

**Nevada Department of Employment, Training and Rehabilitation
(DETR)
Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)**

Policy Number: 4.7

Originating Office: DETR; Workforce Investment Support Services (WISS)

Subject: Incident Reporting Requirements

Issued: NEW May 2019, replacing Workforce Investment Act (WIA) SCP 4.7

Purpose: To transmit procedures to be used by all Employment and Training Administration (ETA) grant recipients for reporting allegations of fraud, program abuse or criminal conduct involving grantees or other entities and sub-recipients receiving Federal funds either directly or indirectly from ETA.

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in ***bold, italic type***.

Authorities/References: Workforce Innovation and Opportunity Act (P.L. 113-128); TEGL 2-12; 2 CFR §200.113; 2 CFR §200.331(d); 2 CFR §200.338; 20 CFR §683.200(h); 20 CFR §683.620; CFR §683.430; 20 CFR §683.440;

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Board (LWDB) members and any other concerned parties. Any LWDBs policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background:

The Code of Federal Regulation (CFR) requires recipients/sub-recipients report allegations, suspicions, and complaints of possible fraud, program abuse and criminal activities involving WIOA funds. The detection and prevention of fraud and abuse in programs authorized by the Department of Labor (DOL) are of the highest priority. Therefore, systematic procedures to protect against and for reporting instances of suspected or actual fraud, abuse or criminal conduct are vital. Sub-recipients must make sound operation and program decisions at all times to retain the confidence of the public in the expending of these funds. Incident Reports (IR), regardless of funding stream, will be made in a timely manner to ensure proper operating design.

This policy will provide the procedure requirements for investigating allegations of wrongdoing or misconduct to include allegations of suspected fraud, program abuse, and criminal conduct involving grantees and other recipients, including Eligible Training Providers (ETP) or subrecipients of Federal funds from ETA and include the reporting requirements for such.

The IR form, Office of Inspector General (OIG) 1-156, is the official form used within the Department for reporting allegations of criminal and other illegal or improper activities in ETA funded programs.

Policy and Procedure:

The OIG conducts criminal, civil, and administrative investigations into alleged violations of federal laws relating to DOL programs, operations, and personnel. In addition, the OIG conducts criminal investigations to combat the influence of labor racketeering and organized crime in the nation's labor unions in three areas: employee benefit plans, labor-management relations, and internal union affairs. The OIG also works with other law enforcement partners on human trafficking matters.

The IR form is the official form used within the Department for reporting allegations of criminal and other illegal or improper activities in ETA funded programs. Reporting procedures do not supersede the organization's responsibility to safeguard WIOA funds by taking prompt and appropriate corrective action. Internal controls must be in place to prevent the possibility of fraudulent activity within the organization. However, if the known or suspected activity of fraud is related to the organization, this information should be immediately reported to the Chief Executive Officer or management unrelated to the activity. Appropriate actions will be taken immediately to stop the fraudulent activities, safeguard remaining assets and records and prevent future instances from recurring, including personnel action if necessary.

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 LWDB within one business day by submittal per Board policy. LWDBs must in turn immediately report these incidents to DETR/WISS who will, after clarifying the events, submit the IR to the OIG.

Administrative Rules: (20 CFR§ 683.200(h))

(h) Mandatory disclosures. All WIOA title I and Wagner-Peyser Act recipients of Federal awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

Reporting Fraud and Abuse: (20 CFR§ 683.620)

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the Department of Labor Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756.

The Web site is [http:// www.oig.dol.gov/contact.htm](http://www.oig.dol.gov/contact.htm).

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

Mandatory Disclosures: (2 CFR§ 200.113)

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to State Administrative & Accounting Manual (SAM). Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Remedies for Noncompliance: (2 CFR§ 200.338)

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

Responsibilities: (TEGL 2-12)

Grant recipients are responsible for following the procedures set forth in this TEGL. Grant recipients must immediately document allegations, suspicions and complaints involving possible fraud, program abuse and criminal misconduct using the IR form. In addition, situations involving imminent health or safety concerns, or the imminent loss of funds exceeding an amount larger than \$50,000 (e.g. \$500,000), are considered emergencies and must immediately be reported to the OIG and [Office of Financial and Administrative Management] (OFAM) by telephone and followed up with a written report in the form of an IR, no later than one working day after the telephone report.

Prohibition and Reprisals: (TEGL 2-12)

No action will 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/her position will be compromised by reporting information through the IR system, he/she may send the report directly to the OIG or OFAM.

