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Reference:

WFI/AWI and RWB Grievance/Complaint and
Hearing/Appeal Procedures

FINAL GUIDANCE

Grievance/Complaint And Hearing/Appeal Procedures Under The Workforce Investment Act (WIA), Trade Adjustment Assistance (TAA), Temporary Assistance for Needy Families (TANF) and Welfare Transition (WT), Food Stamp Employment And Training (FSET) And Wagner-Peyser (WP) Programs

OF INTEREST TO

Workforce Florida, Inc., all Regional Workforce Boards (RWBs), and other entities engaged in implementing workforce programs under the Workforce Investment Act (WIA), the Trade Adjustment Assistance (TAA) Program, Temporary Assistance for Needy Families (TANF) and Welfare Transition Program (WT), Food Stamp Employment and Training (FSET) Program and the Wagner-Peyser Program.

SUBJECT

Workforce Programs Grievance/Complaint and Hearing/Appeal Procedures.

EFFECTIVE DATE

Upon Issuance.

A. WIA, TAA, TANF/WT, AND FSET, GRIEVANCE/ COMPLAINT AND HEARING/APPEAL PROCEDURES

Background - Underlying State/Federal Policy

The WIA, TANF/WT and the FSET programs require the State, the local areas, and direct recipients of program funds to establish and maintain grievance/complaint and hearing/appeal procedures for handling program-related complaints. The grievance/complaint requirements may vary from program to program.

To simplify instructions and to have a unified format, the following grievance/complaint and hearing/appeal procedures will be essentially the same for WIA, TAA, FSET, and TANF/WT workforce programs.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.

I. Regional Workforce System Original Grievance/Complaint and Hearing/Appeal Process

a. Filing Grievance/Complaint at the Local Level

1. Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by career center partners and service partners, has the right to file a grievance/complaint with the RWB, with the exception of complaints alleging unlawful discrimination. Discrimination complaints must be filed in accordance with the *Agency of Workforce Innovation Discrimination-Complaint Procedures*. The discrimination complaint procedures are available online at: www.floridajobs.org/civilrights/moa/tabs/8-A-1.doc.
2. TANF/WT work activity and support services grievances/complaints shall be filed with the local RWB (work activity is defined in Chapter 445, Florida Statutes). Pursuant to 45 CFR 261.56(c)(2) the local RWB will inform customers of and provide a fair hearing regarding non-compliance with work requirements. TANF cash assistance eligibility or benefit entitlement grievances/complaints shall be filed with the local Department of Children and Families (DCF) office, the cognizant agency responsible for administering this part of TANF (20 CFR 662.280), except for complaints alleging unlawful discrimination.
3. Food stamp eligibility or benefit entitlement grievances/complaints shall be filed with the local DCF office (See 7 CFR 271.6 and 273.15), except for complaints alleging unlawful discrimination. The FSET reimbursement shall be treated as a support service, and grievances/complaints shall be filed with the local RWB.
4. Grievance/complaints, except complaints alleging unlawful discrimination, shall be filed at the State level only when based upon actions or decisions made by the State recipient or administrative entity. Any grievance/complaint filed with an inappropriate entity will be forwarded to the proper entity/agency for action. The entity's/agency's 60-day timeframe to handle the grievance will start upon receipt of grievance/complaint.
5. A grievance may be filed by regular employees regarding displacement by a WIA, TAA, TANF/WT, or FSET program participants and by program participants regarding displacement for reasons other than unlawful discrimination. Displacement action prohibitions and available relief specifications are described in WIA (20 CFR 667.600), TANF (45 CFR 261.70), and FSET (7 CFR Parts 271 and 273).

The filing of all other grievances/complaints alleging, employment, and health and safety violations shall be filed as described in Section I. b., Process for Filing a Grievance/Complaint With RWB. As noted above, discrimination complaints must be filed in accordance with the *Agency for Workforce Innovation Discrimination-Complaint Procedures*.

