

OFFICE OF THE STATE INSPECTOR GENERAL



THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT
POLICIES AND PROCEDURES MANUAL
REVISED JULY 2021

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CHAPTER 1: THE 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 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 Office of the State Inspector General 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

Abuse	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.
Chief Audit Executive (CAE)	Director of a state agency internal audit program.
Employee	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.

Employee Suggestion Program (ESP)	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 Whistle Blower Protection Act (WBPA).
Employer	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.
Fraud	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.
Fraud and Abuse Whistle Blower Protection Act (WBPA)	Law establishing that citizens of the Commonwealth and employees of state government be freely able to report instances of wrongdoing or abuse committed by their employing agency, other state agencies or independent contractors of state agencies (<i>Code § 2.2-3014</i>).
Fraud and Abuse Whistle Blower Reward Fund (Fund)	Fraud and Abuse Whistle Blower Reward Fund (Fund) enacted by the WBPA. (<i>Code § 2.2-3014</i>).
Good Faith Report	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.
Misconduct	Conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

Office of the State Inspector General (OSIG)	State agency charged with administration of the fund and promulgating regulations for the fund, including determining reward eligibility requirements and procedures for filing reward claims.
Reward	Monetary benefit payable from the fund by OSIG to an eligible whistle blower.
Screening Process	OSIG internal review procedure to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA.
State Agency	Any agency, institution, board, bureau, commission, council or instrumentality of state government in the executive branch listed in the appropriation act.
State Fraud, Waste and Abuse Hotline (Hotline)	Program established within OSIG by Executive Order of the Governor, which provides state employees and citizens with confidential and anonymous methods 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.
Whistle Blower	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.
Wrongdoing	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.

CHAPTER 2: OFFICE OF THE STATE INSPECTOR GENERAL RESPONSIBILITIES

A. OSIG is responsible for 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 fund as mandated in *Code* § 2.2-3014.
- Receiving and evaluating fund claims.
- Ensuring payment of approved fund monies to whistle blowers.
- Submitting an annual report on WBPA Program activities to the General Assembly.

B. OSIG's Investigations Unit is responsible for investigating alleged fraud, abuse or other wrongdoing reported to OSIG under the WBPA Program. OSIG may work with executive branch agency CAEs when performing WBPA Program investigations.

CHAPTER 3: OSIG-SPECIFIC WBPA PROGRAM NOTIFICATION AND INTAKE PROCEDURES

Section 1: Notification

1. **Annually**—The State Inspector General will communicate 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**—OSIG will publicize the WBPA Program through an electronic communication to all state employees and citizens. The message will:
 - Contain the requirements for reporting allegations to OSIG under the WBPA Program.
 - Clarify pertinent differences between the WBPA Program and the Hotline about 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 through the Hotline.

Section 2: Reporting Alleged Fraud, Abuse or Wrongdoing

1. State employees or citizens wishing to present allegations of fraud, abuse or wrongdoing under the WBPA Program may contact OSIG by phone, email, United States Postal Service (USPS), fax or the online reporting form provided on the OSIG website.
2. OSIG staff are available to advise state employees and citizens whether to report alleged abuse, fraud or wrongdoing under the WBPA Program or using the Hotline.
3. OSIG requires the whistle blower to provide his/her name and lawful residence if he/she intends to file a fund claim under the WBPA Program.
4. Allegations of abuse or wrongdoing received by OSIG by 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 fund monies.
5. Individuals who report information or allegations under the WBPA Program and are determined by OSIG to meet fund eligibility requirements will be assigned a case number and designated as a Whistle Blower.

Section 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

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

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 individual submitting the report intends to file a 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 through other state agencies or organizations are not eligible for fund monies.

CHAPTER 4: OSIG WBPA PROGRAM INVESTIGATIONS PROCESS

1. **Detailed Case Investigation Report**—The Investigations Manager or designee will review the investigation report 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. **Monitor Progress and Status Updates**—The Chief of Investigations will monitor the progress of each WBPA Program investigation and provide the State Inspector General a status update within 60 days of assignment and every 60 days thereafter until completion.
3. **Formal WBPA Program Case Report**—Upon completion of an investigation, the Investigators Manager will submit the 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.
4. **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.
5. **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 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 to the Governor.

CHAPTER 5: REWARD FUND PROCESS

Section 1: Establish Special Non-Reverting Reward Fund

As provided by the WBPA Program, OSIG has coordinated with the State Comptroller to establish the “special non-reverting” fund. The fund was established on the books of the State Comptroller and will be administered by the State Inspector General.

1. All monies recovered by OSIG’s investigation as a result of whistle blower activity and alerts originating with OSIG shall be deposited in the fund.
2. Except as provided in item 4., any monies remaining in the fund—including interest—at the end of each fiscal year shall not revert to the General Fund, but shall remain in the fund.
3. Monies in the fund shall solely be used to:
 - a. Provide monetary rewards to individuals who have disclosed information of fraud, abuse or wrongdoing under the WBPA (§ 2.2-3009 et seq.) and the disclosure results in a recovery of at least \$5,000.
 - b. Support the administration of the fund, defray fund advertising costs or subsidize the operation of the Hotline.
4. 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 OSIG’s investigation, unless otherwise directed by a court of law.

Section 2: Reward Fund Payments to Whistle Blowers

1. Within 10 working days 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 fund claim. Upon approval of the fund claim, the State Inspector General will submit a written request to the State Comptroller to make a WBPA Program fund payment to the whistle blower.
2. Disbursements from the 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, 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 fund regardless of the sums recovered.
 - c. The State Inspector General’s decision regarding the allocation of 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. 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 DOA process the payment to the whistle blower.
- f. The DOA will ensure the amount of the fund payment is properly included in the whistle blower's federal and state tax records (W-2 for state employees; 1099 for citizens).
- g. OSIG shall confirm the DOA processed the 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 fund to support the administration of the fund, defray advertising costs and subsidize the operation of the Hotline. Expenditures for administrative costs for management of the fund shall be approved by the State Inspector General.

CHAPTER 6: WBPA PROGRAM ACTIVITY ANNUAL REPORT

1. OSIG shall submit an annual report to the General Assembly summarizing the activities of the fund.
2. 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.

CHAPTER 7: WHISTLE BLOWER PROTECTIONS UNDER THE WBPA

Section 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.

Section 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.).

Section 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.