



DIRECTIVE NO: 48-20
RECISSION: La Cooperativa Directive No. 15-09
TO: All La Cooperativa Subrecipients
SUBJECT: WIOA Grievance and Complaint Resolution Procedures

REFERENCES:

- Workforce Innovation and Opportunity Act (WIOA), Section 181(c)
- Title 20 Code of Federal Regulations (CFR) Sections 683.600 and 683.610
- Title 29 CFR Section 38.9

PURPOSE

This Directive provides the policy guidance and establishes the procedures regarding grievances and complaints alleging noncriminal violations of Workforce Innovation and Opportunity Act (WIOA) Title I requirements. This Directive applies to all La Cooperativa Subrecipients and supersedes La Cooperativa Directive No. 15-09 Directive, Noncriminal and Discrimination Complaints Procedures.

DEFINITIONS

Complainant – any participant or other interested or personally affected party alleging a noncriminal violation of WIOA Title I requirements.

Complaint file – a file that is maintained in a central location within each office, which includes a copy of each complaint filed along with pertinent documentation.

Compliance Review Office – the organization within the EDD that oversees the administrative resolution of WIOA programmatic complaints.

Contractor - means an entity that receives a contract as defined in 2 CFR 200.22. The term contractor, as used in WIOA, includes entities that the Act refers to as “vendors.” Additionally, it is important to note that contractors are not Subrecipients.

Contract - means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.



Days – consecutive calendar days, including weekends and holidays.

Grievance or complaint – a written expression by a party alleging a violation of WIOA Title I, regulations promulgated under WIOA, recipient grants, subgrants, or other specific agreements under WIOA.

Hearing Officer – an impartial person or group of persons that shall preside at a hearing on a grievance or complaint.

Participant – an individual who has been determined to be eligible to participate in and who is receiving services under a program authorized under WIOA.

Participant case file – either a hard copy or an electronic file.

State Review Panel – an entity within the EDD composed of representatives from EDD's Compliance Review Office, Legal Office, and Director's Office. This panel shall review and approve or disapprove decisions and recommendations regarding grievances or complaints.

Subrecipient – an entity to which a recipient awards funds and is accountable to the recipient (or higher tier Subrecipient) for the use of the funds provided. This term applies to all entities receiving WIOA funds from La Cooperativa.

POLICY

It is the policy of La Cooperativa Campesina de California (LCCDC) that complaints under WIOA should be resolved at the lowest level possible and that such complaints (with the exception of that involving discrimination) should first be filed with a designated Complaints Officer at the Subrecipient level.

Complaints may be brought by any individual or organization including, but not limited to: WIOA applicants/participants, service providers, subgrantees, collaborators, contractors, staff of LCCDC, labor unions, community-based organizations or any other interested persons.

No person, organization or agency may discharge, or in any manner discriminate or retaliate against any person, or deny any person a benefit to which that person is entitled under the provisions of the WIOA Title I regulations because such person has filed any complaint, instituted or caused to be instituted, any such proceeding or investigation, or has provided information or assisted in an investigation.

If a person experiences any instance as described above, the individual may file a complaint directly with LCCDC or the Employment Development Department (EDD).

Subrecipients must provide a copy of these grievance and complaint procedures to each

participant. These procedures must include the following:

- Notification that the participant has the right to file a grievance or complaint at any time within one year of the alleged violation.
- Instructions and timelines for filing a grievance or complaint.
- Notification that the participant has the right to receive technical assistance from the Subrecipient in filing the grievance or complaint.
- Notification that the participant may file an appeal or request a separate review by either LCCDC or the EDD if they experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.

The Subrecipient grievance and complaint procedures must be posted in a public location and made available to any interested parties or members of the public.

Where a hard copy case file is maintained, staff must include a signed copy of an acknowledgement of receipt of the grievance and complaint procedures in each participant's case file. Where an electronic case file is maintained, staff must either:

- (1) enter a case note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it, or
- (2) scan a signed copy of an acknowledgement of receipt of the grievance and complaint procedures and attach it to the participant's case file.