All local workforce grievances/complaints shall be filed with the relevant RWB using their established procedures. The exceptions are Job Corps grievances/complaints that are processed according to requirements of 20 CFR 670.990.

The chart below includes WIA, TAA, FSET and TANF/WT grievances/complaints (for reasons other than unlawful discrimination) or hearing/appeal actions that may be filed with the RWB, AWI acting as the administrative entity for the State Board, or U. S. Department of Labor (USDOL).

WIA, TAA, FSET, AND TANF/WT HEARING/APEALS CHART

Hearing/Appeal Issue	Local Hearing/Appeal	State Hearing/Appeal	Federal Hearing/Appeal
DENIAL OR TERMINATION OF ELIGIBILITY AS A TRAINING PROVIDER (WIA AND TAA)	Yes	Yes	No
DENIAL OF ELIGIBILITY AS AN OJT OR CUSTOMIZED TRAINING PROVIDER BY A ONE-STOP OPERATOR (WIA AND TAA)	Yes	Yes	No
RWB SUBSTANTIAL VIOLATION (WIA)	No	Yes	Yes
RWB PERFORMANCE FAILURE/ SANCTIONS (WIA AND TAA)	No	Yes	Yes
PARTICIPANT SANCTIONED FOR USING CONTROLLED SUBSTANCES (WIA AND TAA)	Yes	Yes	No
DISPLACEMENT OF REGULAR EMPLOYEE OR PROGRAM PARTICIPANT (WIA, TAA, WT, AND FSET)	Yes	Yes	Yes
SANCTION FOR NON-COMPLIANCE WITH WORK ACTIVITIES (TANF/WT, FSET)	Yes	Yes	No

As specified in Rule 65A-4.205, the DCF has delegated to the RWB the responsibility for TANF/WT work activity non-compliance determinations. This rule is incorporated herein by reference. A copy of any rule referenced in this paper may be obtained from AWI, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida, 32399-4128.

Additionally, in the TANF State Plan, DCF has assigned to WFI/AWI the responsibility for providing a grievance process for WT participants to use when filing grievances related to the following: service delivery of TANF-funded work activities, alternative Plan Requirements, support services, diversion programs, and other workforce functions provided in the Workforce Innovation Act of 2000, Chapter 445, Florida Statutes.

b. Process for Filing a Grievance/Complaint with RWB

Under WIA, TAA, TANF/WT and FSET, career center partners, service providers, participants, and other interested parties affected by the local workforce system have the right to file a grievance/complaint.

Grievances/complaints that do not allege unlawful discrimination shall be filed at the local level using the procedures established by the individual RWB.

The RWB shall receive, review, and attempt to informally resolve the initial WIA, TAA, TANF/WT, and FSET grievance/complaint. If the grievance/complaint cannot be resolved informally, then a hearing shall be held and a decision issued within the required 60 calendar days from receipt of complaint/grievance.

Employment, and health and safety complaints/alleged violations for reasons other than unlawful discrimination may be forwarded to the Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida, 32399-4128, or may be mailed directly to the appropriate federal agency as allowed by federal regulation. The last page of Section C has a list of addresses for federal agencies. A copy of the complaint/alleged violation report shall also be mailed to AWI at the above address.

c. Grievance/Complaint Review and Hearing Process at Local Level

After the RWB has received and reviewed the complaint, they shall designate a Hearing Officer(s), schedule a hearing, and notify the grievant/complainant by certified mail, return receipt, at a minimum of 15 calendar days prior to the hearing. The hearing notice shall advise the following:

- The date, time, and place of the hearing;
- The pertinent sections of the WIA, TAA, TANF/WT, and FSET, or any other federal regulations involved;
- Affected parties may present witnesses or documentary evidence at the hearing;
- Affected parties may be represented at the hearing by an attorney or other representative; and
- The parties will receive the RWB decision within 60 calendar days from receipt of the grievance or complaint.

