

Attachment A

UNIFIED WORKFORCE INVESTMENT SYSTEM PROCEDURAL DETAIL

I. 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 (see Attachment B-1 for sample informal resolution process flow chart) 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.

II. WORKFORCE INVESTMENT AREA REQUIRED ELEMENTS

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].

- **Written Policy and Procedures** – Each Local Workforce Investment Board shall establish and maintain for its workforce investment area a unified process for the resolution of *formal, written complaints* brought forward by customers or other interested parties in relation to WIA Title I and Wagner-Peyser Job Service activities; or with regard to alleged violation of an individual’s civil rights or acts of discrimination in a manner consistent with the parameters outlined below.

Furthermore, a statement specifically citing the local area’s adoption of this Unified Workforce Investment System Policy must be included in the local WIB and One-Stop Career Center Standard Operating Procedures (SOP) manual.

- **Designation of Local Complaint Officer/Equal Opportunity Officer and Alternates** – At a minimum, each Local Workforce Investment Area shall designate one Complaint Officer (CO) and one Equal Opportunity Officer (EOO) and a back-up for each. The CO shall be responsible for initial handling of complaints pursuant to this issuance. The same individual may be designated as both the CO and the EOO. The name, business address and telephone number of the designated CO and EOO shall be publicized and included in all customer information describing how to file a complaint. The number of local COs and EOOs (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. It is strongly suggested that each local career center have on-site staff ready to handle the initial complaint process.
- **Local Customer Notification Process** - Local WIBs must assure that *all* Career Center customers are notified of their EO/Complaint rights. This may be accomplished in either a group or individual setting. A written description of the local complaint process (including procedural instruction) 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 also assure that other appropriate local mechanisms are in place to ensure maximum notification and that individual notification is duly recorded in the MA One-Stop Employment System (MOSES) database as part of the customer record. WIBs must also ensure that the local notification process assures that complaint procedures are initiated in a timely manner when a customer expresses a desire to file a complaint or requests a copy of the procedures.
- **Public 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 Investment System Unified Complaint Process poster with local contact information

(Attachment G). The brochure “You Have the Right to File a Complaint” providing customers with general instructions as to how to file a complaint must also 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 versions of the brochure are attached (Attachments D/E).

All direct recipients of WIA/Wagner-Peyser funds must also prominently display the “Equal Opportunity is the Law” Poster in English and Spanish (Attachments K/L).

- **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 C) 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* (July1 – 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.

Instructions for completing the Complaint Log are included in attachment C-1.

- **Written Determinations** – All formal complaints require a written determination to the complainant within specified timeframes.
- **Appeals** – Every complainant must be provided the opportunity to appeal any local adverse decision.
- **Follow-Up** – Workforce Areas should make a concerted effort to provide follow-up on all customer matters referred to outside enforcement agencies.

III. TYPES OF COMPLAINTS COVERED AND RESOLVED LOCALLY UNDER THE UNIFIED POLICY

Generally, this policy covers 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 activity. Such complaints may be brought forward by Workforce Investment Act customers, entities, service providers, staff or other interested parties; and are to be handled, at least initially, according to the processes outlined below.

More specifically, complaints that fall within the jurisdiction of this policy include:

- Complaints alleging violations by actions or omissions by a 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 (within workforce area jurisdiction) alleging violations by actions or omissions by a WIB, One-Stop Career Center, WIA entity or WIA service provider staff in violation of 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
- 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 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 and/or veterans' priority of service.

IV. OSCC COMPLAINTS - LOCAL PROCESS/TIMEFRAMES

Local workforce investment entities shall attempt to resolve customer “issues” in an informal manner in advance of escalation to written complaint status. However, should informal resolution not succeed, local boards must assure that procedures providing for the resolution of complaints through a formal process of local investigation that includes a review of the facts, a determination, and the right to appeal are *fully* in place once a complaint is submitted in writing.

