

SUBJECT: Grievances or Complaints of a Non-Discriminatory Nature

REFERENCE: Section 181, 20 CFR: 667.270, 667.600, 667.610, 667.630

BACKGROUND: The Workforce Investment Act (WIA) mandates that each State and local area receiving an allotment under Title I establish and maintain a procedure for grievances or complaints alleging violations of the requirements of Title I. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint. [The grievance procedure requirements applicable to Job Corps are set forth at 20 CFR 670.990. Complaints of discrimination will be handled through a separate policy. All information and complaints involving criminal fraud, waste, abuse or other criminal activity shall be reported immediately to the U.S. Department of Labor, Office of the Inspector General, Office of Investigations, Room S5514, 200 Constitution Ave. NW, Washington, D.C. 20210.]

POLICY: The following provides standardized procedures for the submission and processing of complaints that allege:

- Violations of WIA Act, regulations or agreements under the Act and other non-criminal complaints.
- Violations of the labor standards provisions at Section 181(b), i.e., violations involving activities that impact wages of employees, displacement, working conditions, and employment conditions.
- Violations of the relocation provisions in Section 181(d).

Each local area, State, and direct recipient must:

- Provide information about the content of the grievance and complaint procedures to participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers.
- Make reasonable efforts to assure that the grievance and complaint procedures information is understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

- Respond to written complaints through written acknowledgement of receipt and explanation of status and next steps. If an oral complaint is received, an informal attempt at resolution can take place prior to the filing of a written complaint. If resolution does not result, the complaint must be put in writing. Complaints must be legible, signed by the complainant or the complainant's authorized representative, and dated. In the event the complainant is unable to provide a written statement, an alternative method of obtaining written documentation from the complainant shall be pursued, which may include assistance by agency staff or local service provider.

These procedures will be available to all WIA staff, applicants, participants, One-Stop partners, service providers, sub-recipients, contractors, labor unions, community based organizations or other interested parties seeking to do business with the Department of Labor. Dissemination will be made through the Internet, Department of Labor Intranet, State Policy Manual, grant awards, and upon request. These procedures provide for prompt and equitable resolution of complaints.

A. Who May File

A complaint may be filed by any individual or organization, including but not limited to:

- program participants
- contractors
- WIA staff
- Local Area staff
- One-Stop Partner staff
- applicants for program participation
- labor unions
- community based organizations.

The identity of the complainant or any other person who has furnished information or assisted in an investigation of a complaint will be kept confidential to the maximum extent possible, consistent with a fair determination of the issues.

No person, organization or agency may retaliate against any individual that files a complaint or testifies during complaint proceedings. Any individual may file a complaint without fear of

jeopardizing their position, opportunity for advancement, salary increase or denial of rights and benefits provided by the Act, regulations, or state and local laws.

B. Time Frames

Except for complaints alleging fraud or criminal activity, complaints shall be made within one hundred and eighty (180) days of the alleged occurrence.

This policy provides that complaints submitted under this procedure will be either resolved or a decision issued within sixty (60) days.

C. Submission Requirements for the Complaint

Local Area Procedures

Grievance procedures shall be established at the Local Area level for resolving any complaint alleging a violation of the Act, regulations or other agreements under the Act. The procedures will explain the process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers.

The Local Area procedures must provide an opportunity for an informal resolution and a hearing. Any hearing that may be required shall be completed within sixty (60) days of the filing of the grievance or complaint. The Local Area procedures may include a requirement that the complainant pursue an informal resolution with a Local Area service provider if the complaint or grievance involves an action or decision of the service provider or one of its employees. If a mutually satisfactory resolution results from an informal process, the staff member should include documentation in the file stating the issues and the resolution. The matter would then be considered closed.

The Local Area process needs to allow an individual alleging a labor standards violation the opportunity to submit the grievance to binding arbitration, if a collective bargaining agreement covering the parties to the grievance so provides.

