

North Carolina Division of Workforce Solutions (DWS)
Customer Complaint, Appeal, and Resolution Procedures

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I. Glossary of Terms

Apparent Violation: A suspected violation of employment-related laws or employment service (ES) regulations by an employer, which an ES staff member observes, has reason to believe, or regarding which an ES staff member receives information (other than a complaint as defined in this policy).

Complainant: The individual, employer, organization, association, or other entity filing a complaint.

Complaint: A Wagner-Peyser complaint or a WIOA complaint.

Complaint System Representative (CSR): Local ES staff trained to respond to complaints. In the local ES office, the ES Office Manager is responsible for the operation of the Complaint System.

Employment Service Office: A site in a local WDB area where staff of the State Workforce Agency, consistent with the requirements of 20 CFR §652.215, provide Wagner-Peyser Act services as a one-stop partner program. Also referred to as American Job Centers. In North Carolina, these are referred to as NCWorks Career Centers.

Employment Service (ES) Office Manager: Employment Service (ES) Office Manager is the ES staff person in charge of employment services provided in a One-Stop center.

Employment-Related Law: Those laws and implementing rules, regulations, and standards that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies. Employment-related law complaints can cover a wide range of issues that arise between employees and employers. Some examples include harassment, wage and hour disputes, retaliation, FMLA violations, violation of employment contracts, health and safety violations or failure to accommodate disabilities.

ES Regulations: The written provisions governing the Employment Service (ES) System established by the Wagner-Peyser Act of 1933 and set forth in the applicable Code of Federal Regulations (CFR).

Enforcement Agency: A state or federal agency with oversight and legal enforcement authority for applicable laws or regulations.

ETA Form 8429: [Employment and Training Administration \(ETA\) of the U.S. Department of Labor \(USDOL\) Complaint/Apparent Violation form.](#)

Farmwork: The cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, furbearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities mean all commodities produced on a farm including crude gum (oleoresin) from a living tree product processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under 20 CFR § 655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

Farmworker: An individual employed in farmwork, as defined above.

Hearing: A short, informal opportunity for a participant to present their complaint under this policy to a Hearing Official with strict rules of evidence not applicable. The Hearing shall be conducted telephonically in an informal

manner without the application of strict rules of evidence. The Hearing Official shall set time thresholds for any Hearing testimony.

Hearing Official: An official selected at the sole discretion of the DWS to preside at a Hearing convened to resolve complaints under this policy. The Hearing Official may be recruited from NCWorks Career Center staff or Statewide DWS staff. No NCWorks Career Center staff or DWS staff from the impacted Local Area may serve as Hearing Official in the matter. For Wagner-Peyser complaints when required by 20 CFR 658.417(a), a Hearing Official will be any State official authorized to hold hearings under State law.

Informal Resolution: An opportunity to resolve complaints and grievances informally.

Local Area: The Local Area administrative entity and its subrecipients to whom the administrative entity has delegated the grievance and complaint resolution process.

Migrant Farmworker: A migrant farmworker is a seasonal farmworker (as defined in this glossary) who travels to the job site and is not reasonably able to return to their permanent residence within the same day.

MSFW: A migrant farmworker or a seasonal farmworker.

Ombudsman: The DWS official who investigates complaints lodged by customers of NCWorks Career Centers and attempts to resolve the conflicts or concerns raised, either by informal resolution or by making recommendations according to established policy.

MSFW Complaint: A representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law by or on behalf of a MSFW.

Participant: A reportable individual who has received services other than the services described in CFR § 677.150(a)(3), after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. The following individuals are not participants, subject to § 677.150(a)(3)(ii) and (iii):

- Individuals who only use the self-service system; and
- Individuals who receive information-only services or activities.

ES participants must be included in the program's performance calculations.

Resolution Notice: Document prepared by CSR identifying the issue(s) and the action(s) and/or remedies to be taken to ensure settlement of the matter (see addendum).

Respondent: The individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or State agency.

Seasonal Farmworker: A seasonal farmworker is an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this glossary) of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

Service Provider: A public agency, private nonprofit organization, or private for-profit entity that delivers educational, training, employment, or supportive services to WIOA participants.

State: The State includes the Governor, the NCWorks Commission, and the DWS.

State Monitor Advocate (SMA): A senior level DWS Official appointed by the State Administrator, responsible for monitoring compliance and for advising the SWA and ES offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by the ES regulations.

Statewide MSFW Complaint Coordinator: The DWS official who processes complaints involving Migrant Farmworkers and Seasonal Farmworkers.

State Workforce Agency (SWA): The Governor has authorized the DWS, housed within the NC Department of Commerce, to serve as the SWA.

Wagner-Peyser Complaint: Wagner-Peyser or Employment Services (ES) Complaint means a representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law. These are part of the ES and Employment-Related Law System Complaints.

