

Complaints, Grievances, and Incident Reports

**SMART 3.0 Training**  
Dallas, TX  
May 29-31, 2019

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Today's Speakers

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Grant Management Toolbox

UG 2, CFR 200 and 2, CFR 2900  
Technical Assistance Guides (TAG)  
Core Monitoring Guide (CMG)  
SMART Training  
Grantee Handbook  
WorkforceGPS

DOL Grant Recipients & Subrecipients

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Grant Management Toolbox References

- SMART Training
- Core Monitoring Guide
- Technical Assistance Guides
- ETA Grantee Handbook
- WorkforceGPS Resources



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Module Overview

- ✓ Different types of allegations
- ✓ WIOA complaints and grievances
- ✓ Discrimination complaints
- ✓ Allegations of Fraud, Misconduct and Abuse
  - ▶ Describe the processes that recipients must establish to handle and resolve all these issues



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Three Types of Allegations

- ✓ Program related Complaints and Grievances
  - ▶ Participants
  - ▶ Service providers
  - ▶ Procurement related parties – bidders or respondents
  - ▶ Employees
  - ▶ Other interested or affected parties
- ✓ Discrimination
- ✓ Allegations of fraud or other forms of misconduct

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 **WIOA Complaints and Grievances**

- ✓ General Requirements
- ✓ LWIA Procedures
- ✓ State Procedures
- ✓ Direct Recipient Procedures
- ✓ Resolution System Components
- ✓ DOL's Role

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 **WIOA Complaints and Grievance Procedures**

[20 CFR 683.600\(a\)&\(b\)](#)

- ✓ Each state, local area and direct grant recipient must:
  - ▶ Establish and maintain a procedure for grievances or complaints alleging violations of the Act.
  - ▶ Provide information on these procedures to participants and other interested or affected parties, including one-stop partners and service providers.
  - ▶ Require every entity receiving Title I funds to provide this information to their participants.
  - ▶ Assure that the information is understood by affected individuals, including youth and limited-English speaking individuals.

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 **WIOA Complaints and Grievance Procedures: LWIA**

[20 CFR 683.600\(c\)](#) 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

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✓ WIOA Complaints and Grievance Procedures: State

[20 CFR 683.600\(d\)](#) Procedures must include:

- ✓ Resolving grievances and complaints in 60 days
- ✓ Hearing appeals from local areas in 60 days
- ✓ Remanding local WIOA-related complaints
- ✓ Opportunity for informal resolution and hearing
- ✓ 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

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✓ WIOA Complaints and Grievance Procedures: Direct Recipient

[20 CFR 683.600\(e\)](#) 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

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✓ WIOA Resolution System Components

**Notifications:**

- ✓ Inform participants and other interested parties of the process and their acknowledgement of receipt of procedures
- ✓ Written notice of final resolution, including:
  - ▶ Statement of facts, decisions and rationale, and corrective actions or remedies, if any
- ✓ Appeal rights and procedures

**Policies and procedures for WIOA complaints**

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WIOA Resolution System Components (cont.)

- ✓ Staff assigned to manage the process:
  - ▶ Equal Opportunity officer or
  - ▶ Complaints officer, or
  - ▶ Authorized decision maker
- ✓ Timelines
- ✓ Prescribed method of investigating the complaint
- ✓ Final resolution and appeal rights

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DOL's Role

**Appeals to Secretary of Labor limited to when:**

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	

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DOL's Role (2)

[20 CFR 683.610](#)

**Scope of USDOL Review Limited to:**

- ✓ Investigations & impositions of remedies
- ✓ Focused on determination
- ✓ Violations of requirements
  - ▶ Were proper procedures followed?

Must follow the internal appeals process before appealing to the USDOL

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✓ Knowledge Check 1 – Questions

**True or False?**

1. Every WIOA-funded recipient must have a procedure for resolving complaints and grievances.
2. Subrecipients are not required to provide access to a process for hearing complaints and grievances.
3. Every WIOA-funded recipient must provide an opportunity for informal resolution and hearing to be completed within 60 days from date of filing.
4. All adverse decisions may be appealed to DOL.

