



COMPLAINT PROCEDURE

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COMPLAINTS PROCEDURE

Introduction

The WIOA provides that the Local Boards must establish a procedure to resolve the complaints filed by the participants, service providers, entities and collaborators when their rights or the signed agreements have been violated or discriminated against for reasons of: race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, and sexual stereotyping, transgenic status, and gender identity), national origin or social status (including limited English proficiency), age, physical or mental disability, for being a victim or being perceived as a victim of domestic violence, sexual assault or stalking, genetic information, veteran status, or political ideas or affiliation and in the case of participants, for citizenship or participation in the WIOA; or when its agreements, contracts or other activities of the programs described in the WIOA have been breached; or is known or suspected of fraud, misuse of funds, or other activities not permitted by the WIOA. This procedure has been prepared considering Sections 181 (c) and 188 (a) of the WIOA and Section 658.411 (c) of 29 CFR 38.4.

Purpose

The purpose of this procedure is to establish the rules to deal with the complaints filed by the participants, service providers, collaborating entities, collaborators, or interested persons who in some way receive or intend to receive benefits under the WIOA, when they understand that their rights have been violated or that they have been discriminated against. In other words, a participant or any other interested person could file a complaint: 1) for **discrimination** or, 2) for **violation of the WIOA**, its regulations, or any contract that has been granted.

Definitions

- ❖ Local Equal Opportunity Official (OLIO, in Spanish) – Collaborator designated by AMSI’s Executive Administrator, whose responsibility is: to monitor and investigate the beneficiaries’ activities, and the activities receiving financial aid under Title I of the WIOA, to ensure that the recipient and its sub-recipients do not violate their opportunity and nondiscrimination obligations; Review the beneficiary's written policies to ensure that those policies are not discriminatory; develop and publish beneficiary procedures for the processing of discrimination complaints; Carry out activities to educate and disseminate the equal opportunity and non-discrimination obligations.
 - Attends in the first instance the complaints of the participants, service providers, or collaborating entity.
- ❖ Participant – All beneficiaries of training and employment programs under the sponsorships of the WIOA.
- ❖ Workforce Development Program – work unit attached to the Department of Economic Development and Commerce of Puerto Rico (DDEC), created by virtue of Law 171-2014, whose function is to manage, advise, coordinate, supervise and implement public policies on the labor development system.
- ❖ Complaint – Written statement where a participant, service provider, collaborating entity, or collaborator alleges that their rights have been violated under the following concepts:
 - Program Complaint – When any agreement signed under contract, as defined by the WIOA, has been violated. This does not include suspected fraud, misuse of funds, or criminal activity.
 - Discrimination Complaint – When service, participation, or access to service is denied for reasons such as: race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, gender stereotyping, transgenic status, and gender identity),

national origin or social status (including limited English proficiency), age, physical or mental disability, being a victim or perceived victim of domestic violence, sexual assault or stalking, genetic information, veteran status, or their ideas or political affiliation and, in the case of participants only, by citizenship or participation status in the WIOA.

- Criminal Act Complaint – When an act of fraud, misuse of funds, or other criminal activity is known or suspected. This includes but is not limited to administrative determinations resulting from audits, monitoring, or special investigations of service providers.

Procedure

Any discrimination complaint involving discrimination on the basis of: race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, and sex stereotyping, transgenic status, and gender identity), national origin, or status (including limited English proficiency), age, physical or mental disability, being a victim or perceived victim of domestic violence, sexual assault, or stalking, genetic information, veteran status, or political beliefs or affiliation, and the case of participants, by citizenship and participation in the WIOA, must be filed within **one hundred and eighty (180) days** from the alleged action. In those program complaints (not criminal), that violate the WIOA, its regulations or the fulfillment of any contract granted, the complainant has up to one year from the alleged action to present it. The procedure for submitting the complaint will be as follows:

- In the case of a complaint from an employee or a participant where there is a collective agreement in the company, corporation, or place of employment, the parties that allege violations related to labor standards will process the complaint through the union.
- Complaints from Collaborators will be submitted directly to the

Human Resources Division. The complaints of the participants, service providers, collaborating entities, and interested persons will be presented before the Local Official of Equal Opportunities (OLIO).

- Discrimination complaints must be resolved within **ninety (90) days** of being filed. Complaints related to the program must be resolved within **sixty (60) days** after they were filed.
- When filing the complaint with the Local Equal Opportunity Official (OLIO), a statement signed by the complainant or his/her designated representative must be included, including the name, address, and telephone number of the complainant; name of the person, company, or institution from which the complaint is filed; and detailed description of the allegations. **Documents AMSI-2018 CI/211** will be used for the filing of the complaint and **AMSI-2018 CI/211a** for the statement of the defendant. The complainant will be provided with a certification to evidence receipt of the complaint and the individual's right to be represented **AMSI-2018 CI/211b**. In addition, the steps taken by the office to resolve the complaint must be included. This will help the Local Equal Opportunity Officer in determining the case.
- The Local Equal Opportunity Officer will open a file and assign a case number.
- From the moment the Local Equal Opportunity Official (OLIO) receives the formal complaint, AMSI will have **sixty days (60)** to issue a decision. Of these, AMSI will have **thirty (30)** consecutive days from the date the complaint was received to summon the parties to attend a hearing.
- The complainant will be provided with a statement indicating the issues raised in the complaint and whether they are accepted for investigation. If rejected, the reason for the rejection will be

indicated using the **AMSI-2018 CI/211c** form.

