

**Workforce Development System
Technical Advisory #21-04
June 25, 2021**

To: Workforce Development Community

SUBJECT: Monitoring – New York State Department of Labor (NYSDOL) Workforce Innovation and Opportunity Act (WIOA) Monitoring/Oversight of and Provision of Technical Assistance to Local Workforce Development Boards (LWDBs) and LWDB Responsibilities Relating to NYSDOL’s Monitoring Process

PURPOSE

Outline NYSDOL’s process for WIOA remote and onsite monitoring, oversight, and provision of technical assistance to LWDBs, Grant Recipients, Local Governmental Grant Subrecipients, and incorporated Fiscal Agents (Reviewees); and communicate NYSDOL’s expectations for completion of successful monitoring.

This Workforce Development System Technical Advisory (WDS TA) rescinds and replaces WDS TA #16-8, “Monitoring – Local Workforce Development Board (LWDB) Responsibilities Relating to New York State Department of Labor Fiscal Monitoring and Oversight” (09/09/2016) and WDS TA #19-5, “Monitoring – Local Workforce Development Board (LWDB) Responsibilities” (10/21/2019).

For information related to LWDB responsibilities for local subrecipient oversight and monitoring, please see the companion monitoring WDS TA #21-05: Monitoring – Remote and/or Onsite Subrecipient Oversight and Monitoring Responsibilities for Chief Elected Officials (CEOs) and Local Workforce Development Boards (LWDBs).

POLICY

NYSDOL’s remote and onsite monitoring, oversight, and provision of technical assistance activities are led by NYSDOL’s Quality Assurance (QA) staff and shall be performed collaboratively with the Reviewees. NYSDOL and local staff shall work together to ensure quality program activities are provided, verify fiscal integrity and compliance, and help the Reviewee meet performance targets.

ACTION

Reviewees shall actively participate in NYSDOL’s remote and onsite Program and Fiscal monitoring, oversight, and technical assistance process to make the process as

efficient as possible. Reviewees will provide NYSDOL with timely access to information requested and documentation pertinent to monitoring duties.

REFERENCES

WIOA Sections 129(b)(1)(E), 134(a)(2)(B)(iv), and 184(a)

WIOA Regulations 20 CFR §683

[WDS TA #21-05: Monitoring](#) – Remote and/or Onsite Subrecipient Oversight and Monitoring Responsibilities for Chief Elected Officials (CEOs) and Local Workforce Development Boards (LWDBs)

[WDS TA #18-5](#) – Securing and protecting Personally Identifiable Information (PII) and Personal, Private and Sensitive Information (PPSI) within the New York State Workforce Development System

[NYSDOL Monitoring Guides and Work Papers](#)

[Trade Adjustment Assistance Reauthorization Act of 2015](#)

INQUIRIES

Please direct all questions to your QA Program or Financial Oversight and Technical Assistance (FOTA) Representative.

ATTACHMENTS

Attachment A: New York State Department of Labor (NYSDOL) Remote and Onsite Monitoring and Oversight Activities

Attachment B: Monitoring Reports and Resolution Process

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NEW YORK STATE DEPARTMENT OF LABOR (NYSDOL) REMOTE AND ONSITE MONITORING AND OVERSIGHT ACTIVITIES

NYSDOL Quality Assurance (QA) staff conduct remote and onsite Program and Fiscal monitoring of certain Local Workforce Development Area (LWDA) programs and procedures. The purpose of such monitoring is to ensure provision of quality Workforce Innovation and Opportunity Act (WIOA) programs, compliance with applicable federal and State requirements, and to help LWDA's meet performance goals.

