

MASSACHUSETTS WORKFORCE DEVELOPMENT SYSTEM

Mass Workforce Issuance

Workforce Issuance No. 07-34

Policy **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Associate Directors
DCS Field Managers

cc: WIA State Partners

From: David W. Mackley, Director
Division of Career Services

Date: June 4, 2007

Subject: **Unified Career Center System Complaint Process**

Purpose: To revise guidance to Local Workforce Investment Boards, Career Center Operators and WIA Title I Administrators regarding the policies and procedures for the local system of processing complaints brought by Career Center customers and other interested parties. While this policy issuance is specific to alleged violations (by action or omission) related to services funded under Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act, as Amended (WIA Title III), the issuance will also reference procedures for initiating resolution of complaints related to other federal or state statutory requirements as part of a *unified* Career Center Complaint Process. This issuance revises WIA Communication No. 05-89 (December 29, 2005).

NOTE: The revision concerns the designation of Nancy Stolberg as the new DCS Equal Opportunity Officer (p.7) and Dan Condon, Manager of System Management as the state-level contact for complaints against out-of-state employers (p.8). No additional substantive changes have been made to the policy.

Background: Requirements related to the establishment and administration of complaint procedures related to services/activities funded under Title I of the Workforce Investment Act of 1998 are promulgated at 20CFR, Ch. V, § 667.600 - § 667.640.

Requirements related to services/activities funded under the Wagner-Peyser Act, as Amended (Title III of the Workforce Investment Act) are separately promulgated at 20CFR Ch. V, § 658.400 - § 658.426. Both sets of regulations require the establishment of a local process to handle complaints brought forward by consumers of the respective program's services.

The processes for handling complaints as described in the two sets of regulations, however, employ two distinct sets of time frames in which actions are to be taken and/or completed.

Presently, local areas have established and administered distinct processes consistent with practices outlined in two separate policy issuances:

- Procedures related to WIA Title I services have been administered within a framework as described in CBWL Policy Issuance No. 00-19 (5/31/2000).
- Procedures related to Wagner-Peyser (WIA Title III) services have been administered within a framework as described in WIA Policy Issuance No. 01-32 (7/18/2001).

With the responsibility for the state administration of both WIA Title I and Wagner-Peyser funds and services now consolidated under the Division of Career Services, the current administrative circumstance requires a revision of the former policies. It also provides an opportunity to update and streamline local procedures under a single, unified complaint process.

Policy:

Consistent with the regulations promulgated at 20 CFR Ch. V, § 667.600 - § 667.640 and also at 20CFR Ch. V, § 658.400 - § 658.426, describing complaint system requirements for all direct recipients* of WIA Title I funds (excluding Job Corps) and Wagner-Peyser funds (Title III), all Massachusetts One-Stop Career Centers in conjunction with their local Workforce Investment Boards must establish and maintain a unified procedure for the submission and resolution of complaints initiated by either customers or interested parties.

**NOTE: Direct recipients may include state agencies, state and local workforce investment boards, One-Stop Career Center operators, Career Center partners, local WIA administrative entities, their service providers, including eligible training providers and entities providing non-WIA funds or resources to meet matching requirements or other conditions under WIA. The specific procedural requirements applicable to Job Corps are set forth at 20 CFR 670.990.*

Compliance with this policy requires each local One-Stop Career Center operator to designate a Complaint Officer whose responsibility it will be to conduct an initial review of an individual's complaint and to determine the correct adjudicative path depending on which of the two funding programs (Title I or Wagner-Peyser) the complaint falls under. The Complaint Officer can draw upon the expertise of specific program staff knowledgeable of the rules and regulations of the specific program(s) under which the complaint has been initiated. The Complaint Officer will also determine if the nature of the complaint warrants adjudication under a path distinct from that established for WIA Title I and Wagner-Peyser related allegations.

