



MASSACHUSETTS

Workforce Investment Act

WIA Communication No. 05-89

Policy **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Regional Directors for Workforce Integration
DCS Associate Directors
DCS Field Managers

cc: WIA State Partners

From: Susan V. Lawler,
Director, Division of Career Services

Date: December 28, 2005

Subject: Unified Workforce Investment System Complaint Process, Revised

Purpose: To provide guidance to Local Workforce Investment Boards, Career Center Operators, Fiscal Agents and WIA Title I Administrators and local workforce investment partners and service providers regarding the revision of policies and procedures for the local system of processing complaints brought by customers of the local workforce investment system and/or other interested parties related to services/activities covered by the Workforce Investment Act. While this policy issuance is specific to alleged violations (by action or omission) related to services funded under Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act, as Amended (WIA Title III), the issuance will also reference procedures for initiating resolution of complaints related to other federal or state statutory requirements as part of a *unified* Workforce Investment Area Complaint Process.

Note: This Communication is a revision of Unified Complaint Process WIA Communication No. 05-08 (issued: 1/27/05). The revisions include:

- A time limit of up to one (1) year in which to file a WIA Title I related complaint (p. 4).
- A description of the State level Appeal/Hearings process (pp.14-15)

- A new Unified Workforce Investment System Complaint Process Flow Chart
- A new Complaint System Poster (English/Spanish)
- A revised Massachusetts Workforce Investment System Complaint Log with a new status entry: “Remanded to local level”.

Background: Requirements related to the establishment and administration of complaint procedures related to services/activities funded under Title I of the Workforce Investment Act of 1998 are promulgated at 20CFR, Ch. V, § 667.600 - § 667.640. Requirements related to services/activities funded under the Wagner-Peyser Act, as Amended (Title III of the Workforce Investment Act) are separately promulgated at 20CFR Ch. V, § 658.400 - § 658.426. Both sets of regulations require the establishment of a local process to handle complaints brought forward by consumers of the respective program’s services. The processes for handling complaints as described in the two sets of regulations, however, employ two distinct sets of time frames in which actions are to be taken and/or completed.

Presently, local areas have established and administered distinct processes consistent with practices outlined in two separate policy issuances:

- Procedures related to WIA Title I services have been administered within a framework as described in CBWL Policy Issuance No. 00-19 (5/31/2000).
- Procedures related to Wagner-Peyser (WIA Title III) services have been administered within a framework as described in WIA Policy Issuance No. 01-32 (7/18/2001).

With the responsibility for the state administration of both WIA Title I and Wagner-Peyser funds and services now consolidated under the Division of Career Services, the current administrative circumstance requires a revision of the former policies. It also provides an opportunity to update and streamline local procedures under a single, unified complaint process that also includes procedures pertaining to the process for the appeal of local determinations to the State level.

Policy: Consistent with the regulations promulgated at 20 CFR Ch. V, § 667.600 - § 667.640 and also at 20CFR Ch. V, § 658.400 - § 658.426, describing complaint system requirements for all direct recipients* of WIA Title I funds (excluding Job Corps) and Wagner-Peyser funds (Title III), all local Workforce Investment Area entities and WIA service providers including all Workforce Investment Boards, One-Stop Career Centers, Fiscal Agents and service providers must establish and maintain a unified process for the submission and resolution of complaints initiated by either customers or interested parties that is consistent with the guidelines described, herein.

***NOTE:** *Direct recipients may include state agencies, state and local workforce investment boards, One-Stop Career Center operators, Career Center partners, local WIA administrative entities, their service providers, including eligible training providers and entities providing non-WIA funds or resources to meet matching requirements or other conditions under WIA. The specific procedural requirements applicable to Job Corps are set forth at 20 CFR 670.990.*

Compliance with this policy requires the Local WIB to assure that the WIA entities [including the WIB, the One-Stop Career Center(s), the Title I Administrator and the Fiscal Agent)] and local partners and service providers have designated an appropriate number of Complaint Officers whose responsibility it will be to conduct an initial review of an individual's complaint and to determine the correct adjudicative path depending on which of the two funding programs (Title I or Wagner-Peyser) the complaint falls under. The designated Complaint Officer (s) can draw upon the expertise of program staff knowledgeable of the rules and regulations of the specific program(s) under which the complaint has been initiated. The Complaint Officer(s) will also determine if the nature of the complaint warrants adjudication under a path distinct from that established for WIA Title I and Wagner-Peyser related allegations.

