

TEXAS WORKFORCE COMMISSION LETTER

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Date:	October 4, 2011
Keyword:	Administration
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Requirements for Reporting, Fact-Finding, and Prosecution of Fraud, Waste, Theft, and Program Abuse Cases, and Collection of Overpayments—*Update***

PURPOSE:

To provide Local Workforce Development Boards (Boards) with:

- procedures for reporting and conducting fact-finding for suspected fraud, waste, theft, program abuse, or violation of state or federal law or Texas Workforce Commission (TWC) policy (fraud, waste, or abuse);
- procedures for collection of overpayments; and
- criteria for referring cases for potential prosecution.

This WD Letter update amends the Customer Awareness Form (RID-51) by adding a new child care eligibility verification statement.

CHANGES TO WD LETTER 13-11:

New information in this WD Letter is in **bold** typeface, which indicates new or clarifying language.

BACKGROUND:

TWC-contracted funds for services can be spent only for individuals who meet eligibility requirements. Boards have a legal and contractual duty to ensure funds are spent in this manner. TWC rules dictate that funds not spent in accordance with this requirement create overpayments that a Board must attempt to collect. TWC, through its monitoring authority in rule, ensures that resources are efficiently and effectively used for authorized purposes and are protected from fraud, waste, and abuse.

In executing its authority, TWC assesses such things as compliance with applicable laws, regulations, contract provisions, and official directives including

such documents as Workforce Development Letters. If TWC believes that an overpayment resulting from ineligibility or fraud exists because of the failure to follow such requirements, it can question the costs associated with the overpayment. Likewise, if TWC believes a Board has not exercised due diligence in attempting to collect an overpayment resulting from ineligibility or fraud, TWC can question the costs associated with the overpayment.

This WD Letter details the procedures and requirements necessary for TWC and Boards to work in partnership in reporting and prosecuting fraud, waste, and abuse.

Changes to WD Letter 59-06, Change 1, issued February 2, 2007, and entitled “Requirements for Reporting, Fact-Finding, and Prosecution of Fraud, Waste, Theft, and Program Abuse Cases, and Collection of Overpayments—*Update*” include, but are not limited to, the following:

- Fact-Finding:
 - The threshold for reporting suspected fraud, waste, and abuse to the Office of Investigations (OI) has been increased from \$500 to \$3,000—except in cases that involve any workforce employee. All cases of suspected fraud, waste, and abuse that involve workforce employees must be reported to OI, regardless of the amount.
 - Boards are solely responsible for nonemployee-related cases that are less than \$3,000.
 - OI determines on a case-by-case basis who takes the lead in conducting fact-finding for cases that involve employees, or nonemployee cases over \$3,000.
- Report of Finding: After a Board concludes the fact-finding process, the Board is required to submit a Report of Finding to OI. OI determines whether the state assumes responsibility for prosecution, or whether the Board assumes the lead for final action.
- Final Action Report: This new report is submitted to OI for all cases in which the Board takes final action.

PROCEDURES:

Boards must exercise “due diligence” in reporting, fact-finding, collecting overpayments, and as appropriate, prosecution referral for cases involving suspected fraud, waste, and abuse. Due diligence is defined as:

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“[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Also termed *reasonable diligence*; *common diligence*.” (Note: Reasonable diligence is defined as “[a] fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue.”). (*Black’s Law Dictionary*, 9th ed. (2009))

Boards must report and conduct fact-finding in cases of suspected fraud, waste, or abuse discovered by a Board, workforce service provider, Workforce Solutions Office, or TWC's Regulatory Integrity Division's (RID) OI. Following are procedures for cases involving suspected fraud, waste, or abuse.

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I. Documentation

Because child care services comprise the bulk of suspected fraud, waste, and abuse cases, Boards must ensure that:

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- customers receiving child care services are notified of eligibility requirements and their responsibilities; and
- the customer's case file includes a signed RID-51. (The RID-51 is available on the Intranet¹ at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html.)

Boards may develop a local version of the RID-51.

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Boards must ensure a locally developed RID-51 includes each of the following elements:

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- A line for the staff member administering the form to print his or her name and a line to date the form.
- A paragraph covering basic eligibility requirements as set forth in the Work/Training/Education, and Family/Income sections of the form.
- A statement regarding possible criminal prosecution if requirements are not met or if false information is reported by a customer in order to receive services.
- **A statement giving notice to customers that:**
 - **information provided by the parent to determine eligibility is subject to validation through cross-checks against state and federal databases; and**
 - **the parent may be asked to provide original documents and participate in face-to-face interviews to verify identity and eligibility for child care services.**

For initial certifications and recertifications, Boards must ensure that the changes to RID-51 are effective no later than November 1, 2011.

