

**DRAFT DIRECTIVE
COVER PAGE**

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 no later than **Monday, July 19, 2021**

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: swilliford@tularewib.org
Include "Draft Directive Comment" in the email subject line.

Mail: Workforce Investment Board of Tulare County
Attn: Sam Williford
309 W. Main St., Ste. 120
Visalia, CA 93291

If you have any questions, contact Sam Williford at 559-713-5228

WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	DATE: June 18, 2021
	SUBJECT: INCIDENT REPORTING

WIB DIRECTIVE

TUL 21-03

TO: WIB Subrecipients
WIB Staff

SUBJECT: 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 also contains WIB-imposed requirements. WIB imposed requirements are indicated by **bold, underlined** type.

This policy supersedes Workforce Investment Board Active Directive TUL 13-03 Incident Reporting, dated August 14, 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)
- WSD20-12, Subject: 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.

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.

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.

WIB Subrecipient Policy and Procedures

Each WIB subrecipient shall establish an appropriate internal policy and financial management procedures to detect fraud, abuse, and criminal activity committed by staff, sub-contractors, or program participants.

These procedures must include a reporting process to ensure that the WIB is notified immediately of any allegations of fraud, abuse, or criminal activity related to programs funded by the WIB. The WIB will, in turn, notify the DOL/OIG and the EDD CRO, as required and stated above.

WIB Subrecipient Reporting

Immediately upon detection or discovery of information alleging fraud, abuse, or other criminal activity involving WIOA funds, the detecting WIB subrecipient must report the incident to the WIB's Deputy Director of Administration (dmcmmunn@tularewib.org).

WIB subrecipients detecting the presence or appearance of fraud, abuse, or other criminal activity must obtain sufficient information to provide a clear, concise written report of each incident.

All such reports must be made immediately, once the detection of the incident occurs, and include the following information:

- **Statement of all facts.**
- **Any known or estimated loss of WIOA funds resulting from the incident; and**
- **Any immediate actions taken or planned that are determined to be necessary to prevent further financial loss or other damage or recovery of funds or property.**

Post Closeout 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 WIB subrecipients and WIB staff.

INQUIRIES:

Please direct inquiries regarding this directive to the WIB at (559) 713-5200.

ADAM PECK
Executive Director

AP:SW:rd

ATTACHMENTS

1. Glossary of Terms

DRAFT

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.