

Benton-Franklin Workforce Development Council

Policy No.: 55-026

Date: 1/31/06

**SUBJECT: Complaint and Grievance Policy for Registrants and Participants
(excludes Discrimination Complaints)**

ORIGINATOR: WIA Title IB

Background

The State of Washington requires that Workforce Development Councils and subrecipients of WIA Title I grant funds comply with the grievance and complaint provisions of WIA. This policy applies to programmatic grievances and complaints pursuant to WIA 181(c) and does not address the procedures for processing complaints alleging discrimination under WIA Section 188 and/or Federal Register Par II 29 CFR 37. *Information and complaints involving allegations of fraud, abuse, or other criminal activity must be reported immediately to the Employment Security Department's Audit Resolution Team.*

Policy & Procedure

There are three types of complaints or grievances a participant or other interested party may file: discrimination complaints, complaints against the program, and complaints against an employer.

- Discrimination complaints may be filed when a participant believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIA.
- Program complaints of a general nature may be filed when a participant, applicant, or registrant feels they have been deprived of the benefits assured under the Act. These are complaints against the program and reflect potential violations of WIA and related regulations.
- Complaints against an employer alleging a labor standards violation may be submitted to binding arbitration procedure when the collective bargaining agreement so provides.

It is important to establish the difference between the types of complaints. A complaint cannot be processed as both a program complaint and as a discrimination complaint.

Complainants must have their complaints heard and an earnest attempt must be made to reach a resolution. There are provisions to appeal to the state and, under some circumstances, to the Department of Labor, if any party to the action is not satisfied with

the results of the local hearings. The complainant will be advised in writing of specific rights at each step of the complaint process. A Complaints and Grievance Coordinator is available to answer questions and/or provide technical assistance to the complainant throughout the complaint process. This individual may be reached by calling or writing as follows:

WIA Complaints and Grievance Coordinator
Benton-Franklin Workforce Development Council
815 N. Kellogg, Suite C
Kennewick, WA 99336
Telephone: (509) 734-5980
Fax: (509) 734-5999

Participants having a complaint with the employer or training agency may file directly with them without having exhausted the right to use the process contained herein; may use this process in lieu of their process; or, may use both processes simultaneously. However, participants are encouraged to attempt resolution of the issues with the employer or training agency first, using their established procedures. Regardless of the sequence used, the participant will request, when filing with the employer or training agency, that their decision be provided in writing.

All complaints will be forwarded to the Complaints and Grievance Coordinator. Upon receipt, the Complaints and Grievance Coordinator will review the complaint for completeness and determination of the issues. The complaint will be given a control number and logged in the Complaints Register.

A. General Principles and Requirements

These procedures will guide the receipt, hearing, and resolution of non-criminal grievances and complaints relating to WIA Title I grant programs and activities that are funded with WIA Title I grant monies.

An individual alleging a labor standards violation may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties so provides. [Title 20 CFR Section 667.600(c)(3)].

Reasonable efforts will be made to assure that information about the content of the grievance and complaint procedures are understood by affected participants and individuals, including youth and those who are limited English-speaking individuals. Such efforts will comply with the language requirements of Title 29 CFR 37 Section 37.35.

At all levels of the grievance or complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing.

All grievances or complaints, amendments, and withdrawals that are not solved informally must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, or discrimination.

B. WDC Grievance and Complaint Procedures

The following outlines the procedures for resolving issues arising in connection with WIA Title I grant programs operated by each administrative entity for the WDC or its subrecipients.

Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions of sub-recipients, has the right to file a grievance or complaint with the WDC.

1. **Notice to Affected Parties:** Initial and continuing notice of the local grievance and complaint procedures and instructions on how to file a complaint must be:

- Made available to any interested parties and members of the public.
- Made available to each participant. A copy of a written description of the local grievance and complaint procedure includes:
 - (1) Notification that the participant has the right to file a grievance or complaint at any time of the alleged violation;
 - (2) Instructions and timeline for filing a grievance or complaint; and
 - (3) Notification that the participant has the right to receive technical assistance. Such information shall be modified, as needed, whenever the procedures are changed.
- Included in each participant's file. A copy of acknowledgement of receipt shall be signed by the participant.

The WDC shall provide assistance to the complainants, including those grievances or complaints against the WDCs. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIA, regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring WDCs to violate rules of confidentiality.

2. **Filing of Grievance or Complaint:** The official filing date of the grievance or complaint is the date the written grievance or complaint is received by the WDC or sub-recipients. The filing of the grievance or complaint will be considered a request for a hearing, and the WDC shall issue a written decision within 60 days of the filing of the grievance or complaint.

The grievance or complaint must be in writing, signed, and dated containing the following information for all complaints:

- Full name, telephone number, and mailing address of the complainant;
- Full name, telephone number, and mailing address of the respondent;
- A clear and concise statement of the facts and dates describing the alleged violation;
- The provisions of the WIA, the WIA regulations, grant, or other agreements under the WIA, believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation, or contract; and
- The remedy sought by the complainant.