Any provisions contained in the Workforce Investment Act of 1998 and the Wagner-Peyser Act, as Amended, their regulations, or other applicable laws and regulations shall apply even if not explicitly stated in this policy. Nothing in this policy shall be construed to contradict prevailing laws and requirements for equal opportunity matters.

Action

Required: This policy is in effect for all Massachusetts Workforce Investment Areas and their direct recipients of WIA Title I and Wagner-Peyser (WIA Title III) funds provided through the Division of Career Services.

Each Local Workforce Investment Board should review the current policies and procedures of the area's complaint resolution process for consistency with WIA regulations and the Commonwealth's procedural outline that follows. Local WIBs should assure that copies of this policy are distributed to all appropriate organizations and staff in its area.

NOTE: Training sessions on the Unified Workforce Investment System Complaint Process are in the process of being scheduled. Upon finalization of the dates and location, separate notice will be transmitted.

Effective: Effective immediately for all Workforce Investment Act funds provided through the Division of Career Services.

References: 20 CFR Ch. V, § 667.600 - § 667.640 and also at 20CFR Ch. V, § 658.400 - § 658.426; §658.500 - §658.504; 20 CFR § 667.630

Inquiries: Questions related to this issuance should be directed to PolicyQ&A@detma.org.

Filing: Please file this in your notebook of previously issued WIA Communication Series Issuances as #05-89.

UNIFIED WORKFORCE INVESTMENT SYSTEM COMPLAINT PROCESS

Each Local Workforce Investment Board shall establish and maintain a unified process for the resolution of *formal, written complaints* brought forward in relation to WIA Title I and Wagner-Peyser Job Service (WIA Title III) activities for its workforce investment area consistent with the parameters outlined below. While local workforce investment entities are encouraged to attempt to resolve customers' "issues" in an informal manner in advance of their escalation to a formal, written complaint status, local Boards must assure that procedures that provide for the resolution of customer complaints through a formal process of local investigation, review of the facts and determination are in place once a complaint is submitted in writing.

Each Local Workforce Investment Board shall also ensure that other local entities, based on their status as direct recipients of WIA Title I and/or Wagner-Peyser (WIA Title III) funds shall also establish and maintain complaint procedures consistent with these same parameters.

- To assure timely response to complaints, each local workforce investment area shall designate an appropriate number of Local Complaint Officers and "back-up" Complaint Officers to assure that the process of resolving a customer's or other interested party's complaint can begin immediately and without delay. Designated Complaint Officers and their "back-ups" will be responsible for processing all complaints related to services and activities covered under the Workforce Investment Act.
- A complaint related to services provided under the Wagner-Peyser Act may be lodged anytime within one year of the alleged violation.
- A complaint related to services provided under Title I of the Workforce Investment Act may be lodged anytime within one year of the alleged violation.
- Complaints alleging discrimination must be filed within 180 days of the alleged violation.
- All complaints must be filed in written form:
 - Submission of the official Unified Workforce Investment System Complaint Referral Record Form (see Attachment E), or
 - Submission of a written letter signed by the complainant.

Written complaints must include the complainant's full name, telephone number and address and the date of filing. Written complaints must also provide a clear, brief statement of the facts of the alleged violation, relevant dates, and other information to assist in the investigation and resolution of the complaint. Staff must offer and provide assistance to any customer seeking to file a complaint including assistance with completing all associated forms.

- All complaints must be entered into the official Unified Workforce Investment System Complaint Log (see Attachment B). Copies of the appropriate Complaint Log pages indicating filing or resolution of complaints occurring in a calendar quarter must be sent to the State Monitor Advocate within 15 days following the end of that quarter.
- The local Complaint Officer may choose to make a determination based solely on the information included in the case file or conduct further investigation before issuing a written determination.