Resolving Investigations: (20 CFR §683.430)

(a) As a result of an investigation, onsite visit, other monitoring, or an audit (i.e., Single Audit, OIG Audit, [Government Accounting Office] (GAO) Audit, or other audit), the Secretary will notify the direct recipient of the Federal award of the findings of the investigation and give the direct recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(1) Adequate resolution. The Grant Officer in conjunction with the Federal project officer, reviews the complete file of the monitoring review, monitoring report, or final audit report and the recipient's response and actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of secs. 184(b)–(c) of WIOA. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(2) Inadequate resolution. If the direct recipient's response and actions to resolve the findings are found to be inadequate, the Grant Officer will begin the Grant Officer resolution process under § 683.440.

(b) Audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process, as discussed in § 683.440.

Grant Officer Resolution Process: (20 CFR §683.440)

(a) General. When the Grant Officer is dissatisfied with a recipient's disposition of an audit or other resolution of findings (including those arising out of site visits, incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring reports, the initial and final determination process as set forth in this section is used to resolve the matter.

(b) Initial determination. The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of WIOA, the Wagner-Peyser Act, and applicable regulations, and the terms and conditions of the grants or other agreements under the award.

(c) Informal resolution. Except in an emergency situation, when the Secretary invokes the authority described in sec. 184(e) of WIOA, the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in dispute contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) Final determination.

(1) Upon completion of the informal resolution process, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIOA funds directly from the Department, ordinarily, the final determination is issued not later than 180 days from the date that the Office of

Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

- (i) Indicate whether efforts to resolve informally matters contained in the initial determination have been unsuccessful;
- (ii) List those matters upon which the parties continue to disagree;
- (iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;
- (iv) Establish a debt, if appropriate;
- (v) Require corrective action, when needed;
- (vi) Determine liability, method of restitution of funds, and sanctions; and
- (vii) Offer an opportunity for a hearing in accordance with § 683.800.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

Violation Procedure:

The LWDB must have a written violation procedure to capture, report and retain documentation for all suspected violations to Title 1 funding. The Pre-Report could be verbal (LWDB to State and vice versa) to gain/concur information/direction to WISS/LWDB/DOL and progress to OIG as appropriate per TEGL 2-12 Incident Reporting (IR) 1-156 requirements. It is imperative that reporting be done immediately upon learning of the alleged violation, even if many details are still unknown. The procedure must indicate how the alleged violation was identified, partner reporting, anonymous tip or other means that provide evidence of potential non-compliance with contract, policy or law.

Initial Incident Report (IR): The procedure must outline an acceptable investigative process that allows the LWDB to complete the OIG 1-156 IR to identify the provision of the alleged violation, the time(s) and date(s), the suspected violator(s), gathering of supporting documentation and witness statements etc. to eventually come to factual finding or conclusion. WISS will fill in the Agency Designation code per instructions.

Supplemental Incident Reports (SIR): Are to be used to supply information that was not available at the time of the initial reporting, request the matter be resolved by another agency for litigation or arbitration. Supplemental reports should be submitted as appropriate using the IR form and without awaiting results of the initial IR. WISS will fill in the Agency Designation code per instructions.

Final Incident Report (FIR): Are to be used when an incident is resolved, or otherwise settled, adjudication and arbitration results are known and all requirements of such adjudication /arbitration have been completed. WISS will fill in the Agency Designation code per instructions.

NOTE: Situations involving imminent health or safety concerns or the imminent loss of funds exceeding \$50,000 are considered emergencies and must be immediately reported to LWDB/DETR and the OIG using the most expedient venue listed below.