The absence of any of the requested information shall not be a basis for dismissing the grievance or complaint.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The WDC shall send a copy of the grievance or complaint to the respondent.

3. **Informal Resolution:** The WDC shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith efforts shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process.

Where a complaint alleges a violation of WIA Title I, grant or any agreements under WIA, the WDC assures that every grievance or complaint not resolved informally or not withdrawn is given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

When the complaint has been resolved through the informal resolution process, the WDC shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within 10 days of the receipt of the notice of resolution. The WDC shall maintain copies of correspondence in the complainant's file.

4. **Notice of Hearing:** Hearings on a written grievance or complaint or those grievances or complaints not resolved informally shall be conducted within 30 days of filing of a grievance or complaint. The complainant and the respondent must be notified in writing of the hearing 10 days prior to the date of the hearing. The 10-day notice may be shortened with the written consent of both parties. The hearing notice shall be in writing and contain the following information:

- The date of the notice, name of the complainant, and the name of the party against whom the grievance or complaint is filed.
- The date, time, and place of the hearing before an impartial complaints and grievance coordinator.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

5. **Local Complaints and Grievance Coordinator:** An impartial local Complaints and Grievance Coordinator shall conduct the hearing. The hearing will be conducted in an informal manner and according to the procedures established by the WDC.

6. **Decision:** Not later than 60 days after the filing of the grievance or complaint, the local Complaints and Grievance Coordinator shall mail a written decision to both parties by certified mail. The local Complaints and Grievance Coordinator's decision shall contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and issues related to the alleged violation;
- A statement of the facts;
- The local Complaints and Grievance Coordinator's decision and the reasons for the decision;
- A statement of corrective action or remedies for violations, if any, to be taken; and
- Notice of the right of either party to request a review of the decision by the State within 10 days of the receipt of the decision.

7. **Appeal:** If a complainant does not receive a decision at the WDC level within 60 Days of the filing of the grievance or complain, or receives an adverse decision, the Complainant then has the right to file an appeal with the State.

The complainant may request a State hearing by submitting a written notice of appeal to the Assistant Commissioner of the Employment and Training Division of the Employment Security Department, or his/her designee.

C. Criminal Complaints and Reports of Fraud, Abuse, and Other Criminal Activities

Such complaints are covered in [20 CFR 667.630](#) which requires immediate reporting of such information through the Incident Reporting System to DOL's Office of Investigations, Room S5514, 200 Constitution Avenue NW,

Washington, DC 20210, or as otherwise directed in the section referenced above.

D. Labor Standards Violations

Complaints alleging labor standards violations under Section 181 of the Workforce Investment Act of 1998 must exhaust local procedures as described in Section III or 60 days after filing must pass with no decision, before complaints can be submitted to the Secretary of the Department of Labor.

Labor standards are described in Subtitle E, Section 181, Requirements and Restrictions of the Act. Special handling of labor standards complaints is described in [667.272](#) of the implementing regulations.

E. Audit Resolution Appeals

Pursuant to [20 CFR 667.500](#) as set out in the Federal Register, on non-federal audit resolution the Governor herewith prescribes standards for appeals procedures for audit resolution disputes.

- A. The period of time shall be not more than 30 days after the issuance of the final determination in which an appeal may be filed for audit resolution.
- B. Rules on procedure, on timely submission of evidence, on the timing of decisions and further appeal rights as set forth in Section III of this provision shall apply.
- C. In the event of possible conflict in interpretation of hearing and review procedures, State Policy 3255 (Pending) shall govern.

F. Maintenance of Records and Reporting

In addition to WIA Policy No. 3415, Records Retention and Public Access (Pending), all complaint and grievance procedures will incorporate record keeping procedures that meet the following standards:

- A. All records and correspondence related to complaints and grievances will be maintained in a manner that ensures security and confidentiality. Complaint files will be physically separate from any other records related to employment in or operation of programs.

All records regarding discrimination complaints and actions taken shall be maintained for a period of not less than three years from the date of resolution.

- B. For each complaint or grievance filed, a separate file will be established and will include:
1. The original complaint or grievance filed, except for discrimination complaints referred to DOL/CRC, in which case a copy will be retained;
 2. A chronological summary of all contacts made to investigate or resolve issues;
 3. All investigative reports and reports of interviews;
 4. Copies of all correspondence and agreements with involved parties; and
 5. All documents collected and copies of documents reviewed in relation to the issues.
- C. All actions taken in relation to receipt, referral, and/or disposition of each complaint and grievance will be recorded in a complaints/grievance log.
- D. Such reports as may be requested will be submitted to the Employment Security Department.

