



# Workforce Development System Technical Advisories



October 16, 2000

## **WORKFORCE DEVELOPMENT SYSTEM TECHNICAL ADVISORY #00-40**

**TO:** Chairperson of Local Investment Boards  
Chief Elected Officials  
WIA Grant Recipients  
WIA Fiscal Agents  
WIA Local Area Contacts

**SUBJECT:** Procedure for Processing Non-Criminal Complaints and Grievances at the Local Workforce Investment Area (Local Area) Level

**Purpose:** To ensure the establishment of required complaint procedures at the Local Area level; and, to provide Local Areas affected by the Workforce Investment System, including One-Stop partners and services providers with sample procedures developed by the state for processing of non-criminal complaints and grievances.

**Background:** Section 667.600 requires each Local Area, State and direct recipient of funds under Title I of WIA, to establish and maintain a procedure for grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers. Procedures for filing discrimination complaints will be provided in a separate Workforce Development System Technical Advisory. Federal requirements regarding the reporting of all criminal complaints and reports of fraud, abuse and other criminal activity will also be addressed in that separate Technical Advisory.

**Action:** Each Local Area, State and direct recipient must provide information about the content of the grievance procedures required to participants and other interested parties affected by the local Workforce Investment System including One-Stop partners and service providers. Local Areas, One-Stop partners and service providers are required to develop their own grievance mechanism. Procedures must include the handling of complaints and grievances arising in connection with WIA programs operated by each Local Area and subcontractor under the Act. Attached is a list of WIA Required Elements for a Grievance Procedure.

(Attachment A). The attached sample procedure reflects what a typical grievance procedure might include (Attachment B); it is not provided as a mandatory model. Other attachments to this Technical Advisory are provided as technical assistance to Local Areas in the development of their procedures. Local Areas and other direct recipients must assure that other employers, including private-for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants.

- Attachments:
- A- [WIA Required Elements for a Grievance Procedure](#)
  - B- [Model WIA Complaint Resolution Procedure](#)
  - C- [Decision](#)
  - D- [Complaint Resolution Time Frame](#)
  - E- [Model Complaint Log](#)
  - F- [Complaint](#)
  - G- [Hearing Notice Contents and Hearing Guidelines](#)

**WIA REQUIRED ELEMENTS FOR A GRIEVANCE PROCEDURE**

In developing a grievance procedure for a local area, developers must allow for the inclusion of the following elements:

- participants must be informed of the complaint resolution process at intake
- complaints and grievances must be filed by a complainant within one year of occurrence
- Local Area staff must be identified specifically as having responsibility for complaint resolution
- if no resolution is reached, a hearing must be held within 30 days of the filing of the grievance to provide the complainant with an opportunity to present evidence
- the grievance hearing procedure shall include written notice of the date, time and place of hearing. (See Attachment G)
- at the Local Area level, a written decision must be issued to the complainant within 60 days of the filing of the complaint
- complainants not in receipt of a written decision within 60 days of the filed complaint have the right to request a review by the Governor. The request must be filed within 15 days from the date on which the complainant should have received a written decision
- the complainant also has the right to request a review by the Governor of an adverse decision issued by the Local Area. Such request must be filed within 10 days of receipt of the adverse decision
- the Governor shall issue a decision within 30 days of receipt of a request for a review by a complainant
- employers may operate their own grievance system or may utilize the grievance system established by the Local Area
- employers shall inform all participants early of the grievance procedures which participants are to follow in case they need them
- an employer's system shall provide for, upon request by the complainant, a review of an employer's decision by the Local Area and the Governor, if necessary

**Model WIA Complaint Resolution Procedure**  
**(Non-Criminal Complaints/Grievances)**

I. Introduction

The Workforce Investment Act (WIA) and the Rules and Regulations require the establishment of a complaint/grievance procedure by each Local Area, State and direct recipient of funds under Title I. The information must be provided to the participants, other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers. The procedure must also have a process which allows an individual alleging a labor standard violation to submit the grievance to a binding arbitration process if a collective bargaining agreement covering the parties to the grievance provides for it. The purpose of the procedure is to ensure that a complaint is resolved promptly and that the complainant is advised of all steps taken to resolve the complaint. The following procedure provides a model to assist Local Areas.