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✓ Knowledge Check 1 – Answers

1. Every WIOA-funded recipient must have a procedure for resolving complaints and grievances. **True**
2. Subrecipients are not required to provide access to a process for hearing complaints and grievances. **False**
3. Every WIOA-funded recipient must provide an opportunity for informal resolution and hearing to be completed within 60 days from date of filing. **True**
4. All adverse decisions may be appealed to DOL. **False**

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✓ Discrimination Complaints

✓ Describe the requirements for handling complaints of discrimination

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✓ Important Updates – WIOA Final Rule

[29 CFR Part 37](#) to [29 CFR Part 38](#)

- ✓ The Final Rule provides important updates to the existing regulations, which have not been substantively updated since 1999.
- ✓ The old rule did not reflect the many developments in civil rights law since that time, changes in the CRC's enforcement procedures and processes, or new practices of recipients of WIOA Title I financial assistance and beneficiaries (for example, the routine use of computer and internet-based systems).

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✓ WIOA Final Rule ...

- ✓ **Updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles.**
- ✓ The rule captures developments since 1999 under the following laws, reflected in case law and in regulations issued by other Federal agencies, including the Departments of Justice and Education and the Equal Employment Opportunity Commission:
  - ▶ Title VI and Title VII of the Civil Rights Act of 1964;
  - ▶ Title IX of the Education Amendments of 1972;
  - ▶ The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008; and
  - ▶ Section 504 of the Rehabilitation Act of 1973.

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✓ Effective Date

- ✓ The new WIOA Section 188 regulations were published in the Federal Register on December 2, 2016 and become effective on January 3, 2017.
- ✓ They can be found through the links on our website: [www.dol.gov/crc](http://www.dol.gov/crc).



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✓ Statutes Prohibit Discrimination

Among the many relevant statutes are:

- ✓ WIOA Section 188
- ✓ Title VII Civil Rights Act of 1964 as amended
- ✓ Civil Rights Act of 1991
- ✓ Equal Pay Act 1963
- ✓ Lilly Ledbetter Fair Pay Act 2009
- ✓ Section 504, Rehabilitation Act of 1973
- ✓ Americans With Disabilities Amendments Act 1990
- ✓ Age Discrimination in Employment Act 1967
- ✓ State statutes

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✓ 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.
- ✓ 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

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✓ Types of Prohibited Discrimination

WIOA Sec. 188 ([29 CFR Part 38](#))

- ✓ 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 (not an exhaustive list)



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✓ DOL Civil Rights Center

**DOL Civil Rights Center (CRC)**

- Implements non-discrimination and equal opportunity provisions in WIOA
- Regulation is in the process of being updated for WIOA and will be issued through the NPRM process

**29 CFR Part 38 Provisions apply to:**

- Any recipient of 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

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✓ State Methods of Administration (MOA)

MOA ([29 CFR Part 38](#))

- ✓ MOA contains policies, procedures, and systems to provide reasonable guarantee of compliance with the nondiscrimination and equal opportunity requirements of WIOA and implementing regulations
- ✓ Local workforce areas must adhere to state MOA
- ✓ MOA includes procedures for obtaining prompt corrective action and imposing sanctions where necessary, including retroactive and prospective relief

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✓ Non-Federal Entity Responsibilities

<ul style="list-style-type: none"> <li>✓ Comply with:           <ul style="list-style-type: none"> <li>▶ WIOA Section 188</li> <li>▶ 29 CFR 38</li> <li>▶ Section 504 of Rehabilitation Act of 1973</li> <li>▶ MOA</li> </ul> </li> <li>✓ Establish procedure for processing complaints</li> <li>✓ Monitor subrecipient/ service provider compliance</li> </ul>	<ul style="list-style-type: none"> <li>✓ Appoint Equal Opportunity Officer, except for:           <ul style="list-style-type: none"> <li>▶ Service providers               <ul style="list-style-type: none"> <li>› Compliance rests with state or LWIA</li> </ul> </li> <li>▶ Small grant recipients               <ul style="list-style-type: none"> <li>› Fewer than 15 participants and 15 employees</li> <li>› But still must designate person to process complaints</li> </ul> </li> </ul> </li> </ul>
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**Discrimination Complaint Procedures**

[29 CFR 38.54](#)

