
**Workforce Investment Act
State Compliance Policies**

Section 4.7

Incident Reporting Requirements

September 2003

I. Introduction:

- A. Federal statute and regulations require the filing of an Incident Report [IR] whenever any alleged unauthorized use of Workforce Investment Act [WIA] funds occurs [§667.630].
- B. Information and complaints involving criminal fraud, waste, abuse, or other criminal activity are required to be reported immediately to the U.S. Department of Labor (USDOL) Office of the Inspector General (OIG) and a copy sent simultaneously to the USDOL ETA Region 6 within one (1) working day of the discovery of the occurrence using DOL Form DL1-156 [8/83]. [Refer to Attachment A – Form and Attachment B – Instructions]
- C. In addition, a toll free Hotline [1 + 800 + 347-3756] has been established for employees or the public to anonymously report to the DOL/OIG.
- D. Incident Reports from Local Workforce Investment Areas should be reported to the USDOL through the State of Nevada/Department of Employment, Training and Rehabilitation (DETR).

II. Reasons to File an Incident Report:

- A. Any act of criminal fraud, waste or abuse, which raises questions concerning possible illegal expenditures, waste, or abuse, or other unlawful activities, should be reported immediately.
- B. Examples of reportable allegations include:
 - 1. **Fraud, misfeasance, nonfeasance or malfeasance** include the following, but are not limited to: bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants, intentional payments to contractors without the expectation of receiving services, and payments to ghost enrollees.
 - 2. **Misapplication of funds** is any alleged use of funds, assets or property not authorized or provided under WIA or its regulations, grants or contracts. This category includes, but is not limited to: nepotism, political patronage, use of participants for political activity, ineligible participants, conflict of interest,

violation of contract/grant procedures, and the use of Federal funds for other than the specified purposes.

Note: a report must be filed when it appears that there exists an intent to misapply funds rather than merely a case of minor mismanagement.

3. **Gross mismanagement** is actions or situations arising out of management ineptitude or oversight leading to major violations of WIA processes, regulations or contract/grant provisions. This category includes, but is not limited to: unauditible records, unsupported costs, highly inaccurate fiscal and/or program reports, payroll discrepancies, payroll deductions not paid to Internal Revenue Service and the lack of good internal control procedures.
4. **Employee/participant misconduct** is actions occurring during or outside work hours that reflect negatively on the Department of Labor, the State and the WIA program. This category may include, 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, favors; misuse of Federal property and other such activities which might adversely affect the confidence of the public as well as serious violations of Federal and state laws.
5. The IR process should not be utilized for personnel actions such as Equal Employment Opportunity complaints, employee grievances, or labor disputes. Please refer to Sections 4.1, 4.3, 4.4, and 4.5 of this Policy Manual for additional information.

III. Who May File an Incident Report:

- A. The Department of Employment, Training and Rehabilitation [DETR] acting on behalf of the Governor of Nevada is responsible for submitting the IR [DL Form 1-156] as a result of any alleged grievance or complaint received from any person with knowledge of a situation, including but not limited to: State program staff, local Boards, service providers, or vendors.

Note: Initial contact may be received by either the Local Workforce Investment Board [LWIB], DETR or the DETR/Employment Security Division/Workforce Investment Support Services [DETR/ESD/WISS] verbally or in writing or as a result of a call received by the OIG toll free Hotline.

IV. When to File an Incident Report:

- A. If the LWIB receives the alleged grievance/complaint, they are required to inform DETR/ESD/WISS within one (1) working day.
- B. The Department, upon receipt of information of an alleged grievance/ complaint, will complete the IR and forward to the Region 6 Administrator and the OIG, at

the addresses below, within one (1) working day.

Address: U.S. Department of Labor
Office of the Inspector General
Attn: Regional Inspector General
71 Stevenson Street, Suite 720
San Francisco, CA 94105

U.S. Department of Labor
Employment and Training Administration
Office of Regional Administrator
71 Stevenson Street, Suite 820
San Francisco, CA 94105

V. Role of the DOL Employment and Training Administration [ETA]/State:

- A. ETA will review the report and work with the OIG, to determine who will be responsible for investigating the allegation.
- B. The ETA will advise DETR of the OIG's decision.
- C. If the OIG elects to investigate the allegation(s), the State will postpone resolution until the investigation is complete.
- D. If the OIG does not elect to investigate, ETA will notify DETR of the investigation findings and issue a period of sixty [60] days to comment and take appropriate corrective action. Corrective action required may include formal investigation, audit or other administrative action and must include a schedule in the response.
- E. Under normal circumstances the State will have the responsible LWIB conduct the investigation; The State will also be responsible for establishing deadlines for their response and must approve all proposed resolution prior to submission to DOL.