The hearing should be conducted according to the procedures established by the individual RWB. However, a complainant who alleges a labor standard violation may submit the complaint for binding arbitration if the collective bargaining agreement covers the parties involved.

General procedures: If a hearing is conducted, the RWB should ensure that the process, including the contents of the hearing dialogue, is transcribed or has the potential of being transcribed. For example, the hearing can be taped for transcription purposes. The recording/documentation of the hearing will allow for transcription if the grievance is appealed or escalated to a higher level.

If the RWB has: 1) conducted a hearing but the grievant/complainant is dissatisfied with or has been adversely affected by the Hearing Officer's decision; 2) not conducted a

hearing within the 60 calendar days from receipt of the grievance/complaint; or 3) conducted the hearing but has not issued a decision within the mandated 60 calendar day timeframe, then the grievant/complainant may file an appeal with AWI.

d. Process for Filing an Appeal of RWB Decision or Lack of Action

The appeal should be concise (if possible, not to exceed five pages not including exhibits and attachments) and shall be sent by certified mail (return receipt), to the Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128.

The appeal request shall state the facts, laws, procedures, etc. that the grievant/complainant believes to be relevant for review. The appeal must be filed with AWI within 30 calendar days of receipt of the RWB Hearing Officer's decision or within 30 calendar days after the required 60-calendar day timeframe for the RWB to act has elapsed.

The request shall include the grievant's/complainant's address where official notices will be mailed.

The state can remand the grievance/complaint back to the RWB to hold a hearing or impose other remedies to resolve the grievance/complaint.

II. State Level Original Grievance/Complaint and Hearing/Appeal Process for WIA, TAA, TANF/WT, and FSET Programs

Any individual or entity, including the RWB, adversely affected by a decision or action of the State Workforce System or administrative entity for reasons other than alleged unlawful discrimination may file a grievance/complaint with the State Administrative Agency. The grievance/complaint shall be filed with Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida, 32399-4128. Complaints alleging that the decision or action was based on unlawful discrimination should be filed in accordance with the Agency for Workforce Innovation Discrimination-Complaint Procedures.

At the state administrative entity level, the Agency Head or his/her designee is the presiding officer and shall conduct all hearings of original state level complaints.

a. Grievance/Complaint Review and Hearing Process at State Level

The state administrative entity will hear initial complaints or grievances regarding actions taken or decisions made by the state administrative agency for reasons other than alleged unlawful discrimination. Upon receipt, the state shall review and attempt to informally resolve the WIA, TAA, TANF/WT, and FSET grievance/complaint. The Agency Head or his/her designee will review the grievance/complaint and contact the grievant/complainant within five working days of receipt of complaint. The Agency Head or designee shall contact the parties and proceed with the informal resolution process.

If the State cannot resolve the grievance/complaint informally, then the Agency Head or designee will act as Presiding Officer and hear the grievance/ complaint.

The hearing notice shall advise the following:

- The date, time, and place of the hearing;
- The pertinent sections of the WIA, TAA, TANF/WT, and FSET, or any other federal regulations involved;
- Affected parties may present witnesses or documentary evidence at the hearing;
- Affected parties may be represented at the hearing by an attorney or other representative; and
- The parties will receive the decision within 60 calendar days from receipt of the grievance or complaint.

The hearing shall be conducted in compliance with rules of procedure as contained in Chapter 28-106, Parts I, II, and III, Florida Administrative Code, incorporated herein by reference. The Presiding Officer will schedule a hearing, complete the hearing, and issue a decision within the required 60 calendar days of receipt of complaint/grievance.