Any provisions contained in the Workforce Investment Act of 1998 and the Wagner-Peyser Act, as Amended, their regulations, or other applicable laws and regulations shall apply even if not explicitly stated in this policy. Nothing in this policy shall be construed to contradict prevailing laws and requirements for equal opportunity matters.

Action

Required: This policy is in effect for all Massachusetts One-Stop Career Centers and other direct recipients of WIA Title I and Wagner-Peyser (WIA Title III) funds provided through the Division of Career Services.

Each Career Center and local WIA Title I and Wagner-Peyser funding recipient should review its current policies for consistency with the regulations and the Commonwealth's procedural outline that follows. Please distribute copies of this policy to all appropriate individuals in your organization.

Effective: Effective immediately for all Workforce Investment Act funds provided through the Division of Career Services.

References: 20 CFR Ch. V, § 667.600 - § 667.640 and also at 20CFR Ch. V, § 658.400 - § 658.426; §658.500 - §658.504; 20 CFR § 667.630

Inquiries: Questions related to this issuance should be directed to PolicyQ&A@detma.org. Also, indicate Issuance number and description.

**LOCAL UNIFIED COMPLAINT PROCESS
FOR
CAREER CENTER CUSTOMERS AND INTERESTED PARTIES**

Each Massachusetts Career Center shall establish and maintain a customer complaint process consistent with the parameters outlined below. Each Local Workforce Investment Board shall also ensure that other local entities that serve Career Center customers based on their status as direct recipients of WIA Title I and/or Wagner-Peyser (WIA Title III) funds shall also establish and maintain a customer complaint process consistent with these same parameters.

- To assure timely response to customer complaints, each Career Center shall designate, at minimum, one Local Complaint Officer and one “back-up” Complaint Officer to be responsible for processing complaints brought by Career Center customers and interested parties.
- A customer may lodge a complaint related to services provided under the Wagner-Peyser Act within one year of the alleged violation.
- There is no time limit for filing a complaint related to services provided under Title I of the Workforce Investment Act.
- Complaints alleging discrimination must be filed within 180 days of the alleged violation.
- All complaints must be filed in written form:
 - Submission of the official *Career Center Complaint Form* (copy attached), 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 complaints must be entered into a Complaint Log. Copies of the appropriate Complaint Log pages indicating filing or resolution of complaints occurring in a calendar quarter must be sent to the State Monitor Advocate within 15 days following the end of that quarter.
- The local Career Center has 15 days from the date a written complaint is received to resolve the complaint. If the complaint was initiated by a Migrant and Seasonal Farm Worker (MSFW) the local Career Center *has only 5 days to resolve the complaint*.
- If the Career Center 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 Career Center.
- If the local Career Center 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.
- If the local Career Center 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) described above, the complainant may request a hearing at the State level (State Complaint Officer) for resolution or further action.
- If a complainant disagrees with the local Career Center determination, the complainant may appeal the local determination to the State level (State Complaint Officer) within 20 days of the receipt of the determination.

- After 30 working days (or, in the case of an MSFW initiated complaint, within 20 days), if resolution has not been accomplished at the State level, the State Complaint Officer will issue to the complainant and respondent, by certified mail, a written determination regarding the complaint. The written determination must include:
 1. the results of the State level investigation
 2. conclusions reached on the allegations
 3. an explanation as to why the complaint was not resolved
 4. If the complaint is against an employer, and the State level investigation has found that the employer has violated Wagner-Peyser regulations, the determination shall state that the Commonwealth will initiate procedures for discontinuation of services to the employer in accordance with the appropriate regulations (§658.500 - §658.504).
 5. If the complaint is against an employer, and the State level investigation has found that the employer has not 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 notification.
 6. If the complaint is against a State agency, an offer to the complainant to request a hearing within 20 working days after the certified date of the receipt of the notification.