VI. Resolution:

- A. The State will request closure from the ETA upon final determination that corrective action has been taken to resolve all issues and allegations. If the ETA approves closure, the State will send a closure letter to the LWIB. If ETA does not approve the closure, the resolution process will be initiated.
- B. When local investigation supports allegations of substantive administrative or fiscal issues, the State will:
 - 1) Issue a Notice of Initial Determination and attempt to settle issues through informal resolution. Informal resolution can be used to resolve administrative issues, provide additional documentation for questioned costs, provide stand-in costs or payment of questioned costs by the responsible agency.
 - 2) If informal resolution settles the issues, the State will issue a final determination letter and request closure from ETA.
- C. If informal resolution is not successful, the State will issue a Notice of Final

Determination. This notice will require the recipient to either request an appeal within thirty [30] days from the date of the Notice of Final Determination; pay the disallowed costs within sixty [60] days; or request a waiver of liability within thirty [30] days if criteria listed in Section XIV of this document is met. The notice may also include any required corrective administrative actions.

- D. If an appeals hearing is requested, the hearing must be conducted within thirty [30] days from the date of the request.

VII. Notice of the Appeals Hearing:

- A. An impartial independent hearing officer must conduct a hearing within thirty [30] days from receipt of the request.
- B. The State must notify the complainant and the respondent of the “Notice of Hearing” not less than ten [10] days prior to the date of the hearing by certified mail, return receipt requested. The time of the hearing may be earlier if mutually agreed to by both parties.
- C. The “Notice of Hearing” shall be in writing and include the following information:
 - 1) Complaint case number, name of complainant, name of respondent, date of complaint;
 - 2) Date, time and location of the hearing before an impartial hearing officer;
 - 3) A hearing is an opportunity to present evidence by either party; and
 - 4) A statement of the alleged violation(s).
- D. A request for a five-day postponement may be made in writing by either party upon a showing of good cause to the hearing officer, provided the hearing is still conducted within thirty [30] days of the request for a hearing.
- E. An impartial and independent hearing officer shall be designated by the State.

VIII. Rules of the Hearing:

- A. The strict rules of evidence will be waived since the hearing shall be conducted in an informal manner by both parties in order to obtain full disclosure of all the facts;
- B. The presentation of both written and oral testimony will be allowed;
- C. Both parties may present witnesses and the right to cross-examine the witnesses;
- D. Both parties have the right to examine all relevant records and documents submitted;
- E. If either the complainant or the respondent fails to appear at the hearing, the impartial hearing officer shall render a decision based on the review of all available information; and
- F. All hearing records, depositions, exhibits and other supporting documentation will be forwarded by the Hearing Officer to the State for record retention immediately following the hearing determination.

IX. Roles and Responsibilities of the Hearing Officer:

- A. Maintain the dignity of the hearing and protect the rights of both parties;
- B. Insure the hearing is recorded and a record of the hearing is made available to all parties, if requested;
- C. Begin the hearing by informing both parties of the issues involved;
- D. Explain that all testimony is under oath;
- E. Explain the hearing procedures and that the complainant bears the burden of proving the allegation(s) in the grievance;
- F. Determine the order of evidence and its relative significance; and
- G. Submit a written decision to the complainant within thirty [30] days after the hearing.

X. Review by the Secretary of Labor:

- A. Should a decision not be reached by the State within sixty [60] days of the hearing or a decision has been reached, to which either one of the parties involved does not agree, an appeal can be submitted to the Secretary of Labor [Secretary]. This appeal must be submitted within one hundred and twenty [120] days from the date on which a decision should have been reached or within sixty [60] days of a decision, which is adverse to one or more of the parties.
- B. The appeal to the Secretary should contain the following information:
 - 1) The full name, telephone number, if any, and address of the person making the grievance/complaint.
 - 2) The full name and address of the respondent against whom the grievance/complaint is made;
 - 3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;
 - 4) The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;
 - 5) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded, before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case;
 - 6) A statement of the date the grievance/complaint was filed with the Governor, the date on which the Governor should have issued a decision, and an attestation that no decision was issued;
 - 7) A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and grant recipient;

8) Send request to:

Secretary of Labor
U.S. Department of Labor
Attn: ASET
Frances Perkins Building
Room N5309
200 Constitution Avenue NW
Washington, D.C. 20210

Copy of the appeal should be sent to:

USDOL Region 6 ETA Regional Administrator
Employment and Training Administration
71 Stevenson Street, Suite 820
San Francisco, CA 94105

Director
State of Nevada
Department of Employment, Training and Rehabilitation
500 E. Third Street
Carson City, NV 89713-0001

and the opposing party.