- The local Complaint Officer may also choose to resolve the complaint by convening a local hearing. Only the designated Local Complaint Officer or authorized back-up may preside at a local complaint hearing. If the local Complaint Officer deems that a hearing is necessary the local Complaint Officer will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of certain conditions of the hearing process that include:

- ✓ the date, time and location of the hearing,
- ✓ instruction that the local Complaint Officer will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed, and
- ✓ instruction that the local Complaint Officer must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

* For clarity it must be noted that an administrative hearing is not the same as a Court of Law. Technical rules of evidence *do not apply*. It is up to the local Complaint Officer to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

- The local Complaint Officer has 15 days from the date a written complaint is received to resolve the complaint. If the complaint was initiated by a Migrant and Seasonal Farm Worker (MSFW) the local Complaint Officer *has only 5 days to resolve the complaint*.
- If the Complaint Officer has made a written request to the complainant (or the complainant's authorized representative) for additional information, the 15 day period (or in the case of an MSFW initiated complaint, the 5 day period) does not begin until the requested information has been received by the local Complaint Officer.
- If the local Complaint Officer has requested additional information from the complainant or the complainant's authorized representative and does not receive a response within 20 days from the date the request was made (or, *in the case of an MSFW initiated complaint, within 40 days*), the complaint is considered resolved.
- If the local Complaint Officer does not resolve the complaint to the satisfaction of the complainant within the 15 day period (or, in the case of an MSFW initiated complaint, the 5 day period), the complainant may request an appeal and/or hearing at the State level (State Complaint Officer) (see STATE LEVEL APPEAL/HEARINGS INFORMATION section, pp.14-15). The request for a State level appeal and/or hearing must be made in writing within 20 days of the receipt of the local determination.
- After 30 working days (or, in the case of an MSFW initiated complaint, within 20 days), if resolution has not been accomplished at the State level, the State Complaint Officer will issue to the complainant and respondent, by certified mail, a written determination regarding the complaint. The written determination must include:
 - ✓ the results of the State level investigation
 - ✓ conclusions reached on the allegations
 - ✓ an explanation as to why the complaint was not resolved
 - ✓ If the complaint is against an employer, and the State level investigation has found that the employer has violated Wagner-Peyser regulations, the determination shall state that the Commonwealth will initiate procedures for discontinuation of services

to the employer in accordance with the appropriate regulations (§658.500 - §658.504).

- ✓ If the complaint is against an employer, and the State level investigation has found that the employer has not violated Wagner-Peyser regulations, an offer to the complainant to request a hearing within 20 working days after the certified date of the receipt of the notification.
- ✓ If the complaint is against a State agency, an offer to the complainant to request a hearing within 20 working days after the certified date of the receipt of the notification.

NOTE: *If the State Complaint Officer has made a written request for information to the complainant or the complainant's authorized representative, the 30 or 20 day time frame (whichever is appropriate) will not commence until the requested information has been received.*

- If complaint resolution occurs above the local level, a copy of the resolution notice will be forwarded to the local entity/organization with which the complaint was originally filed.

TYPES OF COMPLAINTS COVERED BY THIS POLICY

Generally, all complaints brought forward by Workforce Investment Act customers, entities, service providers or other interested parties are to be handled, at least initially, according to the processes outlined above. Such complaints that may arise in the delivery and/or administration of services and activities provided or undertaken locally by direct recipients of WIA Title I or Wagner-Peyser funds and that do not involve alleged criminal* or discriminatory**activity include:

- Non-criminal complaints alleging violations by actions or omissions by WIB, One-stop Career Center, WIA entity or WIA service provider staff in violation of either Title I of the Workforce Investment Act of 1998 or the Wagner-Peyser Act, as Amended.
- Complaints against an employer about the specific job to which a WIA/Job Service customer was referred by a staff person of a One-Stop Career Center or other WIA partner or service provider.
- Complaints against an employer filed by, or on behalf of a WIA/Job Service customer referred to the employer by a staff person of a One-Stop Career Center or other WIA partner or service provider alleging violations of employment related laws.
- Complaints against an employer filed by, or on behalf of an individual who was not referred by a staff person of a One-Stop Career Center or other WIA partner or service provider.
- Complaints of violations of labor standards.
- Complaints by, or on behalf of Migrant or Seasonal Farm Workers (MSFWs) that allege violations of laws enforced by ESA or OSHA***.
- Complaints by, or on behalf of Veterans alleging violations of the mandatory job listing requirements for federal contractors.