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Boards may omit the staff instruction box in a locally developed RID-51.

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However, Boards must establish written instructions for administering a locally developed RID-51 and ensure the instructions are followed.

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The RID-51 can be read over the phone. However, Boards must ensure that Workforce Solutions Office staff:

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- fully responds to the customer's questions;

¹ *The Intranet is not available to the general public.*

- annotates the form based on the phone conversation;
- sends a copy of the form to the customer for signature, with instructions for its return; and
- retains the signed copy in the customer's file.

Boards also must ensure that the RID-51 is completed, as instructed, at both initial certification and recertification to ensure the customer understands his or her responsibilities for the continued receipt of child care services and the consequences of failing to provide required or updated information.

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II. Reporting

Upon detecting any suspected fraud, waste, or abuse involving TWC, Board, or workforce service provider employees, Boards must immediately report it to OI and submit an Incident Report [RID-32 (previously OPI-32)] within five working days. (The RID-32 and instructions are available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html.)

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Upon detecting any suspected fraud, waste, or abuse involving nonemployees and valued at \$3,000 or more, Boards must report it to OI by submitting a RID-32 within five working days.

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Boards must submit the RID-32 and any associated documentation relating to the incident by one of the following methods:

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- **Mailing Address**

TWC Office of Investigations
101 East 15th Street, Room 104AT
Austin, TX 78778

- **E-mail** to the Board's assigned TWC investigator. To find your investigator, check the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_contacts.html, or call (512) 463-2794.

- **FAX**—(512) 936-3280

To maintain confidentiality of any sensitive information contained in the RID-32, Boards must:

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- ensure that all e-mails are encrypted; and
- establish password protocol with their assigned OI investigator.

Within 10 working days, OI will notify the Board in writing of the receipt of the RID-32 and provide an assigned case number. Boards must reference the assigned case number on all case correspondence.

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Boards must review each potential improper payment issue on its own merits. Not every irregularity requires reporting. Not every case in which a customer fails to report changes in his or her circumstances is fraud. OI provides training on recognizing the differences between eligibility issues and fraud. To schedule the training, contact the OI director at (512) 463-2393.

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III. Jurisdiction

Boards must be aware of the following:

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The following criteria determines jurisdiction of cases:

Regardless of the suspected loss amount, OI maintains full jurisdiction over cases involving the following:

- TWC employees
- Board employees
- Workforce service provider employees

Boards must immediately report all such cases to OI. OI maintains full jurisdiction over investigating and producing a Report of Findings (RID-41) for such cases. (The RID-41 and instructions are available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html.)

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Boards must not conduct fact-finding on suspected fraud, waste, or abuse involving TWC, Board, or workforce service provider employees—unless specifically directed to do so by OI. For cases involving a Board or workforce service provider employee, OI will provide a RID-41 to the Board.

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Cases involving losses of less than \$3,000

Boards must be aware that they are not required to report to OI cases involving losses of less than \$3,000—unless they involve a TWC, Board, or workforce service provider employee. However, Boards must:

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- track and document the number and outcome of all cases under \$3,000;
- conduct and document fact-finding;
- if at any time the fact-finding process reveals a loss greater than \$3,000, immediately complete and submit a RID-32 to OI;
- maintain documentation of the fact-finding in a case file separate from the customer's file for review;
- exercise due diligence to collect overpayments; and
- document all attempts to collect overpayments.

Cases involving losses of \$3,000 or more

Boards must be aware that in cases involving losses of \$3,000 or more, OI will review and document a RID-32 and:

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- request that the Board conduct fact-finding; or
- accept the case for investigation and/or action at the state level.

IV. Fact-Finding

Boards must be aware of the following:

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- Fact-finding must be conducted in all cases of suspected fraud, waste, or abuse.
- Once jurisdiction is established, the fact-finding must begin immediately.

Boards must establish local fact-finding procedures to standardize the process.

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Fact-finding can:

- produce a comprehensive report explaining the findings to determine and take final action;
- identify program weaknesses;
- identify occurrences of intentional wrongdoing;
- establish loss amount; and
- support prosecution cases.

The Fact-Finding Mission (available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html) contains useful information for the fact-finding process. Additionally, OI staff is available to consult with Boards as needed.

