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SN (70)

WIOA BULLETIN NO. 01-24

TO: WIOA Partners
FROM: Maricar Pilotin-Freitas, Administrator
Workforce Development Division
SUBJECT: Complaint Procedure

PURPOSE

This bulletin provides the policy and procedures for establishing and maintaining a system for participants and other interested parties to file grievances and complaints alleging violations of the requirements of Title I of WIOA.

OBJECTIVE

The objective of these procedures is to provide Complainants, who are covered under applicable statutory and regulatory provisions, a means to seek redress.

This bulletin does not apply to the following complaints:

- Discrimination complaints, which are covered under WIOA NDP Bulletin No. 1-19, WIOA Nondiscrimination Plan and Recipient Obligations, <https://labor.hawaii.gov/wdc/files/2019/07/WIOA-NDP-Bulletin-No.-1-19.pdf>; and WIOA Bulletin no. 02-17 and no. 02-17, Change 1, WDC Policy, WIOA Methods of Administration, <https://labor.hawaii.gov/wdc/files/2018/02/Final-SN-O2-WIOA-Bulletin-02-17-Change-1-020618.pdf>;

- Complaints and reports of criminal fraud, waste, abuse, or other criminal activity, which are covered under WIOA Bulletin No. 07-22, Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse, and Criminal Conduct, <https://labor.hawaii.gov/wdc/files/2022/09/DOC008-1.pdf>;
- Complaints of non-designation of local areas, which are covered in the current Unified State Plan; and
- Complaints from training providers who are denied eligibility by the Local Workforce Development Board or the State Workforce Board or State, which are covered in WIOA Bulletin no.10-16, Eligible Training Provider Policies and Procedures, Attachment I, item IX, Appeal Procedure.

POLICY

Each WIOA local area, their providers, DLIR, and DLIR's providers must provide information about the applicable content of this grievance and complaint procedure to participants and other interested parties, including one-stop providers and service providers.

The complainant has the burden of establishing the validity and merits of their complaints.

The State and local areas must make reasonable efforts to assure that this policy will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals.

Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law.

Who may File:

WIOA participants, WIOA recipients which includes any entity to which financial assistance under WIOA Title I is extended, state and local WIOA Boards, WIOA grant recipients, American Job Center Operators, Eligible Training Providers, On the Job Training Employers, American Job Center Partners, service providers, and other interested parties.

Currently employed workers may file complaints regarding displacement by program participants.

Complainants and other parties in the investigation process are assured freedom from restraint, interference, coercion, or reprisal. The identity of complainants and witnesses shall be kept confidential except to the extent necessary to ensure a fair determination of the issues.

Time for Filing:

A complaint must be filed within **30 days** of the alleged violation. Each WIOA service provider must have a complaint specialist available to provide assistance.

A complaint may be amended to correct technical deficiencies prior to a scheduled hearing or withdrawn by the complainant at any time prior to the issuance of the hearing officer's decision. Complaints may not be revised to add new issues. If the complainant identifies additional issues, complainants should either withdraw the previously submitted complaint and file a new complaint with the added issues or file an additional complaint. The number of days for each step refers to *calendar* days unless otherwise noted.

Appendix 1 contains procedures and timelines that apply to participants or entities with complaints relating to *local area programs*.

Appendix 2 contains procedures and timelines that apply to participants or other entities with complaints about WIOA programs operated by State Department of Labor and Industrial Relations *Workforce Development Division (WDD)* as a direct grant recipient.

A complainant must use the Complaint Form (Attachment A) or provide the same information in another format. The complainant may discontinue the complaint by submitting a "Withdrawal of Complaint and Release" form (See Attachment B).

The number of days for each step refers to *calendar* days unless otherwise noted.

Complaint File:

Upon receipt of a WIOA program complaint, a complaint file should be established and contain the following, at a minimum:

- All application and enrollment forms;
- The written complaint and related documents;
- Chronological log of events;
- Relevant correspondence from the complainant, career planner, and employer or training provider;
- Record of any resolution attempted, including results of informal resolution;
- Hearing notice, summary, results, and whether complaint was resolved or not; and
- Copy of notice to all parties concerned that they may appeal the decision in writing to the State.