- All sub-recipients of Workforce Innovation and Opportunity (WIOA) Title I-B funds, including LWDBs, contractors and service providers must implement policies and procedures to prevent and detect fraud, abuse and criminal activities involving WIOA Adult, Dislocated Worker, and Youth program funds.
- All sub-recipients must report allegations, suspicions and complaints of possible fraud, program abuse and criminal activities involving WIOA Title I-B funds to DETR/WISS through the LWDB for the OIG.
- 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 LWDB and DETR/WISS for clarification and submittal.
- Allegations of fraud, abuse, or other criminal activity in WIOA-funded programs may originate from sources other than subrecipients. Such sources may include informant, independent auditors, or local law enforcement agencies. Whenever DETR receives an allegation from such a source, DETR/WISS will prepare an incident report (DOL Form DL 1-156) and submit it to Region 6, in accordance with this policy. In such a case, DETR/WISS 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, 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 LWDB and DETR/WISS to determine whether the latter is aware of the incident. If the subrecipient is not aware of the allegations, but DETR/WISS is; then the latter will, when appropriate, inform the former of the specific allegations contained in the incident report through communication with the LWDB.
- **OIG Hotline:** The OIG operates this Hotline to receive and process allegations of fraud, waste, and abuse concerning Department grants, contracts, programs and operations. The OIG also uses the Hotline to address allegations of criminal activity and serious misconduct involving Department employees. Hotline complaints can be sent directly to the Complaints Analysis Office, Office of Inspector General, 200 Constitution Avenue, N.W., Room S-5506, Washington, D.C. 20210. They can be telephoned to the OIG on the Toll-Free Hotline at 1-800-347-3756 or (202) 693-6999 (this is not a toll-free number); or they can be emailed to hotline@oig.dol.gov. The OIG Hotline should not be used for resolving employee grievances, Equal Employment Opportunity complaints, labor disputes, or other personnel concerns.

NOTE: The submission of the IR 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 IR per DL1-156 instructions. The IR form and its instructions can be found in SCP 5.2.

When the OIG receives an IR, they determine whether the allegations have merit and, when appropriate, conduct or arrange for an investigation and/or audit. If the OIG determines that the case does not have investigative or audit merit, the case is referred back to ETA for resolution.

Definitions:

Complaint: For this policy, means criminal and noncriminal complaints accepted by DOL as incidents, such as gross waste of funds, mismanagement, and dangers to 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: Actions occurring during or outside work hours that reflect negatively on the 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 0; 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 and falsification of records and claims regarding trainees (e.g. knowingly enrolling ineligible participants). Criminal fraud is a type of larceny and is punishable under both federal and state law

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, un-auditable 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 Report (IR) (OIG 1-156). This is the primary form for reporting instances of fraud, misapplication of funds, gross mismanagement, and any other incidents of known or suspected criminal or other serious activities. The OIG 1-156 may also be used to provide interim and final reports.

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. Indian and Native American programs are excluded from the nepotism category, as cited in Section 632.118 of 20 CFR Part 632, Subpart F of the WIA regulations.

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OIG Hotline Referrals: The OIG prepares referrals of hotline allegations concerning problems in ETA programs and transmits the referrals to OFAM. ETA uses the process outlined in this [Employment and Training Order] (ETO) to follow-up on incidents included in these referrals.

Open IR: An IR is considered open until the originating or responsible ETA office determines that it has been resolved and reports it as closed on the quarterly OFAM tracking report.

Subrecipient: a recipient that does not receive WIOA funds directly from the DOL.

Hot Line Glossary of Terms

Criminal Abuse of Union Power: May involve union finances or property; unauthorized perks and compensation; vendor kickbacks and/or no-show jobs.

Department of Labor Employee Misconduct: Allegations of misconduct by employees may include:

Bribery: The offering, giving, receiving or soliciting of something of value for the purpose of influencing an action or the discharge of official duties.

Conflict of Interest: A clash between DOL interests and the private interest of an official that may influence the performance of the official's duties.

Embezzlement: Fraudulent appropriation of DOL property by one lawfully trusted to protect its possession.

Mismanagement: Extravagant, careless, or needless expenditure of government funds or the consumption or misuse of government property or resources, resulting from deficient practices, systems, controls or decisions.

Misuse of DOL property;

Misuse of funds/credit cards;

Falsification of official documents.

Embezzlement: Theft from union plan assets which include pension, welfare or health plans. Schemes include allowing ineligible people to participate or payment of charges for services not provided.

Extortion: Deprivation of union member rights by threat of physical or economic harm. The rights of union members include nominating and voting for candidates; attending membership meetings; fair and just grievance procedures; working at or above the prevailing wage; participation in benefit plans; and the right to examine books and records.

Foreign Labor Certification Fraud: The Department of Labor's Office of Foreign Labor Certification (OFLC) provides labor certifications to employers seeking to bring foreign workers into the United States. Visa fraud includes fraud and abuse of the Department's temporary visa programs (including H1B fraud, H2A fraud, and H2B fraud) and the Permanent labor certification program. Fraud and abuse includes the filing of fraudulent labor certification applications (i.e. ETA 750) or immigration fraud by attorneys or employers who file false applications and provide falsified documents to the OFLC.