***Criminal Complaints** – All information and complaints alleging criminal fraud, waste, abuse or other criminal activity under WIA must be reported immediately to the Department of Labor’s Office of Inspector General (20 CFR § 667.630).

Office of Inspector General
200 Constitution Avenue, NW, Room S-5506
Washington, D.C. 20210
Online: <http://www.oig.dol.gov>
Toll free: 1-800-347-3756
FAX: 202-693-5210

****Equal Opportunity/Discrimination Complaints** – Section 188 of the Workforce Investment Act of 1998 and WIA Regulations promulgated at 29 CFR Parts 37.76-37.79 require specific procedures for EO/Discrimination complaints alleged in regard to recipients and sub-recipients of WIA Title I funds and their service providers. Equal Opportunity/Discrimination complaints *must* be resolved within 90 days of the date the complaint was filed. Customers alleging discrimination based on a perceived violation of any of the following statutory or regulatory requirements may choose to have their complaints adjudicated at either the local or federal level in accordance with procedures specifically described in WIA Issuance 01-38 (issued August 2, 2001), WIA Grievance Procedures for Equal Opportunity/Discrimination Complaints and as affirmed by adoption of the policy by DCS as announced in WIA communication No.4-22, Equal Opportunity Policies (issued 3/12/04).

- Section 188 of the Workforce Investment Act of 1998 prohibiting discrimination on the basis of race, color, religion, national origin, age, disability, political affiliation or belief, or on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, as amended prohibiting discrimination on the basis of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, as amended prohibiting discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, as amended prohibiting discrimination on the basis of age;
- Title IX of the Education Amendments of 1972, as amended prohibiting discrimination on the basis of sex in educational programs,; and 29 CFR Part 37, regulations implementing the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.

Local staff must provide complainants with all appropriate assistance to assure the completeness of all required forms (copies of required forms may be requested from the DCS Equal Opportunity Officer).

Kenneth Owens
Director of Diversity
Executive Office of Labor and Workforce Development
19 Staniford Street
Boston, MA 02114

One required form, DL 1-2014a: *Notice About Investigatory Uses of Personal Information*, incorporates a consent form that *must* be signed by the complainant.

NOTE: All Job Service (Wagner-Peyser) related complaints regarding discrimination by an employer *must* be logged locally and referred to the MA Commission Against Discrimination (MCAD) for adjudication.

MA Commission Against Discrimination
One Ashburton Place
Room 601
Boston, MA 02108

A copy of the complaint must also be forwarded to the U.S. Equal Employment Opportunity Commission (EEOC).

U.S. Equal Employment Opportunity Commission
Boston Area office
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Robert L. Sanders, Director

***** Complaints by MSFWs Alleging Violations of Laws Enforced by ESA or OSHA** – Such complaints are to be logged locally and elevated immediately to the State Monitor Advocate who will refer the complaint to the proper enforcement agency (ESA or OSHA).

Jose Ocasio
State Monitor Advocate
19 Staniford Street, First Floor
Charles F. Hurley Bldg.
Boston, MA 02114

Complaints Against Employers From Another State – Such complaints are to be logged locally and elevated immediately to the State level. If the complaint is filed by a Migrant or Seasonal Farm Worker (MSFW), local will refer the complaint to the State Monitor Advocate. The State Complaint Officer or Monitor Advocate will refer the complaint to the appropriate agency in that state.

Alice Sweeney
State Complaint Officer
Division of Career Services
19 Staniford Street
Charles F. Hurley Bldg.
Boston, MA 02114

Jose Ocasio
State Monitor Advocate (see above)

Complaints Involving More Than One Massachusetts Career Centers – Such complaints are to be logged locally and elevated immediately to the State level.

