Complaints, Grievances, and Incident Reports

SMART 3.0 Training
February 25-26, 2020

SMART 3.0 Training Strategies

SMART 3.0 Training Series:
The training modules are focused on:
Strategies for sound grant management that includes: Monitoring, Accountability, Risk mitigation and Transparency

These four themes are weaved throughout the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards also known as the Uniform Guidance (2 CFR Part 200 and 2 CFR Part 2900).

Grant Management Toolbox

DOL Grant Recipients & Subrecipients
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

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

WIOA Complaints and Grievances

- General Requirements
- LWIA Procedures
- State Procedures
- Direct Recipient Procedures
- Resolution System Components
- DOL’s Role
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.

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

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
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.

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.

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.
**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/notice.
- Either party may file an appeal to Secretary within 120 days of the date of original complaint or appeal.
- Party to which state decision is adverse may appeal to Secretary within 60 days of decision.

**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.
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**

Discrimination Complaints

- Describe the requirements for handling complaints of discrimination

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).
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

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.

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
Other Prohibitions on Discrimination

- Executive Order 13160
  - Non-discrimination 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 Compliant Processing
  - EEOC’s Management Directive 715 Affirmative Action Programs
  - Harassing Conduct Policy Statement 2013
  - DOL’s Policy on EEO 2013

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)

DOL Civil Rights Center

- 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
- 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
- 29 CFR Part 38 Provisions apply to:
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

Non-Federal Entity Responsibilities

- Comply with:
  - WIOA Section 188
  - 29 CFR 38
  - Section 504 of Rehabilitation Act of 1973
  - MOA
- Establish procedure for processing complaints
- Monitor subrecipient/service provider compliance
- Appoint Equal Opportunity Officer, except for:
  - Service providers
    - Compliance rests with state or LWIA
  - Small grant recipients
    - Fewer than 15 participants and 15 employees
    - But still must designate person to process complaints

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
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

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

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.
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

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

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 Remedies for noncompliance, including suspension or debarment. (See also 31 U.S.C. 3321).
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) 2-13

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

DL 1-156 Incident Reporting Form
Reporting Mechanisms

✓ 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
  ► But in all cases DOL must be notified
  ► Cannot prevent anyone from reporting incident directly to OIG

The Investigative Process

✓ Submit Incident Report to OIG with copy to ETA
✓ OIG assigns investigative responsibility
  ► OIG determines whether the allegation has merit and may conduct or arrange for an investigation or audit
✓ OIG may refer the case back to ETA for resolution
  ► ETA may conduct its own review of the allegation
  ► ETA may refer the case for state review
  ► Reviewing agency prepares report on findings and conclusions
  ► Report submitted to OIG with ETA recommendations
✓ Follow-up or corrective actions completed
✓ When OIG accepts final resolution, the 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

Some incidents can be prevented:
- Robust system of internal controls
- Trained and competent staff
- Consistent application of policies

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
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

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.  
   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

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

- Indicator 2.1.4: 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 2.1.5: Incident Reporting
  - Is the grant recipient aware of any incident described above and were these allegations immediately reported through the DOL incident reporting system?

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

ETA and Uniform Guidance Resources

- Core Monitoring Guide
  - Objective 2 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
Web Resources

- What is the best way to find your local American Job Center (AJC)?
  - See DOL's Service Locator

- Want More Information? See DOL's Service Locator

Want More Training? See WorkforceGPS: Grant Application and Management Community of Practice

- Financial Reporting
- Subrecipient Management and Oversight
- Indirect Cost Rates
- Policies and Procedures
- Measurement and Performance BasedContracts
- Capital Assets and More

Want More Training? See WorkforceGPS

Remember the Grant Management Toolbox!

Questions?
Please complete your evaluations.