The following is QA's Program review schedule:

<u>Review</u>	<u>Frequency</u>
Desk Reviews	Quarterly
WIOA Adult	Annually
WIOA Dislocated Worker	Annually
WIOA Youth	Annually
Trade Act (TAA)	Annually

The following is the QA Financial Oversight and Technical Assistance (FOTA) Unit's review schedule:

<u>Review</u>	<u>Frequency</u>
Desk Reviews – Financial Reports	Monthly
Financial Management/Cost Allocation	Annually
Program Year Closeout	Annually
Sub-recipient Monitoring	Annually
Procurement	Biennially
Property Management	Biennially

It is important to note that while separate Program and Fiscal monitoring is conducted, there is ongoing communication between the Program and Fiscal monitors regarding the Local Workforce Development Board's (LWDB) status and results of monitoring reviews. Additionally, joint Program-Fiscal monitoring reviews are conducted when necessary to holistically address complex issues.

QA's remote and onsite monitoring activities include the following:

- Complete and share Desk Reviews with LWDBs and provide technical assistance;

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- Perform remote or onsite monitoring reviews in accordance with the schedule above. Reviews include entrance and exit meetings, conference calls, and ongoing technical assistance;
- Issue Report Letters;
- Review/approve LWDB responses and develop Corrective Action Plans (CAPs); and
- Review/approve resolution of Findings.

Definitions

Desk Reviews

A Desk Review of a LWDB is conducted to detect current issues that can be addressed with technical assistance prior to formal remote or onsite monitoring. The Desk Review is an informal process through which staff shares the completed Desk Review with the LWDB and provides additional feedback via emails and phone calls, as needed.

QA's Program desk reviews are conducted quarterly. The reviews include but are not limited to, customers with un-ended services, current levels of services provided, provision of the fourteen WIOA Youth program elements, and LWDB compliance with the "Sunshine Provision."

QA's FOTA desk reviews are conducted monthly. The reviews include, but are not limited to, verifying compliance with spending requirements, monthly cash on hand rules, review of expenditure projections, and compliance with first-in first-out spending requirements.

Exit Meetings and Conference Calls

Exit Meetings and follow up conference calls are included in the QA monitoring process. QA staff, the LWDB Executive Director, and local staff will participate in an exit conference at the conclusion of the remote or onsite monitoring review. The exit conference may be held either remotely or onsite.

The term "finding" is used to identify areas where compliance requirements must be addressed through a required action. The term "technical assistance observation" (TAO) is applied to situations that merit attention because they negatively impact services and performance and if unaddressed, could lead to a finding.

"Recommendations" are actions NYSDOL will suggest a LWDB can take to rectify a TAO.

During the exit meeting, all potential findings are discussed with the LWDB Executive Director and local staff in attendance. QA staff will include, in the final report, information provided by the LWDB Executive Director and local staff to support resolution of the potential findings. If additional findings or issues are discovered after the exit conference, NYSDOL will notify the LWDB Executive Director and appropriate

local staff of the additional findings and provide an opportunity for additional discussion via conference call.

Monitoring Reviews

Monitoring reviews, whether conducted remotely or onsite, are formal monitoring activities that result in written report letters issued to the LWDB. LWDBs shall assist QA staff in conducting the reviews by participating in any necessary monitoring activities and ensuring access to Program and Fiscal records, local program personnel, appropriate workspace, and equipment, if necessary.

As part of remote monitoring reviews, LWDBs will be required to submit requested documentation to QA staff. QA staff will provide the LWDBs with a list of required documentation at the beginning of the review; however, additional documentation may be needed to complete the review. Any documentation submitted by the LWDB must safeguard customers' Personally Identifiable Information (PII). This includes encrypting documents or removal of PII before submitting. Please follow the most recently posted NYSDOL Workforce Development System Technical Advisory on protecting PII.

Technical Assistance Activities

QA staff is committed to providing Technical Assistance (TA) to WIOA programs at the local level. The goals of TA include helping LWDBs achieve positive performance outcomes, maintain One-Stop Operating System (OSOS) data integrity, and help identify potential fiscal and programmatic system vulnerabilities. TA is ongoing and can be provided remotely or onsite. More in-depth TA is available upon request and can include video conferences, WebEx training, and onsite visits.