If not resolved at the local level, then there needs to be an opportunity for a local level appeal according to the procedures

below and submitted to the State at:

Nebraska Department of Labor
Office of Employment and Training
550 South 16th Street
Lincoln, Nebraska 68509

D. State Appeal/Review Process

Appeal of a Local Area Grievance or Complaint

If the complainant does not receive a determination on a complaint filed at the local level within sixty (60) days of filing or if either party is dissatisfied with the local hearing decision, an appeal may be made to the State. The request for review shall be filed within ten (10) days of receipt of the adverse determination or, if no determination is made within sixty (60) days, then at any time prior to receipt of a determination from the local level. Staff will review and/or investigate, provide opportunity for a hearing, and the hearing officer will issue a decision within sixty (60) days of the appeal to the State. A complainant may withdraw his/her appeal at any time prior to the hearing. The decision is final unless appealed to the Secretary.

Statewide Workforce Investment System Grievance or Complaint Review Process

Grievances and complaints from participants and other interested parties affected by Statewide Workforce Investment programs may be submitted to the State at:

Nebraska Department of Labor
Office of Employment and Training
550 South 16th Street
Lincoln, Nebraska 68509

If it is determined that the complaint is directly related to the local Workforce Investment Act program, then the complaint/grievance will be remanded to the local area grievance process. Local level procedures shall be exhausted before the complaint may be addressed at the State level. The local area shall either resolve the complaint informally or have a hearing and issue a final local decision within sixty (60) days.

Elements to Include in the Complaint Requesting Appeal of Local Area Decision or State Review

Complaints must be legible, signed by the complainant or the complainant's authorized representative, and dated. The date of receipt of the written complaint by the appropriate authority [local area, State, or direct recipient], triggers the clock for counting days of action taken.

Complaints must pertain to a single subject, situation or set of facts.

The name, address and phone number must be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and phone number of the representative must also appear in the complaint.

Complaints must state the name of the party or parties complained against and, if known to the complainant, the address and phone number of the party or parties complained against.

Complaints must contain a clear and concise statement of the facts including pertinent dates constituting the alleged violations.

Complaints must cite the provisions of WIA regulations, grants or other agreements under WIA believed to have been violated, if known.

Complaints must state the relief or remedial action(s) sought.

Copies of documents supporting or referred to in the complaint must be attached to the complaint.

E. Investigation and Initial Determination

The Office of Employment and Training will review and/or investigate the alleged incident and issue a written initial determination within ten (10) days.

The Initial Determination will include:

- Statement of Issues
- Initial Determination
- Reason for Determination

- Opportunity for Complainant to request a hearing if not satisfied with the determination.

F. Hearing

If the complainant is not satisfied with the Initial Determination, they may request a hearing before the Commissioner of Labor or an appointed representative. The request for hearing will be filed within seven (7) days of receipt of the Initial Determination. The hearing will be conducted in an informal manner and formal or technical rules of evidence will not apply.

If a hearing is requested, the Office of Employment and Training will:

- Arrange for a hearing in the complainants locale if possible.
- Insure the hearing is held within thirty (30) days of filing.
- Prepare a written notice of hearing and forward to all affected/interested parties.

The written notice of hearing will include:

- Identity of hearing officer, date, time, and place of hearing, how hearing will be conducted and issues to be decided.
- The opportunity to withdraw the request before the hearing. This request must be received in writing before the hearing date.
- The opportunity to bring witnesses and/or documentary evidence.
- The opportunity to be represented by an attorney or representative selected by the complainant.
- The opportunity to have records or documents relevant to the issues to be decided at the hearing produced by their custodian.
- The opportunity to question any witness or parties.
- The opportunity to amend the complaint prior to the hearing.

The decision of the hearing officer will be rendered, in writing, within ten (10) days from the date of hearing. The decision will include:

- A statement of issues presented at the hearing.
- Hearing Officer's decision.
- Reason for decision.
- Recommended remedies to be applied.