II. Guidelines and Definitions

A complaint may be either WIA related or non-WIA related. A WIA related complaint is a written and signed statement by a WIA participant, a staff member, or "other interested person," who alleges that the Governor, Local Area or other subcontractor has violated the Act and/or WIA Rules and Regulations and/or a WIA grant and/or WIA agreement.

If some of the allegations of a complainant are WIA related and the remainder of the allegations are not related to WIA, then the complainant has at least two (2) complaints that must be treated separately and differently. (See General Process below: F., WIA related complaints; and G., Non-WIA related complaints.) If there is uncertainty as to whether a complaint is WIA related, then treat it as WIA related and seek technical assistance (see Local Area Complaint Resolution Officer).

Complaints are to be resolved at the lowest level possible: i.e., the level closest to the reason for the complaint. Each Local Area, State and direct recipient of funds under Title I of WIA, must establish and maintain a procedure for grievances and complaints.

### III. General Process

- A. Non-criminal complaints must be made with **one year** of the alleged occurrence.
- B. The three levels of complaint resolution are:
  - 1. Local – Local Area level (includes all subrecipients within the Local Area)
  - 2. State – Governor’s level
  - 3. Federal – Secretary of the United States Department of Labor level
- C. The identity of the complainant(s) and any people who furnish information to, or are assisting in, an investigation of a complaint should be kept confidential to the maximum extent possible, consistent with applicable law and fairness in handling the complaint.
- D. Local Area
  - 1. Designated Complaint Resolution Officer will:
    - a. The Local Area shall designate a staff member to be the Local Area Complaint Resolution Officer to ensure the availability, coordination and timeliness of all elements of the complaint resolution procedure.
    - b. The Local Area Complaint Resolution Officer will:
      - 1. advise and assist the Program Complaint Resolution Officer of each of the interested parties; i.e., One-Stop partners, service providers.
      - 2. monitor each One-Stop partner’s/service provider’s implementation of the complaint procedure.
      - 3. ensure that WIA related complaints are written, signed, logged, and filed; and information and documentation pertaining to it are safeguarded and filed as appropriate.
      - 4. ensure that non-WIA related complaints are logged, and the complainant is referred to the appropriate agency or agencies and the referral is documented in the log
      - 5. identify need, and provide technical assistance in complaint resolution
      - 6. make arrangements with Local Area Hearing Officer(s) for all WIA complaint hearings in the Local Area.
    - c. Each One-Stop partner/service providers of a Local Area shall designate a staff member to be the Program Complaint Resolution Officer to serve as first reference point for any aggrieved party. The Program Complaint Resolution Officer will conduct an impartial investigation. The investigation should provide sufficient evidence to support or disprove the complaint or to resolve the issues raised. The Program Complaint Resolution Officer will prepare and maintain a separate file of the information gathered on each complaint. The Program Complaint Resolution Officer will inform the complainant of the status of the complaint and notify the complainant of the next step in the elevation of the complaint. Employers may operate their own

grievance system or may utilize the WIA complaint resolution procedure. Employers shall inform participants of the grievance procedure which participants are to follow. Employer grievance systems shall provide for, upon complainant request, a review of an employer's decision by the Local Area and the Governor. Employers opting to use their own grievance system must provide copies of the procedures to the Local Area for review and comment. The review will ensure that WIA guidelines and requirements are not compromised.

2. Complainants will receive complaint information and assistance from an appropriately trained subrecipient staff member when the Program Complaint Resolution Officer is not available.

3. Hearing Officer

The Local Area shall designate a Hearing Officer to:

- a. regulate the course of the hearing
- b. assure that all relevant issues are considered
- c. rule on the introduction of evidence and testimony
- d. take any other action, consistent with due process, that are necessary to ensure an orderly, impartial and fair hearing
- e. attempt to resolve the dispute by conciliation at any time prior to the conclusion of the hearing
- f. cause the hearing to be recorded

The Hearing Officer will prepare a written decision, based upon the entire record, including all evidence or oral testimony, presented at the hearing. (For suggested contents for a decision, see Attachment C.)