MONITORING REPORTS AND RESOLUTION PROCESS

Reports

Upon completion of a formal monitoring review, New York State Department of Labor (NYSDOL) Quality Assurance (QA) staff will issue a written report letter addressed to the Local Workforce Development Board (LWDB) Executive Director summarizing the results of the review. The letter may contain findings (including questioned or potentially disallowed costs) and required actions, and/or Technical Assistance Observations (TAOs) and recommendations.

The report letters will include required action to be taken by the LWDB and local staff to address all findings. The required action may include, but is not limited to:

- Development or revision of local policy or agreements;
- Updating One-Stop Operating System (OSOS) data entered;
- Correction of cost allocations or reconciliations;
- Refunding or adjustments of disallowed costs; and
- Additional training for local Program or Fiscal staff.

The report letter may also contain information provided by the LWDB Executive Director and/or local staff after the exit conference and before completion of the report letter if it addresses findings or TAOs.

QA staff will make every effort to issue the report letter within forty-five (45) calendar days of the completion of the exit conference. If the release of the letter is delayed, QA staff will notify the LWDB Executive Director with an updated timeline.

Responses/Corrective Action Plans (CAPs)

If the report letter includes unresolved findings, the LWDB will have forty-five (45) calendar days from the date of the report letter to provide a written response. The response should include assurance or evidence that the finding has been corrected.

If an LWDB needs more time to draft a response, the LWDB Director must send an extension request to the appropriate QA staff as soon as possible, explaining the reason for the requested extension and the anticipated revised response date. Extension requests will be reviewed on a case-by-case basis.

Depending on the nature and severity of the issues disclosed, it may be necessary for the LWDB to submit a formal CAP to be submitted with a timeline for completion as part of this response.

QA staff will review the response to the report, and will provide written notification to the LWDB and advise if the findings are resolved and/or if its CAP is adequate. If no

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response is received from the LWDB, or the response and/or its CAP does not satisfactorily address and resolve the issue(s) in question, it will then be necessary to commence the Division of Employment and Workforce Solutions (DEWS)-QA dispute resolution process, which is described in the next section of this attachment. Additionally, if it is found that progress is not being made on the CAP timeline that was submitted and approved, the DEWS-QA dispute resolution process will commence.

Dispute Resolution

A. Initial Determination:

QA staff will provide written notification via Certified Mail, in the form of an Initial Determination letter addressed to the Chief Elected Official (CEO) Grant Recipient (with a copy to the LWDB Executive Director) indicating one or more of the following:

1. No response was received from the entity; or
2. The entity's response and/or its CAP was inadequate; or
3. The entity has not made progress on the CAP timeline that was submitted and approved.

Within thirty (30) calendar days of the date of the issuance of the Initial Determination letter, the CEO Grant Recipient, or its designee, shall submit a written response. The written response shall include all necessary supporting documentation.

B. Final Determination:

Within sixty (60) calendar days after the date of issuance of the Initial Determination (plus any approved extension), a Final Determination letter shall be issued via Certified Mail to the CEO Grant Recipient with a copy to the LWDB Executive Director.

As applicable, this letter shall:

1. Identify both allowed and disallowed costs (if applicable);
2. Review for approval, corrective actions taken, or planned to resolve administrative findings;
3. Identify any remaining unresolved administrative findings, with corrective action required within thirty (30) calendar days from the date of issuance of the Final Determination;
4. Note that if disallowed costs remain after the corrective action period, the Final Determination will establish a debt against the CEO Grant Recipient for the disallowed amount, and interest shall be charged from the date of delivery of the Final Determination letter; and

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5. Advise that should the CEO Grant Recipient dispute any finding(s), it has thirty (30) calendar days from the date of issuance of the Final Determination to request an administrative hearing. This hearing shall take place before an independent hearing officer from NYSDOL's Administrative Adjudication Unit.

If administrative findings remain unresolved after the timeline specified in the Final Determination and no hearing is requested within this timeline (or a hearing is requested but the findings are upheld by the independent hearing officer), the Governor shall impose Workforce Innovation and Opportunity Act (WIOA) required sanctions.

Note that fiscal sanctions for programmatic findings without an associated fiscal finding are rare.

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