- Then, AMSI will have the remaining thirty (30) consecutive days to issue the final decision on the complaint filed.
- After the process is finished, a written Notice of Final Determination of the case will be sent to the complainant. In the case of discrimination complaints, the determination will be detailed for each matter presented within the following **ninety (90)** days after the complaint was filed. This Notice will include a statement of the decision, an explanation of the reasons for the decision, or a description of how the parties resolved the matter.
- Individuals who complain will have the opportunity to appeal at the state level if the final decision is not issued within **sixty (60) days** following the filing of the complaint. In the Notice of Final Determination, the complainant will be informed about their right to file an appeal within the following **thirty (30)** consecutive days before the Civil Rights Center if they disagree with the decision. To certify that the complainant was duly oriented, the **AMSI-2018 CI/211d** form will be used.
- In cases of discrimination complaints, the participant, service provider, entity or collaborator can submit their complaint directly to:

**Civil Rights Center
U.S. Department of Labor
Director, Civil Rights Center (CRC)**

200 Constitution Ave. NW
Room N4123

Washington, DC 20210

Phone: (202) 693-6500 * Fax: (202) 693-6505

TTY/TDD: 1-800-877-8339

Email: CivilRightsCenter@dol.gov

Website: <http://www.dol.gov/oasam/programs/crc>

- If the complainant is not satisfied with the decision of the Local Equal Opportunity Official and files the complaint with the Civil Rights Center within the first **thirty (30)** days from the date of the final determination, the Local Equal Opportunity Officer will make the necessary forms to fill out available in his/her office.
- If after **ninety (90)** days the complaint has not been resolved or a final determination has not been issued, the complainant will have the right to file the same complaint before the Civil Rights Center (CRC).
- Regarding filed complaints related to the program, if a party is not satisfied with the final decision, they can appeal to AMSI's Executive Administrator.
- The Executive Administrator will have **ten (10)** consecutive days to issue a decision that will be the final decision of AMSI.
- If the complaining party is not satisfied with the decision of the Executive Administrator, they may appeal to:

Departamento Desarrollo Económico y Comercio
Programa de Desarrollo Laboral
Edificio Fomento Industrial Segundo Piso
#355 Avenida F.D. Roosevelt
San Juan, Puerto Rico 00918
PO Box 192159
San Juan Puerto Rico 00919-2159
Phone: (787) 754-5504 * Fax: (787) 763-0195
TTY/TDD: (787) 294-1924

Hearing Procedure

In every hearing that is held:

- The parties will have the right to attend alone or accompanied by an attorney or authorized representative.

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- Relevant evidence and witnesses will be presented.
- Witnesses and parties will be questioned and cross-examined.
- Access to documents presented as well as evidence relevant to the case and that is in the custody of AMSI, or the entity will be facilitated.

The hearing procedure will be as follows:

- This will begin with an identification and brief description of the case.
- Then, the complaining party will present its arguments, evidence, and witnesses in the case and the defendant will be given the opportunity to cross-examine the witnesses.
- The accused party will have the opportunity to present their arguments, evidence, and witnesses in the case and will give the complainant the opportunity to cross-examine the witnesses.

Evidence of the hearing will be maintained, meaning the hearing could be recorded on audio, video, or other available means. If any party is unable to attend a hearing, they must give **forty-eight (48) hours'** notice, unless the cause is unforeseen. The Local Equal Opportunity Officer will reassign the hearing for a date no later than seven **(7) business days** after the previous date. If the cancellation is not notified, the hearing will be held in absentia and a decision will be made in favor of the present party.

Case Dismissal

If the complaining party wishes to withdraw the complaint, they must submit their request in writing, explaining in detail the reasons that justify the decision. The document must be signed by the complainant. The Local Equal Opportunity Officer will terminate the case in relation to the complainant.

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However, the Local Equal Opportunity Officer will determine whether to continue to investigate the complaint administratively. If so, at the end of the investigation, the Officer will issue a final report and will handle it to the Executive Administrator. A copy will be filed. The Executive Administrator will take the corresponding actions.

Procedure for Reporting and Referring Incidents Related to Potential Illegal Acts or Corruption

The purpose of this procedure is to disclose how to report, document, and refer information on alleged acts of fraud, program abuse, or other criminal or corrupt conduct involving recipients or sub-recipients of the federal funds.

Legal Basis

- Procedure to report and refer incidents related to potential illegal or corrupt acts involving recipients or sub-recipients of federal funds from the Employment and Training Administration (ETA); Government of Puerto Rico - Department of Economic Development and Commerce (DDEC), Labor Development Program (PDL); approved on May 29, 2018.
- Workforce Innovation and Opportunity Act, as amended, Public Law 113-128 of July 22, 2014.
- 20 CFR 667.630
- "Training and Employment Guidance Letter Num 2-12" of July 12, 2012.