Complaints Alleging Statewide Violations or Involving the Division of Career Services – Such complaints are to be logged locally and elevated immediately to the State level.

Complaints Alleging Violations of Unemployment Assistance (UA) or Transitional Assistance for Needy Families (TANF) Law/Regulations – Such complaints are to be logged locally and elevated immediately to the State level. The State Complaint Officer or State Monitor Advocate will process such complaints within the parameters set forth in the respective regulations.

DESIGNATION OF A LOCAL COMPLAINT OFFICER

Each Local Workforce Investment Area shall designate at minimum, one Complaint Officer (CO) and back-up for the local area. The Complaint Officer shall be responsible for initial handling of complaints pursuant to this issuance. The Complaint Officer may also be the Equal Opportunity Officer. The local Complaint Officer's name, business address and telephone number shall be publicized and included in customer information describing how to file a complaint. The number of Local Complaint Officers (and back-ups) designated by the WIB should be guided by the Board's need to assure that the process of complaint resolution must begin immediately upon receipt of the complaint *without delay* and must be conducted within the timeframes required by the nature of the complaint.

LOCAL NOTIFICATION OF COMPLAINT RIGHTS AND PROCEDURES

Notice

All direct recipients of WIA/Wagner-Peyser (WIA Title III) funds including Local Workforce Investment Boards, One-Stop Career Centers, WIA Title I Administrators, WIA Fiscal Agents and WIA service providers are required to prominently display in public view the official Massachusetts Workforce Development Complaint System poster. A copy of the Massachusetts Workforce Development Complaint System poster is provided as an attachment to this issuance. A supply of the Complaint Posters may be ordered through the Division of Career Services.

The brochure “You Have the Right to File a Complaint” providing customers with general instructions as to how to file a complaint must be made available to customers, program participants, employees, one-stop partners, service providers, other interested parties and members of the public. English and Spanish language copies of the brochure are attached.

Local Customer Notification Process

Local WIBs must assure that *all* WIA customers are notified of their EEO/Complaint rights. This may be accomplished in a group or individual setting. A hard copy description of and instructions for the local complaint process should be included in the package of Career Center Seminar materials. While the Career Center Seminar incorporates specific references to the complaint process, providing an advantageous opportunity to satisfy the customer notification requirement, local WIBs must assure that other appropriate notification mechanisms are in place, locally to ensure maximum notification.

WIBs must also ensure that the local notification process assures that complaint procedures are provided in a timely manner when a customer expresses a desire to file a complaint or requests a copy of the procedures.

ADOPTION AND APPLICATION OF COMPLAINT PROCESS

Adoption

Complaint procedures for direct recipients of WIA Title I and Wagner-Peyser funds operating in the local workforce investment area (including Workforce Investment Boards, One-Stop Career Centers, WIA Title I Administrators, WIA Fiscal Agents and WIA service providers) shall be adopted and published by each Local Workforce Investment Board. [20 CFR § 667.600(b) and 20 CFR § 658.400].

State Level Complaint Submission

Complainants may elect to initially file a complaint at the state level by submitting the complaint to the State Complaint Officer or State Monitor Advocate who may choose to process the complaint through resolution. Complaints filed at the state level may, however be remanded back to the local level by the State Complaint Officer/Monitor Advocate for adjudication, including an attempt at informal local resolution. Complaints initially filed at the state level *may not* later be filed at the local level.

The filing of a complaint at the state level does not preclude an attempt to reach an informal resolution with the complainant at the local level while the complaint is processed by the Division of Career Services, centrally.