Boards must be aware of the following:

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- If OI requests the status of cases under Board jurisdiction during the fact-finding process, Boards must submit the status information in a timely manner.
- When OI accepts the case for investigation and/or action at the state level, OI will:
 - investigate the case;
 - make every attempt to pursue criminal action at the local, state, or federal level when it is supported by the evidence; and
 - distribute a RID-41 to TWC, the affected Board executive director, and the Board's fraud point of contact, as appropriate.

V. Report of Findings

Boards must be aware of the following:

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- Upon completing all necessary fact-finding, the Board must submit a RID-41 to OI detailing:
 - the steps taken during the fact-finding to examine the allegation(s);
 - the findings (i.e., were the allegations substantiated or not substantiated);
 - any additional issues detected during the fact-finding process; and
 - any procedural or policy modifications that are needed to strengthen the integrity of the affected program.

- Supporting documentation includes, but is not limited to:
 - application and eligibility forms for the period in question;
 - Parent Responsibility Agreement and RID-51, signed by the customer, in which he or she acknowledges responsibility to adhere to program rules to receive benefits or services;
 - witness statements, signed and dated by the relevant witness, attesting to his or her knowledge surrounding the case, or a report of interview, or statement of facts by the staff who interviewed a witness, or a fact-finder's Statement of Fact stating that a particular witness refused to cooperate, could not be located, etc., as appropriate;
 - wage verification forms, paycheck stubs, etc.;
 - counselor notes or chronology of customer contact;
 - customer or provider correspondence;
 - copies of government-issued photo identification, Social Security cards, birth certificates, or other identifying documents;
 - payment/billing records; and
 - any relevant documentary evidence cited by the fact-finder in the RID-41 (see section 6, Documentation Providing Evidence of Violation (Exhibits)).

Boards must be aware of the following:

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- OI will review the RID-41 for adequacy.
- Cases that do not meet due diligence will be returned to the Board for further fact-finding.
- Cases with clear and convincing evidence that fraud was committed, but that do not meet standard documentary criteria for criminal prosecution, will be returned to the Board for further fact-finding and document gathering necessary to meet the standard criteria.
- Upon determining that the RID-41 is adequate, OI will:
 - accept the case for final action at the state level; or
 - return the case to the Board for final action.

VI. Final Action

Final action can encompass criminal prosecution, collection action, or both. At the conclusion of each case, regardless of the dollar amount, Boards must carefully review the RID-41 and supporting evidence and decide what final action to take.

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Boards may opt to proceed with the following actions:

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Criminal Prosecution

When clear and convincing evidence indicates the subject of the investigation committed fraud (intentional wrongdoing), the subject can be referred to local law enforcement for potential criminal prosecution. Boards must provide a Prosecution Report with all applicable evidence to the appropriate local law enforcement authority for prosecutorial consideration. When a case is declined

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for prosecution, Boards must pursue collection action. (A sample Prosecution Report is available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html).

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Boards must be aware of the following:

- Local prosecutors may require a minimum dollar loss to meet local thresholds for prosecution to occur.
- Local prosecutors make the final decision as to whether to prosecute the case.
- Boards can be liable for questioned costs if, without good cause, they fail to refer cases to local law enforcement authorities for criminal prosecution when there is sufficient evidence that fraud was committed.
- Upon sentencing in a criminal case, Boards must submit a copy of the judgment to TWC's Revenue and Trust Management department at the address below.
- Boards must request the local probation department to include the defendant's full name and the last four digits of the defendant's Social Security number on court-ordered restitution payments.
- Court-ordered restitution payments will include the court's case or cause number. This number, along with a copy of the judgment, must be provided to OI for transmittal to TWC's Revenue and Trust Management department. Advise the court liaison or probation department to send all court-ordered restitution payments to:

Office of Investigations
Texas Workforce Commission
ATTN: Revenue and Trust Management
P.O. Box 322
Austin, Texas 78767-0322

Collections

Boards must pursue collection action when the case is declined for legal action by local authorities based on one of the following:

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- Improper payment resulting from customer or administrative error;
- The merits of the case lack evidence to support intentional wrongdoing; or
- The cost of pursuing criminal prosecution outweighs the monetary amount of the loss.

The primary goal of the collections process is to collect the money due (i.e., the amount of overpaid benefits). Boards must:

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- exercise due diligence to collect overpaid benefits;
- document all attempts to collect overpayments; and
- not enter into a settlement for less than the total amount of the loss without TWC approval.

To enable Boards to meet due diligence, it is recommended that Boards use the Overpayment Collections Calculation Chart (available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html).

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Boards must be aware that they can be liable for any questioned cost not recovered because of a failure to exercise due diligence.