- ✓ Recipient Complaint Procedures
- ✓ Written notice to complainant acknowledging receipt of complaint and right to representation
- ✓ Written statement summarizing issues raised
  - ▶ Issue(s) accepted? If rejected, reasons for rejection:
  - ▶ Period for fact finding, investigation, resolution
  - ▶ Include offer of Alternative Dispute Resolution
- ✓ Issue Notice of Final Action within 90 days from date of filing
- ✓ If lacking jurisdiction, refer to appropriate agency

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**Complainant Responsibilities**

**Complainant responsibilities:**

- ✓ May file at state/local level or directly with CRC
- ✓ File within 180 days of incident (only CRC may extend)
- ✓ 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

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**Resolution of Complaint**

**If reasonable cause is determined by recipient**

- Issue Initial Determination of 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 decision
- Description of the way the parties resolved the issue
- Notice that the complainant may file with CRC if dissatisfied with the decision

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 Knowledge Check 2 – Questions

**True or False?**

1. A discrimination complaint may be filed at the state/local level or with the DOL Civil Rights Center.
2. The process and time frame for handling a discrimination complaint are the same as for non-discrimination complaints or grievances.
3. The DOL regulations governing discrimination complaints are found at 29 CFR Part 38.
4. Alternative dispute resolution must be offered as an option for resolving discrimination complaints.
5. Notice of Final Action on a complaint of discrimination must be issued within 90 days.

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 Knowledge Check 2 – Answers

1. A discrimination complaint may be filed at the state/local level or with the DOL Civil Rights Center. **True**
2. The process and time frame for handling a discrimination complaint are the same as for non-discrimination complaints or grievances. **False**
3. The DOL regulations governing discrimination complaints are found at 29 CFR Part 38. **True**
4. Alternative dispute resolution must be offered as an option for resolving discrimination complaints. **True**
5. Notice of Final Action on a complaint of discrimination must be issued within 90 days. **True**

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 Allegations of Fraud, Misconduct, and Abuse

- ✓ 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

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**Disclosure Requirement**

Mandatory disclosures [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 2 CFR 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180 and 31 U.S.C. 3321).

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**Incidents**

**Incidents are events involving:**

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

[Training and Employment Guidance Letter \(TEGL\) 2-12](#)

**EMPLOYMENT AND TRAINING ADMINISTRATION**  
 U.S. DEPARTMENT OF LABOR  
 WASHINGTON, D.C. 20540

TEGL 2-12  
 2012-12-12

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 1-12**

**TO:** ETA GRANT RECIPIENTS

**FROM:** JANE DAVIS  
 Assistant Secretary

**SUBJECT:** Employment and Training Administration (ETA) Grant Recipients  
 Responsibilities for Reporting Incidents of Suspicious Fraud, Employee Abuse and  
 Criminal Conduct

**1. Purpose.** The purpose of this letter is to advise all ETA grant recipients for reporting  
 allegations of fraud, program abuse or criminal activity involving grants or other federal  
 and state program resources that Federal funds are disbursed or authorized under ETA.

**2. References.**

- Workforce Investment Act of 1998, as amended (P.L. 105-220)
- 20 CFR 603.705, "What procedures apply to the avoidance of backup writing files  
 with respect to recording and storage systems?"
- 20 CFR 603.707, "What are the conditions and steps of disaster fund and other disaster  
 relief (DFR)?"
- 20 CFR Part 6, "Rules and Codes of Department of Labor Employees"; and
- Employment and Training Administration (ETA) Employment and Training Procedures for  
 Reporting and Acting on Incidents of Suspicious Fraud, Program Abuse, and Criminal  
 Conduct Involving Government Grants.

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**What Recipients Must Report**

- ✓ Recipients are required to immediately document and report allegations, suspicions, and complaints of:
  - ▶ Fraud, misfeasance, nonfeasance, or malfeasance
  - ▶ Misapplication of funds
  - ▶ Gross mismanagement and misconduct
  - ▶ Criminal activity
  - ▶ Waste and program abuse
- ✓ If imminent health or safety concerns or imminent loss of funds exceeding \$50,000:
  - ▶ Report to the OIG and ETA immediately by telephone followed by a written Incident Report (IR) no later than one working day
  - ▶ Mandatory reporting of fraud and other criminal acts 2 CFR 200.113

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### 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	

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### Sources of Detection

- ✓ Tips
- ✓ Internal audit
- ✓ By accident
- ✓ Internal controls
- ✓ External audit
- ✓ Notified by police



