

EMPLOYERS' TRAINING RESOURCE

1600 E. Belle Terrace
Bakersfield, CA 93307

POLICY BULLETIN: #ETR 20h-23

TO: All ETR and ETR Providers of Service

FROM:  Aaron Ellis
Interim Chief Workforce Development Officer

DATE: April 20, 2023

SUBJECT: **Fraud or Abuse Reporting Procedure**

**This Policy Bulletin Supersedes Any Previously Issued Policy Statements
Concerning Reporting Procedure**

The procedures set forth in this document shall be used for reporting an issue alleging fraudulent violation of the Workforce Innovation and Opportunity Act (WIOA) regulations, grants, or other agreements under WIOA (including terms and condition of participants' employment), or other laws while in the performance of duties under WIOA funding. This procedure is authorized under WIOA and the governing regulations, 20 CFR Section 683.620. Federal and State requirements for incident reporting are included in Employment Development Department (EDD) Workforce Services Directive (WSD) WSD20-12 (attached).

Scope of Policy

Incidents relating to criminal fraud, criminal abuse or other criminal activity, and non-criminal complaints such as waste of funds, must be reported within one day of discovery. Subrecipients of WIOA funds, which would include the Kern, Inyo and Mono (KIM) Counties Workforce Development Board (WDB), Employers' Training Resource (ETR), and the America's Job Center of California (AJCC) of Kern, Inyo and Mono Counties, are subject to incident reporting under this policy. In addition, subrecipients which are service providers receiving funds from the KIM WDB are also subject to these policies.

Policy Relating to Employees of the KIM WDB, ETR and the AJCC of Kern, Inyo and Mono Counties

If staff of any of these agencies has knowledge or suspicion of a violation of the WIOA or its regulations, the individual must report this information within one workday of detection or discovery to the funding entity (i.e. ETR). WIOA regulations at CFR Section 683.620 require that information or complaints must be reported within one day of detection.

Submit the report to: **Aaron Ellis**
Interim Chief Workforce Development Officer
Employers' Training Resource
1600 E. Belle Terrace
Bakersfield, CA 93307

At the same time, reports must be made to the Employment Development Department (EDD) Compliance Review Office (CRO). The CRO must immediately report the allegations through the Department of Labor's (DOL) Incident Reporting System to the Office of Inspector General (OIG) with a copy simultaneously provided to the DOL Employment and Training Administration (ETA). In addition to submitting allegations to the CRO, Subrecipients may also report allegations directly to the OIG, if deemed appropriate.

The detecting entity shall prepare a written Incident Report. The report must be submitted on the Incident Report form, or a similar document containing the requested information to the CRO by email. The fillable pdf document can be found at:

https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2012/TEGL_2_12_att_c.pdf

A copy of the instructions and the form are attached herein. They are Attachment C of the ETA Training and Employment Guidance Letter (TEGL) 2-12

In addition, for any WIOA incident reported that is tied to WIOA programs funded by La Cooperativa Campesina de California (LCCDC), ETR will notify LCCDC at:

Incident Report
Director
La Cooperativa Campesina de California
1107 9th Street, Suite 420
Sacramento, CA 95814

LCCDC may also notify the Regional Administrator, Region 6, Employment and Training Administration, US Department of Labor, San Francisco, California.

Policy Relating to Employees of Service Providers or Clients under Workforce Innovation and Opportunity Act Funds

WIOA subrecipients must maintain on file a written procedure to inform staff of their responsibilities to report instances of fraud, abuse or criminal activity to the funding entity and the CRO immediately, including that the allegations may also be reported to the OIG.

Submit the report to:

Aaron Ellis
Interim Chief Workforce Development Officer
Employers' Training Resource
1600 E. Belle Terrace
Bakersfield, CA 93307

At such time, the **Chief Workforce Development Officer** (or designee) will immediately report the allegations to EDD CRO, who will report to the OIG and ETA. For any WIOA incident reported that is tied to WIOA programs funded by LCCDC, ETR will notify LCCDC at the above address.

Attached: WSD20-12, "Incident Reporting"
Attachment C of TEGL 2-12

INCIDENT REPORTING

EXECUTIVE SUMMARY

This policy provides the 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 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 Local Workforce Development Areas (Local Area) and other subrecipients of programs funded under the *Workforce Innovation and Opportunity Act* (WIOA), and is effective immediately.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This Directive finalizes Workforce Services Draft Directive *Incident Reporting* (WSDD-208), issued for comment on February 7, 2020. The Workforce Development Community submitted two comments during the draft comment period. A summary of comments, including all changes, is provided as Attachment 2.

This policy supersedes Workforce Services Directive *Incident Reporting* (WSD12-18), dated June 12, 2013. Retain this Directive until further notice.