WIOA Complaint: WIOA Title I Complaints address broader workforce development issues, including training programs and eligibility for services. The timeline for resolving Title I/WIOA Complaints is sixty (60) days from the filing date of the complaint at each of the local and state levels. Complaints must be filed within one (1) year of the alleged violation, in order to be considered.

Workforce Development Board (WDB): A Local Area Workforce Development Board (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

II. Staff Responsibilities

Complaint System Representative (CSR): ES staff must be trained to respond to complaints. In the NCWorks Career Centers, the ES Office Manager is responsible for the operation of the Complaint System at the local level. Complaint System Representatives 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 System Representatives and their 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 System Representative may find it necessary to correct deficiencies that have adversely affected the complainant or other beneficiaries).

Backup Local Complaint System Representative: The Backup Complaint System Representative performs the same job duties as the primary Complaint System Representative. It is strongly recommended that the primary and backup Complaint System Representative work together as a team, sharing the workload, keeping the local career center staff informed of complaint policy and procedures.

All staff within NCWorks Career Centers must undergo training on the process and procedures for the intake and management of complaints, to ensure that staff can intake a complaint and explain the process to customers.

State Monitor Advocate: The DWS Official responsible for:

- **Monitoring Complaint Processing:** Ensuring complaints from MSFWs and other stakeholders are promptly and accurately processed by a trained Complaint System Representative, adhering to Federal and State regulations.

- **Reviewing Complaints:** Actively review complaints to identify trends, systemic issues, or areas needing improvement and work with state and local staff to resolve issues effectively.
- **Reviewing electronic copies of the complaint system log** from the ES office managers on a monthly basis.
- **Training and Guidance:** Assisting in providing training for State and local staff on the complaint system, including the specific needs and rights of MSFWs, to ensure compliance with all relevant regulations.
- **Reporting and Documentation:** Regular reporting on complaint trends, resolution status, and systemic issues is essential. Summarizing all complaints and their resolutions, contributing to annual reports submitted to the Department of Labor.
- **Improving the Complaint System:** Continually assessing the complaint system for effectiveness, working to address gaps, and improve the system's responsiveness and efficiency in handling MSFW complaints.

Statewide MSFW Complaint Coordinator: The DWS official who records and processes complaints lodged by Migrant and/or Seasonal Farmworkers or their representatives, and attempts to resolve the conflicts or concerns raised, either by Informal Resolution (within five (5) days) or by referring complaints to enforcement agencies, as applicable.

Ombudsman: The DWS official who investigates non-MSFW complaints lodged by customers of NCWorks Career Centers and attempts to resolve the conflicts or concerns raised, either by informal resolution or by making recommendations according to established policy.

DWS: The DWS is authorized to issue corrections, guidance, interpretations or similar as necessary to implement this policy.

III. Complaint Log Requirements:

- a. The DWS will ensure centralized control procedures are established for the processing of complaints and apparent violations. The ES Office Manager, Ombudsman, and Statewide MSFW Complaint Coordinator must ensure a Central Complaint Log is maintained, listing all complaints taken by the ES office or the SWA, and apparent violations identified by ES staff, and specifying for each complaint or apparent violation:
 1. the name of the complainant and their designated representative;
 2. the name of the respondent;
 3. the date the complaint is filed, or the apparent violation was identified;
 4. whether the complaint is made by or on behalf of a migrant or seasonal farmworker (MSFW) or whether the apparent violation affects an MSFW.
 5. whether the complaint or apparent violation concerns an employment-related law or the ES regulations; and
 6. the actions taken (including any documents the SWA sent or received and the date the SWA took such action(s)), and whether the complaint or apparent violation has been resolved, including informally.
- b. The ES office must maintain a complete record of complaints and apparent violations in the log format provided by the DWS with separate files for complaints and apparent violations. This log must be completed in a reasonable form with sufficient information. Complaint Logs maintained (including complaints/apparent violation form) by the ES Office should be submitted by the **5th working day each month, but not before last working day** to the Ombudsman, the Statewide MSFW Complaint Coordinator, and the State Monitor Advocate. A central Complaint Log will be maintained by the Ombudsman. The Statewide MSFW Complaint Coordinator will maintain an additional MSFW Complaint and Apparent Violation Log to be reported to USDOL, as required.

- c. Complaint Logs must be maintained by ES office for the duration of the applicable record retention period.

IV. Confidentiality

The identity of the complainant shall be kept confidential to the maximum extent possible, consistent with applicable laws. Additionally, the identity of any person who furnishes information relating to or assisting in the investigation of a complaint shall be kept confidential to the maximum extent possible, consistent with applicable laws and fair determination of the complaint. There may be circumstances where a complaint cannot proceed if the complainant wishes to remain anonymous.