The written decision will be mailed to the complainant, the respondent, the Local Area Complaint Resolution Officer in accordance with the specified time periods (see Attachment D, Complaint Resolution Time Frame).

4. No person may act as Complaint Resolution Officer and Hearing Officer on the same complaint.

- E. Participants Rights

Intake staff of a Local Area or specified staff of a subrecipient program shall inform participants of the complaint resolution process and shall provide a copy of it or a written summary of the steps and time requirements to the participants upon enrollment in the program (see Attachment E).

- F. WIA related complaints shall be written and signed and logged by the Program Complaint Resolution Officer (see Attachment E, WIA Complaint Log Guide).
- G. Non-WIA related complaints shall be logged by the Program Complaint Resolution Officer and referred to the appropriate agency or agencies. Follow up is not required on non-WIA related complaints.

#### IV. Complaint Process

- A. Non-criminal complaints must be made within **one year** of the alleged occurrence. WIA related complaints shall be logged and recorded. If needed, the complainant should be given assistance in the filing of the complaint (see Attachment G for suggested complaints contents). The staff of the WIA office or program taking the complaint shall provide this assistance. If a complainant is joined by several other complainants in filing a formal complaint, their names should appear on the complaint as well.
- B. When a WIA related complaint is filed and this complaint is also a violation of another law or collective bargaining agreement, the grievance procedures of that law or agreement may be used instead of, or in addition to the WIA Complaint Resolution procedure. The Complaint Resolution Officer\* shall see that the complainant is informed of the status of the complaint. The complainant maintains the right to a hearing.

\*If the WIA related complaint alleges a violation by the Local Area, then the Complaint Resolution Officer performs the actions outlined for the Program Complaint Resolution Officer.

C. Resolution - Local Level: Local Area

1. Initial Investigation

- a. When a complaint has been identified as WIA related, the complainant must be informed of the WIA complaint system and his/her rights within it.
- b. If the complaint received in writing is signed by the complainant and includes enough information for the Program Resolution Officer to initiate an investigation, the document shall be treated as if it were a properly completed resolution form filed in person by the complainant. The Program Complaint Resolution Officer should send an acknowledgement to the complainant and shall begin to investigate the complaint. If the complainant has not provided sufficient information to investigate the complaint, the Program Resolution Officer shall request additional information from the complainant.
- c. During the initial discussion with the complainant:
  - (1) make every effort to obtain all the information perceived to be necessary to investigate the complaint
  - (2) explain the need to maintain contact during the complaint investigation
  - (3) offer to assist the complainant through the provision of appropriate WIA services; and
  - (4) find out from the complainant what the complainant needs in order to consider the complaint resolved (what relief is sought)
- d. Informal Resolution

Document all steps taken to resolve the complaint. The methods used in the complaint investigation may include, but are not limited to, analyzing the complaint and available background material, interviewing, examining records, obtaining documents, obtaining written statements, observing and meeting with the complainant and respondent, separately and/or both at the same time. The objective of these efforts is a settlement between the complainant and the respondent.



## 2. Complaint Resolution

This occurs when at least one of the following is true:

- Complainant indicates satisfaction with the outcome
- Complainant chooses not to elevate complaint to next level of review
- Complainant (or complainant's authorized representative) fails to respond to a written request by the Program Resolution Officer or Local Area Complaint Resolution Officer within 10 calendar days
- A final determination has been made by the responsible agency on a referred WIA related complaint

## 3. Hearing

If the complaint is not resolved within 29 calendar days, then on the 30<sup>th</sup> calendar day, the complainant shall have a previously scheduled hearing. If circumstances warrant it, a hearing may be scheduled at any time within 30 days of a filed complaint. The complainant shall receive written note of the date, time or place of the hearing, seven days prior to the hearing date. The hearing may only be cancelled or postponed beyond the 30 days, at the request of the complainant. A request for cancellation shall be transmitted to the Hearing Officer through the Program Complaint Resolution Officer with the complainant's written and signed attestation that the complaint has been resolved or withdrawn. (See Attachment G for required Hearing Notice contents and Hearing Guidelines.)

