

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 59-06, Change 1

Date: February 2, 2007

Keyword: Administration

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



From: Fran Carr, Director, Program Integrity Division, through
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 (Commission) policy (fraud, waste, or abuse);
- procedures for collection of overpayments; and
- criteria for referring cases to the Office of Investigations (OI) for potential prosecution.

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 and Development Rules: 40 TAC Chapter 809

Texas Workforce Commission General Administration Rules: 40 TAC Chapter 800

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. Federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

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 guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

CHANGES TO WD LETTER 59-06:

New information in this WD letter is indicated by:

- A ~~strike through~~ of the original language, which indicates that language has been deleted; and
- **Bold** typeface, which indicates new or clarifying language.

BACKGROUND:

Commission-contracted funds for services may be spent only for individuals who meet eligibility requirements. A Board has both a legal and contractual duty to ensure funds are spent in this manner. Commission rules dictate that funds not spent in accordance with this requirement create overpayments that a Board must attempt to collect.

In addition, the Commission, through its monitoring authority, also ensures that “resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse.” [40 TAC §800.303(a)(2) and §800.305(a)] In executing its authority, the Commission assesses such things as “a subrecipient’s or contract service provider’s compliance with applicable laws, regulations, contract provisions, and official directives including such documents as . . . Texas Workforce Commission Workforce Development Letters.” [40 TAC §800.303(b)]

If the Commission in its monitoring activities believes that an overpayment resulting from ineligibility or fraud has been created because of the failure of a subrecipient or a contract service provider to follow applicable laws, regulations, contract provisions, or official directives—including WD Letters—the Commission may question the costs associated with the overpayment. Likewise, if the Commission believes that a Board has not exercised due diligence in attempting to collect an overpayment resulting from ineligibility or fraud, the Commission may question the costs associated with the overpayment.

This WD Letter provides Boards with information and procedures for complying with the Agency-Board Agreement; the Commission’s Child Care and Development Rules, Chapter 809; and the Office of the Governor, Executive Order RP36.

This WD Letter supersedes and rescinds WD Letter 59-06 and its three attachments, issued October 20, 2006, and entitled “Requirements for Reporting, Fact-Finding, and Prosecution of Fraud, Waste, Theft, and Program Abuse Cases, and Collection of Overpayments.”

PROCEDURES:

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

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[s]uch measure of prudence, activity, or assiduity [diligence], as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. (*Black’s Law Dictionary*, 6th ed. (1990) p. 457)

Boards must report and conduct fact-finding in cases of suspected fraud, waste, or abuse that is discovered by a Board, Board contractor, or Texas Workforce Center. Following are reporting, fact-finding, collections, and prosecution 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 customers receiving child care services are notified of eligibility requirements and their responsibilities. Boards must ensure that the customer’s case file includes ~~the~~ a Customer Awareness Form, **an example of which is provided in Attachment 1.**

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Boards may develop a local version of the Customer Awareness Form.

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Boards must ensure that a locally developed Customer Awareness Form includes 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 that covers basic eligibility requirements as set forth in the *Work/Training/Education*, and *Family/Income* sections of Attachment 1; and**
- **A statement regarding possible criminal prosecution if requirements are not met.**

Boards may omit the staff instruction box in Attachment 1 from locally developed Customer Awareness Forms. LF

However, Boards must establish written instructions for administering the form and ensure they are followed as closely as possible. NLF

The Customer Awareness Form may be read over the phone. However, Boards must ensure that staff: NLF

- **fully responds to the customer’s questions;**
- **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.**

The Customer Awareness Form must be discussed and completed, as instructed, with all individuals receiving child care services to ensure they are made aware of their responsibilities for the continued receipt of child care services and the consequences of failure to provide required or updated information. NLF

Boards also must ensure that individuals receiving child care services sign a Customer Awareness Form at initial certification and each recertification thereafter. NLF

II. Jurisdiction Based upon Amount of Potential Collection

Jurisdiction of overpayment cases is determined by the following criteria:

- Cases involving losses of less than \$500
Boards are not required to report such cases to OI. Boards must: NLF
 - conduct fact-finding;
 - exercise due diligence to collect overpaid benefits and document all attempts made to collect such overpayments; and
 - be aware that they may be liable for any disallowed cost not recovered if they fail to exercise due diligence to collect overpaid benefits.