V. Types of Complaints and Complaint Procedures

Complaints are classified as ES Related or Non-ES Related. If a complaint is related to discrimination, the Equal Employment Opportunity Commission (EEOC) or the Civil Rights Center (CRC), reference the WIOA Nondiscrimination/Equal Opportunity Standards and Complaint Procedures Commission Policy Statement for the steps to handle the complaint. A complaint can be related to Title III (Wagner-Peyser complaint) or Title I (WIOA complaint) programs. A complainant can also be a MSFW or a Non-MSFW. Complaints filed by MSFWs will be tracked on the central Complaint Log; however, they should be reported to the Statewide MSFW Complaint Coordinator immediately upon receiving the complaint. Complaints or grievances must be filed in writing within one (1) year for WIOA Complaints and within two (2) years of the alleged violation for Wagner-Peyser Complaints.

A. Employment Services Related Complaints

An ES-related complaint is a formal allegation against an employer or career center/agency regarding job orders, referrals, or ES regulations. CSRs should attempt to resolve ES-related Complaints informally, using the Informal Resolution (IR) process outlined in this policy. ES related Complaints fall under the following:

- 20 CFR 651 ([General Provisions Governing the Wagner-Peyser Act Employment Service](#))
- 20 CFR 652 ([Establishment and Functioning of State Employment Service](#))
- 20 CFR 653 ([Services of the Wagner-Peyser Act Employment Service System](#))
- 20 CFR 654 ([Special Responsibilities of the Employment Service System](#))
- 20 CFR 658 ([Administrative Provisions Governing the Wagner-Peyser Act Employment Service](#))
- 29 CFR Part 75 ([DOL Review and Certification Procedures for Rural Industrialization Loan and Grant Programs Under the Consolidated Farm and Rural Development Act of 1972](#))

Examples may include but are not limited to:

- A job seeker files a complaint with the state workforce agency, alleging that a local Employment Service provider did not properly provide job referrals or follow up on available job openings, despite the individual meeting all qualifications for the posted positions.
- A job seeker files a complaint alleging that the ES provider is not offering adequate assistance or follow-up in helping them secure job opportunities, even though they have been registered for several months.
- An employer files a complaint alleging that a local ES did not refer qualified applicants for job openings and failed to follow proper job order procedures.
- A participant in a job training program funded through the ES files a complaint regarding claiming that they were not provided with adequate training resources, such as relevant materials or guidance from instructors.

1. Employer-related ES Complaints:

Complaints against an employer are about the specific job to which the applicant was referred through ES and involve violations of the terms and conditions of the job order. For example, employer-related complaints could include allegations such as discriminating against job applicants referred by the employment service or refusing to hire qualified candidates because they were referred by the employment service. Essentially, any situation where the employer is not properly utilizing the services of the employment service to find workers. These complaints primarily center around the employer's interactions with job applicants.

- i. When a complaint is filed against an employer, the proper office to handle the Complaint is the NCWorks Career Center office serving the area in which the employer is located.
 - A. The complaint should first be recorded on the Complaint/Apparent Violation Form (ETA-8429).
 - B. The CSR should then follow the IR process outlined under the heading Informal Resolution (IR) Process (Local Level) in this policy. If the complainant is an MSFW, a copy of the complaint should be forwarded to the Statewide MSFW Complaint Coordinator. All complaints should be recorded on the local Complaint Log and submitted by the 5th working day of each month.
 - C. If IR is unsuccessful at the local level, the CSR must send the complaint to the SWA for resolution or further action.
 - D. The ES office must then notify the complainant and respondent in writing (via hard copy or electronic mail) of the determination or referral to the SWA.
- ii. When a complaint is against an employer in another State or against one or multiple State Workforce Agencies:
 - A. the local office receiving the complaint must send, after ensuring that the Complaint/Apparent Violation Form (ETA-8429) is completed, a copy of the Complaint/Apparent Violation Form and copies of any relevant documents to the DWS Ombudsman for processing;
 - B. copies of the Complaint/Apparent Violation Form (ETA-8429) will be sent to the complainant; and
 - C. the Ombudsman process will include
 1. sending copies of the Complaint/Apparent Violation Form (ETA-8429) to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies; and
 2. all such copies must be sent via hard copy or electronic mail.

2. Agency-related ES Complaints:

An agency-related complaint in the context of employment services refers to a representation or complaint filed against an agency that provides employment services, such as those related to workforce development or training, under a specific federal program. This could include violations of program rules or failure to provide services as required by law.

- i. Procedure for ES Office:
 - A. The complaint should first be recorded on the Complaint/Apparent Violation Form (ETA-8429).
 - B. The CSR should then follow the IR process outlined under the heading Informal Resolution (IR) Process (Local Level) in this policy. If the complainant is an MSFW, a copy of the complaint should be forwarded to the Statewide MSFW Complaint Coordinator. All complaints should be recorded on the local Complaint Log and submitted by the 5th working day of each month.
 - C. If IR is unsuccessful at the local level, the CSR must send the complaint to the SWA for resolution or further action.
 - D. The ES office must then notify the complainant and respondent in writing (via hard copy or electronic mail) of the determination or referral to the SWA.