COMPLAINT ISSUES WHICH ARE COVERED UNDER WIOA TITLE I

Displacement [20 CFR 683.270] - A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

The employment or assignment of a WIOA customer or the filling of a position is prohibited when the employer has terminated any regular, unsubsidized employee or otherwise reduced its workforce with the intent of filling the vacancy with a WIOA customer. A WIOA customer may not be employed or assigned to a position where the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant.

The employment or assignment of a WIOA customer to a position created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation. Regular employees and program participants alleging displacement may file a complaint under these procedures.

Health and Safety [20 CFR 683.280] - Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

Workers' Compensation - To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under title I of WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.

NOTE: In the case of a complaint alleging a violation of health and safety standards by a contractor (employer), the contractor will be required to demonstrate its compliance with State and Federal regulations governing health and safety requirements for that industry [e.g., CAL/OSHA certification].

Wage and Labor Standards [20 CFR 683.275] – Individuals in on-the-job training or individuals employed in activities under title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

Terms and conditions of WIOA customer employment (On-the-Job Training, Customized training, Work Experience) - Complaints filed under this section relate only to the terms and conditions of WIOA customer employment. Typical complaints under this section include disputes over wages or working hours, working conditions, employee and/or training evaluations and disciplinary actions, including termination for cause. The responsibility for resolving the complaint rests initially with the employer and/or contractor.

If violations of WIOA, WIOA regulations, or other agreements under the Act are also alleged in the complaint, said portions of the complaint shall be processed accordingly (e.g., discrimination complaint).

SUBRECIPIENT GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES

Subrecipients must establish procedures for resolving programmatic grievances and complaints alleging violations of WIOA Title I.

Subrecipients have the responsibility to provide technical assistance to complainants, including those filing grievances or complaints against the Subrecipient. Technical assistance

includes, but is not limited to, providing instructions on how to file a complaint, and providing copies of relevant documents such as the WIOA, Federal regulations, State laws and regulations, Subrecipient procedures, and/or contracts. This does not require Subrecipients to violate any rule of confidentiality or provide legal advice.

Grievances or complaints filed directly with LCCDC will be remanded back to the Subrecipient for appropriate action unless those grievances or complaints are a result of an incident of restraint, coercion, or reprisal as a result of filing a complaint.

The procedures must meet the following criteria:

Grievances or complaints must be filed within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.

Furthermore, all Subrecipients of WIOA Title I funds must make reasonable efforts to ensure their policies and corresponding information will be understood by affected participants and individuals, including individuals with limited English proficiency. These efforts must comply with the language requirements of Title 29 CFR Section 38.9.

The Subrecipient must notify LCCDC within **24 hours of the receipt of a written WIOA complaint.** The notification should be sent to:

EEO/Compliance Officer
La Cooperativa Campesina De California
1107 – 9th St., Ste 420
Sacramento, CA 95814

Telephone Number: 916-388-2220
Fax Number: 916-388-2425

LCCDC reserves the right to intervene in the processing of any WIOA complaint at the informal resolution stage in order to assist in resolution, clarify the issues, provide technical assistance, conduct the informal resolution meeting or schedule a hearing before an impartial hearing officer in order to ensure due process and compliance with the 60 day time limit required for resolution pursuant to WIOA regulations.

Filing the Complaint

The official filing date of a grievance or complaint is the date it is received by the Subrecipient. The Subrecipient shall send a copy of the grievance or complaint to the respondent.

Hearings on any grievance or complaint shall be conducted within 30 days of the filing date of the grievance or complaint.

The grievance or complaint must be in writing, signed, and dated by the complainant. The Subrecipient should obtain the following information for all complaints. However, the absence of any of the requested information shall not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, Federal regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the start of the hearing. Grievances or complaints may not be amended to add new issues unless the complainant withdraws and resubmits the complaint. However, the one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision.

