

§ 636.3

20 CFR Ch. V (4-1-01 Edition)

or the regulations because such person has filed any complaint, instituted or caused to be instituted any proceeding under or related to the Act, has testified or is about to testify in any such proceeding or investigation, or has provided information or assisted in an investigation.

§ 636.3 Complaint and hearing procedures at the grantee level.

(a) *Policy.* (1) Each grantee shall establish and maintain a procedure for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act, including any complaint arising in connection with the JTPA programs operated by the grantee or its subrecipients. Such complaint procedures must meet the requirements of this section. The complaint procedure shall provide for final resolution of complaints within 60 days after filing the complaint. Where existing complaints or grievance procedures include the elements set forth in this section, grantees may adopt such mechanism as, or as part of, their JTPA procedure.

(2) Participants shall be provided, upon enrollment into employment or training, with a written description of the complaint procedures including notification of their right to file a complaint and instructions on how to do so. Grantees should designate an individual to monitor the operation of the complaint procedures, to ensure that complaints and related correspondence are logged and filed, to ensure that assistance is available for properly filling complaints, and to ensure the availability, coordination, and promptness of all elements of the procedures. Upon filing a complaint, and at each stage thereafter, each complaint shall be notified in writing of the next step in the procedure.

(3) Complaints may be brought by any individual or organization including, but not limited to, program participants, subrecipients, contractors, staff of the grantee or subrecipient, applicants for participation or financial assistance, labor unions, and community-based organizations.

(4) With the exception of complaints alleging fraud or criminal activity, the filing of a complaint pursuant to this

section must be made within one year of the alleged occurrence.

(5) The grantee may delegate the authority to operate and maintain the complaint and hearing procedure to its subrecipients except for complaints between the grantee and its subrecipients (e.g., audit disallowances), complaints involving more than one of its subrecipients, or complaints involving the operations or responsibilities of the grantee. Where the procedure is delegated, the grantee may provide for an appeal to itself from the decision of the subrecipient or the grantee may provide that the subrecipient's decision is the final decision of the grantee. Where the procedure is delegated, the grantee shall ensure that the procedures specified in this section are followed and a decision issued promptly within 60 days after a complaint is filed.

(6) When a participant is an employee of a grantee or subrecipient and alleges that an occurrence constitutes a violation of the Act, regulations, grant, or other agreements under the Act, as well as a violation of the terms and conditions of employment under a State or local law or a collective bargaining agreement, the participant may pursue the complaint and hearing procedures under the State or local law or the collective bargaining agreement, pursuant to § 636.4. A participant who selects the procedures provided in this section is not precluded from filing a complaint under § 636.4, unless otherwise prohibited by State or local law, or applicable collective bargaining agreement.

(b) *Complaint procedures.* The complaint resolution procedure shall include:

(1) Opportunity to file a complaint. All complaints shall be in writing.

(2) Opportunity for informal resolution of the complaint.

(3) Written notification of an opportunity for a hearing when an informal resolution has not been accomplished. The notice shall state the procedures for requesting a hearing and shall describe the elements in the hearing procedures including those set forth in paragraph (c) of this section.

(4) Opportunity to amend the complaint prior to a hearing.

(5) Opportunity for a hearing pursuant to paragraph (c) of this section within 30 days of filing the complaint.

(6) A final written decision to the complainant which shall be made within 60 days of the filing of the complaint and provided to the parties by certified or registered mail, return receipt requested. The decision shall include:

(i) A statement of facts and reason(s) for the decision.

(ii) A statement that the procedures delineated in this section have been completed.

(iii) A statement of any remedies to be applied.

(iv) Notice of the right to file a complaint with the Grant Officer pursuant to § 636.6 where any party disagrees with the decision.

(c) *Hearing procedure.* A hearing shall be provided within 30 days after filing a complaint. The hearing procedure shall include:

(1) Written notice of the date, time and place of the hearing, the manner in which it will be conducted, and the issues to be decided. Other interested parties may apply for notice. Such other interested party is a person or organization potentially affected by the outcome. The notice to other interested parties shall include the same information furnished to the complainant and shall further state whether such interested parties may participate in the hearing and if applicable, the method by which they may request such participation.

(2) Opportunity to withdraw the request for hearing in writing before the hearing.

(3) Opportunity to request rescheduling of the hearing for good cause.

(4) Opportunity to be represented by an attorney or other representative of the complainant's choice.

(5) Opportunity to call witnesses and introduce documentary evidence. Recipients or subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant.

(6) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for

the grantee or its subrecipient in the ordinary course of business.

(7) Opportunity to question any witnesses or parties.

(8) The right to an impartial hearing officer.

(9) A verbatim record of the proceeding.

(10) A written decision from the hearing officer to the complainant(s) and any other interested parties within 60 days of the filing of the complaint. This period may be extended with the written consent of all of the parties for good cause. The written decision shall include a statement of facts, a statement of reasons for the decision and a statement of any remedies to be applied. Where the hearing officer's decision is the grantee's final decision it shall be provided to the parties by certified or registered mail, return receipt requested.

(11) Where a complaint procedure provides for a grantee's review of the hearing officer's decision, the grantee shall complete its review and provide a final written decision to the complainant(s), and any other parties, by certified or registered mail, return receipt requested, as provided in paragraph (c)(10) of this section within 60 days after the complaint is filed.

(12) Where local law, personnel rules or other applicable requirements specify procedures in addition to those specified above, similarly employed JTPA participants shall be notified of their right to use the same procedures.

§ 636.4 Grievance procedures at the employer level.

(a) *Policy.* (1) Whenever the grantee or subrecipient is an employer, it shall continue to operate or shall establish and maintain for its participants a grievance procedure relating to the terms and conditions of JTPA employment. The employer who does not have a grievance procedure may use the complaint procedure established under § 636.3. Employers shall inform participants of the procedures they are to follow.

(2) A participant who elects the grievance procedure in this section, may also pursue a complaint under