Definitions

- **Misconduct of employees/participants:** Actions or behavior presented during or outside working hours that have a negative effect according to the Federal Department of Labor ("DOL"), the DDEC, the PDL, or their mission, including but not limited to, actual or potential conflicts of interest regarding employment in and outside of regular

employment, professional and business activities; receiving or handling of gifts, bribes, entertainment and benefits; abuse of federal property, abuse of official information and other activities that may adversely affect the general public's confidence in the integrity of the government, as well as serious violations of federal and state laws.

- **Emergency:** A situation involving imminent risks to health or safety, or the imminent loss of funds in excess of \$50,000.00.
- **Fraud, Abuse of Authority, Dereliction of Duty, or Embezzlement:** Any alleged deliberate action that may be in violation of federal laws and regulations. This includes, but is not limited to: allegations of bribery, forgery, extortion, embezzlement, participant check theft, participant or contractor kickbacks, intentional payments to a contractor with no expectation of service, payment to phantom participants, abuse of allocated funds, and false information in official reports.
- **Incident Report ("IR") (OIG Form 1-156):** primary format for reporting instances of fraud, misuse of funds, gross mismanagement, and any other incidents of serious or criminal activities or known or suspected corruption, in programs subsidized with funds from the Employment and Training Administration (ETA).
- **Gross Mismanagement:** Actions or situations derived from administrative or surveillance inefficiency and leading to a serious violation of laws, regulations, or the provisions of the fund allocation contract. Such actions or situations have the potential to severely hinder the achievement of program goals, misuse government resources, and jeopardize future allocations and/or grants. This category includes, but is not limited to: unaudited records, unsupported costs, highly inaccurate fiscal or programmatic reports, payroll discrepancies, unpaid payroll deductions to the Internal Revenue Service, and lack of adequate internal control processes.

- **Misuse of funds:** Any alleged deliberate use of funds, assets, or property that is not authorized or provided for by legislation or regulations, allocations of funds, or contracts. This category includes, but is not limited to: nepotism, political sponsorship, involvement of participants in political activities, service to ineligible participants, conflict of interest, failure to report income from federal funds, violation of procedures related to contract award and/or assignment of funds, and the use of federal funds for purposes other than those specified. An Incident Report must be filed when there is suspicion of attempted misuse of funds, even when it is merely a minor case of mishandling.
- **Complaint:** Information or documentation submitted to the authorized official of the Department of Economic Development and Commerce (DDEC), in which a person, entity, official, or employee, voluntarily reports having knowledge or suspicion of an incident that involves illegal or constitutive acts of corruption in which recipients or sub-recipients of funds from ETA are involved.
- **Defendant:** Official, employee, contractor, or entity accused of having incurred in illegal acts or corruption.
- **Complainant:** Any person, official, or employee who files the complaint or reports incidents of which he or she is aware or suspects.

Any person, entity, employee, or official who has knowledge or suspects situations of fraud, abuse of power, omission in the performance of duty or embezzlement, misuse of funds, gross mishandling, employee and/or participant misconduct, and other potential or suspected criminal or corrupt actions may report the same.

- Allegations of incidents (Complaints) can be reported or presented to the authorized official of the DDEC by the following means:

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- **In person**, visiting the Labor Development Program (PDL)
- **By mail**, to the following address:

Departamento de Desarrollo Económico y Comercio

Programa de Desarrollo Laboral

Querellas Confidenciales

PO Box 362350

San Juan, PR 00936-2350

- **By phone**, calling:
(787) 754-5504, extension 5237 o 5345
- **By fax**, at (787) 763-0195
- **By email**, to the following address:

querellas.wioa@ddec.pr.gov

However, if a Complainant understands that by disclosing information through the Incident Reporting System, they may be adversely affected, they may report directly to the Office of the Inspector General (“OIG”) or to the Office of Financial and Administrative Management (“OFAM”) to the following address:

**Office of Inspector General
200 Constitution Avenue, NW
Room S-5502
Washington, DC 20210**

They may also report the incident to the Office of the Inspector General at hotline@oig.dol.gov, by phone at 1-800-347-3756, or by fax at 202-693-7020.

This mechanism may not be used to resolve employee complaints, Equal Employment Opportunities cases, labor disputes, or other personnel matters.

Useful information at the time of filing the Complaint:

- Type of Incident, list of facts, what the known or suspected criminal or corruption action consisted of.
- Who committed it (Defendant).
- When and where did the events occurred.

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- How did you learn about the facts stated or what is the suspicion based on.
- Documents, if any, that can support your complaint.
- People who can provide additional information.
- Type of funds or programs involved.
- Any other information that you understand will be relevant.

Confidentiality

The identity of the Complainants will be kept anonymous.

Approval

This revision to the AMSI, Inc. Complaint Procedure is approved today, **September 2, 2020**, in Caguas, Puerto Rico.

Ana G. Arias Villasuso
Associate Administrator
Research and Development Division
Executive Administration Area

Joaquín Santiago Santos
Executive Administrator

Vicky Cintrón de Azize
Chair, Local Workforce Development Board