Complaints, Grievances and Incident Reports
Uniform Guidance vs. OMB Circulars

- Prior to the Uniform Guidance, requirements governing cost principles, administrative requirements and single audit requirements were found in eight separate OMB Circulars.

- In addition to the Uniform Guidance, recipients and subrecipients of a DOL award must adhere to 2 CFR 2900 found at www.ecfr.gov.

- Adopted on December 19, 2014, includes a limited number of exceptions approved by OMB to ensure consistency with existing policy and procedures.

- Expanded at 2 CFR 2900.2, the exceptions definition of non-Federal entity includes for-profit or commercial and foreign entities.

- Grant recipients and subrecipients of DOL funds that are commercial or for-profit entities or foreign entities must adhere to 2 CFR 200 and 2 CFR 2900.

The Uniform Guidance can be found at http://www.doleta.gov/grants/resources.cfm
Purpose and Introduction

This course will cover:

- Required processes for complaints and grievances
- Different processes for discrimination complaints
- Fraud, waste and abuse reporting
- Mandatory disclosure of criminal violations
- Handling EEO complaints
- Filling out incident reports

Failure to meet these requirements can have administrative and even financial consequences.
SECTION 1: WIA and WIOA Complaints and Grievances

SECTION 2: Discrimination Complaints

SECTION 3: Allegations of Fraud, Misconduct and Abuse
At the end of this course, you should be able to:

• Distinguish between the different types of allegations.

• Describe the requirements for handling complaints of discrimination.

• Describe the requirements for identifying and reporting incidents of fraud, waste, and abuse.

• Describe the processes that recipients must establish to handle and resolve all these issues.
SECTION 1:
WIA and WIOA
Complaints and Grievances
WIA and WIOA Complaints and Grievances

- Can be raised by...
  - Person, organization or other interested/affected party
- Common sources for filing...
  - Participants, Service Providers
  - Procurement-related Parties, Employees

**Discrimination**

- Multiple grounds for filing
- Many laws and regulations provide protection

**Fraud**

- Fraud or other types of criminal misconduct
(c) Grievance Procedure.--
1) In general.--Each State and local area receiving an allotment under this title shall establish and maintain a procedure for grievances or complaints alleging violations of the requirements of this title from participants and other interested or affected parties.
Establish and maintain a procedure for grievances or complaints alleging violations of the Act.

Provide info on procedures to participants and other interested/affected parties, including one-stop partners and service providers.

Require every entity receiving WIOA Title I funds to provide this information to WIOA-funded participants.

Ensure that the information is understood by anyone affected, including youth and limited-English speaking individuals.
Policies and Procedures for Complaints

- Describe every step in resolution process
- Assign responsibility
- Clear and efficient process

Notifications

- Inform participants/interested parties
- Acknowledge receipt of complaint
- Written notice of final resolution
  - Statement of facts
  - Decisions/rationale
  - Corrective active/remedies
- Appeal rights and procedures
Components of WIA & WIOA Resolution Systems

- Should identify staff assigned to manage the process
  - Equal Opportunity
  - Complaints Officer
  - Other
- Should identify authorized decision maker
- Should prescribe methods of investigating the complaint
- Should identify required timelines
- Should identify final resolution and appeal rights
WIA & WOA Grievance Procedures: LWIAs

WIA 20 CFR 667.600(c) and WIOA 20 CFR 683.600(c)

Additional or differing requirements apply to each type of recipient: namely, a local workforce area, a state, and a recipient funded directly by ETA.

Procedures must include:

- Process for dealing with grievances and complaints from participants and other interested parties
- Opportunity for informal resolution and hearing to be completed within 60 days from date of filing
- Binding arbitration procedure, if required by collective bargaining agreement, for alleged labor standards violation
- Opportunity for appeal to the state if:
  - No decision within 60 days
  - Either party is dissatisfied with the local hearing decision
Dealing with grievances and complaints

Resolving appeals from local areas

Opportunity for appeal to the Secretary of Labor

Remanding local WIA-related complaints and grievances back to the local area

- If a complainant bypasses the local area and files directly with the state, the state must have a process for remanding that complaint back to the local area for initial resolution.
- If the complaint arises at the state level, then that complaint must be heard at the state level.
Procedures must include:

- Opportunity for informal resolution and hearing within 60 days of filing
- Hearing appeals from local areas within 60 days

Additional state appeal procedures for:
- Non-designation of local areas
- Denial or termination of training providers, providers of OJT and customized training, one-stop operators
- Testing and sanctioning for controlled substances
Direct recipient procedures must include:

- Process for dealing with grievances and complaints from participants and other interested parties, including complaints against subrecipients and other service providers.
- Opportunity for informal resolution and hearing to be completed within 60 days of date of filing.
Complaints must be heard and resolved at the recipient level, but some can be appealed to the Secretary of Labor only under certain circumstances.

