

EMPIRE STATE DEVELOPMENT CORPORATION STATEMENT OF POLICY AND PROCEDURES

PROHIBITION ON RETALIATION AGAINST WHISTLEBLOWERS

This Statement of Policy and Procedures-Prohibition on Retaliation Against Whistleblowers ("Policy Statement") sets forth the policy of the Empire State Development Corporation and its subsidiaries ("ESDC"); an employee disclosing information concerning wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or Director with respect to investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services that the employee reasonably believes to be true and reasonably believes to be a violation of a law, rule, regulation or policy shall not suffer reprisal, retaliation or punitive action by the ESDC or its respective employees. It is a violation of this Policy Statement to retaliate or take wrongful punitive action against any employee for the reporting of such alleged activity ("Protected Whistleblower Reporting"). Retaliation includes action by ESDC to fire, discharge, demote, suspend, threaten, harass or discriminate against an employee because of the employee's role as a whistleblower insofar as the actions taken by the employee are legal.

Retaliation and wrongful punitive action can also be a violation of a variety of state and federal laws depending on the facts and circumstances. In particular, New York State law provides that a public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. Retaliation and wrongful punitive action can include both adverse employment actions, such as termination from employment and demotion, and the creation of a hostile work environment.

Employees who retaliate or take wrongful punitive action against an employee for Protected Whistleblowing Reporting shall be subject to disciplinary action, including informal and formal corrective action up to and including termination from employment.

REPORTING AND INVESTIGATION OF WHISTLEBLOWER RETALIATION CLAIMS

Employees who believe that they or another employee has been the subject of illegal retaliation or wrongful punitive action as a result of Protected Whistleblower Reporting should report same orally or in writing to two of the following:

- Senior Vice President- Legal and General Counsel;
- Ethics Officer;

- Director of Human Resources;
- Chief Administrative Officer; and
- Chairman or Chief Executive Officer.

INVESTIGATION OF CLAIMS OF RETALIATION OR PUNITIVE ACTION

All reporting of alleged retaliation or wrongful punitive action or matters involving Protected Whistleblower Reporting shall be reviewed and investigated by the Audit Committee or referred by the Audit Committee for review and investigation in the manner herein provided.

Unless otherwise directed by the Audit Committee based on a finding of special circumstances, all investigations conducted by the ESDC in accordance with these practices and procedures shall be conducted under the direction and supervision of the Senior Vice President-Legal and General Counsel. Investigators may include representatives of the Legal Department, Human Resources Department, internal or external auditors and outside counsel.

Reported allegations of retaliation or punitive action by employees made directly to the Inspector General's Office or other outside governmental authority shall be investigated by the Inspector General's Office or the outside governmental authority, as the case may be, unless referred back to the ESDC for investigation. Unless otherwise directed by the Audit Committee, the Inspector General's Office, or other outside governmental authority as the case may be, the Senior Vice President-Legal and General Counsel shall serve as liaison with the Inspector General's Office and other outside governmental authority. All information requests and requested information shall be forwarded to the Senior Vice President-Legal and General Counsel for appropriate action including gathering the requested information and thereafter forwarding to the requesting entity.

In the case of allegations received by the ESDC which involve (or might involve) concurrent responsibilities of more than one audit committee of ESDC and its subsidiaries there shall be appropriate coordination which may involve one of the audit committees taking the lead in the matter ("Lead Audit Committee"). The Lead Audit Committee, through its Chair or the Senior Vice President-Legal and General Counsel, shall periodically report to the other audit committees, as appropriate, regarding the status and disposition of such matters.

INVESTIGATION REPORTS

The findings of investigations conducted by ESDC hereunder shall, as appropriate, be set forth in a written report which shall include findings of fact, conclusions and recommendations including any disciplinary action, ("Report"). The Senior Vice President and Counsel (or others designated by the Audit Committee) shall, as may be appropriate, provide the Audit Committee

with completed Reports prepared under his/her supervision. All reports received by the Agency from the Inspector General's Office shall be directed to the Audit Committee. All Reports prepared by outside third parties, including outside counsel and alike, shall be directed to the Audit Committee.

DISPOSITION OF SUBSTANTIATED CLAIMS

The Audit Committee shall take appropriate action upon each completed written Report prepared by or forwarded to it pursuant to this Policy Statement. Appropriate action may include referral to the Inspector General's Office; referral to the all the Directors for recommended action requiring Directors approval; or referral to the President/CEO for recommended disciplinary or administrative action subject to the Corporation's current grievance procedures.

ABUSE OF PRACTICES AND PROCEDURES AND MERITLESS CLAIMS

It shall be a violation of this Policy Statement for any employee to report or disclose information that the employee knows or reasonably should know to be untrue, unfounded or misleading or for which there is no basis for the claim reported in law, rule, regulation or policy. Any such meritless claim shall be subject to the same Investigation of Claims, Investigation Reports and Disposition set forth in this Policy Statement.

DISCIPLINARY ACTION

Disciplinary action brought under this Policy Statement shall be subject to all collective bargaining provisions, laws and regulations applicable to the employee against whom disciplinary action is being taken for alleged violations of this Policy Statement.

PERIODIC REPORTING TO THE MEMBERS

Periodically, but not less than once annually, the Audit Committee, in consultation with the Senior Vice President-Legal and General Counsel, shall provide a written summary to the ESDC Board(s) for the period setting forth the status of pending matters reported pursuant to this Policy Statement, including all claims of whistleblower retaliation.

RECORD RETENTION AND ADMINISTRATION

Unless otherwise directed by the Audit Committee, all information obtained and work product prepared pursuant to this practice and procedure, including but not limited to Reports, statements, physical evidence, reports, memos and notes shall be maintained by ESDC in files maintained and administered by the Chief Administrative Officer and/or the President as appropriate.

RECUSAL

In the event it becomes necessary for Directors, Officers or employees to recuse themselves from responsibilities assigned to them under this Policy Statement, these practices and procedures shall be administered with such reasonable adjustments as are necessary in furtherance of their purpose.

APPLICABILITY

The Policy Statement herein shall apply to all employees, full- and part-time employees, including those on probation, seasonal employees, temporary employees, Officers, Directors and interns of the ESDC and the term "employee," for the purposes of the Policy Statement, shall include all of the foregoing positions.