Authorities Budget Office
Recommended Guidance

This Recommended Governance Practice bulletin on a Whistleblower Access and Assistance Program is intended for use by policymakers, and directors, officers and officials of public authorities. These bulletins are intended to delineate best practices and encourage their consideration and incorporation into the management and oversight of public authorities.

Subject: Whistleblower Access and Assistance Program

Provisions: Title 12 of Article 9 of Public Authorities Law requires the Authorities Budget Office, in consultation with the Office of the Attorney General, to develop a whistleblower access and assistance program. The purpose of this program is to provide board members, officers, and staff of state and local public authorities with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation.

As part of this program, state and local authorities are to adopt and adhere to whistleblower protection policies.

Objectives: To assist state and local authorities implement an effective whistleblower protection program, the ABO and the Office of the Attorney General have developed a model whistleblower policy. It is expected that every state and local authority would be guided by these provisions, but the board of directors of each authority should write and adopt a policy that best meets the needs of the authority while still conforming to the intent of the law.

Recommended Practice:

Whistleblower Policy and Procedures

Purpose

It is the policy of this Public Authority to afford certain protections to individuals who in good faith report violations of the Public Authority's Code of Ethics or other instances of potential wrongdoing within the Public Authority. The Whistleblower Policy and Procedures set forth below are intended to encourage and enable employees to raise concerns in good faith within the Public Authority and without fear of retaliation or adverse employment action.

Definitions

"Good Faith": Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

"Public Authority Employee": All board members, and officers and staff employed at this Public Authority whether full-time, part-time, employed pursuant to contract, employees on probation and temporary employees.

"Whistleblower**"**: Any Public Authority Employee (as defined herein) who in good faith discloses information concerning wrongdoing by another Public Authority employee, or concerning the business of the Public Authority itself.

"Wrongdoing": Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority engaged in by a Public Authority Employee (as defined herein) that relates to the Public Authority.

"Personnel action": Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

Section I: **Reporting Wrongdoing**

All Public Authority Employees who discover or have knowledge of potential wrongdoing concerning board members, officers, or employees of this Public Authority; or a person having business dealings with this Public Authority; or concerning the Public Authority itself, shall report such activity in accordance with the following procedures:

a) The Public Authority Employee shall disclose any information concerning wrongdoing either orally or in a written report to their supervisor, or to the Public Authority's ethics officer, general counsel or human resources representative.

b) All Public Authority Employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner.

c) The identity of the whistleblower and the substance of their allegations will be kept confidential to the best extent possible.

d) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to the Authorities Budget Office or an appropriate law enforcement agency where applicable.

e) Should a Public Authority Employee believe in good faith that disclosing information within the Public Authority pursuant to Section 1(a) above would likely subject them to adverse personnel action or be wholly ineffective, the Public Authority Employee may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency, if applicable. The Authorities Budget Office's toll free number (1-800-560-1770) should be used in such circumstances.

Section II: **No Retaliation or Interference**

No Public Authority Employee shall retaliate against any whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority; and, no Public Authority Employee shall interfere with the right of any other Public Authority Employee by any improper means aimed at deterring disclosure of potential wrongdoing. Any attempts at retaliation or interference are strictly prohibited and:

a) No Public Authority Employee who in good faith discloses potential violations of this Public Authority's Code of Ethics or other instances of potential wrongdoing, shall suffer harassment, retaliation or adverse personnel action.

b) All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by this Public Authority.

c) Any Public Authority Employee who retaliates against or had attempted to interfere with any individual for having in good faith disclosed potential violations of this Public Authority's Code of Ethics or other instances of potential wrongdoing is subject to discipline, which may include termination of employment.

d) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

Section III: **Other Legal Rights Not Impaired**

The Whistleblower Policy and Procedures set forth herein are not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

a) Specifically, these Whistleblower Policy and Procedures are not intended to limit any rights or remedies that an individual may have

under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act"), and Executive Law § 55(1).

b) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall prior to disclosing information to a government body, have made a good faith effort to provide the appointing authority or their designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. (See Civil Service Law § 75-b[2][b]; Labor Law § 740[3]).