

Attachment M-2

Grievance and Appeal Procedure

I. Purpose:

In accordance with 20 CFR 667.600, the purpose of this procedure is as follows:

- A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide workforce investment programs
- A process for resolving appeals from decisions made at the local level
- A process for remanding grievances and complaints related to the local Workforce Investment Act programs to the local area grievance process

The purpose of this procedure is also a process for appealing decisions made concerning the statewide workforce investment system.

These procedures will be made available, upon request, to all WIA Title I participants and staff persons.

II. General Guidelines for Filing a Grievance or Complaint [*WIA §181(c); 20 CFR 667.600; 20 CFR 610*]

- A. Each local workforce investment board will establish and maintain a procedure for grievances or complaints alleging violations of the requirements of Title I of the Workforce Investment Act of 1998 or Arkansas Act 1125 of 1999 from participants and other interested or affected parties. Grievances or complaints involving local activities should follow these local procedures. Grievances or complaints involving statewide activities should be sent by certified mail, return receipt requested, to the Executive Director (Director) of the Arkansas Workforce Investment Board at the address below.
- B. If a grievance or complaint is filed with the Director that, in the opinion of the Director, after consultation with the chairman of the Arkansas Workforce Investment Board, should first be filed with the local workforce investment board, that grievance will be remanded to the administrator or director of the local board to be processed there. This decision will be made within 30 days of receiving the grievance. Notification of remanding will be sent to the complainant or informant.
- C. All complaints, with the exception of complaints alleging fraud or criminal activity, must be filed within one year of the alleged occurrence.

- D. The name of the complainant or informant will be kept confidential where possible. Where disclosure of the person's identity is essential to assure a fair determination of the issues and to effectively accomplish responsibilities under the Workforce Investment Act, disclosure will be under conditions that promote continued receipt of confidential information. Written reports may be subject to disclosure under Arkansas Freedom of Information Act.
- E. No person, organization, or agency may discharge or in any other manner retaliate against any person because that person has filed a complaint, instituted any proceeding related to the Workforce Investment Act, testified or is about to testify in any proceeding or investigation, or provided information or assisted in an investigation.
- F. Complainant's statement must include:
- The full name, telephone number (if any), and address of the person making the complaint
 - The full name and address of the person or entity against whom the complaint is made
 - A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation
 - The provisions of the Workforce Investment Act of 1998, Act 1125 of 1999, regulations, a grant, or other agreements under WIA Title I believed to have been violated
 - A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any federal, state, or local authority, and if so, the date of the commencement or conclusion and the name and address of the authority
- G. Upon receipt of a grievance or complaint, the Director or designee will acknowledge of receipt of the grievance to all parties by certified mail, return receipt requested. The acknowledgement of receipt of the grievance will:
- Outline the steps to be taken to resolve the matter
 - Notify all parties of the right to request a hearing
 - Advise of attempt to reach an informal resolution
 - Provide a synopsis of issues to be decided
- H. The Arkansas Workforce Investment Board (State Board) will be consulted on all grievances or complaints. A written decision will be made within 60 days of receipt of the grievance or complaint. If requested, a hearing will be completed within those 60 days.
- I. The following procedures will apply to a hearing:
- The hearing will be informal. Technical rules of evidence will not apply. Hearsay evidence will be admissible at the discretion of the hearing examiner.

- Hearings will be held at a time and place determined by the Director, in agreement with the State Board, after reasonable written notice has been sent to the parties and the witnesses.
 - The party requesting the hearing will have the burden of establishing the facts and the entitlement to the relief requested.
 - Either party may be represented by an attorney or other representative.
 - Either party may bring witnesses and documentary evidence.
 - The respondent will cooperate by making available any person under their control or employ to testify, if these persons are requested to testify by the complainant, and to release requested documents relevant to the issue after the requesting party has established that such testimony/documentation is relative and not cumulative.
 - Either party or representative will have the opportunity to question any witness.
 - A verbatim record or tape recording will be made of the proceeding.
 - A written decision will be made by the Director or designee, after consultation with Arkansas Workforce Investment Board.
- J. If a hearing is not requested, the Director or designee will conduct an administrative fact-finding investigation, with the collaboration of the State Board. The investigation will include:
- Opportunities for all parties to submit an in-depth position statement, including documentary supportive data and/or records
 - Access to and review of appropriate official records
 - Interview of principle parties and opportunity for all parties to offer rebuttal to information received
 - A written decision
- K. A written decision will be sent by certified mail, return receipt requested, and will contain the following:
- Statement assuring that all steps included in the grievance/complaint procedures have been adhered to
 - Issue(s) being decided
 - Statement of facts
 - Reasons for the decision
 - Remedies to be offered, if appropriate
 - Summary
 - Advisement of the right to appeal the decision
- L. A party to which the decision is adverse may appeal the decision to the Secretary of Labor (Secretary). The appeal must be filed within 60 days of the receipt of the decision. All appeals must be sent by certified mail, return receipt requested, to the address below. A copy of the appeal must be simultaneously provided to the appropriate U.S. Department of Labor Employment and Training Administration Regional Administrator and the opposing party. The Secretary will investigate the grievance or complaint and

make a final determination relating to the appeal no later than 120 days after receiving such appeal.

- M. If no decision reached by the Director and the State Board within 60 days of the filing of the grievance or complaint, then the grievance or complaint may be filed with the Secretary within 120 days of the original filing date. The procedures listed in II(L) above must be followed.
- N. In most cases, the decision of the Secretary may be appealed to the Office of Administrative Law Judges within 21 days of receipt of the final determination. Instructions for this appeal are given in 20 CFR 667 Subpart H. *[WIA §186; WIA §187]*
- O. Nothing in this procedure shall be constructed to prohibit a grievant or complainant from pursuing a remedy authorized under another federal, state, or local law.