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)

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

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.

POLICY AND PROCEDURES

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)

General

All subrecipients who receive WIOA funds must promptly report all allegations of WIOA-related fraud, abuse, and other criminal activity to the CRO. The CRO must immediately report the allegations through the DOL's Incident Reporting System to the OIG with a copy simultaneously provided to the ETA. In addition to submitting allegations to the CRO, subrecipients may also report allegations directly to the OIG, if deemed appropriate.

Each subrecipient must establish appropriate internal procedures to prevent and detect fraud, abuse, and criminal activity. These procedures must include a reporting process to ensure that the CRO is notified immediately of any allegations of WIOA-related fraud, abuse, or criminal activity, including the process for reporting allegations to the OIG. Internal procedures must be in writing and include the designation of a person on the subrecipients' staff who will be responsible for such notifications.

Subrecipients must 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. Funding entities must provide written notification to subrecipients regarding their responsibilities to be alert for instances of fraud, abuse, and criminal activity committed by staff, contractors, or program participants and to report all instances to the funding entity and the CRO immediately, including that the allegations may also be reported to the OIG. Proof of this notification must be maintained in the funding entity's files. Subrecipients detecting the presence or appearance of fraud, abuse, or other criminal activity must obtain sufficient information to provide a clear, concise report of each incident. Reports must include a statement of all facts, known at the time, as well as any known or estimated loss of WIOA funds resulting from the incident. It is important that an initial report is made to the CRO within one working day of the detection of the incident. The submission of an incident report should not be delayed, even if all facts are not readily available. Any facts subsequently developed by the subrecipient must be forwarded in a supplemental Incident Report.

The reporting procedures do not supersede the responsibility for subrecipients to safeguard WIOA funds by taking prompt and appropriate corrective action when any evidence of a violation of the WIOA or its implementing regulations is found. A glossary of terms and definitions related to reportable issues is available in Attachment 1.

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 fact-finding 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.

ACTION

Please bring this directive to the attention of all relevant parties.

INQUIRIES

If you have any questions, contact your [Regional Advisor](#).

/s/ JAIME L. GUTIERREZ, Chief
Central Office Workforce Services Division

Attachments:

1. [Glossary of Terms and Definitions \(PDF\)](#)
2. [Summary of Comments \(PDF\)](#)

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, unauditible 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.

SUMMARY OF COMMENTS

Draft Directive *Incident Reporting* (WSDD-208)

There were two comments to the draft version of this Directive:

Comment #1-All state-imposed requirements are designated with bold, italic type. However, numerous times throughout the Draft Directive the word "may" is shown in bold italics, which implies the action is permissive. For example, the following sentence on page 5 of the Draft Directive ***"The Incident Report may also be submitted to the OIG"*** is designated as state-imposed. Could the Employment Development Department (EDD) clarify whether this is a state-imposed requirement?

Resolution - No, the sentence should not be designated as a state-imposed requirement. The designation was removed in the Directive.

Comment #2 - Could the EDD clarify if the reference to Title 2 *Code of Federal Regulations* (CFR) Section 200.333 in the Directive is a state-imposed requirement?

Resolution - No, the Title 2 CFR Section 200.333 reference should not be designated as a state-imposed requirement. The designation was removed in the Directive.

**U. S. DEPARTMENT OF LABOR
MANUAL SERIES**

Attachment C

DLMS – 8

AUDITS AND INVESTIGATIONS



**Chapter 700 - Allegations of Wrongdoing or Misconduct, Incident Reporting, and
Whistleblower Protection**

ETA INSTRUCTIONS FOR OIG 1-156 INCIDENT REPORT (IR)

1. Using the Incident Report Form: The OIG 1-156 Incident Report Form should be used for filing:

(a) Initial Incident Report: Form OIG 1-156 is designed primarily as an initial report to inform the Employment and Training Administration's (ETA) Office of Financial and Administrative Management (OFAM) and the Office of the Inspector General (OIG) that a violation or apparent violation has occurred. It should also be used to inform OFAM and OIG of cases involving ETA employees, programs, and operations being investigated by or reported to other investigative agencies.

(b) Supplemental Incident Report: Once the initial Form OIG 1-156 has been filed Form OIG 1-156 should be used:

- (1) To provide supplemental information not available at the time of the original report.
- (2) If the matter cannot be resolved at the agency level and the case goes to litigation or arbitration at another level, supplemental reports will be submitted without awaiting results of adjudication or arbitration.

(c) Final Incident Report: Form OIG 1-156 should be used when:

- (1) An incident is resolved, or otherwise settled.
- (2) Adjudication and arbitration results are known and all requirements of such adjudication or arbitration have been completed.