G. Appeal to the Secretary of Labor

The Secretary of Labor shall investigate an allegation of a violation of the requirements of Title I if:

1. A decision relating to a Statewide Workforce Investment program grievance or complaint has not been reached within sixty (60) days of receipt of the grievance or complaint or within sixty (60) days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or
2. A decision relating to such violation has been reached and the party to which such decision is adverse appeals such decision to the Secretary.

All appeals to the Secretary of Labor must be submitted by certified mail, return receipt requested, to the:

Secretary
U.S. Department of Labor
Washington, D.C. 20210
Attention: ASET

A copy of the appeal must be simultaneously provided to the opposing party and to:

Region V Administrator
U.S. Department of Labor
Employment and Training Administration
230 S. Dearborn Street
Chicago, Illinois 60604

Appeals made under (2) above must be filed within sixty (60) days of the receipt of the decision being appealed. Appeals made under (1) above must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals should contain the following information:

- The full name, telephone number (if any) and address of the person making the complaint.
- The full name and address of the respondent against whom the complaint is made.
- A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

- The provisions of the Act, regulations or grant or other agreements under the Act believed to have been violated.
- 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.

The Secretary is required to make a final determination relating to an appeal no later than 120 days after receiving such appeal.

H. Remedies

Remedies that may be imposed through this grievance/complaint process for a violation of any requirement of Title I shall be limited to –

- Suspension or termination of payments under this title;
- Prohibition of placement of a participant with an employer that has violated any requirement under this title;
- Where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- Where appropriate, any other relief available under Title I of the Workforce Investment Act of 1998.

I. Other Remedies

Nothing prohibits a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of Title I of the Workforce Investment Act.

J. Violations of the Labor Standards Provisions at Section 181(b)

Complaints Related to Conditions of Employment

Employees of the Local Areas and Sub-Contractors shall submit and resolve complaints through local employer procedures.

Each recipient of WIA funds which is an employer of WIA participants shall continue to operate or establish and maintain a grievance procedure relating to the terms and conditions of employment.

Employers, including private-for-profit employers of WIA participants, may operate their own grievance system or may utilize the grievance system established by the State or the Local Area. Employers shall inform WIA participants of the grievance procedure they are to follow when the participant begins employment.

A complainant may appeal/submit the complaint if any of the following conditions exist:

- The employing agency does not operate a complaint system.
- The employing agency operates a complaint system but the procedures are not followed.
- The complaint alleges a violation of Federal or State rules and regulations.

Appeal to the Secretary

As described in Section G above, when the grievance alleges violation of Section 181(b) and the grievance procedure rights have been exhausted or the 60-day time period has elapsed without a decision, either party to such procedure may submit the grievance to the Secretary of Labor. The Secretary shall investigate the allegations and make a determination as to whether a violation of Section 181(b) has occurred.

If a modification or reversal of the decision issued pursuant to the recipient's grievance procedure is warranted, or the 60-day time period has elapsed without a decision, the Secretary may modify or reverse the decision, or issue a decision if no decision has been issued, after an opportunity for a hearing.

If the Secretary determines that the decision issued pursuant to the grievance procedure is appropriate, the determination shall become the final decision of the Secretary.

Binding Arbitration

As an alternative to the above, a person alleging a violation of Section 181(b) may submit the grievance to a binding grievance procedure if a collective bargaining agreement covering the parties to the grievance so provides. However, binding arbitration decisions are not reviewable by the Secretary and the remedies available to the grievant are limited to those set forth in the Act.

K. Violations of the Relocation Provisions in Section 181(d) of the Act

When the grievance alleges violation of the Relocation Provisions in Section 181(d) of the Act, the grievance may be submitted to the Secretary of Labor for investigation to determine whether the State or local area is in compliance with the Act.

If the Secretary determines that a violation of the relocation prohibitions has occurred, the Secretary shall require the State that has violated such provisions to repay to the United States an amount equal to the amount expended in violation.

L. Recordkeeping Requirements

Complaint records must be retained for a minimum of three years following resolution of the complaint. These records should be made available for review, as needed for compliance verification purposes.