



Incident Reporting

Department: Office of Economic & Workforce Development

Effective Date: March 1, 2023

Directive #: WDD 23-14

Supersedes: 14-11

PURPOSE

This directive provides guidance and establishes the procedures for reporting allegations of fraud, program abuse, or criminal conduct involving grantees or other entities and subrecipients receiving federal funds either directly or indirectly from the Office of Economic and Workforce Development (OEWD) to the Employment Development Department (EDD) to the EDD Compliance Review Office (CRO) and the US Department of Labor’s (DOL) Office of Inspector General (OIG). This policy applies to OEWD service providers and other subrecipients of programs funded under the Workforce Innovation and Opportunity Act (WIOA) and is effective immediately.

REFERENCES

- [Title 2 Code of Federal Regulations \(CFR\) Part 200](#): Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) Sections 200.22, 200.23, 200.92, 200.93, 200.333, and 200.344
- Title 20 CFR Sections [683.600](#) and [683.620](#)
- [DOL Training and Employment Guidance Letter \(TEGL\) Employment and Training Administration \(ETA\) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct \(July 12, 2012\)](#)
- WSD20-12 EDD Workforce Services Directive - Incident Reporting ([May 11, 2021](#))

BACKGROUND

Per Title 20 CFR Section 683.620, information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately through the DOL’s Incident Reporting System to the OIG with a copy simultaneously provided to the ETA. Complaints of a noncriminal nature (e.g., mismanagement and gross waste of funds) may be handled under the procedures set forth in Title 20 CFR Section 683.600 or may be reported through the DOL’s Incident Reporting System. When an individual has knowledge or suspicion of a violation of the WIOA or its regulations, the individual must take prompt and appropriate action.

DEFINITIONS

Complaint – allegations of criminal activity and serious misconduct accepted by the DOL as incidents, and allegations of fraud, waste, and abuse concerning federally-funded grants, contracts, programs and operations, and dangers to the public health and safety. The Incident Reporting System should not be used for resolving employee grievances, Equal Employment Opportunity complaints, labor disputes, or other personnel concerns.

Contract – a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract when the substance of the transaction meets the definition of a federal award or subaward. (Uniform Guidance Section 200.22)

Contractor – an entity that receives a contract as defined in 200.22 Contract. (Uniform Guidance Section 200.23)

Subaward – an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (Uniform Guidance Section 200.92)

Subrecipient – a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. (Uniform Guidance Section 200.93).

POLICY

All service providers who receive WIOA funds shall promptly report all allegations of WIOA-related fraud, abuse, and other criminal activity to the Office of Economic and Workforce Development (OEWD). OEWD will immediately submit allegations to CRO and report allegations to the OIG, if deemed appropriate.

OEWD and each service provider shall establish appropriate internal program management procedures to prevent and detect fraud, abuse, and criminal activity. These procedures must include a reporting process to ensure that OIG and the OEWD are notified immediately of any allegations of WIOA-related fraud, abuse, or criminal activity. Service providers will establish, document, and implement procedures to immediately notify the funding entity of any suspected or proven fraud, abuse, or other criminal activity involving WIOA-funded activities. It is the service provider's responsibility to be alert for instances of fraud, abuse, and criminal activity committed by staff, contractors, or program participants and to report all such instances to the funding entity immediately. Proof of this notification must be maintained in the funding entity's files.

The incident reporting process should not be used for personnel actions such as Equal Employment Opportunity complaints, employee grievances, or labor disputes.

REPORTING

Within one workday of detection or discovery of information alleging fraud, abuse, or other criminal activity involving WIOA funds, the detecting entity shall prepare a written [Incident Report \(PDF\)](#). The report must be submitted on the Incident Report form, which can be found as

Attachment C to TEGL 2-12, or a similar document containing the requested information to the CRO by email at PACBCROIncidentReports@edd.ca.gov.

The Incident Report may also be submitted to the [DOL OIG](#).

Allegations considered to be of an emergency nature may be reported by telephone to the Compliance Resolution Unit Supervisor at 1-916-654-8354 or by calling the OIG Hotline at 1-800-347-3756 and **followed immediately thereafter by a written incident report.**

Incident Reports submitted to the EDD (e.g., Regional Advisor) must be forwarded to the CRO. The CRO will record any Incident Report it receives in the WIOA Incident Report System, report the incident directly to the OIG Complaints Analysis Office, and forward the Incident Report to the DOL ETA Region 6 within one working day of receipt. However, the CRO may need to contact the reporting entity for clarification or additional details prior to forwarding it to the OIG and ETA Region 6. Concurrent with its transmittal of the Incident Report to the ETA Region 6, the CRO will, when applicable, notify the reporting entity to take appropriate action to recover misspent funds, or to contain its financial liability.

Upon receipt, ETA Region 6 will forward the Incident Report to the DOL Regional OIG, San Francisco. Subsequently, ETA Region 6 will advise the CRO of the action to be taken by the DOL Regional OIG. When the OIG receives an Incident Report, they will determine whether or not to investigate the incident. If the OIG decides not to investigate an Incident Report, the case is referred back to ETA for resolution. At this time the case is referred to the EDD by ETA Region 6 for investigation. If the OIG decides to investigate the incident, ETA Region 6 will instruct the CRO to wait for the OIG's results before commencing the state-level formal resolution.