**Limitations**

- **State does not issue a decision within 60 days on an original complaint or on an appeal/hearing**
  - Either party may file appeal to Secretary within 120 days of date of original complaint or appeal

- **Party to which state decision is adverse may appeal to Secretary within 60 days of decision**

- **Appeal of non-designation of local areas if filed within 30 days of denial of designation**

- **Appeal by local area within 30 days if state revokes local plan or imposes reorganization plan**
Knowledge Check

Knowledge Check
Every WIOA-funded recipient must have a procedure for resolving complaints and grievances.

- A) True
- B) False
The answer is True.

This is required for state recipients, local workforce area recipients, and recipients funded directly by ETA.
Subrecipients are not required to provide access to a process for hearing complaints and grievances.

A) True
B) False
The answer is False.

Subrecipients and other service providers do not need to have their own complaint resolution process, but they do need to inform participants how they can use the recipient's process for filing and resolving complaints and grievances.
Every WIOA grant recipient or subrecipient must provide an opportunity for informal resolution and hearing to be completed within 60 days from the date of filing.

A) True

B) False
The answer is True.

The 60-day time limit applies to all recipients and subrecipients.
All adverse decisions located at the local area level may be appealed directly to DOL.

- A) True
- B) False
The answer is False.

Except for direct DOL grant recipients, adverse decisions starting at the local area must come through the state resolution process before they can be appealed to DOL.
SECTION 2: Discrimination Complaints
Among the many relevant statutes are:

- WIA and WIOA Section 188
- Title VII Civil Rights Act of 1964 as amended
- Civil Rights Act of 1991
- Equal Pay Act of 1963
- Lilly Ledbetter Fair Pay Act of 2009
- Section 504, Rehabilitation Act of 1973
- Americans With Disabilities Amendments Act of 1990
- Age Discrimination in Employment Act of 1967
- No Fear Act of 2002
- Civil Service Reform Act of 1978
- State statutes
### Other Prohibitions on Discrimination

**Executive Order 13160**

- Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs.

**Executive Order 13145**

- To Prohibit Discrimination in Federal Employment Based on Genetic Information.

**Executive Order 13166**

- Improving Access to Services for Persons With Limited English Proficiency.
Executive Order 11478


Regulations and Policies

- EEOC’s Management Directive 110 Complaint Processing
- EEOC’s Management Directive 715 Affirmative Action Programs
- Harassing Conduct Policy Statement 2013
- DOL’s Policy on EEO 2013
Types of Prohibited Discrimination

WIA Section 188 and WIOA Section 188

It is unlawful to discriminate on the grounds of:

- Race
- Color
- Religion
- Sex
- National Origin
- Age (except when criterion for program eligibility)
- Disability
- Political Affiliation or Belief
- Citizenship
- Other bases

Additional DOL guidance is forthcoming. Refer to EEOC for sexual orientation and gender identification complaints at www.eeoc.gov.
Civil Rights Center

- Implements non-discrimination and equal opportunity provisions in WIA and WIOA

Provisions apply to

- Contained in Section 188
- Any recipient of WIA/WIOA financial assistance
- Programs and activities that are part of the one-stop system and operated by one-stop partners
- Employment practices of a recipient or one-stop partner

WIA 29 CFR Part 37 and WIOA 29 CFR Part 38
State Governors are required to establish and adhere to an MOA that is approved/monitored by the CDC.

- Policies, procedures, and systems
- Reasonable guarantee of compliance
- Submission of an WIOA MOA approved by CRC
- Adherence to provisions in State MOA by local workforce areas
- Procedures for obtaining prompt corrective action and imposing sanctions, where necessary
- Retroactive and prospective relief for violations
Non-Federal Entity Responsibilities

Must comply with…

• WIA/WIOA Section 188
• 29 CFR 37 and 29 CFR 38
• Section 504 of Rehabilitation Act of 1973
• MOA Elements 1-9

Establish procedure for processing complaints

Monitor subrecipient/service provider compliance

Appoint an Equal Opportunity Officer (not required for service providers or small grant recipients)
Discrimination Complaint Procedures

WIA 29 CFR 37.76 and WIOA 29 CFR 38.76

Written notice to a complainant acknowledging receipt of complaint and right to representation

- Should be within 5 days of receipt

Written statement summarizing issues raised

- Issue(s) accepted? If rejected, reasons for rejection
- Period for fact finding, investigation, resolution
- Time period needed for resolving the complaint and applicable due dates
- Include offer of Alternative Dispute Resolution (ADR)

Issue Notice of Final Action within 90 days from date of filing
If Recipient Does NOT Have Jurisdiction

- Advise the complainant
- Include a statement defining the reason for the determination.
- Inform the complainant that they may file a complaint with the CRC within 30 days of their receipt of the determination.

