

The letters S, M, A, R, and T are arranged vertically. Each letter is inside a circle. The circles are connected by a dashed line that starts at the top left and ends at the bottom left with a small downward-pointing arrow. The background features a pattern of overlapping circles in light blue and orange.

S
M
A
R
T

Strategies

Monitoring

Accountability

Risk Mitigation

Transparency

Grievances, and Incident Reporting

SMART 4.0

Hosted by the Office of Grants Management
Division of Compliance Assistance and Policy
Employment and Training Administration
U.S. Department of Labor.

SMART 4.0 Training Series

- The training modules are focused on: **S**trategies for sound grant management that includes **M**onitoring, **A**ccountability, **R**isk mitigation and **T**ransparency.
- **4.0 focuses on Risks Identification and SMART Practices!**

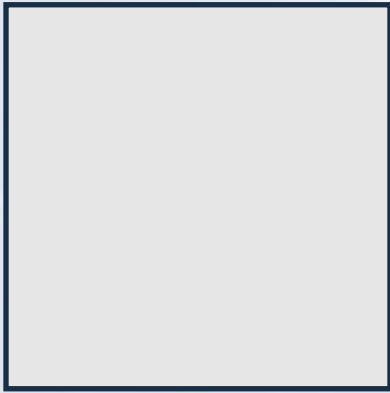


Disclaimer

SMART 4.0 is part of the catalog of SMART grant management tools. This conference and its materials should be viewed primarily as a support resource. It is not intended to be comprehensive but rather to provide an understanding of 2 CFR 200, 2 CFR 2900, and the management of ETA grants. The use of these SMART 4.0 modules does not ensure compliance. Any omission of an applicable Federal requirement does not waive a grant recipient or subrecipient's responsibility to comply with that requirement.

If, in any instance, there appears to be a conflict with the program statute, Federal regulations, or OMB guidance, such conflict must be resolved in favor of the statute, Federal regulations, or OMB guidance. All the information in the SMART 4.0 modules may not be reproduced or distributed for a fee or profit.