Remedies:

Under WIOA, Section 181(c)(3), remedies that may be imposed for a violation of any requirement of this title shall be limited to:

- A. Suspension or termination of payments under this title;
- B. Prohibition of placement of a participant with an employer that has violated any requirement under this title;
- C. Where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- D. Where appropriate, to other equitable relief.

Appendix 1: Complaints Relating to Local Area WIOA Programs

- A. Each local area is responsible to develop and adhere to a complaint procedure in accordance with this bulletin that includes the following:
1. A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;
 2. Use of the Complaint Form (Attachment A) or another format to submit the same information in a complaint; and optional use of the "Withdrawal of Complaint and Release" form (Attachment B). to withdraw complaints;
 3. Filing of complaints within **30 days** of the alleged violation.
 3. An opportunity for an informal resolution, hearing, and hearing results to be completed within **60 days** of the filing of the grievance or complaint;
 4. A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and
 5. An opportunity for a local level appeal to DLIR WDD Administrator within **ten (10) days** of the decision or when a decision should have been rendered in the following circumstances:
 - (i) No decision is reached within **60 days**; or
 - (ii) Either party is dissatisfied with the local hearing decision.
- B. Appeals to DLIR must be in writing, accompanied by all documentation submitted to the local area when filing the complaint, and include:
1. Complaint form with identification of the appellant and contact information,
 2. A description of the allegations, with enough detail to allow a reviewer to determine whether the allegations, if true, would violate a provision of WIOA,
 3. Pertinent dates, including when the complaint was filed at the local level, date of alleged occurrence, date of informal resolution and results, and hearing date and results, and
 4. Signature of the person filing the appeal.
- C. DLIR will acknowledge receipt of the appeal with a notice that it will make a decision based on documentary evidence provided. DLIR may remand the complaint to the local level for further investigation. DLIR will render a decision within **40 days** of receiving the appeal.
- D. A complainant may file a formal appeal of DLIR decision to Secretary of Labor if the party to such decision received an adverse decision. Federal appeals must be made within **120 days** of the filing of the appeal of a local grievance with the State. (This would be within **10 days** of the DLIR decision.)

USDOL will make a final decision no later than **120 days** after receiving a formal appeal. USDOL will only investigate complaints arising through the established procedures.

**TABLE 1: COMPLAINT
PROCESSING TIMELINE FOR
LOCAL AREA COMPLAINT**

Processing Days	Cumulative Days	Event
	0	Complaint Received (filed within 30 days of alleged violation)
60	60	Informal Resolution, Hearing, and Decision; or Binding Arbitration; and Decision
10	70	Appeal filed to DLIR
40	110	DLIR determination
10	120	Appeal filed with USDOL Secretary
120	240	USDOL final decision

Appendix 2: Complaints Relating to DLIR as the Direct Grant Recipient

Step 1 – Filing a Complaint

A complainant must use the Complaint Form (Attachment A) or use another format to submit the same information. The complainant may discontinue the complaint by submitting a "Withdrawal of Complaint and Release" form (See Attachment B).

Reasonable efforts must be made to assure that this policy will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals.

A complaint must be filed within **30 days** of the alleged violation.

Complaints are filed with:

Administrator
Workforce Development Division
State Department of Labor and Industrial Relations
830 Punchbowl Street, Room 329 Honolulu, Hawaii 96813

Step 2 – Informal Resolution

An attempt is made at the DLIR Workforce Development Division (WDD) Branch level to informally resolve the complaint to the satisfaction of all parties. Informal resolution must be completed within **ten (10) days** from the date the complaint was filed.

Step 3 – Determination After Informal Resolution

If all parties are satisfied, the complaint is considered resolved. A written determination outlining the terms and conditions of the resolution is attached to the complaint and sent to the complainant and service provider within **five (5) days** from the informal resolution.