- ii. When a complaint is filed against a NCWorks Career Center, the proper office to handle the complaint is the NCWorks Career Center office serving the area in which the alleged violation occurred.
- iii. When a complaint is filed against more than one NCWorks Career Center and is regarding an alleged agency-wide violation, the DWS Ombudsman must process the complaint.
- iv. When a complaint is filed alleging a violation that occurred in the same State but through a different NCWorks Career Center office, the NCWorks Career Center office where the complaint is filed must ensure that the Complaint/Apparent Violation Form is completed and send the form to the appropriate local NCWorks Career Center office for processing.
- v. If the complaint involves a non-MSFW individual, the issue must be resolved within fifteen (15) working days after receipt to the satisfaction of the complainant. If the complaint involves an MSFW, the issue must be resolved within five (5) days.

B. Non-Employment Service-Related Complaints

1. Employment Law Related Complaints

Employment-Related Law Complaints can cover a wide range of issues that arise between employees and employers. Examples include harassment, wage and hour disputes, retaliation, Family Medical Leave Act (FMLA) violations, violation of employment contracts, health and safety violations, or failure to accommodate disabilities.

- 1. When a complaint is filed regarding a violation of Employment-Related Law with the NCWorks Career Center or at the DWS, the office must first determine if the complainant is a MSFW.
 - i. *For non-MSFW Complainants:*
 - A. The CSR must take, in writing (hard copy or electronic ETA Form 8429), the complaint(s) describing the alleged violation(s) of the employment-related law(s).
 - B. If it is determined that the complaint must be referred to a State or Federal agency, the CSR must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as applicable, for assistance. Agency information can be provided directly to the complainant, or the CSR can assist in making the referral, if requested. The DWS will provide a guidance document on referrals to outside agencies.
 - C. The CSR will provide a completed copy of the complaint form including the information regarding the outside agency referral to the complainant.
 - D. Upon completing the referral, the local or DWS representative is not required to follow up with the complainant.
 - E. The complaint must be recorded on the complaint log and submitted to the Ombudsman, Statewide MSFW Complaint Coordinator and the State Monitor Advocate on the 5th working day of the month.
 - ii. *For MSFW Complainants:*
 - A. The CSR must take from the MSFW or their representative, in writing (hard copy or electronic ETA Form 8429), the complaint(s) describing the alleged violation(s) of the Employment-Related Law(s). If an MSFW Complaint is received in letter form, the CSR should ensure that there is sufficient information to determine the identity of the respondent (individual/organization the complaint is against) to permit an investigation to be conducted.
 - B. The local office staff must first attempt an informal resolution as outlined under the heading Informal Resolution (IR) Process (Local Level) in this policy. If, after five (5) working days, the local CSR cannot resolve the complaint, then the local CSR must immediately send the complaint to the applicable enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as

applicable, for assistance. Agency information can be provided directly to the complainant, or the CSR can assist in making the referral, if requested. Refer to the Resource Guide attached to this policy for additional information on referrals to outside agencies.

- a. In cases in which pursuing an informal resolution would be to the detriment of the complainant, the complaint must be immediately referred to the applicable enforcement agency.
- C. The CSR will provide a completed copy of the complaint form including the information regarding the outside agency referral to the complainant and to the Statewide MSFW Complaint Coordinator. Concurrently, the complainant should be offered other ES services, if interested.
- D. The complaint must be recorded on the complaint log and submitted to the Ombudsman, Statewide MSFW Complaint Coordinator and the State Monitor Advocate on the 5th working day of the month.

If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with 20 CFR § 658.500. If this occurs, the SWA must notify the Assistant Secretary or his/her representative, Complainant, and the employer of this action.

2. Complaints Involving Fraud, Waste or Abuse

Training and Employment Guidance Letter (TEGL) No. 15-23 sets out the procedures for reporting suspected fraud, program abuse, or criminal conduct by recipients and subrecipients of federal assistance from the Employment and Training Administration (ETA). This includes entities receiving federal awards directly from ETA, and subrecipients receiving federal funds indirectly from ETA. For a quick reference guide, please see [TEGL 15-23 Attachment II](#).

It is the role of all WDB staff members and the DWS employees to notify the DWS Ombudsman immediately of any potential case of fraud, waste, or abuse. The DWS Ombudsman will serve as primary contact with USDOL, USDOL Office of Inspector General, and law enforcement.

1. Procedures in the case of fraud, waste, or abuse:
 - i. The DWS Ombudsman prepares an Incident report and an Executive Summary of all complaints involving fraud, waste or abuse.
 - ii. The Ombudsman notifies the DWS Assistant Secretary and Division Counsel along with the appropriate law enforcement authorities (U.S. Department of Labor Employment and Training Administration, State Bureau of Investigation, State Auditor, NC Department of Labor, and Law Enforcement Officials).
 - iii. The WDB staff, the DWS and NCWorks Career Center staff shall not interfere in or obstruct any part of a criminal investigation.
 - iv. The DWS Ombudsman will serve as primary contact for law enforcement officials. The appropriate law enforcement authority will lead the investigation and report back to the DWS Ombudsman of any findings.