Today's Speakers



First Last

Occupation/Title
Company Name

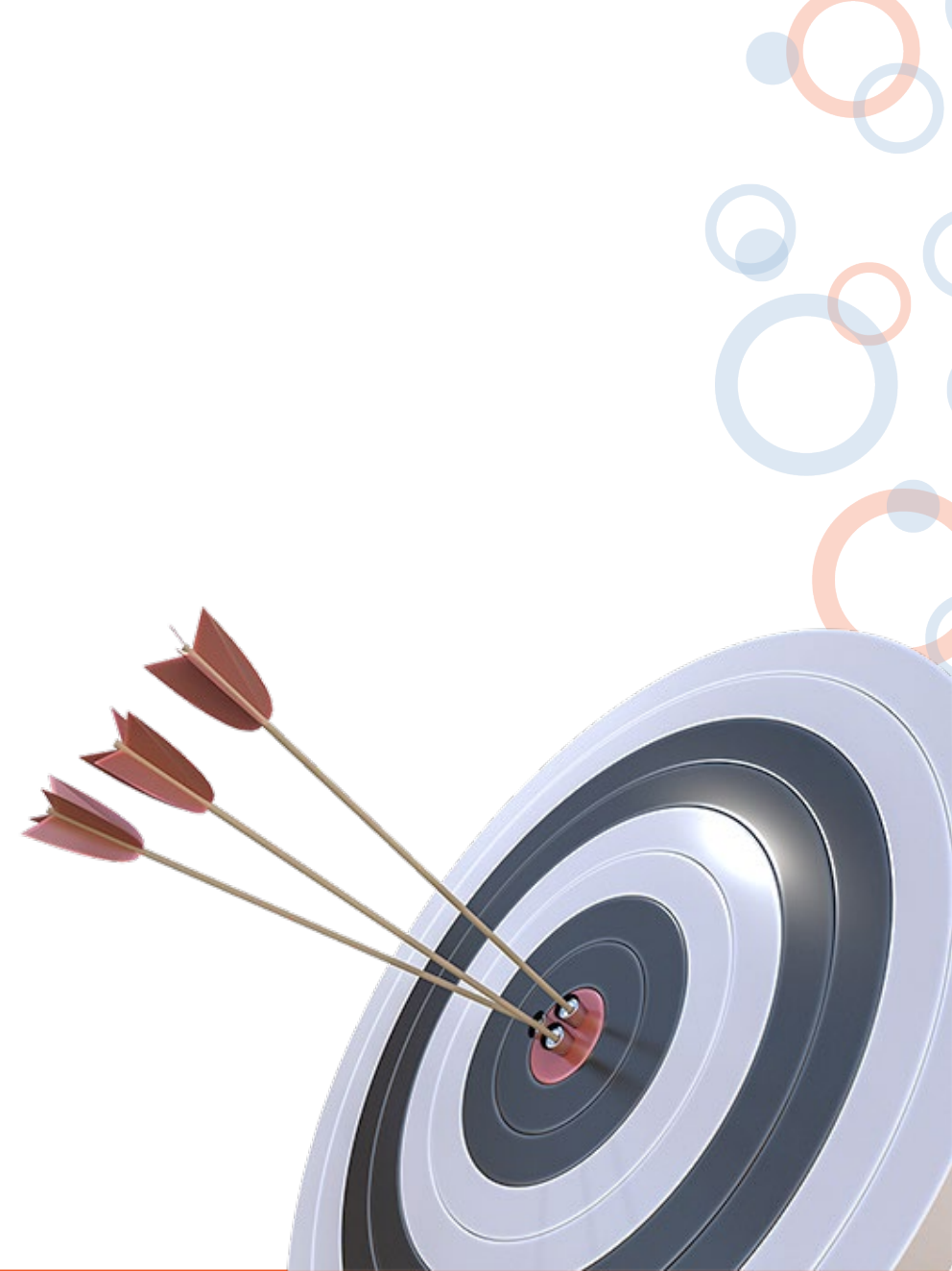


First Last

Occupation/Title
Company Name

Module Overview

- Types of Complaints or Grievances.
 - Discrimination/EEO.
 - › WIOA.
 - › Other Programs.
 - Program Related.
 - Incidents - Fraud, Waste, and Abuse.
- Reporting.
 - Program Related.
 - Incident Reporting.
- Risk and SMART Practices.





Complaints and Grievances



Types of Complaints and Grievances

Types of Complaints & Grievances:

- **Discrimination** complaints can be based on:
 - National origin.
 - Race.
 - Sex.
 - Ethnicity.
 - Religion.
 - Sexual orientation.
 - English proficiency.
 - Etc.
- **Program-related** complaints and grievances:
 - Participants.
 - Service providers.
 - Procurement related parties – bidders or respondents.
 - Employees.
 - Other stakeholders or affected parties.
- **Fraud, waste, and abuse** complaints.

Discrimination

Statutes Prohibit Discrimination

Among the many relevant statutes are:

- Title VI and Title VII of the Civil Rights Act of 1964.
- Title IX of the Education Amendments of 1972.
- Section 504 of the Rehabilitation Act of 1973.
- Age Discrimination Act of 1975.
- The Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008.
- WIOA sec. 188.

DOL's Adoption

- 29 CFR Parts 31, 32, 33, 35 and 38.
- WIOA sec. 188 (29 CFR Part 38).

Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Labor.”

29 CFR Part 31 – NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR - EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

Rehabilitation Act of 1973

“No qualified handicapped individual shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance from the Department of Labor.”

29 PART 32 – NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Age Discrimination Act of 1975

“The Act prohibits discrimination on the basis of age by recipients of Federal financial assistance and in federally assisted programs or activities is prohibited.”

29 CFR Part 35 – NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR.

Other Prohibitions on Discrimination

■ Executive Order 13160.

- Nondiscrimination 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 13985.

- Prohibit against discrimination and unfair disparities.

