns under the WBPA Program or via the Hotline.

### ***Procedure 1002.2: Reporting Alleged Fraud, Abuse, or Wrongdoing***

1. State employees or citizens wishing to present allegations of fraud, abuse of wrongdoing under the WBPA Program may contact the OSIG via phone, email, United States Postal Service (USPS), or fax.
2. The OSIG’s staff is available to advise state employees and citizens whether to report alleged abuse, fraud, or wrongdoing under the WBPA Program or using the Hotline.
3. The OSIG requires the whistle blower provide his/her name and lawful residence if he/she intends to file a Reward Fund claim under the WBPA Program.
4. Allegations of abuse or wrongdoing received by the OSIG via email, USPS, or fax that do not include the sender’s name and personal contact information will be managed by the Hotline, and, therefore, will not be eligible for Reward Fund monies.
5. Individuals who report information or allegations under the WBPA Program and are determined by the OSIG to meet Reward Fund eligibility requirements will be assigned a whistle blower case number.

### ***Procedure 1002.3: OSIG Receipt of Allegations of Fraud, Abuse, or Wrongdoing***

1. All reports of allegations of fraud, abuse, or wrongdoing undergo a two-step screening process.  
*Step One*

The OSIG will confirm the name and identity of individual who submits an allegation of abuse or wrongdoing, and that the individual is a citizen of the Commonwealth.

*Step Two*

The OSIG will determine whether:

- a. The allegation falls within the scope of the WBPA Program as it relates to fraud, abuse, or wrongdoing.
  - b. The allegation contains sufficient detail to initiate an investigation.
  - c. The allegation was previously reported (within a one-year time frame).
  - d. The allegation is serious or material enough to warrant dedication of OSIG's investigative resources.
  - e. The individual submitting the report intends to file a Reward Fund claim and will disclose personal identity and contact information.
2. Allegations submitted by an individual who is not a state employee or citizen of the Commonwealth, will be referred to the appropriate state agency or organization that may best address the concern(s).

Note: Allegations managed by the Hotline do not fall within the scope of the WBPA Program. Individuals reporting information under these programs are not eligible for Reward Fund monies.

OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	PROCEDURE NO. 1003.1
Topic: Office of the State Inspector General OSIG WBPA Program Investigations Process	Date: August 1, 2014

## ***PROCEDURE 1003.1: OSIG WBPA PROGRAM INVESTIGATIONS PROCESS***

1. **Detailed Written Summary and Evaluation**—The Fraud, Waste and Abuse Hotline Manager (Hotline Manager) or designee will prepare a detailed written summary that describes the allegations of fraud, abuse, or wrongdoing submitted under the WBPA Program and will evaluate the information to ensure that circumstances meet WBPA Program requirements.
2. **Confidential Tracking Number**—The Hotline Manager or designee will create a confidential tracking number for each WBPA Program case and assign the case to the OSIG’s Investigative and Law Enforcement Services division for formal investigation.
3. **Monitor Progress and Status Updates**—The Director of Investigations will monitor the progress of each WBPA investigation and provide the State Inspector General a status update within 90 days of assignment and every 90 days thereafter, until completion.
4. **Formal WBPA Program Case Report**—Upon completion of an investigation, the Investigator will prepare and submit a formal WBPA Program case report for management review and approval. When appropriate, recommendations for corrective action to address procedural deficiencies disclosed in the investigation will be included in the formal case report.
5. **Financial Recovery**—Formal WBPA Program case reports will describe any and all financial recovery realized on behalf of the Commonwealth as a result of the information received from the whistle blower and the subsequent investigation.
6. **Executive Summary**—Formal WBPA Program case reports will be forwarded to the State Inspector General for review. Upon authorization by the State Inspector General, the Investigator will prepare an Executive Summary that recaps the findings of the investigation, any recommendations, the recovery of funds, and the status of applicable Reward Fund claims. Upon signature approval of the State Inspector General, the Executive Summary will be forwarded to the subject state executive branch agency director or chief executive, respective Secretariat, and the Chief of Staff of the Governor.

OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	PROCEDURE NOS. 1004.1–1004.2
Topic: Office of the State Inspector General Reward Fund Process	Date: August 1, 2014

## ***PROCEDURES 1004.1–1004.2: REWARD FUND PROCESS***

### ***Procedure 1004.1: Establish Special Non-reverting Reward Fund***

1. As provided by the WBPA Program, the OSIG will coordinate with the State Comptroller to establish the “special non-reverting” Reward Fund. The Reward Fund will be established on the books of the State Comptroller and administered by the State Inspector General.
  - a. All monies recovered by the OSIG’s investigation as a result of whistle blower activity and alerts originating with the OSIG shall be deposited in the Reward Fund.
  - b. Except as provided in item four below, any monies remaining in the Reward Fund—including interest therein—at the end of each fiscal year shall not revert to the General Fund but shall remain in the Reward Fund.
  - c. Monies in the Reward Fund shall solely be used to:
    - o Provide monetary rewards to individuals who have disclosed information of fraud, wrongdoing, or abuse under the WBPA ([§ 2.2-3009](#) et seq.), and the disclosure results in a recovery of at least \$5,000.
    - o Support the administration of the Reward Fund, defray Reward Fund advertising costs, or subsidize the operation of the Hotline.
  - d. By the end of each calendar quarter, and upon the State Inspector General’s authorization, 85% of all sums recovered shall be remitted to the institutions or agencies on whose behalf the recovery was secured by the OSIG’s investigation, unless otherwise directed by a court of law.
  - e. Monies remaining in the Reward Fund at the end of the fiscal year, and any interest earned on monies in the Reward Fund, shall remain in the Reward Fund and not revert to the General Fund.