NOTE: *If the State Complaint Officer has made a written request for information to the complainant or the complainant's authorized representative, the 30 or 20 day time frame (whichever is appropriate) will not commence until the requested information has been received.*

- Hearings shall be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law.
- If complaint resolution occurs above the local Career Center level, a copy of the resolution notice will be forwarded to the Career Center at which the complaint was originally filed.

TYPES OF COMPLAINTS COVERED BY THIS POLICY

Generally, all complaints brought forward by a Massachusetts One-Stop Career Center customer are to be handled, at least initially, according to the processes outlined above. Such complaints that may arise in the delivery and/or administration of services and activities provided through Career Centers, as a direct recipient of WIA Title I or Wagner-Peyser funds and that do not involve alleged criminal* or discriminatory**activity include:

- Non-criminal complaints alleging violations by actions or omissions by the local Career Center and/or its staff in violation of either Title I of the Workforce Investment Act of 1998 or the Wagner-Peyser Act, as Amended.
- Complaints against an employer about the specific job to which a Career Center customer was referred by a Career Center staff person.
- Complaints against an employer filed by a Career Center customer referred to the employer by a Career Center staff person alleging violations of employment related laws.
- Complaints against an employer filed by an individual who was not referred by a Career Center staff person.
- Complaints of violations of labor standards.

- Complaints by Migrant or Seasonal Farm Workers (MSFWs) that allege violations of laws enforced by ESA or OSHA***.
- Complaints by Veterans alleging violations of the mandatory job listing requirements for federal contractors.

***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).

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

****Equal Opportunity/Discrimination Complaints** – Section 188 of the Workforce Investment Act of 1998 and WIA Regulations promulgated at 29 CFR Parts 37.76-37.79 require specific procedures for EO/Discrimination complaints alleged in regard to recipients and sub-recipients of WIA Title I funds and their service providers. Equal Opportunity/Discrimination complaints *must* be resolved within 90 days of the date the complaint was filed. Customers alleging discrimination based on a perceived violation of any of the following statutory or regulatory requirements may choose to have their complaints adjudicated at either the local or federal level in accordance with procedures specifically described in WIA Issuance 01-38 (issued August 2, 2001), WIA Grievance Procedures for Equal Opportunity/Discrimination Complaints and as affirmed by adoption of the policy by DCS as announced in WIA communication No.4-22, Equal Opportunity Policies (issued 3/12/04).

- 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.

Career Center staff must provide complainants with all appropriate assistance to assure the completeness of all required forms (Career Centers may request copies of required forms from the DCS Equal Opportunity Officer).

Nancy Stolberg
Director of Civil Rights
Commonwealth's WIA EEO Officer
Division of Career Services
19 Staniford Street
Boston, MA 02114

One required form, DL 1-2014a: *Notice About Investigatory Uses of Personal Information*, incorporates a consent form that *must* be signed by the complainant.

NOTE: All Job Service (Wagner-Peyser) related complaints regarding discrimination by an employer *must* be logged and referred to the MA Commission Against Discrimination (MCAD) for adjudication.

MA Commission Against Discrimination
One Ashburton Place - Room 601
Boston, MA 02108

A copy of the complaint must also be forwarded to the U.S. Equal Employment Opportunity Commission (EEOC).

U.S. Equal Employment Opportunity Commission
Boston Area office
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Robert L. Sanders, Director

***** Complaints by MSFWs Alleging Violations of Laws Enforced by ESA or OSHA** – Such complaints are to be logged by the local Career Center 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
19 Staniford Street, First Floor
Charles F. Hurley Bldg.
Boston, MA 02114

Complaints Against Employers From Another State – Such complaints are to be logged by the local Career Center and elevated immediately to the State level. If the complaint is filed by a Migrant or Seasonal Farm Worker (MSFW), the Career Center 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.

Dan Condon, Manager of System Management
Division of Career Services
19 Staniford Street
Charles F. Hurley Bldg.
Boston, MA 02114

Complaints Involving More Than One Massachusetts Career Centers – Such complaints are to be logged by the local Career Center and elevated immediately to the State level.

