

COMPLAINTS COVERED BY THIS POLICY AND PROCEDURES

Complaints regarding:

A. Employment-related law:

When a complaint is filed regarding an employment-related law with at the Career Center or at the Division of Workforce Solutions (DWS) the office must determine if the complainant is a Migrant and Seasonal Farmworker (MSFW).

1. If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency or another public agency for assistance. Upon completing the referral, the local or DWS representative is not required to follow up with the complainant.
2. If the complainant is a MSFW, the Career Center office or the Complaint Specialist must:
 - a) Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s); and
 - b) Attempt to resolve the issue informally at the local level.
 - i) **Exceptions:**
 - (1) In cases where the complaint was submitted to the State Monitor Advocate (SMA) determines that he/she must take immediate action; and
 - (2) In cases where *informal resolution at the local level would be detrimental* to the complainant(s). In such cases where informal resolution at the State or local level would be detrimental to the complainant(s), the Complaint Specialist or SMA (depending on where the complaint was filed) *must* immediately refer the complaint to the appropriate enforcement agency.
 - c) If the issue is *not resolved within 5 business days*, the Complaint Specialist *must* refer the complaint to the appropriate enforcement agency or another public agency for further assistance.
 - d) If the Career Center office or the Complaint Specialist determines that the complaint *must* be referred to another State or Federal agency, he/she must refer the complaint to the *State Monitor Advocate (SMA)* who *must* immediately refer the complaint to the appropriate enforcement agency for prompt action.
 - e) If the complaint is elevated to the SMA, the Complaint Specialist *must* provide the SMA's contact information to the complainant.
 - f) The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

B. Title III - Wagner-Peyser (WP):

1. When a WP related complaint is filed with a Career Center or the DWS office, the following procedures apply:
 - a) When a WP related complaint is filed against an employer, the proper office to handle the complaint is the Career Center office serving the area in which the employer is located.
 - b) When a complaint is against an employer in another State or against another State Workforce Agency (SWA):

- i) The local office receiving the complaint must send, after ensuring that the Complaint/Referral Form is completed, a copy of the Complaint/Referral Form and copies of any relevant documents to DWS Complaint Specialist for processing.
- ii) Copies of the referral letter must be sent to the complainant, and
- iii) Copies of the complaint and referral letter must be sent to the Employment and Training Administration (ETA) Regional Office(s) with jurisdiction over the transferring and receiving State agencies.
- iv) All such copies must be sent via hard copy or electronic mail.
- c) If the complaint is against more than one SWA, the complaint must clearly state and must be elevated immediately to the DWS SMA/Complaint Specialist for processing.
- d) When a WP- related complaint is filed against a Career Center, the proper office to handle the complaint is the Career Center office serving the area in which the alleged violation occurred.
- e) When a WP related complaint is filed against more than one Career Center and is in regard to an alleged agency-wide violation the DWS SMA/Complaint Specialist must process the complaint.
- f) When a complaint is filed alleging a violation that occurred in the same State but through a different Career Center office, the Career Center office where the complaint is filed must ensure that the Complaint/Referral Form is completed and send the form to the appropriate local Career Center office for processing. A copy of the referral letter must be sent to the complainant via hard copy or email.
- g) If a complaint regarding an alleged violation of the WP regulations is filed at the Career Center office by either a non-MSFW or MSFW, or his/her representative(s) (or if all necessary information has been submitted to the office), the appropriate Career Center office Complaint Specialist must investigate and attempt to resolve the complaint immediately upon receipt.
- h) When a non-MSFW or his/her representative files a complaint regarding the WP regulations with DWS, or when a non-MSFW complaint is referred from the Career Center office the following procedures apply:
 - i) If the complaint is not transferred to an enforcement agency, the Complaint Specialist must investigate and attempt to resolve the complaint immediately upon receipt.
 - ii) If resolution at DWS' level has not been accomplished within 30 working days after the complaint was received by DWS (or after all necessary information has been submitted to DWS), whether the complaint was received directly or from a Career Center office, DWS must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in determination section below.
- i) When a MSFW or his/her representative files a complaint regarding WP regulations directly with DWS, or when a MSFW complaint is elevated from the Career Center office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.
 - i) If resolution at the DWS level has not been accomplished within 20 business days after the complaint was received by DWS (or after all necessary information has been submitted to DWS), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent.

C. Apparent Violations

If DWS, a Career Center office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or WP regulations by an employer, except as provided under the field checks or complaints section of the regulations, the employee must document the suspected violation and refer this information to the Career Center Manager.

- If the employer has filed a job order with the Career Center office within the past 12 months, the Career Center office must attempt informal resolution.
- If the employer has not filed a job order with the Career Center office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

NOTE: This “Apparent Violation” section applies only to agricultural workers. The SMA must be copied on any reported or documented apparent violations.

