

Section 8

Fraud

Overview

Introduction

The information contained in this chapter provides guidance for reporting suspected incidents of fraud, abuse or other criminal activity and noncriminal complaints, such as waste of funds, to the Compliance Review Division (CRD) of the Employment Development department (EDD) and to the U.S. Department of Labor's (DOL) Office of Inspector General (OIG).

Background

In accordance with Title 20 CFR Section 683.620, report all allegations involving Workforce Innovation and Opportunity Act (WIOA) related criminal fraud, waste, abuse or other criminal activity immediately through the DOL's Incident Reporting System to the OIG.

The Incident Reporting System also processes noncriminal complaints regarding the mismanagement and gross waste of funds. Non-WIOA funded program ae held to the San Bernardino County Policy.

Policy

As the administrative entity of the San Bernardino County Local Workforce Development Area (LWDA), Workforce Development Department (WDD) will immediately report all allegations of WIOA related fraud, abuse or other criminal activity to the Department of Labor OIG and to the CRD.

References

The policy and procedures included in this section implement the requirements listed in:

- Title 20 Code of Federal Regulations (CFR) Sections 683.430, 683.600, and 683.620
 - EDD Directive [WSD 20-12](#)
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Definitions

Introduction	Terms/definitions specifically used in this section is in relations to fraud, abuse or other criminal activity.
Complaint	Allegations of criminal activity and serious misconduct accepted by the Department of Labor (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.
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	<p>Employee/Participant Misconduct should be considered as actions occurring during or outside work hours reflected negatively on the program or its purpose, and may include, but are not limited to:</p> <ul style="list-style-type: none">• Conflict of interest involving outside employment, business and professional activities,• The receipt or giving of gifts, fees, entertainment, and favors,• Misuse of federal property,• Misuse of official information,• Other activities that might adversely affect the confidence of the public regarding the integrity of government, and• Serious violations of federal and state laws.
Fraud	<p>Fraud is any deceitful act or omission, or willful device used with the intent to obtain some unjust advantage for one party, or to cause an inconvenience or loss to another party. Types of fraud include:</p> <ul style="list-style-type: none">• Bribery,• Embezzlement,• Extortion,• Forgery,• 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,• Theft,• Solicitation and receipt of bribes (kickbacks), and• Falsification of records and claims regarding trainees (e.g., knowingly enrolling ineligible participants). <p>Criminal fraud is a type of larceny punishable under both federal and California law as a felony. Civil fraud is subject to tort actions under civil laws.</p>

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Definitions, Continued

Gross Mismanagement	<p>Gross Mismanagement is defined as actions, or situations arising out of management ineptitude or oversight, which led to a major violation of contract provisions and/or which severely hamper accomplishment of program goals. These include situations which:</p> <ul style="list-style-type: none">• Lead to waste of government resources, and• Put into serious jeopardy future support for a particular project. <p>This category includes, but is not limited to:</p> <ul style="list-style-type: none">• Non-auditable records,• Unsupported costs,• Highly inaccurate fiscal and/or program reports,• Payroll discrepancies,• Payroll deductions not paid to the Internal Revenue Service or the State of California, and• The lack of internal control procedures.
Misapplication of funds	<p>Misapplication of Funds is defined as any alleged deliberate use of funds, assets, or property not authorized or provided for by legislation, regulations, grants, or contract. This category includes, but is not limited to:</p> <ul style="list-style-type: none">• Nepotism,• Political patronage or use of participants for political activity,• Intentional services to ineligible enrollees,• Conflict of interest,• Failure to report income derived from federal funds,• Violation of contract provisions,• Maintenance of effort violations, and• The use of WIOA funds for other than WIOA purposes. <p>Note: 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.</p>
Pass-through entity	<p>A non-federal entity who provides a subaward to a recipient to carry out part of a Federal program.</p>
Standard of Conduct violations	<p>Standard of Conduct Violations are violations of terms and conditions stipulated in the subgrant agreement. The relevant stipulations in the subgrant agreement are:</p> <ul style="list-style-type: none">• General Assurance,• Employment of Former State Employees,• Conducting Business Involving Relatives,• Conducting Business Involving Close Personal Friends and Associates,• Avoidance of Conflict of Economic Interest, and• Maintenance of Effort.

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Definitions, Continued

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 who receives a subaward from a pass-through entity to carry out part of a federal program, but does not include an individual who 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)
Subrecipient Contractor	A recipient who does not receive WIOA funds directly from the State.

Preventing Fraud, Abuse and Criminal Activity

Introduction The Local Workforce Development Area (LWDA) has implemented the following processes and policies to deter and prevent the occurrence of fraud, abuse and other criminal activity among its employees, subrecipients and subcontractors.

LWDA payment system LWDA utilizes the County's electronic System Applications and Products (SAP), which is designed to ensure strong fiscal accountability and to prevent fraud and abuse.