Individuals with a disability needing reasonable accommodations shall call the State Administrative Entity Process Manager at (850) 245-7105 at a minimum of five working days prior to the hearing and indicate what special accommodations are needed in order to participate in the hearing.

b. Remedies

1. The remedies that may be imposed under WIA grievances/complaints (other than those alleging unlawful discrimination) shall be limited to:
 - a. Suspension or termination of payments under WIA;
 - b. Prohibition of placement of participant with an employer that has violated any requirement under WIA;
 - c. Reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment, where applicable.
2. Other WIA, TAA, TANF/WT, and FSET grievance/complaint remedies including other equitable relief to be imposed as appropriate.

c. Appeal Review of RWB Hearing Officer's Decision

This section shall apply to appeals of RWB decisions filed with the state administrative entity, other than appeals alleging that the decision was based on unlawful discrimination. The latter appeals should be filed in accordance with the Agency for Workforce Innovation Discrimination-Complaint Procedures.

Within five working days of receipt of appeal notice, the AWI Agency Head or his/her designee shall notify each party that an appeal has been filed. Each party shall be given 15 calendar days from the date of the notice to submit written argument and provide supporting documentation. Only unaltered, verbatim transcripts of the original hearing evidence and other proof introduced at the initial hearing will be considered for purposes of the appeal.

The party submitting the transcript must bear all expenses of the transcription and deliver a copy of the transcript to the Agency Head and the opposing party. If a stenographer authorized to administer oaths has not recorded the proceedings and prepared the transcript, an exact copy of the tape recording, video, or other recording must also be delivered to the Agency Head and the parties, along with the transcript. The party submitting the transcript and the recording must include a certification that the transcript is verbatim and the recording is of the entire proceeding and has not been altered. The Agency Head will not consider a transcript when the foregoing procedure has not been followed.

The Agency Head or his/her designee shall issue a decision within 60 calendar days of receipt of the appeal request.

d. Appeal of State Decision/Final Order

A grievant/complainant may file an appeal of the State decision/final order if the grievant/complainant is dissatisfied with or has been adversely affected by the State Hearing Officer's decision for reasons other than unlawful discrimination; or the State has not conducted a hearing; or the State has conducted the hearing, but has not issued a decision within the mandated 60 calendar- day timeframe. The appeal must be filed within 30 calendar days of receipt of the State's decision; or after the mandated 60 calendar days has elapsed for the State to have issued a decision. The appeal shall be filed with the following agency/entity:

- WIA and TAA appeals of state decisions for reasons other than unlawful discrimination may be filed with the USDOL using the Federal Level Appeal Procedures included in the next section.
- TANF work activity and support services appeals for reasons other than unlawful discrimination may be filed according to Rules of Appellate Procedure, Rules 9.110 and 9.190 (b). (See next section.)

e. Judicial Review of Final Orders

The final order issued by the AWI Hearing Officer will be signed by the Hearing Officer and dated on the day it is mailed. The period for judicial review will run from the date the order is mailed. The final order will include a notice that provides the individual with the opportunity for judicial review. Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, set forth the procedures for an individual to appeal a final department (agency) decision or action.

f. Federal Level Appeal Process

Under WIA regulations, 20 CFR Section 667.600, if the RWB or the State has not issued a decision on a case that does not deal with allegations of unlawful discrimination within the required 60 calendar-day timeframe, the grievant/complainant can file an appeal to the USDOL. The appeal must be filed with the USDOL no later than 120 calendar days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. A copy of the appeal must be simultaneously provided to the appropriate Regional Administrator and the opposing party.

An appeal must be filed within 60 days of the receipt of the decision being appealed in cases where a decision has been reached and the party to which such a decision has been adversely impacted wishes to appeal to the Secretary. A copy of the appeal must be simultaneously provided to the appropriate USDOL Regional Administrator and the opposing party.

Section 667.650 states that a local area found in substantial violation of WIA Title I and which has received a notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the USDOL Secretary under WIA Section 184(b). These appeals must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization. A copy of the appeal must be simultaneously provided to the Governor.

The Request for Review/Appeal must be submitted by certified mail (return receipt) to: Secretary, U. S. Department of Labor, Washington, D.C. 20210, Attention: ASET.