At their discretion, Boards may refer cases to local law enforcement authorities for criminal prosecution. LF

- Cases involving losses of \$500 but less than \$3,000
Boards must: NLF
 - report the discovery to OI;
 - conduct fact-finding;
 - submit a final Report of Findings and supporting documentation to OI;
 - exercise due diligence to collect overpaid benefits and document all attempts made to collect such overpayments; and
 - be aware that they may be liable for any disallowed cost not recovered if they fail to exercise due diligence to collect overpaid benefits.

At their discretion, Boards may refer cases to local law enforcement authorities for criminal prosecution.

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• Cases involving losses of \$3,000 but less than \$150,000

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Boards must:

- report the discovery to OI;
- conduct fact-finding;
- submit a final Report of Findings and supporting documentation to OI;
- exercise due diligence to collect all overpaid benefits and document all attempts made to collect such overpayments;
- be aware that they may be liable for any disallowed cost not recovered if they fail to exercise due diligence to collect overpaid benefits;
- not enter a settlement for less than the total amount owed without approval of the Commission, after receipt and review of OI; and
- after necessary collection attempts have been made, refer any unpaid overpayment amount of \$3,000 or more to OI for:
 - due diligence review of the local collections process by the Collections Unit;
 - review of the case file to ensure it meets standard documentary criteria for criminal prosecution; and
 - consideration for criminal prosecution by the Fraud Prosecutions Unit.

• Cases involving losses of \$150,000 or more

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Boards must:

- report the discovery to OI;
- be aware that OI maintains full jurisdiction over fact-finding and the Report of Findings for such cases.

Boards must also be aware that OI maintains full jurisdiction over cases that involve the following:

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- Texas Workforce Commission employees;
- Board employees; or
- contractor employees if they are suspected of a conspiracy or involvement in an offense involving a larger scheme or plan.

For each of these cases, OI will conduct the same fact-finding investigative course of action set forth in Attachment 2. In addition, for cases involving a Board or contractor employee, OI will provide a copy of the final Report of Findings to the affected Board.

III. Reporting

Boards must ensure that on discovery of suspected fraud, waste, or abuse for amounts that involve a loss of \$500 or more, the *Office of Investigations Incident Report* (Form OPI-32) is submitted to:

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Texas Workforce Commission
Office of Investigations
101 East 15th Street, Room 210
Austin, Texas 78778-0001

However, not every irregularity requires reporting. Boards must review each potential improper payment issue on its own merits. NLF

Form OPI-32 and its instructions are available on the Intranet under *Forms/General* at http://intra/intranet/gl/html/general_forms.html. (Note: The Intranet site is not available to the general public.)

Boards must ensure that Form OPI-32:

- is submitted no later than five working days from the date of discovery of suspected fraud, waste, or abuse; and
- includes any associated documentation relating to the discovery.

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Within 15 working days, OI will notify Boards in writing of the receipt of Form OPI-32 and provide an assigned case number. Boards must ensure that the assigned case number is referenced on all correspondence concerning the case. NLF

IV. Fact-Finding

Boards must ensure that fact-finding is conducted in *all* cases of suspected fraud, waste, or abuse in which OI does not maintain full jurisdiction. NLF

If the Board identifies the suspected fraud, waste, or abuse, the Board must begin ~~its~~ the fact-finding process immediately. NLF

Boards must be aware that not every case in which a customer fails to report changes in his or her circumstances is fraud. *Fact-Finding 102* offers training on recognizing the differences between eligibility issues and fraud. To schedule this training course, contact Bill McCrea at William.McCrea@twc.state.tx.us. NLF

If the Commission identifies the suspected fraud, waste, or abuse, OI will issue an Initial Letter to the Board with general instructions and guidance on conducting the fact-finding. The Board must submit the initial results of the fact-finding within 60 days from the mailing date of the Initial Letter. NLF

Boards must ensure that the fact-finding:

- identifies the individual responsible for the overpayment;
- directs all correspondence to the individual; and

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- ascertains the identifying characteristics (e.g., Social Security number, Texas Driver License or Identification Card Number, etc.) and the individual's current address.