When the CRO commences the state-level resolution, it will request a fact-finding and resolution report from the appropriate next level of oversight, depending on the nature of the allegations. The CRO may require the EDD's direct subrecipients to submit a fact-finding and local resolution report, or the fact-finding mission may be conducted by the EDD. The factfinding may, in certain circumstances, rise to the level of a special monitoring review, an investigation, or an audit by the appropriate state entities or by independent third-party auditors, as determined by the CRO.

Whenever the entity reporting the allegation of an incident believes that immediate action to prevent further financial loss or other damage is necessary, or recovery of funds or property may be impeded if immediate action is not taken, the reporting entity has the responsibility to take any action it deems appropriate, including contacting the local law enforcement agency. **Any immediate action taken or planned by the reporting entity must be reported to the CRO when the Incident Report is submitted.**

Allegations of fraud, abuse, or other criminal activity involving WIOA-funded programs may originate from sources other than subrecipients. Such sources may include informants, independent auditors, or local law enforcement agencies. Whenever the EDD receives an allegation from such source, the CRO will prepare and submit an Incident Report to the OIG Complaints Analysis Office and to ETA Region 6, in accordance with this Directive. In such a case, the CRO will inform, when

appropriate, the subrecipient of the incident reported and advise the latter of the need to take certain action.

During an investigation, based on a report of fraud or abuse, the DOL OIG investigators or auditors may contact a subrecipient regarding an incident of which the subrecipient was not previously aware. Upon learning of the incident from federal sources, the subrecipient should contact the CRO to determine whether the latter is aware of the incident. If the subrecipient is not aware of the allegations but the CRO is aware, then the CRO will inform, when appropriate, the subrecipient of the specific allegations contained in the Incident Report.

Action will not be taken against any complainant for disclosing information concerning criminal or improper activities or making a valid complaint to proper authorities. Complainants may remain anonymous. If a complainant considers that their position will be compromised by reporting information through an Incident Report, the complainant may submit the report directly to the OIG.

Post Close-Out Adjustments and Continuing Responsibilities

Per Uniform Guidance Section 200.344, the closeout of a federal award does not affect any of the following:

- The right of the federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-federal entity within the record retention period.
- The obligation of the non-federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

Records Retention Requirements

Per Uniform Guidance Section 200.333, financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report, or for a period of three years from the date of the submission of the quarterly or annual financial report (for federal awards that are renewed quarterly or annually), as reported to the federal awarding agency or pass-through entity (in the case of a subrecipient). Pass-through entities must not impose any other record retention requirements upon non-federal entities. The only exceptions are the following:

- If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the non-federal entity is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition

INQUIRIES

Inquiries should be addressed to the OEWD Director of Workforce Strategy at (415) 701-4848 or email workforce.connection@sfgov.org.

The OEWD and its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required. The OIG Hotline telephone number for reporting suspected incidents should be prominently posted for staff members and for the general public, where applicable.

ATTACHMENT 1

INCIDENT REPORTING GLOSSARY OF TERMS AND DEFINITIONS

The definitions of employee or participant misconduct, fraud, misfeasance or malfeasance, gross mismanagement, and misapplication of funds included below were developed to provide guidance for the purpose of the Incident Reporting Directive. These definitions are illustrative and are not intended to be either comprehensive or restrictive. (TEGL 2-12, Attachment A)

Emergency – A situation involving imminent health or safety concerns, or the imminent loss of funds exceeding an amount much larger than \$50,000 (e.g., \$500,000).

Employee/Participant Misconduct – Actions occurring during or outside work hours that reflect negatively on the Employment Development Department or its mission including, but not limited to: conflict of interest or the appearance of conflict of interest involving outside employment, business and professional activities; the receipt or giving of gifts, fees, entertainment, and favors; misuse of federal property; and, misuse of official information and such other activities as might adversely affect the confidence of the public in the integrity of the government (29 CFR Part O; 5 CFR Parts 2635 and 5201) as well as serious violations of federal and state laws.

Fraud, Misfeasance, Nonfeasance or Malfeasance – Any alleged deliberate action which may be in violation of federal statutes and regulations. This category includes, but is not limited to, indications of bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants or contractors, intentional payments to a contractor without the expectation of receiving services, payments to ghost enrollees, misuse of appropriated funds, and misrepresenting information in official reports.

Gross Mismanagement – Actions or situations arising out of management ineptitude or oversight and leading to a major violation of the legislative process, regulations, or contract/grant provisions. Such actions or situations have the potential to severely hamper accomplishment of program goals, waste government resources, and jeopardize future support for a particular project. This category includes, but is not limited to, un-auditable records, unsupported costs, highly inaccurate fiscal reports or program reports, payroll discrepancies, payroll deductions not paid to the Internal Revenue Service, and lack of good internal control procedures.

Misapplication of Funds – Any alleged deliberate use of funds, assets or property not authorized or provided for by legislation or regulations, grants, or contracts. This category includes, but is not limited to, nepotism, political patronage, use of participants for political activity, ineligible enrollees, conflict of interest, failure to report income from federal funds, violation of contract/grant procedures, and the use of federal funds for other than specified purposes. An incident report should be filed when there appears to be an intent to misapply funds rather than merely for a case of minor mismanagement.