III. Appeal of Local Decisions

- A. A decision made by a local workforce investment board may be appealed to the Arkansas Workforce Investment Board (State Board) when no decision is reached within 60 days or when either party is dissatisfied with the local hearing decision. *[WIA §181(c)(1); 20 CFR 667.600]*
- B. A training provider that has been denied eligibility or has had eligibility terminated may appeal to the State Board within 60 days of the decision. *[20 CFR 663.565(b)(4); 20 CFR 667.640(b); WIA §122(g)]*
- C. A provider of on-the-job training or customized training that has been denied eligibility may appeal to the State Board within 60 days of the decision. *[20 CFR 667.640(b)(iii); WIA §122(g)]*
- D. The appeal must be sent by certified mail, return receipt requested to the Director at the address below within 60 days of the local decision or, when no local decision has been reached, within 120 days of the original filing date. The Director will contact the local board director or administrator and investigate the appeal. Except as indicated below, procedures in II(H-O) above will apply.
- E. A decision made under the state appeal process concerning a training provider (including on-the-job training and customized training may not be appealed to the Secretary of Labor. *[20 CFR 667.640(b)(3)]*

IV. Appeal of Non-designation as Workforce Investment Area. *[20 CFR 661.280; 20 CFR 667.640(a); WIA §116(a)(5); Act 1125 §8(f)]*

- A. A unit or combination of units of general local government or rural concentrated employment program grant recipient (as described in WIA §116(a)(2)(B)) that requests, but is not granted designation as a local workforce investment area under WIA

§116(a)(2) or §116(a)(3) may appeal to the decision to the State Board within 30 days of the decision. The appeal must be sent by certified mail, return receipt requested to the Director at the address below.

- B. The Director, with collaboration by the State Board will investigate the appeal and make a decision in agreement with the State Board within 60 days of receipt of the appeal.
- C. If the appeal does not result in designation, an appeal may be made to the Secretary within 30 days of the appeal decision of the State Board. It must be submitted by certified mail, return receipt requested, to the Secretary at the address below. A copy of the appeal must be simultaneously provided to the Arkansas Workforce Investment Board. The appeal will be made in accordance with 20 CFR 667.645.

V. Appeal of Local Areas Found in Violation of WIA Title I

- A. The Governor of Arkansas (Governor) is responsible for resolving findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A-133 audits) of subrecipients. Appeal procedures in III above will be followed, with the Governor making the final decision. *[20 CFR 667.500(a)]*
- B. A local area may appeal to the Governor to rescind or revise a reorganization plan imposed because of failure to meet performance levels for two consecutive program years. The Governor must make a final decision within 30 days after receipt of the appeal. The Governor's final decision may be appealed by the local board to the Secretary under 20 CFR 667.650(b) not later than 30 days after the local area receives the decision. The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued, and remains effective unless the Secretary rescinds or revises the reorganization plan. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision within 30 days after receipt of the appeal. *[WIA §136(h); 20 CFR 666.420(c); 20 CFR 667.650]*
- C. A local area found to be in substantial violation of WIA Title I that has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur may appeal to the Secretary within 30 days of written notification of the revoked plan or imposed reorganization. The actions do not become effective until the time for appeal has expired or until the Secretary has issued a decision. The Secretary will notify the Governor and the appellant in writing of the Secretary's decision within 45 days of the receipt of the appeal. *[20 CFR 667.650; WIA §184(b)]*
- D. A local area found to be out of compliance with the uniform administrative requirements found at 29 CFR part 95 or part 97, as appropriate may appeal to the Secretary in accordance with WIA §667.650. The action will not become effective until the time for appeal has expired or the Secretary has issued a decision. *[20 CFR 667.710]*

VI. Special Complaint Procedures

- A. Complaints of discrimination from participants and other interested parties will be handled in accordance with WIA section 188(b) and the Department of Labor nondiscrimination regulations implementing that section. Questions about or complaints alleging a violation of the nondiscrimination provisions of WIA section 188 may be mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, DC 20210. *[20 CFR 667.600(f)]*
- B. A complaint may be made directly to the Secretary of Labor if a WIA Title I recipient has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this title, or has testified or is about to testify in any such proceeding or investigation under or related to this title, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this title or the Secretary's regulations. In this case, the Secretary shall take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both, within 30 days. *[WIA §184(f)]*
- C. Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department of Labor's Incident Reporting System to the DOL Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. *[20 CFR 667.630]*
- D. Testing for use of controlled substances is not part of the Arkansas Workforce Investment system, therefore, an appeal procedure is not established for this procedure at this time. *[20 CFR 667.640(c)]*

VII. Job Corps *[20 CFR 670.470; 20 CFR 670.545]*

Job Corps has a separate appeal procedure.

- A. A person who is determined to be ineligible to participate in Job Corps or is not selected for enrollment may appeal the determination to the outreach and admissions agency or to the center within 60 days of the determination.
- B. The appeal will be resolved according to the procedures in 20 CFR 670.990 and 670.991.
- C. If the appeal is denied by the outreach/admission contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days of the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve

the appealed decision. The decision by the Regional Director is the Department of Labor's final decision.

- D. If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by WIA §188, the individual may proceed under the applicable DOL nondiscrimination regulations implementing WIA §188.
- E. Disciplinary actions taken by a Job Corps center may be appealed in accordance with that center's appeal policy.

Addresses:

Executive Director
Arkansas Workforce Investment Board
320 Executive Court, Suite 302
Little Rock, AR 72205

Secretary
U.S. Department of Labor
Washington, DC 20210
Attention: ASET