3. Apparent Violations

If a DWS ES staff member, a NCWorks Career Center employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as part of a field check under 20 CFR § 653.503, the employee must document the suspected violation on ETA Form 8429. They then must refer this information to the Career Center Manager and the Statewide MSFW Complaint Coordinator (if the apparent violation involves a MSFW)

and the Ombudsman (if the apparent violation involves a non-MSFW). All Apparent Violations should be listed on the Central Complaint Log.

Note: The Statewide MSFW Complaint Coordinator must be copied immediately on any reported or documented apparent violations involving MSFWs.

1. If the employer has filed a job order with the NCWorks Career Center office within the past twelve (12) months, the NCWorks Career Center office or reporting staff must attempt IR (see informal resolution steps). An example of a violation that can be solved with informal resolution might be if an employer is observed with no water available to employees working in the field and the situation is remedied by the employer immediately providing water.
2. If the apparent violation is considered egregious and informal resolution isn't possible, the Statewide MSFW Complaint Coordinator will refer the violation to the appropriate agency, in writing.
3. If the employer has not filed a job order with the NCWorks Career Center office during the past twelve (12) months, the suspected violation of an employment-related law must be referred to the Statewide MSFW Complaint Coordinator.

4. WIOA Complaints (Title I)

1. Each local area and direct recipient must:
 - i. provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local workforce development system, including One-Stop partners and service providers; and
 - ii. make reasonable efforts to assure that the information will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals.
2. Local area procedures must provide:
 - i. a process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce development system, including One-Stop partners and service providers;
 - ii. an opportunity for an informal resolution and a Hearing to be completed within sixty (60) days of the filing of the grievance or complaint;
 - iii. a process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and
 - iv. an opportunity for a local level appeal to a State entity when:
 - A. a decision is reached within sixty (60) days; or
 - B. either party is dissatisfied with the local hearing decision.
3. Procedures of direct recipients must provide:
 - i. a process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's WIOA programs;
 - ii. an opportunity for an informal resolution and a hearing to be completed within sixty (60) days of the filing of the grievance or complaint; and
 - iii. the remedies that may be imposed under local, State, and direct recipient grievance procedures enumerated at WIOA sec. 181(c)(3).

The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 38. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

VI. Informal Resolution (IR) Process (Local Level)

Note: For an MSFW Complaint, if a resolution has not been achieved to the satisfaction of the complainant within five (5) working days after receipt, the Complaint System Representative must send the complaint to the Statewide MSFW Complaint Coordinator for resolution or further action.

When a complaint is received, the staff member receiving the complaint must complete the Complaint/Apparent Violation Form, then they must offer to explain the operation of the Complaint System to the complainant. Following the reception of the complaint, the CSR must perform the following:

1. Record the complaint on the Complaint Log
2. Notify appropriate office staff (ES Office Manager, CSR backup, etc.) that a complaint has been filed
3. Determine the issues identified in the complaint
4. Investigate to ascertain pertinent facts
5. Prepare an administrative case file and record of the complaint including all evidence to support complaint
6. Determine if proper procedures have been followed
7. Attempt IR by scheduling and holding a discovery meeting(s). The purpose of the meeting is to bring the parties together to discuss the issues and to examine evidence and make recommendations that may lead to informal resolution; any recommendations must be based on the fact-finding investigation and information obtained during the informal meeting(s).
 - (1) If IR is unsuccessful, the complainant must be referred via the processes outlined in Section V. Types of Complaints and Complaint Procedures of this policy.
 - (2) If IR is successful, document resolution in the Complaint Log and in writing to the customer.

A. WIOA Complaints

1. In the case of a complaint related to Title I of WIOA, there must be an opportunity for IR at the local level. Additionally, a local hearing must be completed within sixty (60) days of the filing of the complaint.
2. There may be a local level appeal to a State entity when:
 - i. no decision is reached within sixty (60) days; or
 - ii. either party is dissatisfied with the local hearing decision

B. Employment-Related Law Complaints

1. In the case of a complaint being filed regarding an employment-related law, the office must determine if the complainant is an MSFW.
 - i. If the complainant is a non-MSFW, there is not an IR process. The office must immediately refer the complainant in accordance with the procedures listed in the above under Section V. Types of Complaints and Complaint Procedures (B) (1) (i).
 - ii. If the complainant is an MSFW, IR procedures must be followed within five (5) working days. If the issue is not resolved within the allotted time, the Complaint System Representative must refer the complainant in accordance with the procedures listed in Section V. Types of Complaints and Complaint Procedures (B) (1) (ii).
 - A. Informal Resolution is bypassed, and immediate action must be taken for MSFW cases if the SWA and the Complaint System Representative determines that they must take immediate action or in cases where informal resolution at the local level would be detrimental to the complainant(s).