Informal Resolution

The Subrecipient shall notify the complainant and respondent of the opportunity for an informal resolution. **The Subrecipient shall review the grievance or complaint and notify the complainant of the opportunity for an informal resolution within 10 days of receipt.**

Subrecipients must make a good faith effort to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either the complainant or respondent to exert a good faith effort shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered a part of the facts to be judged during the resolution process. The Subrecipient must assure that all grievances or complaints not resolved informally or not withdrawn are given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

If a complainant and respondent reach an informal resolution, a notice of resolution must be sent to the complainant and entered into the complaint file. If the informal resolution leads to an impasse between the complainant and respondent, the complainant may choose to not proceed to a hearing. If this occurs, a notice of impasse must be sent to the complainant and entered into the complaint file. **In the event of resolution or impasse, the Subrecipient must request the complainant to provide a written withdrawal of the complaint within 10 days of receipt of the notice of resolution or impasse.**

Notice of Hearing

The Subrecipient must notify the complainant and respondent in writing of the hearing at least 10 days prior to the date of the hearing. The 10-day notice period may be shortened with written consent from both parties. The notice shall be in writing and contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violation(s). The statement must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

Conduct of Hearing

An impartial hearing officer shall conduct the hearing. ***All members of the Subrecipient's Board and the Subrecipient's Executive Director are considered interested parties and cannot conduct an impartial hearing.*** It is suggested that the Subrecipient seek impartial hearing officers that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint.

The hearing must be conducted in an informal manner and not be bound by strict rules of evidence. All hearings must follow any applicable procedures established by the Subrecipient. Both parties have the right to be represented at their own cost, present written and oral testimony, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing must be recorded electronically or by a court reporter.

Decision of Hearing Officer

The hearing officer shall provide a written decision to the Subrecipient. **The Subrecipient shall issue that decision in writing to the complainant, the respondent, and LCCDC within 60 days of the official filing date.**

The decision shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The hearing officer's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.

- **The opportunity to request an appeal of the decision by the State Review Panel within 10 days of receipt of the decision.**

APPEALS AND REVIEW OF DECISIONS BY THE STATE

A complainant who is participating in a LCCDC program funded by EDD may file an appeal or a review of a Subrecipient decision at the State level for any of the following reasons:

- An adverse decision was issued at the Subrecipient level
- A hearing was not provided at the Subrecipient level
- The Hearing Officer did not issue a decision within the 60-day time limit
- As a result of filing a grievance or complaint, the complainant experienced an incident(s) of restraint, coercion, or reprisal at the Subrecipient level

Appeals or reviews of decisions are to be sent to:

Chief, Compliance Review Office, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

A copy of the appeal or request for review must be sent to LCCDC simultaneously.

The official filing date of the grievance or complaint is the date it is received by the Compliance Review Office. **The filing shall be considered a request for a hearing and the State Review Panel shall issue a written decision within 60 days of the official filing date.** The Compliance Review Office shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, dated, and signed by the complainant. The State will attempt to obtain the following information for all complaints. However, the absence of any of the requested information will not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, Federal regulations, State laws or regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The Chief of the Compliance Review Office or a designee shall review the grievance or complaint and notify the complainant and respondent of the opportunity for an informal resolution within 10 days of receipt. If the State cannot resolve the grievance or complaint informally, a hearing will be held.

Adverse Decisions Issued at the Subrecipient Level: The appeal or request for EDD review must be in writing, signed, and dated by the complainant. The State will attempt to obtain the following information. However, the absence of any of the requested information will not be used as a basis for dismissing the appeal or request for EDD review.

- The full name, telephone number, and mailing address of the complainant, Subrecipient, and other respondent, if applicable.
- A statement of the basis of the appeal or request for EDD review.
- Copies of relevant documents, such as the complaint filed with the Subrecipient and their decision, if any was received.
- The date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

Appeals must be filed or postmarked within 10 days from the date on which the complainant received an adverse decision from the Subrecipient.