When informal resolution is unsuccessful, a determination letter will be issued within **five (5) days** from the date the informal resolution was conducted and sent to the complainant and other party.

Step 4 – Request for Hearing

Any party dissatisfied with the determination of the informal resolution may appeal in writing within **5 days** of the date of the determination and request a formal hearing. The request for a hearing must be filed with:

Hawaii Department of Labor
Attention: Wage Standards Division Hearing Officer
830 Punchbowl Street, Room 340
Honolulu, HI 96813

A copy of the request for a hearing must be provided to DLIR Workforce Development Division Administrator.

Step 5 – Hearing

The hearing officer will schedule a formal hearing by a written notice e-mailed and mailed to all interested parties at least **seven (7) days** prior to the hearing. The notice will include:

- date
- time
- location for the hearing

The hearing must be conducted within **25 days** from the date the appeal for a hearing was filed. Parties may present witnesses and documentary evidence and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative (at their own expense) and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

Step 6 – Final Decision

Within **ten (10) days** from completion of the hearing, a written decision will be issued. The decision of the hearing officer is final.

The decision shall contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and issues related to the alleged violation;
- A statement of the facts;
- The Hearing Officer's recommended resolution and the reasons for the resolution;
- A statement of corrective action or remedies for the violations, if any, to be taken, and
- Notice of the right of either party to file a federal appeal.

Step 7 – Federal Appeal

WIOA allows for a formal appeal to the U.S. Department of Labor (USDOL) if the state has not issued a decision within 60 days after a complaint is filed, or the party to such decision received an adverse decision. Federal appeals must be made within **sixty (60) days of the receipt of the decision being appealed or within 120 days of the filing of the appeal of a local grievance with the State.**

USDOL will make a final decision no later than **120 days** after receiving a formal appeal. USDOL will only investigate complaints arising through the established procedures.

Appeals submitted to USDOL must be submitted by certified mail, return receipt requested, to:

Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210
Attention: ASET

A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

TABLE 2: COMPLAINT PROCESSING TIMELINE FOR WDD AS GRANT RECIPIENT

Processing Days	Cumulative Days	Event
	0	Complaint Received (within 30 days of alleged violation)
10	10	Informal Resolution
5	15	Determination from Informal Resolution
5	20	Request For Hearing
(7)	(27)	Hearing notice issued
25	45	Hearing (includes 7 days for hearing notice)
10	55	Final Decision
5	60	Federal Appeal
120	180	USDOL Final Decision

Complaint Form

(Please print or type)

Date/Time Received

Case No.

Name

Address

City, ST, Zip Code

Phone

Alternate Phone:

Email

Basis for alleged complaint (Please Mark One)

Displacement

Labor Standards

Health/Safety Standards

Other (Specify)

Explain/describe briefly in what way there was a violation of statutory provisions. Be specific: Include the names(s) of individual(s) involved, the remedy/relief you are seeking (what you want to have done) if your complaint is found to be valid. Please use reverse side if you require more space.

CERTIFICATION: By my signature below, I certify that the statement of my complaint above and on any page(s) attached is true to the best of my knowledge and belief. I also agree to notify the local area program agency if I change my address or telephone number(s). I further understand that I may withdraw my complaint at any time by submitting a Withdrawal and Release form.

Signature

Date

WITHDRAWAL OR RELEASE OF COMPLAINT	
<i>Name (Please Print)</i>	Complaint Number
Nature of complaint	Date Filed
STATEMENT	
<p>I hereby withdraw my complaint. I further release and forever discharge the State of Hawaii, Department of Labor and Industrial Relations/recipient, and all their past and present officers, employees, and agents from any and all claims, demands, actions, causes of actions, or suits at law or in equity, known or unknown, concerning the act or actions giving rise to or otherwise related to the complaint indicated above.</p> <p>I have read and fully understand the foregoing, and make this withdrawal and release voluntarily and of my own free will, without coercion or duress from anyone.</p>	
Signature of complainant	Date