Procurement process To guard against fraud and abuse, Workforce Development Department (WDD) Request for Proposal (RFP) process requires potential contractors to identify and disclose or submit:

- Financial interest in any other lines of business.
- Pending litigation involving the prospective contractor, its officers, employees and/or consultants.
- Convictions or adverse court rulings involving fraud and/or related acts of any officer, consultants, and/or employees.
- Reasons for termination of any contract prior to its original termination date during the previous two (2) years.
- Contracts currently in effect.
- An audited financial statement for a fiscal period not more than 18 months old at the time of submission.
- Proof of legal entity status.

Bonds Prior to the award of a contract, WDD may require a potential subrecipient secure a bond against the loss of money and other property caused by any fraudulent or dishonest act committed by any employee, board member, officer, partner, shareholder, and/or program participant.

The bond shall name the LWDA as loss payee or additional insured for the purpose of reimbursement of any loss sustained by the action of the subrecipient in the performance of the contract.

Retention of records Contractors shall make all records pertaining to service delivery and all fiscal, statistical and management books and records available for examination and audit by the LWDA for a period of five years or as specified in contract after final payment under the contract, end of follow-up, or until all pending County, State and Federal audits are completed, whichever is later.

The LWDA has the right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items, and has the right to monitor the performance of the contractor in the delivery of services.

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Preventing Fraud, Abuse and Criminal Activity, Continued

Conflict of interest	<p>WDD and its contractors shall make all reasonable efforts to ensure no conflict of interest exists between its officers, employees, or subcontractors and the LWDA.</p>
Nepotism	<p>No relative by blood, adoption, or marriage of any executive, person in an administrative capacity, or employee of a contractor shall be enrolled for services or training provided by the same contractor.</p> <p>A supervisor shall review and authorize enrollment of family members of LWDA officials seeking services under WIOA. WDD policy is the relationship must be disclosed prior to enrollment.</p>
Financial interest	<p>Procurement shall not be awarded to any organization where a Workforce Development Board (WDB) member, WDD staff, or his/her immediate families have a financial interest in the organization, unless justified under sole source circumstances.</p>
Receipt of gratuities	<p>The receipt of gratuities, favors, or anything of monetary value from a contractor or bidder is prohibited for all WDB members and LWDA staff.</p>
Fiscal records	<p>A contractor's fiscal records are kept in accordance with generally accepted accounting principles and must account for all funds, tangible assets, revenue, and expenditures.</p> <p>All fiscal documents and audits must be kept in a locked cabinet and access is restricted to staff who is authorized to retrieve information for business needs.</p>
Separation of duties related to Procurement	<p>The WDD Director or Assistant Director, whenever practical, designates one staff person to be responsible for development of procurement solicitation and another staff person to be responsible for evaluation of solicitation.</p> <p>The Director or Assistant Director ensures the administrative system and procedures are sufficient to establish a system of checks and balances in regard to procurement activities.</p>

Detecting Fraud, Abuse, and Criminal Activity

Introduction

The Local Workforce Development Area (LWDA) has implemented the following processes and policies for detecting fraud, abuse and other criminal activity among its employees, subrecipients and subcontractors.

Report Fraud and Abuse

All Workforce Development Department (WDD) employees and subrecipient/subcontractors are instructed to be alert for instances of Workforce Innovation and Opportunity Act (WIOA) related fraud, abuse, and criminal activity committed by staff, contractors, or program participants, and to promptly report such instances to supervision.

Examples of reportable offenses

Examples of reportable offenses include, but are not limited to:

- Misapplication of funds
 - Gross Mismanagement
 - Theft
 - Embezzlement
 - Bribes, kickbacks
 - Forgery
 - Falsification of records and claims regarding WIOA program participants
 - Nepotism
 - Conflicts of interest
 - Misuse of funds, assets or property
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Fraud, waste, abuse hotline

Fraud, waste, abuse department performs operational and compliance audits of departments, offices, agencies and special districts. Administers the auditor-controller's fraud, waste, and abuse hotline.

Call to report an incident concerning fraud, waste, or abuse at 800-547-9540. The hotline is available 24 hours a day, seven (7) days a week.