~~Boards must ensure that the fact-finding process detailed in Attachment 2 is followed when fraud, waste, or abuse is suspected.~~ **Boards must establish local fact-finding procedures.**

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Boards may use Attachment 2, which provides additional guidance on developing fact-finding methods, including:

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- questions for Boards to consider;**
- questions that steer a fact-finding mission;**
- common elements of a fact-finding mission; and**
- examples of supporting documentation.**

During the fact-finding process, OI may issue a Status Letter to the Boards requesting the status of the fact-finding and copies of all fact-finding documentation. Boards must submit the requested documentation within 30 days from the mailing date of the Status Letter.

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V. Final Report of Findings

Upon completion of all necessary fact-finding, Boards must submit a final Report of Findings to OI detailing:

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- the steps taken during the fact-finding process;
- the findings (i.e., what was discovered during the fact-finding process);
- any additional issues detected during the fact-finding process;
- a description of actions taken to resolve the allegations; and
- any procedural or policy modifications that are needed to strengthen the integrity of the affected program.

OI will review the final Report of Findings for due diligence and adequacy of the fact-finding, and may offer additional instructions and guidance by issuing a Further Fact-Finding Letter. The Board must respond within 30 days from the mailing date of the Further Fact-Finding Letter.

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VI. Collections

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

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

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- Boards must send an Overpayment Statement to the individual(s) responsible for the delinquency that contains the following information:
 - 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.

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

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Boards may set up payment plan agreements as long as the agreements meet due diligence requirements. Because recovery of funds is the goal, Boards are encouraged to arrange payment plan agreements whenever individuals are unable to pay in full by the pay-by date.

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- If the overpayment is not remitted **or a payment plan 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. The Demand Letter must itemize the delinquency by time period and dollar amount, and contain a **new** pay-by date. The Demand Letter also must include:
 - 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 the overpayment, regardless of the amount, is not received within 10 days of the pay-by date, Boards must notify OI of the outstanding debt and Social Security number of the individual responsible for the delinquency in order to place the individual on the Warrant Hold list of the Texas Comptroller of Public Accounts.
- If payment is not received within 10 days of the pay-by date and the amount of any remaining overpayment is \$3,000 or greater, Boards must forward the individual's case material to OI for screening for appropriate legal action.
- If the amount of any remaining overpayment is less than \$3,000, Boards need not forward the case material to OI, and may at their discretion refer the case to local law enforcement authorities for criminal prosecution.

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Note: Training for the collections process will be provided in the future by the Regulatory Enforcement Division's Collections Unit.

VII. Criminal Prosecution

When a case meets the \$3,000 threshold (following attempted collection) for potential criminal prosecution, Boards must ensure that the Report of Findings is provided to OI for prosecutorial consideration. Boards also must be aware that

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the Report of Findings may be forwarded to Commission executive staff or other appropriate entities having jurisdiction, for review and additional action if necessary.

A Board that submits a Report of Findings for a case meeting the \$3,000 threshold must also meet standard documentary criteria, by forwarding the following documents to OI:

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- The complete case file, which must include the customer's eligibility application for the program and the Customer Awareness Form;
- Necessary witness statements, signed and dated by the relevant witness, attesting to the facts of the case, or a Board letter stating that a particular witness refused to cooperate, could not be located, etc., as appropriate;
- A customer's signed and dated statement, attesting to the facts of the case, or a Board letter stating that the customer refused to cooperate, could not be located, etc., as appropriate; and
- Any relevant documentary evidence cited by the fact finder in the final Report of Findings.

Boards must be aware that cases meeting the \$3,000 threshold but not meeting standard documentary criteria for criminal prosecution will be returned to the Boards for any further fact-finding and document gathering necessary to meet the standard criteria.

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ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries regarding investigation to:

julia.buenrostro@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

ATTACHMENTS:

Attachment 1: Customer Awareness Form

Attachment 2: The Fact-Finding Mission

Attachment 3: The Fact-Finding Process

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| Rescissions: WD Letter 59-06 | Expiration: Continuing |
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