### ***Procedure 1004.2: Reward Fund Payments to Whistle Blowers***

1. Within 10 working days (excluding state holidays and weekends) of the closing of a WBPA Program investigation that verifies a final recovery of \$5,000 or more, the State Inspector General will review and certify the Reward Fund claim. Upon approval of the Reward Fund claim, the State Inspector General will submit a written request to the State Comptroller to make a WBPA Program Reward Fund payment to the whistle blower.
2. Disbursements from the Reward Fund shall be made by the State Treasurer on warrants issued by the State Comptroller upon written request signed by the State Inspector General.

3. In the event that multiple whistle blowers contemporaneously report the same qualifying incident or occurrence of wrongdoing or abuse, the Reward Fund monies may be split up to 10% among the whistle blowers, at the State Inspector General's discretion.
  - a. The amount of the reward shall be up to 10% of the actual sums recovered by the Commonwealth as a result of the disclosure of the wrongdoing or abuse.
  - b. The amount of any reward shall not exceed the balance of the Reward Fund, regardless of the sums recovered.
  - c. The State Inspector General's decision regarding the allocation of Reward Fund monies is final and binding upon all parties and cannot be appealed.
  - d. The request for payment will include the name and address of the whistle blower and the payment amount. The OSIG will provide documentation supporting the amount of the payment to the State Comptroller.
  - e. Once approved, the State Comptroller shall forward the request to the Department of Accounts (DOA) Finance and Administration, with a request that Finance and Administration process the payment to the whistle blower.
  - f. The DOA will ensure the amount of the Reward Fund payment is properly included in the whistle blower's federal and state tax records (W-2 for state employees; 1099 for citizens).
  - g. The OSIG shall confirm the DOA processed the Reward Fund request and that payment was made to the whistle blower for the amount approved by the State Inspector General.
  - h. Five percent of all sums recovered on behalf of the Commonwealth will be retained in the Reward Fund to support the administration of the Reward Fund, defray advertising costs, and subsidize the operation of the State Fraud, Waste, and Abuse Hotline. Expenditures for administrative costs for management of the Reward Fund shall be approved by the State Inspector General.

<b>OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT</b>	<b>PROCEDURE NO. 1005.1</b>
<b>Topic: Office of the State Inspector General WBPA Program Activity Annual Report</b>	<b>Date: August 1, 2014</b>

## ***PROCEDURE 1005.1: WBPA PROGRAM ACTIVITY ANNUAL REPORT***

1. The OSIG shall submit an annual report to the General Assembly summarizing the activities of the Reward Fund.
2. The OSIG will provide a copy of the WBPA annual report to the Chief of Staff to the Governor, the Secretary of Finance, and the State Comptroller.

OFFICE OF THE STATE INSPECTOR GENERAL THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT	POLICY NOS. 1006.1–1006.3
Topic: Office of the State Inspector General Whistle Blower Protections Under the WBPA	Date: August 1, 2014

## ***POLICIES 1006.1–1006.3: WHISTLE BLOWER PROTECTIONS UNDER THE WBPA***

### ***Policy 1006.1: State Employee Protections***

1. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower, whether acting individually or on behalf of or under direction from another individual.
2. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.
3. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle blower for misconduct or violation of criminal law.
4. If an employee has, in good faith, exhausted existing internal procedures for reporting and seeking recovery of falsely claimed sums through official channels, and if the Commonwealth failed to act on the information provided in a reasonable period of time, no court shall have jurisdiction over an action brought under *Code* [§ 8.01-216.5](#) based on information discovered by a present or former employee of the Commonwealth during the course of his/her employment.
5. Any whistle blower covered by the state grievance procedure may initiate a grievance alleging retaliation for reporting wrongdoing or abuse through the WBPA Program and may request relief throughout that procedure.

### ***Policy 1006.2: Citizens of the Commonwealth Protections***

1. No state agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.
2. Except for the provisions of *Code* [§ 2.2-3011](#) (E), the WBPA does not limit the remedies provided by the Virginia Fraud Against Taxpayers Act (*Code* [§ 8.01-216.1](#) et seq.).

### ***Policy 1006.3: Protection Against Discrimination and Retaliation—Good Faith Required***

To be protected by the provisions of this chapter, a state employee or citizen of the Commonwealth who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief information provided is accurate. Reckless disclosures or disclosures the employee or citizen knew or

should have known were false, confidential by law, or malicious are not deemed good faith reports and are not protected.