Reporting Fraud, Abuse and Criminal Activity

Introduction	<p>The Local Workforce Development Area (LWDA) has implemented the following processes and policies for reporting fraud, abuse and other criminal activity among its employees, subrecipients and subcontractors.</p>
General information	<p>All subrecipients who receive Workforce Innovation and Opportunity Act (WIOA) funds shall promptly report to the Compliance Review Office (CRO) and Office of Inspector General (OIG), all allegations of WIOA related fraud, abuse and other criminal activity.</p> <p>Each subrecipient must establish and implement appropriate internal procedures to prevent and detect fraud, abuse, and criminal activity and provide copy of the procedures to Workforce Development Department (WDD). These procedures must include a reporting process to ensure 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.</p> <p>Internal procedures must be in writing and include the designation of a person on the subrecipients' staff who will be responsible for such notifications.</p>
How to report fraud and abuse	<p>To report allegations of fraud, abuse or criminal activity involving WIOA funds, employees and subrecipient/subcontractors should make an initial report following the chain of command. A Department of Labor (DOL) Incident Reporting System with a copy to the Employment Development Department (EDD)/Employment and Training Administration (ETA) should be completed.</p> <p>Link for the DOL Incident Report: Incident Report Form</p>
Contents of the incident report	<p>The incident report should 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. Proof of the notification must be maintained in the funding entity's files.</p> <p>The Incident Reporting System should not be used for resolving employee grievances, Equal Employment Opportunity complaints, labor disputes, or other personnel concerns.</p>
Where to send the Incident Report	<p>The Incident Report is immediately sent to the Workforce Development Department (WDD) Assistant Director who will review the report and forward to the Director.</p>
Applicability to Service Providers	<p>Service providers who receive funds through WDD must report allegations of fraud, abuse and criminal activity involving WIOA-funded activities to the WDD Assistant Director.</p>

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Reporting Fraud, Abuse and Criminal Activity, Continued

Required timeframe

The Incident Report must be submitted to the WDD Director immediately to ensure the initial report is made to the CRO and OIG 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.

The WDD Director or Assistant Director will forward any facts subsequently developed by the LWDA or a subrecipient to DOL/OIG and EDD/CRO in a supplemental incident report.

WDD Director's responsibility

Within one working day of detection or discovery of information alleging fraud, abuse, or other criminal activity involving WIOA funds, the WDD Director will prepare and submit a written incident report, using the EDD form (found through WSD [Directive 20-12](#)), to both the CRO and the OIG.

CRO

- Mail to: Attention: Compliance Resolution Unit
Compliance Review Office, MIC 2
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001
- Email: PACBCROIncidentReports@edd.ca.gov
- Telephone: Compliance Resolution Unit Supervisor at 916-654-8354

OIG

- Mail to: Office of Inspector General (OIG)
Complaints Analysis Office
200 Constitution Avenue, N.W., Room S-5514
Washington, D.C. 20210
 - Online website: www.oig.dol.gov/hotlinecontact.htm,
 - OIG Hotline number: 800-347-3756, or
 - Fax: 202-693-7020.
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Allegations of an emergency nature

The WDD Director or Assistant Director may report allegations considered to be of an emergency nature by:

- Telephone to the EDD Compliance Resolution Unit Supervisor at 916-654-8354, and
- Calling the DOL/OIG Hot Line 800-347-3756.

Complete a written incident report immediately following the phone call.

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Reporting Fraud, Abuse and Criminal Activity, Continued

CRD action

Upon receipt of an incident report, EDD Compliance Review Division (CRD) will:

- Record the Incident Report received,
- Contact the LWDA for clarification or additional details, if necessary,
- Report the incident directly to the OIG Complaints Analysis Office,
- Forward Incident Report to the DOL ETA Region 6 within one working day of receipt,
- Notify the LWDA to take appropriate action to recover misspent funds, or to contain its financial liability, and
- Request a monitoring review or investigation by the appropriate State entities, or
- Require the LWDA to submit its fact-finding and local resolution, or
- Require the subrecipients to submit a fact-finding and local resolution report.

Immediate action

When the LWDA believes immediate action is necessary to prevent further financial loss or other damage, or that recovery of funds or other property may be impeded if immediate action is not taken, the LWDA must take any action it deems appropriate, including contacting the local law enforcement agency.

Any immediate action taken or planned by the LWDA must be reported to the EDD CRD when written incident report is submitted.

DOL/OIG initiates contact with LWDA

In the event the DOL/OIG contacts the LWDA regarding an incident of which the LWDA was not aware, the LWDA should contact the EDD CRD to determine if it is aware of the incident. If the CRD is aware of the incident, it will inform the LWDA of the specific allegations contained in the incident report.

The OIG will determine whether to investigate the incident.

If the OIG decides...	Then the...
Not to investigate the incident,	<ul style="list-style-type: none">• Case is referred back to EDD Region 6 for resolution, and• EDD Region 6 will investigate the incident.
To investigate the incident,	EDD Region 6 will instruct the CRO to wait for the OIG's results before commencing the state-level formal resolution.

Note: Action will not be taken against any complainant for disclosing information concerning criminal or improper activities, or making a valid complaint to proper authorities. Complainant may remain anonymous and if he/she feels their position will be compromised, the complainant may submit the report directly to the OIG.

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Reporting Fraud, Abuse and Criminal Activity, Continued

Retention

Any financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for three years as reported to the federal awarding agency or pass-through entity (subrecipient) from the date of submission of the:

- Final expenditure report; or
 - Quarterly or annual financial report.
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Retention exceptions

The only retention 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 to extend the retention period, in writing by the:
 - Federal awarding agency,
 - Cognizant agency for audit,
 - Oversight agency for audit,
 - Cognizant agency for indirect costs, or
 - Pass-through entity.
 - Records for real property and equipment acquired with federal funds must be retained for three years after final disposition.
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