C. Employment Services (ES) Complaints

The IR process is the same for both MSFW and non-MSFW complaints with the exception of the timelines for reporting and the responsible party at the SWA.

- i. For non-MSFW complainants, IR must occur within fifteen (15) working days.
- ii. For MSFW complainants, IR must occur within five (5) working days.

Following these deadlines, if a resolution is not reached, the complaint must be referred to the SWA for further action.

Resolved Complaints

If IR is achieved, the Complaint System Representative will:

1. Prepare a Resolution Notice, identifying the issue(s) and the action(s) and/or remedies to be taken to ensure settlement of the matter. This notice will be reviewed by the parties to ensure they agree.
2. If the IR 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 System Representative will also sign and date the statement, provide a copy to each party, and place the original in the case file. The file should be kept with the central Complaint Log.
3. If an IR requires additional 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.
4. If the agreement is signed and dated, resolution is achieved, and the case is closed, the Complaint Log must be updated to reflect resolution.

A Complaint is considered resolved when:

1. the complainant indicates satisfaction with the outcome via written correspondence;
2. the complainant chooses not to escalate the complaint to the next level of review;
3. the complainant or the complainant's authorized representative fails to respond to a request for information within forty (40) working days of a written request by the appropriate ES office or State agency;
4. the complainant exhausts all available options for review; or
5. a final determination has been made by the enforcement agency to which the complaint was referred.

Unresolved Complaints

1. If the complaint cannot be resolved using the informal resolution process, the complaint would be escalated to the State-level formal resolution process.
 - i. *For MSFW Complaints*, if informal resolution cannot be achieved at the meeting(s), then the complaint must be escalated to the Statewide MSFW Complaint Coordinator within five (5) working days for further investigation. An administrative case file including all documentation must be submitted. MSFW complaints must be forwarded to the Statewide MSFW Complaint Coordinator at MSFWcomplaintcoordinator@commerce.nc.gov or

NC Division of Workforce Solutions
Attn: Statewide MSFW Complaint Coordinator
4316 Mail Service Center
Raleigh NC 27699-4316
 - ii. *For non-MSFW complaints regarding the ES regulations*, complaints by individuals or interested parties that were unable to be informally resolved at the local level should be forwarded within fifteen (15) working days. All other non-MSFW complaints excluding those from MSFW participants, should be forwarded within thirty (30) working days to the DWS Ombudsman at CustomerOmbudsman@ncworks.gov or

NC Division of Workforce Solutions
Attn: DWS Ombudsman
4316 Mail Service Center

VII. Formal Complaint Resolution Process (State-Level)

When complaints by individuals or interested parties are filed directly with the DWS State Office/SWA or outside agencies, or when an informal resolution cannot be reached at the local level, the following procedures apply:

Note: All complaints or inquiries received from agencies within the North Carolina Department of Commerce, the General Assembly, the Governor's Office, or sent directly to the DWS State Office will be assigned to the Ombudsman for initial review.

A. For non-MSFW Complaints:

The DWS Ombudsman or their designee shall review the complaint and notify the complainant and respondent of the opportunity for an IR within fifteen (15) days of receipt.

1. The complaint must be in writing, dated, and signed by the complainant.
 - i. Complainants are encouraged to include the details listed above under the heading Complaint Log Requirements in their complaint. However, the absence of any of the requested information will not be used as a basis for dismissing the written complaint.
2. The official filing date of the complaint is the date it is received by the DWS Ombudsman or Statewide MSFW Complaint Coordinator. The DWS Ombudsman shall issue a written decision within thirty (30) working days of the official filing date.

Note: It is essential that local staff forward unresolved complaints to the DWS Ombudsman within the allotted fifteen (15) day timeframe.

3. Jobseekers that are banished or suspended from an NCWorks Career Center or employers that are denied access to NCWorks Online may also submit a request for Informal Resolution or a Hearing. All requests for a Hearing and associated documents can be accessed by contacting the DWS Ombudsman at 984-236-4254 or CustomerOmbudsman@ncworks.gov.

Once a Complaint is reported to the DWS Ombudsman, programmatic inquiries are sent to the responsible parties for assistance. The responsible parties include but are not limited to Local Area WDB Directors and staff, NCWorks Career Center staff, NCWorks Career Center Partners, the DWS staff members, EEO staff, and partners agencies who have the specific content knowledge to assist the claimant or inquiring citizens. The Ombudsman assigns a Case Identification (CID) number. The WDB, NCWorks Career Center, and specific program information are added to the inquiry or complaint. General inquiries of how to access services are currently not assigned a CID.