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### Fraud Triangle

Some incidents can be prevented:

- ✓ Robust system of internal controls
- ✓ Trained and competent staff
- ✓ Consistent application of policies



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**Actions to Avoid Fraud**

- ✓ Robust system of internal controls
- ✓ Policies, procedures, administrative standards
  - ▶ Written standards required for procurement staff and activities
  - ▶ Financial standards and controls
  - ▶ Procurement policies and procedures
- ✓ Ensure service providers do same
- ✓ Monitor internal and external operations
- ✓ Train staff on ethics, incident report policies and procedures
- ✓ Report promptly any incidents or suspicions



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**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

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**Knowledge Check 3 – Questions**

**True or False?**

1. An Incident Report is filed for possible criminal activities while a complaint usually relates to a possible program violation.
2. The recipient must file an Incident Report only for known criminal activities.
3. 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.
4. Incidents can be reported and channeled through a state or local system if that process is able to resolve the matter.
5. A robust internal control system will help to prevent or detect potential criminal activity.

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**Knowledge Check 3 – Answers**

1. An Incident Report is filed for possible criminal activities while a complaint usually relates to a possible program violation. **True**
2. The recipient must file an Incident Report only for known criminal activities. **False**
3. 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. **True**
4. Incidents can be reported and channeled through a state or local system if that process is able to resolve the matter. **False**
5. A robust internal control system will help to prevent or detect potential criminal activity. **True**

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**Core Monitoring Guide – Objective 2.i Civil Rights, Complaints, Grievances, & Incident Reporting**

- ✓ **Indicator 2.i.4: Grievance and Complaint System**
  - ▶ Does the grant recipient have a written procedure for grievances or complaints alleging violations of WIOA?
  - ▶ Does the grant recipient have a process to provide information on these procedures to participants and other interested or affected parties, including One-Stop partners and service providers?
- ✓ **Indicator 2.i.5: Incident Reporting**
  - ▶ Is the grant recipient aware of any incident described above and were these allegations immediately reported through the DOL incident reporting system?

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**Module Review**

- ✓ Distinguish the different types of allegations
- ✓ Establish systems and procedures to handle complaints and grievances for each type of allegation
- ✓ Follow the additional requirements for handling complaints of discrimination
- ✓ Identify and report incidents following guidelines in TEGL 2-12 and Uniform Guidance
- ✓ Establish robust internal control system to prevent and detect fraud, waste, and abuse

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✓ **ETA and Uniform Guidance Resources**

- ✓ **Core Monitoring Guide**
  - ▶ *Objective 2.J Civil Rights, Complaints, Grievances, & Incident Reporting*
- ✓ **WIOA Administrative Provisions 20 CFR 683 – Subpart F**
- ✓ **TEGL 2-12: Employment and Training Administration (ETA) Grant Recipient Responsibilities for Reporting Instances of Suspected Fraud, Program Abuse and Criminal Conduct**
- ✓ **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR Part 200**
  - ▶ 2 CFR 200.113
  - ▶ 2 CFR 200.338



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✓ **Web Resources**

- ✓ **What is the best way to find your local American Job Center (AJC)?**
  - ▶ See [DOL's Service Locator](#)
- ✓ **Want More Information?**
  - ▶ [DOLETA.gov/Grants](#)
    - Funding Opportunities
    - How to Apply
    - Manage Your Awarded Grant
  - Resources and Information
    - ETA Grantee Handbook
    - Annual Grant Terms Template
    - Core Monitoring Guide
    - Technical Assistance Guides
    - Uniform Guidance Quick Reference Sheet
- ✓ **Want More Training?**
  - ▶ [WorkforceGPS's Grants Application and Management Community of Practice](#)
    - Financial Reporting
    - Subrecipient Management and Oversight
    - Indirect Cost Rates
    - Policies and Procedures
    - Procurement and Performance-Based Contracts
    - Capital Assets and More
  - ▶ [WorkforceGPS](#)



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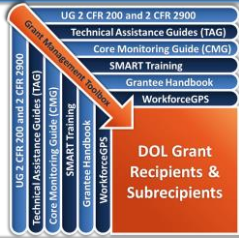
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✓ **Remember the Grant Management Toolbox!**



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