B. COMPLAINT PROCEDURES FOR WAGNER-PEYSER EMPLOYMENT SERVICE (ES) ACTIVITIES

Background/Underlying State and Federal Policy

Federal regulations at 20 CFR Part 658, Subpart E, provide that each state shall establish and maintain an employment service complaint system that includes procedures at the local, State and Federal level for processing these complaints.

In addition, any person who believes he or she, or any specific class of individuals, has been subjected to unlawful discrimination in a Wagner-Peyser program (including employees or and applicants for employment with the agency administering the program) may file discrimination complaints by following the procedures in the Agency for Workforce Innovation Discrimination-Complaint Procedures.

Special handling procedures are required for complaints filled by Migrant and Seasonal Farm Workers (MSFW) that do not allege unlawful discrimination. The RWB shall attempt to resolve the MSFW complaint. IF MSFW complaints cannot be resolved within five working days of receipt of complaint by the RWB, the complaint form and copies of all documents in the complaint file are forwarded to the Agency for Workforce Innovation, Monitor Advocate Office, Caldwell Building-Suite 150, 170 East Madison Street, Tallahassee, Florida 32399-4133. Attention: Senior Monitor Advocate.

Complaints alleging unlawful discrimination in the MSFW program may be filed in accordance with the Agency for Workforce Innovation Discrimination-Complaint Procedures.

Federal regulations at 20 CFR 658.415 state that non-ES related complaints (employment, health and safety, etc.) must be forwarded as soon as possible after being received. These complaints shall be sent to Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida, 32399-4128, or to the appropriate federal agency with a copy of the complaint sent to AWI Office of General Counsel. (See Section C for federal agencies and addresses.)

I. Regional Workforce Board/One-Stop ES Complaint/Resolution Procedures

Complaints that are related to the Wagner-Peyser employment services that do not allege unlawful discrimination are handled by the career center manager or complaint specialist. The manager/specialist will maintain a separate file for each complaint and enter the complaint on the complaint log. The local RWB will attempt to resolve all ES-related complaints.

The complaint is resolved when the complainant is satisfied with the outcome; the complainant chooses not to elevate to the next level; or when the complainant has not responded within 20 working days after correspondence has been mailed for ES complaints and within 40 working days for MSFW complaints.

If the ES complaint is not resolved within 15 working days, then the complaint and associated file documents are forwarded to the Agency for Workforce Innovation, Office of One-Stop and Program Support, Caldwell Building-Suite 105, 107 East Madison Street, Tallahassee, Florida, 32399-4133, Attention: ES Complaint Coordinator.

Within five days after the end of the quarter, the local career center manager will mail the Complaint Logs to the Senior Monitor Advocate at the address included in the MSFW procedures above.

The MSFW complaints involving an allegation of noncompliance with assurances regarding wage and hour law or other employment conditions are to be forwarded to the nearest USDOL Wage and Hour office. Check the USDOL web site at <http://www.dol.gov/esa/whd/> to find the local office nearest you.

For MSFW violations of Occupational Safety and Health Administration (OSHA) Directives, complaints should be forwarded to the USDOL, Occupational Safety and Health Administration. (See address in the chart on the last page of Section C.)

The following conditions are identified in 20 CFR 658.501(a) as the basis for discontinuation of services to employers:

1. Employer submits and refuses to alter or withdraw job orders containing specifications which are contrary to employment related laws;
2. Employer submits job order and refuses to provide assurances that the jobs offered are in compliance with employment-related laws;
3. Employer is found through field checks or otherwise to have misrepresented the terms or conditions of employment specified on the job order or to have failed to comply fully with assurances made on the job orders;

4. The career center is notified by enforcement agency that the employer has violated an employment related law;
5. Employer, following investigation of complaint, is found to have violated employment service regulations;
6. Employer refuses to accept qualified workers referred;
7. Employer refuses to cooperate in field checks; and
8. Employer repeatedly causes discontinuation proceedings to be initiated.

