



DRAFT DIRECTIVE COVERPAGE



INCIDENT REPORTING

GENERAL INSTRUCTIONS

The attached Directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email or mail no later than **March 9, 2020**.

All comments received within the comment period will be considered before issuing the final Directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final Directive.

Comments received after the specified due date will not be considered.

Email Scott.Osborne@edd.ca.gov
Include "Draft Directive Comments" in the email subject line.

Mail Employment Development Department
Policy Unit
PO Box 826880, MIC 69
Sacramento, CA 94280-0001

If you have any questions, contact your [Regional Advisor](#) at 1-916-654-7799.

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 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 Employment and Guidance Letter (TEGL) [2-12 \(PDF\)](#), *Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct* (July 12, 2012)

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 DOL's Incident Reporting System to the OIG with a copy simultaneously provided to the ETA. Complaints of a

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

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 also be reported through 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 EDD subrecipients that receive WIOA funds must promptly report to the CRO all allegations of WIOA-related fraud, abuse, and other criminal activity. 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 shall 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 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. 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 such 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 are to 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 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 (PDF)**, or a similar document containing the requested information to the CRO through one of the following methods.*

Mail Employment Development Department
 Compliance Review Office
 Compliance Resolution Unit
 PO Box 826880, MIC 22
 Sacramento, CA 94280-0001

Email PACBCROIncidentReports@edd.ca.gov

The Incident Report may also be submitted to the OIG.

Website oig.dol.gov/contact.htm
Telephone 1-800-347-3756
FAX 1-202-693-7035
Mail Department of Labor Office of Inspector General
Office of Investigations
200 Constitution Avenue, NW Room S-5514
Washington, DC 20210

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.***

The Workforce Services Branch will forward any Incident Report it receives 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 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 in 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 an Incident Report and submit it to the OIG Complaints Analysis Office and to ETA Region 6, in accordance with this Directive. In such a case, the CRO will, when appropriate, inform the subject 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, then the CRO will, when appropriate, inform 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 his or her position will be compromised by reporting information via an Incident Report, he or she may send 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 federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and 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.

Grantees or other entities and subrecipients receiving federal funds either directly or indirectly from the EDD are required to retain all records related to Incident Reports until all litigation, claims, or audit findings involving the records related to the Incident Report, have been resolved and final action taken.

ACTION

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

INQUIRIES

If you have any questions, contact your [Regional Advisor](#) at 1-916-654-7799.

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

Attachment is available on the internet:

[Glossary of Terms and Definitions \(PDF\)](#)