IMPLEMENTATION OF COMPLAINT RESOLUTION PROCEDURES

Local complaint procedures must be developed to assure WIA customers and entities of their rights and to process complaints in an objective and consistent manner. Procedures must provide for:

- dealing with written complaints from customers and other interested parties affected by the local workforce investment system as well as entities and organizations administering funds and providing services under the Workforce Investment Act, including Workforce Investment Boards, One-Stop Career Center Operators and partners, WIA Title I Administrators, WIA Fiscal agents and WIA service providers;
- protecting a complainant's confidentiality to the extent possible and, when consent has been provided for the release of the complainant's identity, ensuring that such disclosure is made under conditions that will promote the continued receipt of confidential information;
- advising complainants and respondents of their right to due process including the right to:
 - representation by an attorney or other individual of his/her choice,
 - present evidence,
 - question others who present evidence, and
 - receive an impartial decision made strictly on recorded information;
- ensuring that no person, organization or agency may discharge or in any manner retaliate against any person or WIA entity because that person/entity has filed a complaint, instituted any proceeding related to the WIA Title I and Wagner-Peyser Regulations, testified or is about to testify in a proceeding or investigation, or has provided information or otherwise assisted in an investigation;
- providing an opportunity for informal resolution and a hearing consistent with the parameters established in this issuance;
- submitting the complaint of alleged violation to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides;
- providing an opportunity for a local level appeal to the State entity (DCS);
- implementing corrective action and/or sanctions when warranted; and
- maintaining all complaint related written materials in a secure file to reasonably assure confidentiality for a period of 3 years.

COMPLAINT LOGS

Each WIB must establish procedures for its area for the use and maintenance of the Unified Workforce Investment System Complaint Log (see Attachment) consistent with guidance provided, herein.

- The WIA Complaint Log must clearly identify each individual complaint.
- Each complaint must have a unique identification number.
- Copies of those Complaint Log pages that clearly indicate all newly filed and all resolved complaints for the calendar quarter must be promptly submitted (through email) to the State Monitor Advocate no later than the 15th day of the month following the end of each quarter.
- The Complaint Log is available in, and is to be completed and maintained in an Excel format.
- Local area Complaint Logs will be maintained on an annual basis consistent with the *state fiscal year* (July 1 – June 30). Each annual complaint log will be kept for a period of 3 years following the end of the fiscal year for which the log was kept.

The State Complaint Officer will compile and maintain a statewide Complaint Log from the submitted local Complaint Logs.

APPARENT VIOLATIONS

Apparent violations are informal complaints about employers received from individuals (customers or staff) or agencies that are not documented or handled as part of the formal Unified Complaint Process described in this issuance. Reporting suspected or apparent violations by employers when no formal complaint has been filed is allowable under regulations found at 20 CFR §653 covering services to Migrant and Seasonal Farm workers (MSFWs), specifically §653.107(k) and §653.113(a)(b)(c).

Examples of *Apparent Violations* include (but are not limited to):

- A local staff person speaks with a MSFW who complains about unfair treatment by an employer and, though the individual provides credible information alleging an employer violation, the person chooses not to file a complaint (through the formal Complaint Process). The staff person still suspects a violation occurred.
- A One-Stop Career Center staff person attempts to take a job order from an H2-A employer who insists on a requirement that is a violation of employment related laws(s).
- A One-Stop Career Center staff person visiting a farm labor job site (H2-A) observes a possible violation of housing standards but no complaint has been filed.

While Apparent Violations are to be logged on the WIA Complaint Log, they are processed separately and are an exception to the formal Complaint Process.

Such *Apparent Violations* must be reported in writing to the Local One-Stop Career Center Director.

Upon receipt of a report of an Apparent Violation, the One-Stop Career Center Director must determine:

- if the employer filed a job order with the Massachusetts One-Stop Career Center system within the previous 12-month period?
- if the apparent violation involves Wagner-Peyser Job Service (WIA Title III) regulations, terms/conditions of the job order or employment related law(s)?

If it is determined that the employer has filed a job order within the previous 12 months, the One-Stop Career Center Director must contact the employer and attempt to achieve *informal resolution within five (5) working days*.

If the issue is not resolved and there is an apparent violation of:

- Wagner-Peyser Job Service regulations, the One-Stop Career Center Director must refer the matter to the State Complaint Officer for investigation. If a violation is found to have occurred, DCS may have to initiate *Discontinuation of Services* to the employer under the terms of §658.501(a)(b)(c).
- Employment related law(s), the One-Stop Career Center Director must refer the matter in writing to the State Complaint Officer in order that procedures can be initiated for the *Discontinuation of Services* to the employer. The One-Stop Career Center Director must also refer the matter in writing to the State Monitor Advocate who will refer (in writing) the apparent violation to the appropriate enforcement agency and will notify the One-Stop Career Center Director of the final disposition of the matter, upon final resolution.