Complaints Alleging Statewide Violations or Involving the Division of Career Services – Such complaints are to be logged by the local Career Center 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 by the local Career Center 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.

DESIGNATION OF A LOCAL COMPLAINT OFFICER

Each Local Workforce Investment Board shall designate at minimum, one Complaint Officer (CO) and back-up for the local area. The Complaint Officer shall be responsible for initial handling of complaints pursuant to this issuance. The Complaint Officer may also be the Equal Opportunity Officer. The local Complaint Officer's name, business address and telephone number shall be publicized and included in customer information describing how to file a complaint.

LOCAL NOTIFICATION OF COMPLAINT RIGHTS AND PROCEDURES

Notice

All Massachusetts One-Stop Career Centers are required to prominently display in public view the official Career Center Complaint Poster. A copy of the Career Center Complaint Poster is provided as an attachment to this issuance. Local WIBs and/or Career Centers may order a supply of posters for display through the Division of Career Services.

The brochure “You Have the Right to File a Complaint” providing customers with general instructions as to how to file a complaint must 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 copies of the brochure are attached.

Local Customer Notification Process

All Career Center customers *must* be notified of their EEO/Complaint rights. This may be accomplished in a group or individual setting. The Career Center Seminar incorporates specific reference to the Career Center Complaint process and provides the most advantageous opportunity to satisfy the customer notification requirement.

A hard copy description of and instructions for the local Career Center Complaint process should be included in the package of Career Center Seminar materials. Career Centers must ensure that the local notification process assures that complaint procedures are provided in a timely manner when a customer expresses a desire to file a complaint or requests a copy of the procedures.

ADOPTION AND APPLICATION OF COMPLAINT PROCESS

Adoption

Complaint procedures for local One-Stop Career Centers (and other direct recipients of WIA Title I and Wagner-Peyser funds operating in the local workforce investment area) shall be adopted and published by each Local Workforce Investment Board. [20 CFR § 667.600(b) and 20 CFR § 658.400].

State Level Complaint Submission

Customers or interested parties 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 the local Career Center from attempting to reach an informal resolution with the complainant while the complaint is processed by the Division of Career Services, centrally.

IMPLEMENTATION OF COMPLAINT RESOLUTION PROCEDURES

Local complaint procedures must be developed to assure Career Center customers 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, including Career Center partners and service providers;
- protecting confidentiality of complainants 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 which will promote the continued receipt of confidential information;
- advising complainants and respondents of their right to due process including the right to:
 - be represented 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 because that person 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 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.

COMPLAINT LOGS

Each One-Stop Career Center must maintain a Complaint Log (see Attachment) that clearly identifies each individual customer complaint. 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 by local career centers in an Excel format.

The State Complaint Officer is responsible for the maintenance of a statewide Complaint Log.

Each career center will maintain the Complaint Log on an annual basis consistent with the *state fiscal year* (July 1 – 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.

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 career center 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 career center employee still suspects a violation occurred.
- A career center 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 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.

While Apparent Violations are to be logged on the Career Center Complaint Log, they are processed separately and are an exception to the formal Complaint Process.

Such *Apparent Violations* must be reported in writing to the Career Center Director.

Upon receipt of a report of an Apparent Violation, the Career Center director must make two determinations:

1. Has the employer filed a job order with the Massachusetts One-Stop Career Center system within the previous 12-month period?
2. Does the apparent violation involve Job Service 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 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:

- Job Service regulations, the 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).
- Employment related law(s), the 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 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 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 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.

Per USDOL requirement, 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).

ATTACHMENTS

- Career Center Complaint Form
- Career Center Complaint Poster
- Career Center Complaint Log
- “You Have the Right to File a Complaint” brochure (English & Spanish versions)

Complaint Information Form DL 1-2014a USDOL Directorate of Civil Rights (Federal) which includes the Notice About Investigatory Uses of Personal Information (Federal) (English & Spanish versions)