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

- A complaint related to services provided under either Title I of the Workforce Investment Act or the Wagner-Peyser Act, as Amended may be lodged anytime within one year of the alleged violation.
- All formal complaints subject to the process described in this policy must be filed in written form:
 - ✓ Submission of the official Unified Workforce Investment System Complaint Referral Record Form [see Attachment F (includes instructions)], 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 formal complaints must be entered into the official Unified Workforce Investment System Complaint Log (see Attachment C). Copies of the appropriate Complaint Log pages indicating filing or resolution of complaints occurring in a calendar quarter must be submitted to the State Monitor Advocate within 15 days following the end of that quarter.
- The local CO 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 CO may also choose to resolve the complaint by convening a local hearing. Only the designated local CO or authorized back-up may preside at a local complaint hearing. If the local CO deems that a hearing is necessary the local CO 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 CO 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 CO must rule on the introduction of evidence* and afford the parties the opportunity to present, examine, and cross-examine witnesses.

***NOTE:** For clarity it must be stated 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 CO to follow principles and procedures that are designed to assure credible evidence that can be tested through cross-examination.

- Generally, the local CO 15 days from the date a written complaint is received to resolve the complaint. However, if the complaint was initiated by (or on behalf of) a Migrant and Seasonal Farm Worker (MSFW) the local CO *has only 5 days to resolve the complaint*.
- If the CO 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 CO 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.
- The CO must provide the complainant with a written determination. If the local CO 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 (see Section VI, STATE LEVEL APPEAL/HEARINGS).
- The CO must include the right to appeal within the written determination. Notification must be given that the complainant may submit a request for a State level appeal and/or hearing and that it must be made in writing within 20 days of the receipt of the local determination.
- 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, centrally by the Department of Career Services.
- 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.
- Send copies of local Workforce determinations related to Career Center complaints to:

Alice Sweeney, Complaint Officer
 Director Special Initiatives & Customer Accountability
 Department of Career Services
 19 Staniford Street, First Floor
 Boston, MA 02114

V. EO COMPLAINTS - LOCAL PROCESS/TIMEFRAMES

- An Equal Opportunity Complaint must be filed within 180 days of the alleged act(s) of discrimination. This complaint must be filed at either the local level or with the USDOL Civil Rights Center (CRC) in Washington, D.C.
- If a customer alerts a career enter of his/her intent to file a discrimination complaint, steps should be taken to connect the complainant with the designated local EO Officer (his or her name should appear on the Complaint / EO poster or flier). If the local EO Officer (EOO) is not available immediately, the designated EOO back-up shall be contacted.
- In all possible instances, the designated local EOO should personally meet with the complainant(s) in an area of the agency's offices that ensures confidentiality. The purpose of this preliminary interview is to:
 - ✓ determine the complainant's name, address and means of contact;
 - ✓ determine the basis of the complaint;

- ✓ develop a detailed description of the allegation(s);
 - ✓ determine the date of the most recent alleged event of discrimination; and
 - ✓ identify the proper respondent.
- Career centers may choose to gather the complainant's information on USDOL-Civil Rights Center's (CRC) Complaint Information (CIF) and Privacy Act Consent Forms (see Attachments H/I).
 - Once the information is gathered, the document must be signed and dated by the complainant. The signed/dated Consent Form should indicate whether the complainant allows the EOO to disclose the complainant's identity, if necessary to investigate his or her complaint.
 - The EOO should ask the complainant whether he/she would like the complaint handled locally or referred to the USDOL-Civil Rights Center in Washington, D.C. The complainant's decision should be indicated on the signed document Consent form.
 - The EOO should stress that a local resolution would likely be resolved more quickly and that the complainant's right to file again with the USDOL would still be available should the resolution be unsatisfactory.
 - If the complainant elects to have his/her complaint resolved at the local level, the EOO must request that the customer allow one (1) day for preparation of a written letter to either acknowledge receipt of the complaint or to provide a notice of Lack of Jurisdiction. If this is not possible, the complainant should be asked to wait in the public reception area while the EOO examines the complainant's statement and a response is prepared. **Note: when mailing letters to complainants, always send them "return receipt requested." When providing similar written responses in person, secure a signed receipt.**
 - The EOO must review the information provided and determine if he/she has jurisdiction (see Attachment M)
 - Once determined, the EOO must declare in writing that he/she either has jurisdiction over the complaint or does not have jurisdiction based on one or more of the following reasons:
 - ✓ The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 37.
 - ✓ The complaint was not filed with the prescribed timeframes within 180 days of the date that the discriminatory act (s) allegedly occurred.
 - ✓ The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIA Title I financial assistance as defined in 29 CFR Part 37.4.
 - If it is determined that the EOO does not have jurisdiction, he/she should provide the complainant with the address and phone number of the appropriate agency with jurisdiction.
 - If it is determined that the career center does not have jurisdiction in the particular matter (see Section VII, below), a notice citing one or more of the above reasons shall