- C. The Secretary shall act within 120 days of receipt of the request and where there is reasonable cause to believe the Act or regulations have been violated and shall direct the State to issue a decision adjudicating the dispute pursuant to state and local procedures. For resolution of State and Direct Grants, the Secretary of Labor uses the DOL audit resolution process and Grant Officer Resolution process. A final determination issued by a Grant Officer under this process may be appealed to the DOL Office of Administrative Law Judges within 21 days of receipt of final determination in accordance with WIA section §667.800.

XI. Debt Collection of Disallowed Costs:

- A. ETA holds its direct recipient liable for all mis-expenditures of funds awarded to the recipient, including all WIA Title 1 recipients. [§667.705]
- B. The preferred corrective action for disallowed costs from ETA grant funds is non-Federal cash repayment. The ETA uses a process of three demand letters at about 30-day intervals to demand repayment. If no appeal has been filed, debts are considered delinquent thirty [30] days after the date of the Final

Determination, therefore are subject to accrued interest charges.

- C. ETA may be willing to negotiate short-term installment agreements instead of full lump-sum repayments when the circumstances warrant.
- D. If the Final Determination has been appealed, then debt collection efforts are suspended and no interest will accrue until the appeal has been resolved and a final decision rendered.

XII. Offset Method for Debt Collection:

- A. Use of offset as a method for debt collection under WIA Title 1 programs is addressed in the Act at Section 184(c) and in §667.705.
- B. Under these provisions direct recipients wishing to utilize offset must formally request an offset from the Grant Officer.
- C. Offsets are generally applied against administrative funds.
- D. This option is only available if the debt is not due to gross negligence or a willful disregard of the Act and/or regulations, including a pattern or misexpenditure. [§667.705(a)]
- E. If the Grant Officer has held a state recipient responsible for misexpenditure incurred by an LWIB, the State may also utilize the offset provisions to collect the debt by deducting the amount of the debt from the subsequent year's administrative allocation to the LWIB. Again this option is only available if there is no gross negligence or a willful disregard of the Act and/or regulations, including a pattern or misexpenditure. [§667.705(b)]

XIII. Waiver of Liability [WIA Section 184(d)(2) and §667.720(c)(1-5)]:

The Act at Section 184(d)(2) provides that a State may request that the Grant Officer waive the liability for a debt if the following requirements are met [§667.720(c)]:

- A. Expenditure occurred at sub-recipient level.
- B. The resolution report must accompany the waiver request if the debt was established in a non-Federal resolution proceeding.
- C. The situation must not be due to willful disregard of WIA Title 1 requirements, gross negligence or failure to observe accepted administrative standards.
- D. The recipient must show that a final determination was issued, all appeals have been made, and a debt created.
- E. The recipient established and adhered to appropriate standards for the award and monitoring of grants and contracts.
- F. The recipient established contracts with clear and unambiguous goals and obligations.
- G. The Board conducted monitoring visits and audits at reasonable intervals.
- H. The recipient took prompt corrective action as a result of the violation.
- I. The fraud was discovered and promptly reported.

- J. The recipient/sub-recipient cooperates with any prosecution.
- K. After aggressive debt collection, further action against the perpetrator, of the fraud, would be inappropriate or futile.
- L. The recipient has requested a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 184(d)(2) and Section 667.720 of the WIA;
- M. The recipient will not be released from liability for misspent funds under the determination required by be WIA Section 184(d) unless the Grant Officer determines that further collection action, either by the recipient or subrecipients, would be inappropriate or futile.

Note: If the waiver request is made during the ETA audit resolution period, it must be made during informal resolution. If the waiver request relates to a debt established during the grantee's resolution process, then a copy of the audit resolution document(s) or a resolution report must accompany the request.

XIV. Advance Approval for Corrective Action [§667.730(b)]:

- A. A direct grantee may also request approval from the Grant Officer for contemplated debt collection actions it plans to either begin or forego.
- B. The request must include a description of the establishment of the debt and all actions taken by a subrecipient to collect the funds.
- C. The Grant Officer may determine that the grantee may forego collection if the criteria listed in XI A-J above are met and if the grantee demonstrates that further debt collection would either be inappropriate or prove futile.