If the employer has not filed a job order within the previous 12 months the One-Stop Career Center Director need only refer the matter to the State Monitor Advocate as Job Service regulations are not considered to have been violated if a job order had not been listed within the 12 month time frame.

Per USDOL requirement, the State Monitor Advocate will forward a copy of all apparent violations involving MSFWs and/or H-2A employers/contractors to the Farm Labor Specialist (FLS) assigned to the DOL ESA Regional Office and will contact the DOL Regional Administrator (RA) in the event that US workers are withheld from the job prior to the arrival at the job site of H-2A workers.

Apparent violations of Child Labor Law must also be reported in writing to the State Monitor Advocate for action by the local office of the Wage and Hour Division of the USDOL Employment Standards Administration (ESA).

STATE LEVEL APPEAL/HEARINGS INFORMATION

As stated above, if the local process *does not* resolve the complaint to the satisfaction of the complainant an offer to request an *appeal* and/or *hearing* to the next higher level (the State) must be given to the complainant. The complainant must request the state level appeal and/or hearing in writing within 20 business days of receiving the local determination. If the complainant chooses to request an appeal *without specifically requesting a hearing*, the State Complaint Officer may decide to either make a determination based solely on the information included in the case file or conduct further investigation before issuing a written determination. In either case, the State Complaint Officer must submit a written determination to the complainant within 30 days of receipt of the original appeal request or after having received additional information from further investigation (unless the State Complaint Officer deems a formal hearing to be necessary as described in following section).

If the State Complaint Officer deems that a hearing is necessary or if the complainant specifically requests a hearing, the State Complaint Officer will notify the parties (in writing) that the matter has been scheduled for a formal hearing. The notice must inform the parties of certain conditions of the hearing process that include:

- the date, time and location of the hearing,
- instruction that the State Hearing Official (State Complaint Officer or other, duly authorized State Official) will conduct and regulate the course of the hearing to assure full consideration of all relevant issues and that actions necessary to ensure an orderly hearing are followed, and
- instruction that the State Hearing Official must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

* For clarity it must be noted that an administrative hearing is not the same as a Court of Law. Technical rules of evidence *do not apply*. It is up to the State Hearing Official to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

In conjunction with the hearing process the State Hearing Official:

- may decide to make a determination based on the information included in the case file or investigate further prior to the formal hearing,
- may decide to conduct a hearing on more than one complaint/appeal if the issues are relate,
- May permit (at his/her discretion) the participation of interested parties (amicus curae) with respect to specific legal or factual issues relevant to the complaint/appeal,
- may choose to conduct the hearing at a single location convenient to all parties (preferred) or, if that would represents a hardship for one or more parties, the State Hearing Official may elect to conduct the hearing by a telephone conference call.

The State Hearing Official must conduct the hearing *and* issue a written determination within

the 30 day period from the date the hearing was requested. Following the completion of a hearing, the State Hearing Official is required to provide a written determination to the complainant, respondent and any participating interested parties. The State Hearing Official's determination must inform the complainant and respondent that either may file an appeal with the U.S. Department of Labor Regional Administrator within 20 business days of the date of the written determination.

ATTACHMENTS

- A. Unified Workforce Investment System Complaint Process Flow Chart
- B. Unified Workforce Investment System Complaint Log
- C. Unified Workforce Investment System Complaint Process Handout – English**
- D. Unified Workforce Investment System Complaint Process Handout – Spanish**
- E. Unified Workforce Investment System Complaint Referral Record Form
- F. Complaint System Poster (English/Spanish)
- G. Complaint Form 2014a – English***
- H. Complaint Form 2014a – Spanish***

**“You Have the Right to File a Complaint” brochure (English & Spanish versions)

***Complaint Information Form DL 1-2014a USDOL Directorate of Civil Rights (Federal) which includes the Notice About Investigatory Uses of Personal Information (Federal) (English & Spanish versions)