**DECISION**

A formal decision should contain the following elements:

1. Name of Complainant
2. Name of Respondent
3. Date of Hearing
4. List of Attendees
5. Statement of Issue(s)
6. Finding of Facts
7. Opinion and Reason for Decision
8. Signature of Hearing Officer
9. Date

**Complaint Resolution Time Frame**

	<u>Calendar Day (s)</u>	<u>Benchmark</u>	<u>Status of Complaint</u>	<u>Steps</u>
L O C A L	1		Complaint Filed	I
	1-29		Resolution (Informal)	II
	30		Hearing (If II Fails)	III
	31-60		Written Hearing Decision	IV
	61-70		If IV not reviewed by Complainant, Complainant Request for Governor's review	V
			OR	
	61-70	File a request within 10 days of receipt of unsatisfactory decision.		
S T A T E	71-100	The Governor must issue a decision with 60 days of receipt of Complainant's request for Governor's review.	Governor's decision	VI
	1-60	If the complaint was initially filed at the State level and a decision was not issued within 60 days or the Complainant has received an adverse decision, the Governor shall provide for an independent review.	Complaint Filed Resolution (Informal) Hearing (If II Fails) Written Hearing Decision	I II III IV VI
F E D E R A L	61-70	File a request within 10 days of the day that the complainant should have received Governor's decision.	If Complainant does not receive VI – Complainant Request for USDOL Secretary's Review	VII
		USDOL Secretary shall act within 120 days of receipt of the request.		

**MODEL COMPLAINT LOG**

A model complaint log might contain the following elements.

1. Identification. On the first page, identify the agency whose log this is. The agency personnel responsible for complaints resolution and, if appropriate, hearings, may also be identified.
2. Complaint Number. If the quantity of complaints warrants it, consecutive numbers may be assigned to the complaints as they are logged.
3. Date Received. Complaints should be logged on the day of receipt and the date recorded. This starts the time frame clock.
4. Complainant Name.
5. Complainant Against. Indicate the agency which is the object of the complaint, or a short description of its nature.
6. To whom referred and date.
7. Disposition and Date. Record the disposition of the complaint at this level and at other levels as appropriate, along with the dates.

**COMPLAINT**

Local Areas and the other agencies responsible for complaint resolution may want to formalize the process by use of a complaint form.

Whether a form is used or not, a complaint should contain the following basic elements:

1. Complainant name, address and telephone number
2. The respondent's name and address (may be an agency or office)
3. The nature of the complaint. It should contain each of the basic who, what, where, when and how information, as applicable.
4. Signature of complainant, and
5. Date signed.

If a form is designed, other elements may be added, such as complaint number, date of receipt and receiver signature, and various stage completion dates.

**NOTE:** Any written, signed complaint must be acted upon, whether on agency's form or not.

**HEARING NOTICE CONTENTS AND HEARING GUIDELINES**

A. Hearing Notice. The notice of the hearing should include:

1. the date, time, place and purpose of the hearing
2. a statement of the law and regulations under which the hearing is to be held
3. a reference to the particular sections of the statutes or rules involved, where possible, and
4. a short and plain statement of the matters asserted. It shall be sent to the party requesting the hearing and to all other parties.

Whenever feasible, the notice shall be sent at least seven days before the date of the hearing.

B. Hearing Guidelines:

1. The hearing shall be recorded
2. The complainant may be represented by an attorney or other designated representatives
3. To the extent possible, consistent with a fair determination of the issues, the identity of any person who has furnished information related to an investigation to a WIA related problem, shall be kept confidential
4. Within the limitations of the Freedom of Information Act, the complainant has a right of access to relevant records and documents that the program and/or Local Area maintains
5. The complainant and respondent have the right to an opportunity to present evidence relevant to the complaint, to call witnesses and examine and cross-examine other parties and their witnesses.