immediately be provided in writing. The written notice must include the specific phrase “lack of jurisdiction” in describing why the career center is not the appropriate entity to resolve the complaint. If the notice is mailed to the complainant, send “return receipt requested”. The notice should also inform the complainant that he/she has 30 days from the date of receipt to file a complaint to the CRC. The *original* signed complaint should be included with the notice. A *copy* of the complaint should be maintained on file with the career center.

- If the discrimination complaint is within the EOO’s jurisdiction, an acknowledgement letter must be prepared. The acknowledgement letter should contain the following:

- ✓ Notice of complaint receipt.
- ✓ Assignment of a distinct complaint number (e.g. xxxx-01-01, first complaint, year)
- ✓ Restatement of the issues raised in the complaint.
- ✓ Notice of which issues have been accepted.
- ✓ Explanation, if necessary of issues that will not be investigated.
- ✓ A notice that the complainant has a right to representation by any individual he/she chooses during the complaint process. The notice should specify that if an attorney is chosen to represent the complainant, all legal fees are the sole responsibility of the complainant.
- ✓ A notice that a preliminary period of fact-finding or investigation will occur and may take approximately 15 days to complete. Preliminary fact-finding describes the issues raised by the complainant and the respondent.
- ✓ A choice of “Alternate Dispute Resolution” (ADR) as an appropriate option for informal resolution.

ADR includes “mediation” as a way of resolving the issues or differences between the parties to the complaint. The ADR objective and process should be briefly explained in the letter. The choice to use ADR rests with the complainant and such a choice to use ADR should be communicated to the EOO by the complainant as quickly as possible. Upon receiving notice of the complainant’s decision to pursue ADR, the EOO must immediately notify the Commonwealth:

Alice Sweeney, Complaint Officer
Director Special Initiatives & Customer Accountability
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

ADR should not be considered as an appropriate mechanism for resolution when the complaint:

- is of a high profile nature;
 - involves legal issues;
 - involves the potential for setting a policy precedent; and/or
 - impacts other members of a protected group.
- ✓ A statement that a “Notice of Final Action” will be issued to the complainant within 90 days of the filing date of the complaint.

- ✓ A notice that the complainant has the right to file his/her complaint with the USDOL if the EOO fails to issue said “Notice of Final Action” within the 90 days cited below.
- The EO complaint process including fact-finding, ADR, settlement agreement, and “Notice of Final Action” must be completed within 90 days of the date that the complaint was filed at the local level.
- The respondent to the complaint must also be notified that a complaint alleging discrimination has been filed and is being processed. The respondent must be provided a summary or copy of the complaint and given written notice that any form of retaliation or intimidation is against the law. The respondent must also be notified if ADR has been offered to the complainant as a means of informal resolution.
- Copies of all correspondence related to EO complaints must be sent to both:

Rex Gerlach-Brown
Acting Director of Diversity and Equal opportunity
Executive Office of Labor and Workforce Development
19 Staniford Street, Fifth Floor
Boston, MA 02114

and

Alice Sweeney, Complaint Officer
Director Special Initiatives & Customer Accountability
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

VI. STATE LEVEL APPEAL/Hearing - PROCESS/TIMEFRAMES

As stated above, if the local process *does not* resolve the complaint to the satisfaction of the complainant the “Notice of Final Action” issued to the complainant must include an offer to request an *appeal* and/or a formal *appeal hearing* to the next higher level (the Commonwealth). The complainant must request the state-level appeal and/or formal appeal hearing in writing within 20 business days of receiving the local determination. If the complainant chooses to request an appeal *without specifically requesting an appeal 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 and issuing a written determination without scheduling a formal hearing. 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 below).