- A. The Ombudsman must investigate and attempt to resolve the complaint immediately upon receipt and will notify the complainant and respondent of the opportunity for an IR within fifteen (15) working days of the official filing date.
- B. If the Ombudsman determines that a complaint should be referred to an enforcement agency, the Ombudsman will make the necessary referral and notify the complainant in writing of the referral agency. Follow up is not required for non-MSFW complaints referred to enforcement agencies.
- C. If a resolution at the DWS' level has not been accomplished within thirty (30) working days after the complaint was received by the DWS (or after all necessary information has been submitted to the DWS), the Ombudsman must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent.
- D. All written determinations by the SWA on complaints under the WP regulations must be sent by certified mail (or another legally viable method), and a copy of the determination may be sent via electronic mail. The determination must include all the following:

1. The results of any SWA investigation.
2. The conclusions reached on the allegations of the complaint.
3. If a resolution was not reached, an explanation of why the complaint was not resolved.
4. If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a Hearing within twenty (20) working days after the certified date of receipt of the notification.
5. Instances of Discontinuation of Services, Banishment/Suspension and Appeal Notifications will need to be sent on letterhead and under signature of the Assistant Secretary.

B. For MSFW Complaints:

When a MSFW or their representative files a complaint regarding the ES regulations directly with a SWA, or when a MSFW complaint is referred from an ES office, the Statewide MSFW Complaint Coordinator must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

If resolution at the SWA level has not been accomplished within twenty (20) working days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA), the Statewide MSFW Complaint Coordinator must:

1. 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 the prior section.
2. For MSFW employment-law related complaints that are not resolved informally, the Statewide MSFW Complaint Coordinator will review and escalate to an enforcement agency, if applicable. If the complaint is being escalated to an enforcement agency, the Statewide MSFW Complaint Coordinator will notify the Assistant Secretary or his/her representative.
3. NC SWA must notify the complainant of the enforcement agency to which the complaint was referred by providing a completed copy of the complaint form.
4. If the SWA determines that the employer has not violated the ES regulations, the SWA must offer the complainant the opportunity to request, in writing, a Hearing within twenty (20) working days after the certified date of receipt of the notification.
5. If the State agency makes a final determination that the employer who has or is currently using the ES has violated the ES regulations, the determination must state that the State will initiate procedures for discontinuation of services to the employer.

NOTE: A customer does not lose their right to request redress through the Complaint/Hearing process when a determination of suspension or banishment (Please reference the Guidelines for North Carolina NCWorks Career Center Code of Conduct Violation Commission Policy Statement) has been made. All written notifications of sanction and banishment should apprise the individual of their rights to file an appeal. However, a customer's request to seek redress through the complaint system is not caused to suspend or delay the sanction or banishment terms until redress through the complaint process (including all levels of appeal) have been exhausted.

Resolutions and appeals of State-level complaints are addressed in this policy. As laid out in those Sections, jobseekers that are banished or suspended from an NCWorks Career Center or employers that are denied access to NCWorks Online may also submit a request for Informal Resolution or Hearing. All requests for a Hearing and associated documents can be accessed by contacting the DWS Ombudsman at 984-236-4254 or CustomerOmbudsman@ncworks.gov.

C. Reopening of case after resolution

If the complainant or the complainant's authorized representative fails to respond, the complainant or the complainant's authorized representative may reopen the case within one (1) year after the SWA has closed the case.

VIII. State Complaint Hearing

If no IR is possible or a Hearing is requested within the designated timeframe, a determination letter will be issued by the DWS Ombudsman or the Statewide MSFW Complaint Coordinator. Any party dissatisfied with determination may appeal in writing twenty (20) working days from the date of determination and request a Hearing. The request for a Hearing must be filed with:

NC Division of Workforce Solutions
Attn: DWS Ombudsman
4316 Mail Service Center
Raleigh NC 27699-4316

The complainant-impacted Local Area WBD Director, the DWS Regional Operations Director, and any other interested parties shall be notified in writing of the Hearing at least fifteen (15) calendar days prior to the Hearing. The notice will include the date and time of Hearing, which must be conducted forty (40) calendar days from the date the complaint/grievance was filed. The Hearing shall be conducted by an impartial Hearing Official.

A. WIOA Complaint Procedures:

A determination by the Hearing Official shall be issued within sixty (60) calendar days from the official filing date with the State. A determination by the Hearing Official shall be deemed final unless a complainant submits a written appeal to the DWS within thirty (30) calendar days of the issuance of the decision.

B. Wagner-Peyser Complaint Procedures:

1. State Hearing Officials may decide to hear multiple complaints concurrently if the issues are related, or if the complaint processing will be expedited by doing so.
2. Upon referral of a complaint, the designated Hearing Official must:
 - i. notify all parties of the date, time, and place of the Hearing; and
 - ii. reschedule Hearings when appropriate.
3. In conducting a Hearing, the Hearing Official must:
 - i. regulate the course and proceedings of the Hearing;
 - ii. issue subpoenas if necessary, provided that the official has the authority to do so under state law;
 - iii. ensure all relevant issues are considered;
 - iv. ensure parties are able to present, examine, and cross-examine witnesses;
 - v. rule on the introduction of evidence and testimony;
 - vi. ensure an orderly proceeding through all necessary means; and
 - vii. if possible, Hearing Officials should aim to resolve the dispute at any stage before the conclusion of the Hearing.
4. All testimony must be recorded and transcribed when appropriate.
5. Hearing Officials may elicit testimony from witnesses but may not act as an advocate for any party.
6. Federal and State rules of evidence do not apply to these Hearing procedures. However, Hearing Officials must seek credible, relevant, and non-repetitive evidence. Hearing Officials may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
7. Case records must be available to parties upon request, with special consideration and handling of sensitive records such as medical information.