D. WIOA (Training and Service Complaints) - Local / State Level – 20 CFR 683.600 (a) & (b)

1. Complaints must be submitted in writing and filed at the local level within one year of the date of the incident; unless discrimination is alleged, in which case the complaint must be filed within 180 days. If needed or requested, the Complaint Specialist must assist complainant in writing the complaint (including Limited English Proficiency (LEP) customers).
2. Upon receipt of a complaint the designated Complaint Specialist reviews and determines what type of complaint it is and the path to follow. If a complaint is initially filed with DWS, then it must be remanded to the local level. DWS will directly assume responsibility and receive and process complaints relating to workforce development programs when any of the following conditions apply:
 - a) Complaint involves a conflict/dispute between the DWS and a local level entity;
 - b) Complaint involves more than one local level entity; and/or
 - c) Local level time limits and/or procedures have not been adhered to.
3. **All WDB complaints must be recorded on the local Complaint Log and must include:**
 - a) name, address, and phone number of the complainant;
 - b) grounds or basis for the complaint;
 - c) date the complaint was filed;
 - d) person(s) and/or organization(s) against whom the complaint is filed; and any other pertinent information.

Complaint Specialist are designated to assure the promptness and coordination of the procedures identified in this policy. All Workforce Development Boards (WDBs) *must* ensure that American Job Centers (AJCs) designate an individual to process the complaint and the monitor procedures at each comprehensive, affiliate and/or specialized career center.

Complaint Specialists must be available to assist complainants and to provide information concerning the rights and responsibilities which are afforded by Federal or State laws and regulations.

Complaint Specialists and his/her back-ups must:

Act independently and without fear of intimidation or retaliation and have direct access to the decision maker (in the course of complaint investigation, resolution and/or referral, the Complaint Specialists may find it necessary to correct deficiencies which have adversely affected the complainant or other beneficiaries).

Local Level Processing

INFORMAL RESOLUTION

Program-related complaints (or grievances) and procedures are addressed under WIOA (§181(c)) and federal regulations at 20 CFR 683.600. These complaints **are not discrimination-based** and are normally filed and processed at the local level.

Complaint specialists (and back-ups) must perform the following within 15 days of receipt of a program related complaint:

1. Log the complaint on the Quarterly Complaint Log as appropriate;
2. Begin to prepare an administrative case file and record of the complaint;
3. Determine the issues identified in the complaint and corresponding jurisdiction for each;
4. Notify appropriate office staff that a complaint has been filed;
5. Investigate to ascertain pertinent facts for those issues for which jurisdiction is determined;
6. For issues that the agency lacks jurisdiction; the complaint specialists must refer the issues out to the appropriate entities(s);
7. Issue a letter to the complainant acknowledging receipt and outlining the issues identified, jurisdiction or lack thereof and the entities to which referrals were made;
8. Determine if proper procedures have been followed (for example: if an individual is complaining about being unfairly terminated or being denied benefits or services, are there adequate records in case file of action(s) taken and were those actions consistent with agency policy?);
9. Attempt informal resolution by scheduling and holding an informal resolution meeting(s). The purpose of the meeting is to bring the parties together to discuss the issues and to examine evidence and make recommendations which may lead to a resolution (informal resolution)**; any **recommendations must be** based on the fact-finding investigation and information obtained during the informal meeting(s); and
10. If informal resolution cannot be achieved at the meeting(s), then notice to the complainant must be given for the opportunity to request a formal hearing.

*** The objectives of the Informal Resolution process or any discovery meetings are:*

- (1) Where possible, simplification of the issues;*
- (2) To help make any necessary amendment(s) to the complaint;*
- (3) Exchange of reports, regulations and any other pertinent documents and to exchange the names of any expert witnesses expected to be called for a formal hearing;*
- (4) Examine the possibility of obtaining statements of fact, documents and other exhibits which will avoid unnecessary testimony;*
- (5) Specify the kinds of documents and/or relief required to resolve the complaint; and*
- (6) Afford the opportunity for discovery by opposing parties (representatives for the parties must have the authority to resolve issues through negotiations and they must be prepared*

to spend sufficient time and effort in negotiations which may require more than one meeting).

If resolution is achieved, the complaint specialist will prepare a brief "Resolution Notice", identifying the issue(s) and the action(s) and /or remedies to be taken to assure settlement of the matter. This notice will be reviewed by the parties to assure they are in agreement.

If the resolution listed on the agreement is acceptable to both the complainant and respondent, they will be asked to sign and date the document as being accepted. The Complaint Specialist will also sign and date the statement, provide a copy to each party, and place the original in the case file.

If a resolution requires some agreement or action by the Respondent or individuals other than those identified in the Resolution Notice, those other individuals must be added to the document, and must also sign, date it and receive a copy of the fully executed "Resolution Notice".

If agreement is signed and dated, resolution is achieved, and the case is closed, the Complaint Log must be updated to reflect resolution.