

ACTION BULLETIN

TO: All WIOA Program Operators

DATE: January 10, 2022

SUBJECT: INCIDENT REPORTING

PURPOSE OF BULLETIN:

This Action Bulletin updates ACWDB's policy and procedures for reporting incidents of criminal fraud, criminal abuse or other criminal activity and noncriminal complaints such as mismanagement and gross waste of Workforce Innovation and Opportunity Act (WIOA) funds.

SCOPE:

This directive applies to Local Workforce Development Areas (LWDA) and other subrecipients of programs funded under the WIOA.

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 2-12, Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct (July 12, 2012)
- EDD's Workforce Services Directive (WSD) 20-12 – Incident Reporting; Issued May 11, 2021

BACKGROUND:

Per Title 20 CFR Section 683.620, the Alameda County Workforce Development Board (ACWDB) is required to report all allegations involving criminal fraud, waste, abuse or other criminal activity 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.

POLICY:

All subrecipients who receive WIOA funds must promptly report all allegations of WIOA-related fraud, abuse, and other criminal activity to the Civil Rights Officer (CRO) as follows:

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. The report must be submitted on the Incident Report form, which can be found as an attachment to this bulletin. Complainants may also opt to use a similar document containing the requested information – and submitting that document to PACBCROIncidentReports@edd.ca.gov.

The Incident Report may also be submitted to the DOL OIG (<https://www.oig.dol.gov/contact.htm>).

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:

- This ACWDB Action Bulletin becomes effective immediately upon release.
- All WIOA Program Operators shall comply with these requirements.
- All relevant staff shall be immediately informed of this bulletin and all requirements contained herein.

Any discrepancies arising between this policy/procedure and federal or state provisions (due to future revisions) will default to the current minimum federal and state regulations and guidance available.

For information and inquiries please contact:

Assistant Director
Alameda County Workforce Development Board
24100 Amador Street, 6th Floor
Hayward, CA 94544-1203
(510) 259-3836

ATTACHMENTS:

1. Glossary of Terms – 1 page
2. Chapter 700 – Allegations of Wrongdoing or Misconduct, Incident Reporting, and Whistleblower Protection with Incident Report Form – 3 pages
3. All Required Department Contact Information Page – 1 page

INCIDENT REPORTING
GLOSSARY OF TERMS

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.

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, unauditable 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.

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 or adjudication or artibration.
- (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

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 3 for all required department contact information page.

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 report

2. 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 LMSA MSHA OASAM OIG OSHA SOL ASP BLS NCEP WB OIPA Other (Specify)

Table with 4 columns: 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)

Table with 5 columns: Name, Grade, Position or job title, Employment, Local 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

For Official Use Only (When filled in)

14. Details of Incident (Describe the Incident)

[Redacted area for incident details]

If more room is needed attach additional sheets.

15. Typed name and title of DOL employee

[Redacted area for employee name and title]

16. Signature of DOL employee

[Redacted area for signature]

17. Copies furnished to:

[Redacted area for copies furnished to]

18. Attachments: (List)

[Redacted area for attachments list]

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

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.

CRO by email at
PACBCROIncidentReports@edd.ca.gov.

<https://www.oig.dol.gov/contact.htm>