More detail on the ES Complaint System (20 CFR sections 658.411-418) can be found in the Complaint Resolution Handbook, e.g., the completion of the complaint filing, assigning, and handling ES-related complaints, complaint resolution, referrals, hearings, etc. Also, a list of referral agencies is available in the Complaint Resolution System Handbook that has been provided to each RWB, local Representative, and career center.

Note: Nothing included in this paper precludes a grievant/complainant from pursuing a remedy authorized under another federal, State, or local law.

C. REPORTING CRIMINAL FRAUD AND ABUSE, DISCRIMINATION, HEALTH AND SAFETY, AND EMPLOYMENT COMPLAINTS/VIOLATIONS

Criminal fraud and abuse, discrimination, health and safety, and employment, complaints that violate federal laws, regulations, and directives are handled differently than the program related complaints/grievances handled by local and state hearing and appeal procedures.

I. Reporting Criminal Fraud and Abuse

WIA Section 667.630 describes the process for reporting complaints and/or reports of criminal fraud and abuse. Complaints/reports must be reported immediately to the USDOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW, Washington, D.C. 20210.

The complaint or report can also be mailed to the USDOL Southeast Regional Inspector General for Investigations, Office of Investigations, Sam Nunn Atlanta Federal Center, 61 Forsythe Street, SW, Suite 6T1, Atlanta, Georgia 30303 with a copy simultaneously provided to the Employment and Training Administration.

Reports or complaints alleging criminal fraud and abuse may also be reported through USDOL's Hotline at 1-800-347-3756.

II. Reporting WIA, TANF/WT, FSET, and Wagner-Peyser Discrimination Complaints

WIA Section 667.275(a) requires that recipients of financial assistance under WIA Title I, as defined in 29 CFR 37.4, comply with the requirements of WIA Section 188 and its implementing regulations at 29 CFR part 37, along with other federal requirements related to nondiscrimination.

Under WP, discrimination complaints may be filed directly with a local-office equal opportunity representative, when such has been designated and trained, with the state agency having administrative responsibility for WP programs, or with the Civil Rights Center, U.S. Department of Labor. (See 20 CFR 658.411.)

Under the FSET program, individuals who believe that they have been subject to discrimination may file a written complaint with the United States Department of Agriculture, Office of the Hearing Clerk, Room 112, Administration Building, Washington, D.C. 20250 (See 7 CFR part 15.) Alternatively any person who believes he or she, or any specific class of individuals (including employees of and applicants for employment with an agency administering the FSET program), has been subjected to unlawful discrimination under FSET program may file a complaint in accordance with the Agency for Workforce Innovation Discrimination-Complaint Procedures.

Under Florida law, employees or applicants may also choose to file employment complaints with the Florida Commission on Human Relations. (See Section 760.06, Florida Statutes.) Contact the following entities for discrimination, employment, health and safety, or Florida Law violations/complaints:

Florida Commission on Human Relations Florida Law Violations 2009 Apalachee Parkway, Suite 100 Tallahassee, Florida 32301 (850) 488-7082 1-800-342-8170 (voice and TTY)	U. S. Department of Labor, Civil Rights Center Discrimination Complaints 200 Constitution Avenue, NW, Room N-4123 Washington, D. C. 20210
U. S. Equal Employment Opportunity Commission (EEOC) Employment Complaints Miami District Office One Biscayne Tower 2 South Biscayne Boulevard, Suite 2700 Miami, Florida 33131 (305) 536-4491 or 1-800- 669-4000 TTY (305) 536-5721 or 1-800-669-6820	USDOL Occupational Safety and Health Administration (OSHA) Safety and Health Violations 200 Constitution Avenue, NW Washington, D.C. 20210
EEOC Tampa Area Office 501 East Polk Street, Suite 1000 Tampa, Florida 33602 (813) 228-2310 or TTY (813) 228-2003	USDOL Office of Inspector General, Office of Investigations 200 Constitution Avenue, NW Room S-5014 Washington, D. C. 20210.

SUPERSESION:

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