

(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

§ 636.5

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§ 636.3 where there is an alleged violation of the Act, regulations, grant or other agreement under the Act.

(b) *Equal benefits.* Where local law, personnel rules, or other applicable requirements specify procedures (including procedures for any adverse action or for termination of employment), similarly employed JTPA participants shall be notified of their right to use the same procedures, as well as JTPA procedures.

§ 636.5 Exhaustion of grantee level procedure.

(a) *Exhaustion required.* No complainant may file a complaint with the Department until the grantee level procedures specified in § 636.3 have been exhausted.

(b) *Exhaustion exceptions.* Complainants who have not exhausted the procedures at the grantee level may file the complaint at the Federal level, and the Department may accept such complaint if it determines that:

(1) The grantee or subrecipient has not acted within the time frames specified in § 636.3; or

(2) The grantee's or subrecipient's procedures are not in compliance with § 636.3; or

(3) An emergency situation exists.

§ 636.6 Complaints and investigations at the Federal level.

(a) *General; final determination of reliable and probative evidence.* Where local administrative remedies have been exhausted, section 144(c) of the Act requires that a final determination of the complaint shall be made within 120 days after the Department receives the complaint. The Department's resolution of non-criminal matters pursuant to section 144(c) of the Act consists of the final determination under § 636.8(e) of whether there is reliable and probative evidence to support the allegation or belief that a grantee or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreement under the Act.

(b) *Complaints.* (1) Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. Complaints alleging discrimination under

section 167, will be filed with the Regional Director, Office of Civil Rights (OCR). All other JTPA complaints will be filed with the appropriate Grant Officer. However, a complaint timely filed with either the Grant Officer or the Regional OCR Director shall be deemed properly filed and shall be referred (as necessary) to the appropriate office. The complaint shall be filed only after the grantee level procedures in § 636.3 have been exhausted and no later than 30 days from the date of receipt of the written decision or notice required by § 636.3. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint.

(ii) The full name and address of the respondent (the grantee or subrecipient or person against whom the complaint is made).

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

(iv) Where known, the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.

(v) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.

(vi) A copy of the final decision of the recipient or subrecipient issued pursuant to § 636.3.

(2) A complaint will be considered to have been received upon receipt by the appropriate Grant Officer. To be acceptable, the complaint must be a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the respondent an opportunity to prepare a defense. A complaint may be amended to cure defects or omissions, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date for purposes of timely filing.

(3) A complaint once filed may be withdrawn only with the consent of the Grant Officer. If the complainant fails to cooperate or is unavailable, the