Complainants must submit appeals or requests for EDD review to the following address:

Chief, Compliance Review Office, MIC 22-M
Employment Development Department
P.O. Box 826880 Sacramento, CA 94280-0001

If an evidentiary hearing was held at the Subrecipient level, the Compliance Review Office shall request the record of the hearing from the Subrecipient and the State Review Panel shall review the record without scheduling an additional hearing. The Subrecipient is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. Within 10 days of receipt of the grievance or complaint, the Compliance Review Office shall notify the complainant and respondent of the opportunity for an informal resolution and proceed with the informal resolution process.

Hearings Not Provided at the Subrecipient Level or instances of restraint, coercion, or reprisal as a result of filing a grievance or complaint: If an evidentiary hearing was not held or a participant was restrained from filing a complaint, the Compliance Review Office shall instruct the Subrecipient to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If the Subrecipient refuses to hold a hearing within the required timeframe, the EDD shall schedule an evidentiary hearing before an impartial hearing officer within the 30-day timeframe.

Requests for EDD review must be filed or postmarked within 15 days from either of the following:

- The date on which a complainant should have received a decision regarding

a Subrecipient filed complaint, which is defined as five days from the date the decision was due; or

- the date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

Hearings Held at the State Level

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of the grievance or complaint. The complainant and respondent shall be notified in writing of the hearing at least 10 days prior to the hearing. The hearing shall be conducted by an impartial officer. The hearing notice shall contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

The EDD hearing shall be conducted in an informal manner without the application of strict rules of evidence. Both parties shall have the right to be represented, present written and/or oral testimony under oath and arguments, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing shall be recorded either electronically or by a court reporter.

Following completion of the EDD hearing, the EDD hearing officer shall make a written recommendation to the State Review Panel. The hearing officer's recommendation shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The EDD hearing officer's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.

Review of Decisions by the State Review Panel

The State Review Panel shall not conduct a new evidentiary hearing but shall review the record established by either the Subrecipient level hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained within the record. The State Review Panel may accept, reject, or modify the EDD hearing officer's recommendation or the decision of the Subrecipient, and shall issue a written decision to the

concerned parties within 60 days of the EDD's receipt of the Subrecipient level appeal, request for EDD review, or grievance or complaint.

The State Review Panel shall send a written decision to both the complainant and the respondent by certified mail. The decision shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The State Review Panel's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.
- A notice of the right of either party to file an appeal with the U.S. Secretary of Labor.

FEDERAL LEVEL APPEAL PROCESS

If the State Review Panel has issued an adverse decision regarding a grievance or complaint, or has not issued a decision within 60 days of receipt of a Subrecipient level appeal, request for EDD review, or grievance or complaint, the complainant may file an appeal with the U. S. Secretary of Labor.

Appeals of an adverse decision must be filed within 60 days of receipt of the adverse decision by the State Review Panel. In cases where the State Review Panel did not issue a decision, the complainant must file an appeal within 120 days of either of the following:

- The date on which the complainant filed the appeal of a Subrecipient level decision or request for EDD review with the State.
- The date on which the complainant filed the grievance or complaint with the State.

All appeals to the Secretary of Labor must be sent via certified mail with return receipts requested. Copies of the appeal must simultaneously be provided to the Employment and Training Administration (ETA) Regional Administrator and the respondent. The mailing addresses are as follows:

U. S. Secretary of labor

Secretary of Labor
Attn: Assistant Secretary of ETA
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

ETA Regional Administrator

Regional Administrator
Employment and Training Administration
U.S. Department of Labor
P.O. Box 193767
San Francisco, CA 94119-3767

The Secretary shall issue a final determination no later than 120 days after receiving the appeal.

REMEDIES

Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to the following:

- Suspension or termination of payments under WIOA Title I.
- Prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I.
- Reinstatement of an employee, where applicable, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment.
- Other equitable relief, where appropriate.

None of the above shall be construed to prohibit a complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of WIOA Title I.

ACTION:

La Cooperativa and its subrecipients shall follow this directive which shall remain in effect until such time that a revision is required.

If you have any questions regarding this Directive, please contact Marina Tapia at 916-388-2224 or e-mail at mtapia@lacooperativa.org.

DocuSigned by:

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Marco Lizarraga
Executive Director