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## Incident Reporting

### Executive Summary

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This policy provides the guidance and establishes the procedures for reporting to the US Department of Labor’s (DOL) Office of Inspector General (OIG) 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). 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 *Wagner-Peyser Act (W-P)* 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-260)*, issued for comment on August 28, 2024. The Workforce Development Community submitted no comments during the draft comment period.

This policy supersedes Workforce Services Directive *Incident Reporting (WSD20-12)*, dated May 11, 2021. This Directive remains active until further notice.

### References

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- WIOA (Public Law 113-128) Sections 185(b) and 188
  - Inspector General Act of 1978 (Public Law 95-452)
  - Title 2 Code of Federal Regulations (CFR) Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), Sections 200.113 and 200.333
  - Title 5 CFR Part 2635: Standards for Ethical Conduct for Employees of the Executive Branch
  - Title 5 CFR Part 5201: Supplemental Standards of Ethical Conduct for Employees of the Department of Labor
  - Title 20 CFR Part 683: Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act, Sections 683.420, 683.430, and 683.620

- Title 20 CFR Part 684: Indian and Native American Programs under Title I of the Workforce Innovation and Opportunity Act, Section 684.630(d)
- Title 29 CFR Part 38: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act
- Title 29 CFR Part 0: Ethics and Conduct of the Department of Labor Employees
- DOL Training and Employment Guidance Letter (TEGL) 15-23, *Employment and Training Administration (ETA) Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct* (June 11, 2024)
- [Workforce Services Directive](#) WSD22-06, *Audit Resolution* (November 14, 2022)
- WSD18-05, *WIOA Grievance and Complaint Resolution Procedures* (September 4, 2018)
- WSD17-01, *Nondiscrimination and Equal Opportunity Procedures* (August 1, 2017)

## Background

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Title 20 CFR Section 683.620 mandates that information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately to the [OIG Hotline Portal](#) and simultaneously reported to the ETA. The Inspector General Act of 1978, as amended, authorizes the OIG to conduct audits and investigations related to programs and operations of the DOL, including audits and investigations related to alleged fraud, waste, abuse, misconduct, or other wrongdoing concerning such programs and operations.

When an individual has knowledge of, or suspicion of a violation of the WIOA or its regulations, the individual must take prompt and appropriate action. For specific guidance on how to proceed, refer to the following Directives:

- WSD17-01, *Nondiscrimination and Equal Opportunity Procedures*, for complaints alleging discrimination under WIOA Section 188 and Title 29 CFR Part 38.
- WSD18-05, *WIOA Grievance and Complaint Resolution Procedures*, for programmatic complaints alleging violations of WIOA Title I requirements in the operation or administration of WIOA programs and activities, refer to
- WSD22-06, *Audit Resolution*, for appeals of administrative or financial sanctions imposed on a Local Area resulting due to monitoring, investigations, or audits.

## Policy and Procedures

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### Definitions

For the purposes of this Directive, the following definitions apply:

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

*Employee/Participant Misconduct* – Actions occurring during or outside work hours that reflect negatively on the EDD 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 0 and 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 or inaction 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 (fake) 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 statutory (such as WIOA or W-P) processes, 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 program or 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.

*Incident Referrals* – The OIG refers incidents and allegations concerning ETA programs to the ETA in instances where the OIG determines that the incident report does not have investigative or audit merit.

*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, conflicts 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. It should be noted that there are some exceptions related to nepotism for the Indian and Native American programs, as described in 20 CFR Section 684.630(d).

*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.

*Subrecipient* – A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal award; 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.

## **Incident Reporting Requirements**

***Each subrecipient must establish written incident reporting procedures to prevent and detect fraud, abuse, and criminal activity. These procedures must include the reporting process to ensure that the OIG and ETA are informed. Internal procedures must be in writing and include the designation of a person on the subrecipients' staff who will ensure that staff and participants are aware of the incident reporting process.***

Incident reporting procedures do not supersede the responsibility to safeguard WIOA funds by taking prompt and appropriate corrective action. 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.

Reporting allegations of fraud, program abuse, or criminal conduct involving grantees or other entities and subrecipients must be submitted in two steps:

1. Complete the relevant fields on the [OIG Hotline Portal](#).
2. Send a copy of the incident report, including screenshots or photos of the three OIG Hotline Portal screens to [ETAIncidentReporting@dol.gov](mailto:ETAIncidentReporting@dol.gov).

**Note** – The OIG Hotline Portal should not be used for resolving employee grievances, Equal Employment Opportunity complaints, labor disputes, or other personnel concerns.

If Internet access is not available, incidents can be reported to the OIG through the following hotlines:

- **Toll-free hotline** 1-800-347-3756
- **Non-toll-free hotline** 1-202-693-6999

While all incidents should be reported as soon as possible, situations involving imminent health or safety concerns, or the imminent loss of funds exceeding an amount larger than \$50,000 are considered emergencies and must be immediately reported to the OIG and ETA no later than one working day after the emergency discovery.

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.

Reference [TEGL 15-23](#) for detailed instructions on reporting to the OIG and ETA.

### **Incident Referrals**

When the OIG receives an incident report from any source, the OIG will determine whether the allegations have merit, and when appropriate, conduct or arrange for an investigation and/or audit.

In instances where the OIG determines that the incident report does not have investigative or audit merit, the incident report will be referred to the ETA for resolution. The ETA will either forward the incident report to the EDD Compliance Review Office (CRO) to research and report back, or the ETA will work with the CRO to analyze and report on the incident.

In instances where an incident report is remanded to the CRO, it will be prioritized and CRO 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 CRO. 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.

### **Records Retention Requirements**

Under 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 three-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 three years after final disposition.

## Action

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

## Inquiries

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

/s/ JAVIER ROMERO, Deputy Director  
Workforce Services Branch

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

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