

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 26 WIA PROGRAM COMPLAINT RESOLUTION PROCEDURES AND PROCEDURES
FOR REPORTING CRIMINAL FRAUD AND ABUSE

11.2.26.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).

[11.2.26.1 NMAC - N, 12/31/05]

11.2.26.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB) local workforce development boards (LWDBs), and all SAE WIA subrecipients.

[11.2.26.2 NMAC - N, 12/31/05]

11.2.26.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.

[11.2.26.3 NMAC - N, 12/31/05]

11.2.26.4 DURATION: Permanent.

[11.2.26.4 NMAC - N, 12/31/05]

11.2.26.5 EFFECTIVE DATE: December 31, 2005 unless a later date is cited at the end of a section.

[11.2.26.5 NMAC - N, 12/31/05]

11.2.26.6 OBJECTIVE: This rule sets forth the complaint resolution procedures for program complaints involving proper application of the Workforce Investment Act and its regulations and policies by the LWDBs and program complaints involving statewide WIA policies and rules.

[11.2.26.6 NMAC - N, 12/31/05]

11.2.26.7 DEFINITIONS: [RESERVED]

11.2.26.8 ACTION: References include the following: Public Law 105-220, Workforce Investment Act, Section 667.630 (criminal complaints and reports), and 20 CFR Part 667, Subpart F.

A. PROGRAM COMPLAINTS AGAINST LOCAL WIA PROGRAMS

(1) **Who may file:** Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of local WIA programs, agreements or the local workforce development board's policies and activities.

(2) **Time and place for filing:** Local program complaints must be filed with the service provider or local administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) **Procedure to be followed:**

(a) **Step 1 - Initial review.**

(i) Written complaints will be taken by the service provider or local administrative entity from the complainant or the complainant's designated representative. All complaints will be logged.

(ii) If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIA, the complaint will be referred to the appropriate organization for resolution. Notice of the referral will be sent to the complainant.

(iii) If the complaint is retained, a complaint file should be established that contains: 1) all application and enrollment forms, if appropriate, 2) the complaint statement and form, 3) chronological log of events, 4) relevant correspondence, and 5) a record of the resolution attempted.

(b) **Step 2 - Informal resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

(c) **Step 3 - Formal resolution.**

(i) When no informal resolution is possible, the service provider will forward the complaint and a copy of the file to the local administrative entity that will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the complaint file should be documented accordingly.

(ii) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The local administrative entity will schedule the hearing and forward the program complaint to the impartial hearing officer for resolution. The local administrative entity will monitor the processing of the complaint.

(d) **Step 4 - Hearing.** The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 45 calendar days from the date the complaint 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, 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 recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(e) **Step 5 - Final decision.** The local administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

(f) **Step 6 - Appeal.**

(i) Any party dissatisfied with the final decision, or any party who has not received a decision or a final resolution within 60 calendar days from the date the complaint was filed, may file a request for review. A request for review must be filed with the state administrative entity (office of workforce training and development) within 90 calendar days from the date the complaint was originally filed.

(ii) The state administrative entity will review the record and issue a final decision on appeal within 30 calendar days from the date the appeal was received by the state administrative entity.

B. PROGRAM COMPLAINTS AGAINST STATEWIDE WIA PROGRAMS AND POLICIES

(1) **Who may file:** Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of statewide WIA policies, activities or agreements.

(2) **Time and place for filing:** Statewide program complaints must be filed with the statewide service provider or state administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) **Procedure to be followed:**

(a) **Step 1 - Initial review.**

(i) Written complaints will be taken from the complainant or the complainant's designated representative. All complaints will be logged.

(ii) If the complaint alleges a violation of local WIA programs, policies or agreements, the complaint will be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not part of WIA, the complaint will be referred to the appropriate organization. Notice of the referral will be sent to the complainant.

(iii) If the complaint is retained, a complaint file should be established that contains: 1) the complaint statement and form, 2) chronological log of events, 3) relevant correspondence, and 4) a record of the resolution attempted.

(b) **Step 2 - Informal resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

(c) **Step 3 - Formal resolution.**

(i) When no informal resolution is possible, the statewide service provider will forward the complaint together with a copy of the complaint file to the state administrative entity who will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the complaint file should be documented accordingly.

(ii) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The state administrative entity will schedule the hearing and forward

the program complaint to the impartial hearing officer for resolution. The state administrative entity will monitor the processing of the complaint.

(d) **Step 4 - Hearing.** The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 45 calendar days from the date the complaint 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, 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 recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(e) **Step 5 - Final decision.** The state administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

C. CRIMINAL FRAUD AND ABUSE COMPLAINTS

(1) Complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately to the United States Department of Labor, Office of Investigator General, Office of Investigations, Room 55514, 200 Constitution Avenue NW, Washington, D.C. 10210 or to the regional inspector general at (972) 850-4000.

(2) The USDOL hotline number for criminal complaints is 1-800-347-3756.

D. MAINTENANCE OF RECORDS. The SAE and LWDBs shall make provisions for the maintenance and retention of all records involving WIA complaints filed in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the complaint was filed unless an unresolved complaint is pending. In that case, records must be retained until final resolution of the complaint.

[11.2.26.8 NMAC - N, 12/31/05]

11.2.26.9 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.26.9 NMAC - N, 12/31/05]

11.2.26.10 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.

[11.2.26.10 NMAC - N, 12/31/05]

HISTORY OF 11.2.26 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6/23/00 - Repealed 12/31/05