■ Executive Order 13166.

- Improving Access to Services for Persons With Limited English Proficiency.

■ Regulations and Policies.

- EEOC's Management Directive 110 Complaint Processing.
- EEOC's Management Directive 715 Affirmative Action Programs.
- Harassing Conduct Policy Statement 2013.
- DOL's Policy on EEO 2013.



WIOA Complaints and Grievances

WIOA Sec. 188 (29 CFR Part 38)

Prohibited Discrimination

- The Final Rule provides coverage prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status.
- Updated WIOA Section 188, the regulations became effective on January 3, 2017.
- Applicable to:
 - Any recipient of WIOA Title I 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.
- The Civil Rights Center (CRC) of the U.S. Department of Labor enforces these provisions (www.dol.gov/crc).

WIOA Complaint 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 (2)

- Identify staff to manage the process:
 - Equal Opportunity officer or,
 - Complaints officer or,
 - Authorized decision maker.
- Establish Timelines.
- Prescribed method of investigating the complaint.
- Final resolution and appeal rights.

WIOA Complaints & Grievances Procedures (3)

29 CFR 38.72

- Provide written notice to complainant acknowledging receipt of complaint and right to representation.
- Provide written statement summarizing issues raised:
 - Issue(s) accepted? If rejected, reasons for rejection.
 - Period for fact finding, investigation, resolution.
- Issue Notice of Final Action within 90 days from date of filing.
- If lacking jurisdiction, refer to appropriate agency.

WIOA Complaints & Grievances Procedures

(4) Complainant Responsibilities

- May file at state/local level or directly with Civil Rights Center(CRC) ([29 CFR.38.69\(b\)](#) and [29 CFR 38.70\(e\)](#)).
- File within 180 days of incident (only CRC may extend) ([29 CFR 38.69\(c\)](#)).
- 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 ([29 CFR 38.7676](#)).
- Employment discrimination and civil rights cases are referred to the Equal Employment Opportunity Commission (EEOC) ([29 CFR 38.81\(b\)](#)).
- Age discrimination complaints are referred to Federal Mediation and Conciliation Service ([29 CFR 28.81\(a\)](#)).
 - If not mediated within 60 days, goes to CRC.

WIOA Requirements – States (1)

Methods of Administration (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.

WIOA Requirements – States (2)

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 Requirements – LWIAs

[20 CFR 683.600\(c\)](#) Local Workforce Investment Areas (LWIAs) must have procedures that 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 Requirements - Direct Award Recipients

[20 CFR 683.600\(e\)](#)

Award recipients of nonformula or competitive grants authorized under WIOA must have procedures that 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 filing date.

WIOA Resolution System Components (1)

Policies and Procedures for WIOA complaints.

Provide proper notifications:

- Inform participants and other interested parties of the process and their acknowledgment of receipt of procedures.
- Acknowledging receipt of complaint.
- Written notice of final resolution, including:
 - Statement of facts, decisions and rationale, and corrective actions or remedies, if any.
- Appeal rights and procedures.

WIOA Resolution System Components (2)

If reasonable cause is determined by recipient 29 CFR 38.87

- 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 29 CFR 38.72(b)(5)

- 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 the Civil Rights Center (CRC) within 30 days of the date on which the notice is received if dissatisfied with the decision.

DOL's Role (1)

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/hearing.

Either party may file appeal to Secretary within 120 days of date of original complaint or appeal.

Party to which state decision is adverse may appeal to Secretary within 60 days of decision.

Appeal of non-designation of local areas if filed within 30 days of denial of designation.

Appeal by local area within 30 days if state revokes local plan or imposes reorganization plan

DOL's Role (2)

[20 CFR 683.610](#)

Scope of DOL's review limited to:

- Investigations and impositions of remedies.
- Focused on determination.
- Violations of requirements.
 - Were proper procedures followed?

Must follow the internal appeals process before appealing to the USDOL.