If the complaint is referred to another agency, provide the complainant with a copy of the referral letter.
Complainant Responsibilities

- Must file within 180 days of incident (only CRC may extend)

- May file at state/local level or directly with CRC (29 CFR 38.73)

- If no action within 90 days or if not satisfied with decision, may file a new complaint (not an appeal) with CRC within 30 days

- Employment discrimination and civil rights cases are referred to EEOC

- Age discrimination complaints are referred to Federal Mediation and Conciliation Service
  - If not mediated within 60 days, goes to CRC
Resolution of Complaint

If Reasonable Cause is Determined by Recipient

• Issue letter of Initial Determination with specific findings
• List proposed remedial actions and timeline for completion
• Specify if a written agreement is necessary
• Provide the opportunity for negotiations

Notice of Final Action

• Decision on the issue(s) and the reasons for the decision
• Description of the way the parties resolved the issue
• Notice that the complainant may file with CRC if dissatisfied with the decision
Knowledge Check

Knowledge Check
A discrimination complaint may be filed at the state or local level or with the DOL Civil Rights Center.

- A) True
- B) False
The answer is True.

The complainant has the option to file a discrimination complaint locally or directly with the Civil Rights Center.
The process and timeframe for handling a discrimination complaint are the same as for non-discrimination complaints or grievances.

A) True
B) False
Question 2 - Feedback

The answer is False.

Not only may a discrimination complaint be filed directly with the Civil Rights Center instead of being filed locally, but the requirements at 29 CFR 37 and 29 CFR 38 apply to discrimination complaints and not to program complaints. The regulations prescribe the requirement to offer Alternative Dispute Resolution and the issuance of a Notice of Final Action, and the resolution period is 90 days instead of 60 days as with non-discrimination complaints.
The WIOA regulations governing discrimination complaints are found at 29 CFR 38.

- A) True
- B) False
The answer is True.

The WIOA regulations governing discrimination complaints are found at 29 CFR 38.
Alternative dispute resolution must be offered as an option for resolving discrimination complaints.

- A) True
- B) False
The answer is True.

Alternative dispute resolution must be offered as an option for resolving discrimination complaints.
Notice of Final Action on a complaint of discrimination must be issued within 90 days.

A) True
B) False
The answer is True.

Notice of Final Action on a complaint of discrimination must be issued within 90 days.
SECTION 3: Allegations of Fraud, Misconduct and Abuse
Mandatory Disclosure Requirements

2 CFR 200.113

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to make required disclosures can result in any of the remedies described in 200.338 Remedies for noncompliance, including suspension or debarment.

See also 2 CFR part 180 and 31 U.S.C. 3321.
Incidents

May be criminal in nature or involve…

- Fraud, misfeasance, nonfeasance, or malfeasance
- Misapplication of funds
- Gross mismanagement
- Employee or participant misconduct
- Waste and program abuse

**TEGL 2-12:** Any alleged deliberate act which may violate Federal statutes or regulations. It includes but is not limited to bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants or contractors, intentional payments to a contractor without the expectation of receiving services, payments to ghost enrollees, misuse of appropriated funds, and misrepresenting information in official reports.

SOURCE: Training and Employment Guidance Letter (TEGL 2-12) located at WorkforceGPS on the Complaints, Grievances and Incident Reports page.
Implement an Incident Reporting (IR) System

Follow TEGL 2-12 instructions

Establish procedures for incident reporting
✓ Identify types of incidents to be reported
✓ Train staff on TEGL and your procedures

Report even suspicions of misconduct
✓ Gather information to report, do not “investigate”

Cases of imminent health or safety concerns and/or imminent loss > $50,000
✓ Report to the OIG and ETA immediately by telephone and written IR within one working day

DOL Hotline—Office of Inspector General
1-800-347-3756 or (202) 693-6999
Contact ETA Regional Office for assistance
Sample DL 1-156 Incident Reporting Form

Incident Report

For Official Use Only (When filled in)