All decisions of a State Hearing Official must be accompanied by written notice informing the parties that they may appeal the decision within twenty (20) working days of the certified date of receipt of the decision, and they may file an appeal with the regional administrator. The notice must give the address of the Regional Administrator.

IX. Complainant Appeals Process and Procedures

A complainant may file an appeal with the Assistant Secretary, Division of Workforce Solutions, if:

- a. a Hearing has been conducted and either party is dissatisfied or has been adversely affected by the Hearing Official's decision;
- b. a Hearing was not conducted within sixty (60) calendar days from receipt of the grievance; or
- c. a Hearing was conducted, but a decision was not issued within the mandated sixty (60) calendar daytime period.

The appeal should be concise (if possible, not to exceed five (5) pages which does not include exhibits and attachments) and shall be sent by certified mail, return receipt to:

NC Division of Workforce Solutions
Attn: Assistant Secretary for Workforce Solutions
Appeal Notice
4316 Mail Service Center
Raleigh NC 27699-4316

To the extent possible, the appeal request shall state the facts, laws, procedures, etc. that the complainant believes to be relevant for review. The appeal must be filed with the DWS within thirty (30) calendar days of receipt of the Hearing Official's determination. The request shall include the complainant's address where official notices will be mailed.

The State can remand the appeal back to the DWS Ombudsman to hold a Hearing or impose other remedies to resolve the complaint. The State has sixty (60) calendar days to issue a response.

The appeal actions listed above supplement, but do not supplant, applicable civil and criminal actions under other pertinent federal, state, or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, et cetera.

X. Local Area WDB Appeals Process and Procedures

A WDB may file an appeal with the Chief Deputy Secretary, State Department of Commerce, if

- a. the Assistant Secretary, Division of Workforce Solutions, has made a decision on the complainant's appeal and the WDB is dissatisfied or has been adversely affected by the Assistant Secretary's decision; or
- b. an appeal was made to the Assistant Secretary, but a decision by the Assistant Secretary was not issued within a sixty (60) calendar day reasonable time period or without an extension notification past the sixty (60) day threshold. All parties must have been given prior written notification if calendar timeline thresholds were not met. This notification should have included newly established deadlines.

The appeal should be concise (if possible, not to exceed five (5) pages, which does not include exhibits and attachments) and shall be sent by certified mail, return receipt to:

NC Department of Commerce
Attn: Chief Deputy Secretary
DWS Appeal Notice
301 N. Wilmington Street
Raleigh NC 27601

To the extent possible, the appeal request shall state the facts, laws, procedures, etc. that the WDB believes to be relevant for review. The appeal must be filed with the Department of Commerce within thirty (30) calendar days of receipt of the DWS Assistant Secretary's determination. The request shall include the WDB's address where official notices will be mailed.

The State can remand the appeal back to the DWS Ombudsman to hold a Hearing or impose other remedies to resolve the complaint.

The appeal actions listed above supplement, but do not supplant, applicable civil and criminal actions under other pertinent federal, state, or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, et cetera.

XI. Federal-Level Complaint Procedures

WIOA Complaints

Under 20 CFR § 683.630, if the State has not issued a decision with the required sixty (60) days' time limit, the complainant can file and appeal to the Secretary of Labor. An appeal must be made within one hundred twenty (120) days of the filing of the complaint with the State or filing of the appeal of the local grievance or complaint with the State. An appeal can also be made after a decision on a grievance or complaint under 20 CFR § 683.600(d) has been reached and the party wishes to appeal to the Secretary. The appeal must be filed within sixty (60) days receipt of the decision.

All appeals must be sent by certified mail, return receipt requested, to the following address:

Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Assistant Secretary for Employment and Training (ASET)

The Secretary shall issue a final determination no later than one hundred twenty (120) days after receiving the appeal.

Nothing in this policy statement precludes a complainant from pursuing a remedy authorized under another Federal, State, or local law (20 CFR §683.600(h)).

Wagner-Peyser Complaints

For ES regulation-related complaints, the ETA regional office is responsible for processing appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint (20 CFR § 658.421). ES regulation-related complaints can be sent to:

U.S. Department of Labor
Employment and Training Administration
Sam Nunn Atlanta Federal Center
Room 6M12-61 Forsyth Street S.W.
Atlanta, Georgia 30303