Check Your Knowledge in 60 Seconds

Answer True or False:

1. Every WIOA Title I-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.





Other Program Complaints & Grievances

Wagner-Peyser Program

20 CFR 658.400

Employment Service (ES) and Employment-Related Law Complaint System (Complaint System).

- The Complaint system:
 - Handles complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations.
 - Accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws.
- The State administrator is responsible for the complaint system.

Wagner Peyser – State Procedures (1)

- State Workforce Administrators assign complaints received to a trained complaint system representative.
- Ensure that the complaint system representative documents any actions taken on the complaint, including referrals, records of calls and written correspondences.
- ES office manager must transmit an electronic copy of the quarterly complaint system log.
- ES must assist the complainant to obtain appropriate services.

Wagner Peyser – State Procedures (2)

- Must explain the complaint system to the complainant.
- Take all information necessary in writing to investigate the complaint.
- State administrator must establish a referral system to manage complaints within state.
- Follow-up on unresolved complaints.

Wagner-Peyser Complaints– State Procedures (3)

- Complaints filed at the local and State level must include:
 - The name of the complainant;
 - The name of the respondent (employer or State agency);
 - The date the complaint is filed;
 - Whether the complaint is by or on behalf of a migrant and seasonal farmworker (MSFW);
 - Whether the complaint concerns an employment-related law or the ES regulations; and
 - The action taken and whether the complaint has been resolved, including informally. The complaint log also must include action taken on apparent violations.

SCSEP

- Recipients must provide participants an opportunity to file a complaint or grievance without fear or reprisal.
- Complaint filed must be regarding:
 - Dissatisfaction with services.
 - Instances of denied service.

Check Your Knowledge in 60 Seconds

Answer 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.





Program- Related Complaints

General Procedures (1)

- Grant recipients must establish and maintain a procedure for program related complaints and grievances.
- Procedures must outline actions to resolve complaints between recipient and its employees, subrecipients, applicants and participants.
- Ensure that information pertaining to the use of the complaint system is publicized.
 - Recipients are required to provide a copy of the complaint policies to staff and participants.

General Procedures (2)

- Written submission of a complaint form.
- Include informal resolution of complaints.
- Provide timeframes for submission, investigation, resolutions, follow up etc.
- Follow up on unresolved complaints.
- Include an appeal process.



Fraud, Waste, and Abuse Complaints

Definitions

- **Fraud, misfeasance, nonfeasance, or malfeasance** – Any alleged deliberate act which may violate federal statutes or regulations.
- **Misapplication of funds** – Any deliberate use of funds, assets, or property not authorized or provided for by legislation or regulations, grants or contracts.
- **Gross mismanagement** – Actions or situations arising out of management ineptitude or oversight and leading to a major violation of the legislative process, regulations, or contract/grant provisions.
- **Employee/Participant Misconduct** – Actions occurring during or outside work hours that reflect negatively on the organization or its mission.
 - For example: conflict of interest or the appearance of conflict of interest.

[Training and Employment Guidance Letter \(TEGL\) 2-12](#)

Disclosure Requirement

Mandatory disclosures [2 CFR 200.113](#).

The grant recipient 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 [2 CFR 200.338](#) Remedies for noncompliance, including suspension or debarment. (See also [2 CFR Part 180](#) and 31 U.S.C. 3321).

Fraud Related Statutes

- Embezzlement 18 USC 641.
- False claims 18 USC 287.
- False statements 18 USC 1001.
- Forgery 18 USC 2314 and 2315.
- Obstruction of Federal audit 18 USC 151.
- Theft and bribery 18 USC 666.



Grant Fraud – Office of the Inspector General (OIG)

Common activities to be aware of:

- **Conflict of interest** occurs when one party has an interest in a transaction and may benefit from it.
- **Materially false statements** can occur when the grant recipient submits misleading information to the Federal awarding agency.
- **Embezzlement & Theft** which is one of the most common issues facing grant recipients.

Differences: Fraud vs. Waste and Abuse

Fraud.

