

SOX provides certain protections to whistleblowers and criminal penalties for those who retaliate against them in any way... penalties from a large fine to ten years in prison.

NFP No. 08-11

WHISTLEBLOWER PROTECTION AND DOCUMENT DESTRUCTION PROVISIONS

Best Practices For Not-For-Profit Board Governance

The Sarbanes Oxley Act (SOX) has dramatically changed the governance landscape of corporate America. While most of the provisions of the Act apply to publicly traded companies, the whistleblower protection and document destruction provisions apply to all corporations, including not for profit organizations (NFP's).

WHISTLEBLOWER PROTECTION

Cambridge Dictionary defines a whistleblower as “a person who tells someone in authority about something illegal that is happening, especially in a government department or a company.” SOX provides certain protections to whistleblowers and criminal penalties for those who retaliate against them in any way.

There are a myriad of other federal and state laws protecting whistleblowers. NFP's should develop written policies in conjunction with legal counsel to promote high ethical standards within the organization and reduce legal liability. The policy should be reviewed by the Board of Directors. These policies often include a clear definition of whistle blowing and the covered individuals, provide employees with a mechanism for reporting complaints including a method by which the complaint can be made anonymously (such as a toll-free complaint hotline), identify a compliance officer, individual, or committee responsible for promptly investigating and resolving complaints, and affirm that no retaliation of any kind will be permitted against the whistleblower. Retaliation against a whistleblower can result in penalties from a large fine to ten years in prison.

Questions or comments?
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Penalties for the alteration, destruction, or concealment of any records with the intent of obstructing a federal investigation or proceeding include fines, imprisonment up to twenty years, or both.

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DOCUMENT DESTRUCTION

SOX imposes penalties on anyone who knowingly destroys, alters or conceals records and documents with the intent of obstructing “any matter within the jurisdiction of any department or agency of the United States.” All NFP’s should develop a document destruction policy in conjunction with legal counsel to promote compliance with this provision.

The policy should also include procedures for the management of electronic files (including email) and voicemail. Specifically NFP’s should ensure that all employees are aware of the Destruction Policy provision and a system should be designed to ensure that management is made aware of and tracks all potential and actual litigation, investigations and external audits.

NFP’s should institute procedures when performing their routine document destruction to ensure that all records scheduled for destruction are checked against the list of known investigations. Penalties for the alteration, destruction, or concealment of any records with the intent of obstructing a federal investigation or proceeding include fines, imprisonment up to twenty years, or both.

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