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Boards must adhere to the following collections process regardless of the dollar amount involved.

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Overpayment Statement

Boards must mail an Overpayment Statement (a sample Overpayment Statement is available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html) to the individual(s) responsible for the delinquency containing the following information:

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- The time period and dollar amount of the delinquency;
- A point of contact at the Board; and
- A pay-by date of 30 days from the mailing date of the Overpayment Statement in which to respond and remit payment.

The Overpayment Statement is the first opportunity to notify the individual of the delinquency and amount due; therefore, it is recommended that Boards contact the individual by telephone, if possible, approximately seven to 10 days after mailing the Overpayment Statement to initiate collection.

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Repayment Schedule

Because recovery of funds is the goal, it also is recommended that Boards:

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- establish a Repayment Schedule whenever individuals are unable to pay in full by the pay-by date. (A sample Repayment Schedule is available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html); and
- use the Overpayment Collections Calculation Chart to ensure compliance with due diligence requirements in collecting overpaid benefits.

Demand Letter

If the overpayment is not remitted or a repayment schedule has not been established by the pay-by date, Boards must give due notice by sending a Demand Letter by certified mail to the individual. (A sample Demand Letter is available on the Intranet at https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html.)

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Boards must ensure that the Demand Letter itemizes the delinquency by time period and dollar amount, contains a new pay-by date, and sets forth:

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- the violations involved in the collection action and the recourse available to the Board to collect the debt, including criminal prosecution; and
- a statement that if payment is not received within 10 days of the pay-by date, the delinquency then proceeds to the final phase of the collections process, the prosecution phase.

If payment is not received within 10 days of the pay-by date and the evidence clearly and convincingly indicates fraud has been committed, Boards must decide if they will refer the case to local law enforcement authorities for criminal prosecution.

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Bankruptcy

When a Board learns that a person from whom it is seeking collection of a benefits overpayment has filed for bankruptcy, the Board must cease all collection activities immediately to avoid violation of the federal bankruptcy court's automatic stay against collection activities against the debtor. Penalties for violation of this automatic stay are severe. If the Board wishes to safeguard its claim to payment in the bankruptcy proceeding, the Board must first determine if the bankruptcy was filed under the Federal Bankruptcy Code as a:

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- Chapter 7 bankruptcy (known as "liquidation"); or
- Chapter 13 bankruptcy (known as "wage earner"—an employed individual pays back prepetition debts with post-petition earnings pursuant to a plan).

When a Board files a claim in a bankruptcy proceeding, it is recommended that the case still be referred for potential criminal prosecution. The primary purpose of a criminal prosecution is to hold an individual accountable for the alleged crime, not necessarily to collect the money that was defrauded. This is not considered an attempt to collect the overpayment and does not violate federal bankruptcy law involving the automatic stay of collection activities against the debtor.

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Note: Training for the collections process is available from RID's Collections & Civil Actions Department at (512) 463-2884.

VII. Final Action Report (RID-45)

After all associated legal and/or corrective final actions have been taken, the Board must submit a RID-45 to OI, including a fact-finding results summary, collections effort summary, and as applicable, prosecution results. (The RID-45 is available on the Intranet at

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https://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html.)

If clear and convincing evidence showed that fraud has been committed and the Board decides not to refer the case to local law enforcement for prosecution, the Board must provide the rationale for its decision in the RID-45.

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Boards must be aware that RID will review the RID-45 for due diligence. If due diligence is determined, the case will be closed. Cases that fail to meet fact-finding, legal action (prosecutions), or collections due diligence will be referred to TWC's Workforce Development Division for questioned costs and/or sanctions consideration.

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INQUIRIES:

Direct inquiries regarding investigation to bradford.ward@twc.state.tx.us.

Direct inquiries regarding collection to william.brown@twc.state.tx.us.

Direct inquiries regarding prosecution to evan.farrington@twc.state.tx.us.

Direct inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

RESCISSIONS:

WD Letter 13-11

REFERENCE:

Office of the Governor, Executive Order RP36, issued July 12, 2004, and entitled "Relating to Preventing, Detecting, and Eliminating Fraud, Waste, and Abuse"

Texas Workforce Commission Child Care Services Rules: 40 TAC, Chapter 809

Texas Workforce Commission Integrity of the Texas Workforce System Rules: 40 TAC, Chapter 802

Texas Workforce Commission Agency-Board Agreement

WD Letter 05-04, Change 1, issued May 26, 2004, and entitled "Change and Clarification on Overpayment Recovery of Child Care Related Funds"

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by "must" or "shall."

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by "may" or "recommend."