G. Petition for Review to the Department of Labor

Petitions for review of local decisions or the lack thereof regarding complaints alleging discrimination (Section I) should be filed with the Department of Labor, Civil Rights Center. Such petitions must be filed within thirty (30) days of receipt of the local decision and submitted to:

National Director
U.S. Department of Labor
Civil Rights Center
Room N-4123 Frances Perkins Building
200 Constitution Avenue NW
Washington, D.C. 20210

H. Petition for Review to the State

Any individual or organization may petition the state to review a local decision or lack thereof, if the complaint (under [Section II. A](#)) was previously filed with the WDC Administrative Entity or state subrecipient, provided:

- applicable local procedures have been exhausted; and
- a decision was not received within sixty (60) days of filing; or

- the decision received was unsatisfactory to the complainant or other interested party.

A. Filing of a Petition for Review

A petition for review will be regarded as filed on the date a written request is received by the Assistant Commissioner of the Employment and Training Division of the Employment Security Department. Requests must be received within fifteen (15) days from the date on which the complainant should have received a decision. If the petition is mailed, it will be deemed filed with the addressee on the postmark date if it is properly addressed and has sufficient postage.

Petitions for review will be addressed to:

Assistant Commissioner
Employment Security Department
Employment and Training Division
P.O. Box 9046
Olympia, Washington 98507-9046
Attention: WIA Complaints

- B. Copies of the petition for review will be sent by E&TD to all interested parties and will serve as notice that a request has been filed.
- C. Within five (5) days of receipt of the notice, WIA grant recipients, administrative entities, and state subrecipients will transmit all records pertaining to a particular complaint to the Employment and Training Division. Such records must include a complete transcript of the hearing.
- D. Upon request, WDC, fiscal agents, administrative entities, and state subrecipients will take necessary action to obtain any additional evidence requested by the Employment Security Department.
- E. The review shall be confined to the record under review and shall be limited to consideration only of those matters over which the Assistant Commissioner has jurisdiction.
- F. In the event the record is incomplete or otherwise provides insufficient information, the matter may be remanded to the responsible local authority for the taking of additional evidence and issuance of a new decision. Should the Assistant Commissioner be convinced that a fair hearing will not be provided by the local authority, the case may be assigned to an administrative law judge.

- G. The decision of the Assistant Commissioner is a final agency action and is subject to review under [RCW 34.05.570](#).
- H. In the interest of fairness, the Assistant Commissioner reserves the option to delegate the review to the reviewing officer of the Employment Security Department. In that case, the decision of the delegated review authority is a final agency action and subject to review under RCW 34.05.570.
- I. If a complainant requests a state review and a decision is not issued within thirty (30) days, the complainant may request a federal review. This review will determine whether reasonable cause exists to believe the Act or its regulations have been violated. Complainants shall be advised of this procedure at the time they request a state review.

Other Processes

The Civil Rights Center/U.S. Department of Labor (CRC) has responsibility for enforcing federal laws that prohibit discrimination by recipients of federal funds in employment and service delivery based on race, color, and national origin (Title VI). CRC also has responsibility for enforcing federal laws that prohibit discrimination based on religion, age, sex, disability, political affiliation or belief. CRC also has responsibility for enforcing federal laws that prohibit discrimination by recipients of federal funds in service delivery based on citizenship or status as a participant in any WIA Title I financially assisted program or activity (Section 188 of the Workforce Investment Act of 1998). CRC's jurisdiction is over violations of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1998.

For all complaints alleging violations of both Title VI and VII, Title VI takes precedence over Title VII, thus affording CRC jurisdiction.

http://www.dol.gov/dol/oasam/public/regs/compliance/CIF_information.htm

The Equal Employment Opportunity Commission (EEOC) has responsibility for enforcing federal laws that prohibit discrimination in employment on the basis of race, color, national origin, sex, religion, age (40 or above), and disability. EEOC jurisdiction is over violations of Title VII of the Civil Rights Act of 1964 of Title IX of the Civil Rights Act, as amended. <http://www.eeoc.gov/facts/howtofil.html>

The Office of Civil Rights/Department of Education (OCR) has responsibility for enforcing federal laws that prohibit discrimination in education-related employment and service delivery based on sex. OCR's jurisdiction is over violations of Title IX of the Civil Rights Act, as amended. <http://www.ed.gov/offices/OCR/complaintintro.html>

The Washington State Human Rights Commission (HRC) has responsibility for enforcing state laws that prohibit discrimination in employment and places of public accommodation based on race, creed, color, national origin, sex, or the presence of any sensory, mental or physical disability. HRC also has responsibility for enforcing state

laws that prohibit discrimination in employment based on age (40 or above) and marital status. HRC jurisdiction is over the state law against discrimination -- RCW 49.60.
<http://www.wa.gov/hrc/hrc3-03b.htm>

REFERENCES

- Workforce Investment Act of 1998, Public Law 105-220, including Section 188.
- Department of Labor WIA Final Regulations, August 11, 2000, including Part 667 Subpart F Grievance Procedures, Complaints, and the State Appeals Process.
- State WIA Policy 3440 Rev. 1
- 20 CFR Section 667
- 29 CFR 37 Section 37.35