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

Formal Hearing Process

If the State Complaint Officer deems that a formal hearing is necessary or if the complainant specifically requests such 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 the following conditions of the hearing process:

- 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.
- 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 related.
- 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 represent a hardship for one or more parties, the State Hearing Official may elect to conduct the hearing by a telephone conference call.
- Must conduct the hearing *and* issue a written determination to the complainant, the respondent and any other participating interested parties within the 30-day period (or in the case of a complaint brought by a Migrant and Seasonal Farm Worker –MSFW – within 20 days) from the date the hearing was requested. The State Hearing Official's 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;

- ✓ a statement 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 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 determination if the complaint is against an employer and the State level investigation has found that the employer has not violated Wagner-Peyser regulations; and/or
- ✓ 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, and a violation by the agency is not determined.

The State Hearing Official's determination must also inform the complainant and respondent that both have the right to appeal the Hearing Official's determination to the U.S. Department of Labor Employment and Training Administration (USDOL ETA). The appeal must be submitted to DOL/ETA within 60 days of the receipt of the state's determination. All appeals must be submitted in writing by certified mail; return receipt requested, to the Secretary, US Department of Labor, Attention: ASET. A copy of the appeal must be simultaneously provided to USDOL ETA Boston Regional 1 Office and to the opposing party or parties. USDOL must make a final determination no later than 120 days after receiving the appeal.

U.S. Department of Labor
Employment and Training Administration
200 Constitution Ave, NW
Washington, DC 20210
Attention: ASET

and

Ms. Holly O'Brien, Regional Administrator
Employment & Training Administration
U.S. Department of Labor, Room 350
JFK Building
Boston, MA 02203
Cc: T. Lee Reynolds

VII COMPLAINTS NOT RESOLVED LOCALLY OR COVERED BY THIS POLICY

- **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). A copy of the complaint must simultaneously be provided to the MA Department of Workforce Development Office of Internal Control and Security.

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

Office of Internal Control & Security
Charles F. Hurley Building 4th Floor
19 Staniford Street
Boston, MA 02114

- **Complaints of Job Service Discrimination by an Employer**
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. Simultaneously a copy of the complaint must be forwarded to the U.S. Equal Employment Opportunity Commission (EEOC).

MA Commission Against Discrimination
Boston Area office
One Ashburton Place
Boston, MA 02203

U.S Equal Opportunity Commission
JFK Building
475 Government Center
Boston, MA 02203

- **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
Department of Career Services
19 Staniford Street, First Floor
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.
- **Complaints Involving More Than One Massachusetts Career Center**
Such complaints are to be logged locally and elevated immediately to the State level.
- **Complaints Alleging Statewide Violations or Involving DCS or CommCorp –**
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.

Alice Sweeney, Complaint Officer
Director Special Initiatives & Customer Accountability
Department of Career Services
19 Staniford Street, First Floor
Boston, MA 02114

Jose Ocasio
State Monitor Advocate
Department of Career Services
19 Staniford Street
Boston, MA 02114

- **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.

Note: 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. Apparent Violations must, however, 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; and
- ✓ 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).
- ✓ **Federal, state or local 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.

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).
- **Complaints Alleging Federal Contractor Violations** - Federal contractors must adhere to a number of wage and labor standard requirements mandated under a variety of federal statutes. Complaints alleged against federal contractors should be forwarded to the appropriate federal agency. Attachment J provides contact information and additional guidance with respect to determining the relevant federal agency in such cases.
- **Career Center Staff Personnel Complaints** - Staff Personnel Complaints (other than discrimination complaints) should be handled through the appropriate employer of record Human Resource office.