1. Date of report
2. Agency designation code (Yr.) (Agency) (Report No.)
3. File Number (For IG use)

4. Type of report
   - Initial
   - Supplemental
   - Final
   - Other (Specify)

5. Type of incident
   - Conduct violation
   - Criminal violation
   - Program violation

6. Allegation against
   - DOL Employee
   - Contractor
   - Grantee
   - Other (Specify)

Given name and position of employee(s), contractor(s), grantee, etc. List telephone number, OWCP or other Claim File Number, if applicable, and other identifying data:

7. Location of incident (Give complete name(s) and addresses of organization(s) involved)

8. Date and time of incident/discovery

9. Source of complaint
   - Public
   - Contractor
   - Grantee
   - Program Participant
   - Audit
   - Investigative Law Enforcement Agency (Specify)

Other (Specify)

Give name and telephone number so additional information can be obtained.
DOL Hotline - Office of Inspector General
• 1-800-347-3756 or (202) 693-6999

DOL's Incident Reporting System (TEGL 2-12)
• Incident Report Form DL 1-156
• File with DOL Office of Inspector General in D.C. or to Regional Inspector General for Investigations
  • Copy simultaneously provided to ETA

Incidents may be channeled through a state or local system
• In all cases DOL must be notified
• One cannot prevent anyone from reporting incident directly to OIG

✓ WHEN IN DOUBT, FILE A REPORT!
The Investigative Process

1. Submit Incident Report to OIG with copy to ETA

2. OIG assigns investigative responsibility
   - Determines whether allegation has merit
   - May conduct or arrange for an investigation/audit

3. Case may be referred back by OIG to ETA for resolution
   - ETA conducts its own review of the allegation or refers the case for state review
   - Reviewing agency prepares report on findings and conclusions
   - Report is submitted to OIG with ETA recommendations

4. Report accepted; follow-up/corrective action completed

5. Final resolution accepted; incident is closed
Common Types of Incidents

- False claims
- Time & attendance
- Improper travel payments
- Procurement (including bid rigging, sole sourcing)
- Contract compliance violations
- Double billing
- Duplicate charging
- Simple theft
- Waste
- Abuse of program funds
- Employee misconduct
Sources of Detection

Tips

Internal audit

By accident

Internal controls

External audit

Notified by police
Fraud Triangle

Opportunity

Motivation

Rationalization

Fraud Triangle
Prevent fraud and detect incidents:
Establish/maintain robust system of internal controls.

2 CFR 200.318

Maintain written standards of conduct covering individual and organizational conflicts of interest.

- Include procedures for reporting suspicious incidents
- Include internal financial standards and controls that will help to prevent or detect fraudulent activity
- Be clear and comprehensive
- Have strong internal admin standards and controls

Ensure that your service providers and contractors do same!
Take Action to Avoid Fraud

Monitor internal and external operations

Train staff on ethics, incident report policies and procedures

Report promptly any incidents or suspicions

If you suspect that a contractor or any other party is offering a bribe, notify the OIG immediately.
Knowledge Check
An Incident Report is filed for possible criminal activities while a complaint usually relates to a possible program violation.

- A) True
- B) False
The answer is True.

This is a basic distinction between complaints and incidents.
The recipient must file an Incident Report only for known criminal activities.

- A) True
- B) False
The answer is False.

A recipient must file an Incident Report not only for known criminal activity but also for complaints of wrongful activity and suspicions of criminal activity.
Imminent loss of funds exceeding $50,000 must be reported immediately to OIG by phone followed by a written incident report within one working day.

A) True
B) False
The answer is True.

This is considered to be an emergency situation that requires an immediate telephone report that is followed by a written report within one day.
Incidents can be reported and channeled through a state or local system if that process is able to resolve the matter.

- A) True
- B) False
The answer is False.

It is true that the recipient may establish a procedure for reporting incidents and channeling those reports through their own system, but at the same time the recipient must notify DOL of the incident, must report the incident on form DL 1-156 to OIG and ETA, and must await instructions from OIG or ETA before taking further action.
A) True
B) False
The answer is True.

A robust internal control system does help to prevent and detect potential criminal activity. In addition, an effective internal control system has the added benefit of making the overall operations of the recipient more effective and efficient.
SUMMARY
Section 1: WIA and WIOA Complaints and Grievances

-Outlined required processes for handling and resolving WIA and WIOA complaints and grievances.

Section 2: Discrimination Complaints

- Described the requirements for handling complaints of discrimination.

Section 3: Allegations of Fraud, Misconduct and Abuse

- Defined the requirements for identifying and reporting incidents of fraud, waste, abuse, and mandatory disclosure of criminal violations.
- Described the processes to handle complaints and filling out Incident Reporting Forms.
This presentation is complete.