- Fraud actions violates a statute/ laws, always illegal.
- Typically for personal gain, focuses on falsehoods.

Waste and abuse.

- Misuse and not always to benefit self.
- Not always illegal.
- Goes against the prudent person theory test.



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Incident Reporting

Grant Recipient's Responsibility

- Grant recipients must report **information** and **complaints** on **fraud, waste, abuse** or **other criminal activity** **immediately** through the Department's Incident Reporting System.
- Other complaints may be handled under the procedures set forth by the local area, State, and direct recipient grievance procedures or through the Department's Incident Reporting System.

WHEN IN DOUBT, FILE A REPORT!

Where to Report?

- DOL Hotline - Office of Inspector General (OIG).
 - 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.
 - In all cases DOL must be notified.
 - Cannot prevent anyone from reporting incident directly to OIG.

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](#).

Investigative Process – OIG & ETA

- 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.
 - ETA prepares report on findings, recommendations and conclusions which is submitted to OIG.
- Follow-up or corrective actions completed.
- When OIG accepts final resolution, the incident is closed.

Implement an Incident Reporting System

- Follow [TEGL 2-12](#) instructions.
- Establish procedures for incident reporting:
 - Identify types of incidents to be reported.
 - Train staff on TEGL and organization's 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 incident report within one working day.

**DOL Hotline—Office of
Inspector General**
1-800-347-3756 or (202) 693-6999
**Contact ETA Regional Office for
assistance.**

Check Your Knowledge in 60 Seconds

Answer True or False:

1. An Incident Report is filed for possible criminal activities while a complaint usually relates to a possible program violation.
2. The recipient must file an Incident Report only for known criminal activities.
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.
4. Incidents can be reported and channeled through a state or local system if that process is able to resolve the matter.
5. A robust internal control system will help to prevent or detect potential criminal activity.





Risks and SMART Practices

Common Risks

- Lack of formalized system for handling complaints.
- Not having a Complaint & Grievance policy or disclosure statement in the eligibility or intake document.
- Not having a formal tracking log to handle complaints.
- Not following up or issuing a decision on an original complaint or does not issue a decision on an appeal/hearing.

SMART Practices

- Develop policies, procedures, administrative standards to include:
 - Reporting fraud, waste and abuse or other criminal activities.
 - Addressing Discrimination/EEO and program related grievances and complaints.
 - Internal appeal process.
- Ensure participants, subrecipients and service providers are aware of requirements.
- Train staff on ethics, incident report policies and procedures.
- Report promptly any incidents.

Questions?



Testing For Compliance – Core Monitoring Guide

The purpose of ETA monitoring is to assess compliance using the Core Monitoring Guide (CMG). Here is a list of indicators that were discussed during the module's topic.

- **Objective 2.i: Civil Rights, Complaints, Grievances & Incident Reporting.**

- The grant recipient has a system in place to ensure the Federal Civil Rights complaints, program complaints, grievances, and incidents are handled properly and in accordance with Federal requirements.
 - › **Indicator 2.i.4: Grievance and Complaint System.**
 - › **Indicator 2.i.5: Incident Reporting.**

- Also, consider utilizing the entire Core Monitoring Guide as a resource.

Complaints and Grievances Resources

- [Core Monitoring Guide PDF](#)
 - Executive Order 13160
 - Executive Order 13145
 - Executive Order 13166
 - Technical and Employment Guidance Letter [TEGL 2-12](#):
- Department of Labor Exceptions [2 CFR Part 2900](#)
 - [2 CFR 2900.2](#)
 - [2 CFR 2900.20](#)
 - [2 CFR 2900.21](#)
 - [2 CFR 2900.22](#)
 - WIOA Provisions [20 CFR Part 683](#)
 - [20 CFR 683.420](#)
 - [20 CFR 683.730- 2 CFR 683.750](#)
- [Uniform Guidance Crosswalk PDF](#)
 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
 - [2 CFR Part 200](#)
 - 2 CFR 200.113
 - 2 CFR 200.338

Thank You!