2. Completing the Incident Report Form:

The agency designation code requested in block 2 is assigned by the office preparing the form and should include the fiscal year in which the report is being submitted, the agency acronym, and a number to indicate the chronological sequence of the report (for example, 09-CHI-ETA-01 would show that the report was submitted in Fiscal Year (FY) 2009, by Chicago, ETA, and was the first report they submitted in FY 2009, and 09-OWI-ETA-02 would show that the report was submitted in FY 2009 by the Office of Workforce Investment (OWI), ETA/NO, and was the second report OWI submitted in FY 2009).

Block 16 should be signed on all copies by the responsible official for the office unless the employee believes he/she should send the form directly to the OIG and OFAM.

Entries requiring additional space may be continued at the end of the synopsis entry in Block 14 or on a separate sheet(s) of bond paper. Head each additional sheet "Continuation" and give the Agency Identification Code from Block 2.

3. Transmitting the Completed Incident Report Form:

For IRs originating in a region or concerning a regional office (RO) program, the Regional Administrator/Regional Apprenticeship Director (RA/RD) should send the original signed OIG 1-156 via a transmittal memorandum to the Special Agent-In Charge (SAC) of the OIG's Regional Office of Labor Racketeering and Fraud Investigations within two days of discovery or receipt of the incident report and simultaneously forward copies to OFAM and the Office of Regional Management (ORM) or the Office of Apprenticeship (OA).

For IRs originating in the national office (NO) or concerning an NO program, the originating office should send the original signed OIG 1-156 to OFAM within two days of discovery or receipt of the incident report and simultaneously forward copies to ORM or OA. OFAM will send the original IR to the OIG within two working days of receipt.

See Attachment E for SAC and other OIG addresses.

Mail ETA NO copies to:

Office of Financial and Administrative Management
200 Constitution Avenue, N.W., Room N-4653
Washington, D.C. 20210
ATTENTION: OGM

Office of Regional Management
200 Constitution Avenue, N.W., Room C-4517
Washington, D.C. 20210

or

Office of Apprenticeship
200 Constitution Avenue, N.W., Room N-5311
Washington, D.C. 20210

Note: If the report concerns Department of Labor staff, the copies for the ETA NO should be sent in a sealed envelope addressed to the Administrator of OFAM with a notation on the envelope "TO BE OPENED BY ADDRESSEE ONLY."

Incident Report

U.S. Department of Labor

Office of Inspector General



For Official Use Only (When filled in)

1. Date of
report2. Agency designation code
(Yr.) (Agency) (Report No.)3. File Number
(For IG use)

4. Type of report

☐

Initial

☐

Supplemental

☐

Final

☒

Other (Specify) _____

5. Type of incident

☐

Conduct violation

☐

Criminal violation

☐

Program violation

6. Allegation against

☐

DOL Employee

☐

Contractor

☐

Grantee

☐

Other (Specify) _____

Given name and position of employee(s), contractor(s), grantee, etc. List telephone number, OWCP or other Claim File Number, if applicable, and other identifying data:

7. Location of incident (Give complete name(s) and addresses of organization(s) involved)

8. Date and time of incident/discovery

9. Source of complaint

☐

Public

☐

Contractor

☐

Grantee

☐Program
Participant☐

Audit

☒

Investigative Law Enforcement Agency (Specify)

Other (Specify)

Give name and telephone number so additional information can be obtained.

10. Contacts with law enforcement agencies (Specify name(s) and agency contacted and results)

11. Expected concern to DOL

☐

Local

☐

Regional

☐

National

☐

Media interest

☐Executive
interest☐

GAO/Congressional interest

☐

Other (Specify) _____

12. DOL Agency involved

☐

SECY

☐

ESA

☐

ETA

☐

ILAB

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LMSA

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MSHA

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OASAM

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OIG

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OSHA

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SOL

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ASP

☐

BLS

☐

NCEP

☐

WB

☐

OIPA

☐

Other (Specify) _____

Amount of grant or contract (If known)

\$

Amount of subgrant of
subcontract (If known)

\$

13. Persons who can provide additional information (Include custodian of records)

Name

Grade

Position or
job titleEmployment¹Local Address (Street, City, &
State) or organization, if
employed and telephone number

¹Enter one of these codes:

U - Unemployed

G-Grantee

C-Contractor

D - DOL

F-Other Federal Employee

P - Program Participant or
claimant

(Complete page 2 of this form)

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14. Details of Incident (Describe the Incident)

If more room is needed attach additional sheets.

15. Typed name and title of DOL employee

16. Signature of DOL employee

17. Copies furnished to:

18. Attachments: (List)