Health Care Provider Fraud: Fraud committed by a medical provider (including physicians, durable medical equipment vendors, pharmacies, hospitals, laboratories) involving any OWCP claim. Fraud schemes includes billing the Department of Labor directly or indirectly for services

not rendered, misrepresenting services, unbundling services, billing for medically unnecessary services, duplicate billing, increasing units of service which are subject to a payment rate, falsifying claims resulting in increased payment to the health care provider, and kickbacks.

Improper Labor Management Relations: Corrupt union officials enter into a wide variety of “sweetheart” contracts with organized crime controlled and other corrupt employers in return for bribes and other favors. Such contracts typically include concessions which are significantly beneficial for the employer and detrimental to the union member.

Kickbacks: Illegal payments used to influence the operation of a benefit plan.

Labor Racketeering: Labor racketeering is the use of a union, benefit plan (i.e. pension plan,) contractor, and/or industry for personal benefit by illegal means. This abuse may take the form of collusive arrangements between union officials and employers that occur at the expense of union members or corruption within the unions themselves. It also occurs when organized crime groups infiltrate unions.

Procurement Fraud: Fraud in connection with DOL contracts or committed by DOL contractor(s), such as making false statements or false claims or providing a product less than called for in the contract. Procurement fraud includes DOL grant fraud; theft by a DOL grantee; embezzlement of Senior Community Service Employment Program (Older Americans Act) funds; Workforce Investment Act fraud (WIA[WIOA]fraud), theft or embezzlement; or Workforce development board misconduct or fraud.

Procurement fraud Reporting Requirement: The Federal Acquisition Regulation (“FAR”) now requires all contractors to notify the government whenever they become aware of a contract overpayment or fraud, rather than wait for the contract overpayment or fraud to be discovered by the government. If you are a federal contractor, or employee of same, and you have evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, gratuity violations, or a violation of the False Claims Act, where such evidence arises in connection with a federal contract, click FAR Contractor Disclosure Form to file a report with this office.

Unemployment Insurance (UI) Fraud: The Department of Labor's Unemployment Insurance (UI) programs provide unemployment benefits to eligible workers who become unemployed through no fault of their own, and meet certain other eligibility requirements. Allegations of UI fraud can include: theft of UI funds, unemployment compensation overpayment, disaster unemployment assistance (DUA) fraud, and the identity theft that results when false UI and DUA claims are made on behalf of unknowing individuals.

Veterans’ Employment and Training Service (VETS) Fraud: The Veterans’ Employment and Training Services (VETS) helps veterans, reservists, and National Guard members in securing employment and the rights and benefits associated with such. Allegations of violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Veterans Employment Opportunities Act (VEOA), non-compliance with Federal Contractor Program Veterans' Employment Report (VETS-100 Report) requirements, and other compliance issues that fall within the authority of VETS should first be reported to VETS officials. Allegations of serious misconduct involving the handling of such complaints on the part of VETS officials may be reported to the OIG Hotline.

Worker Health and Workplace Safety: The Department of Labor’s Occupational Safety and Health Administration (OSHA) aims to ensure employee safety and health in the United States by working with employers and employees to create better working environments. Workplace safety

violations should first be referred to OSHA but if they are not remedied, these safety concerns may be reported to the OIG Hotline.

LWDB Requirements:

All sub-recipients (LWDBs/programs) must have written policy, including investigative process, documentation, follow through requirements and be kept in a central location for access. Documentation (electronic, including emails or hard files) must be kept for five (5) years after a final resolution has been executed.

LWDBs must execute their investigation per policy to completion and as prescribed by the State and or DOL. Items of suspected Fraud, Misfeasance, Nonfeasance, Malfeasance, Gross/Mismanagement, Employee/Participant/Training Provider Misconduct, Misapplication of Funds, Conflict of Interest, Embezzlement, Falsification of Documents, Extortion etc. *must* be reported from sub recipients (programs and LWDBs) to boards and from boards to WISS via email no later than one business day of discovery/reporting of the incident(s) to determine/concur with the board's action plan. The submission of an incident report should not be delayed even when all the facts are not readily available. Thorough investigations, supplemental and final incident reports are expected as appropriate in a timely manner as information becomes available.

DETR/WISS, acting on behalf of the Governor, is responsible for submitting the IR to OIG upon receipt and clarification of information of an alleged incident and as appropriate.

Reference TEGL 2-12, SCP 5.2 for OIG contact information, Hotline telephone number and reporting forms and their proper use.