New York State Department of Labor
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Workforce Development System
Technical Advisory # 19-5
October 21, 2019

TO: Workforce Development Community

SUBJECT: Monitoring – Local Workforce Development Board (LWDB) Responsibilities Relating to New York State Department of Labor (NYSDOL) Program Monitoring/Oversight and Technical Assistance

PURPOSE

Communicate the responsibilities of LWDB Grant Recipients, Local Governmental Grant Subrecipients, and incorporated Fiscal Agents regarding NYSDOL's process for Workforce Innovation and Opportunity Act (WIOA) Program monitoring/oversight and the provision of technical assistance.

For information on LWDBs responsibilities related to NYSDOLs Fiscal monitoring of WIOA, please see the companion monitoring WDS-TA #16-8: Monitoring – Local Workforce Development Board (LWDB) Responsibilities Relating to New York State Department of Labor Fiscal Monitoring and Oversight

For information related to LWDBs responsibilities for local subrecipient oversight and monitoring, please see the companion monitoring WDS TA #19-4: Monitoring – Subrecipient Oversight and Monitoring Responsibilities for Chief Elected Officials (CEOs) and Local Workforce Development Boards (LWDBs)

POLICY

Program monitoring/oversight and provision of technical assistance activities carried out by NYSDOL's Quality Assurance (QA) staff shall be carried out collaboratively. NYSDOL and local staff shall fully participate in this process to ensure appropriate program activities and federal compliance, and assist in achieving positive program performance.

ACTION

LWDBs, Grant Recipients, Local Governmental Grant Subrecipients and incorporated Fiscal Agents shall actively participate in monitoring/oversight and technical assistance of local programs initiated by QA staff. This includes ensuring timely access to information and documentation pertinent to monitoring/oversight duties and the provision of technical assistance. All program monitoring guides can be found on the

NYSDOL website at https://labor.ny.gov/workforcenypartners/wioa/wioa-monitoring-guides.shtm.

Program Monitoring and Oversight Activities

QA staff conducts Program monitoring/oversight activities of local programs and procedures. The purpose of such activities is to ensure appropriate provision of WIOA programs, including compliance with applicable Federal and State requirements, and assist in the achievement of performance goals.

The following is QA's Program review schedule:

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

It is important to note that while separate Program and Fiscal monitoring is conducted, there is ongoing sharing of information between the program and fiscal monitors regarding the results of monitoring reviews. Additionally, joint program-fiscal monitoring reviews are conducted when necessary and appropriate to holistically address complex issues.

QA's Program monitoring/oversight activities include the following:

- Sharing of completed Desk Reviews for technical assistance;
- Site Visits;
- Exit Conferences and Conference Calls;
- Reports;
- Responses/Corrective Action Plan (CAP) review and approval; and
- Resolution review and approval.

Desk Reviews:

A Desk Review of Local Workforce Development Area (LWDA) Programs is done quarterly to detect current issues so that they can be addressed through technical assistance prior to a formal on-site monitoring review. This is an informal process, in which the sharing of these completed Desk Reviews and additional feedback is provided in the form of emails and phone calls, as needed.

Site visits:

Site visits are formal monitoring/oversight activities that result in written reports, in letter format, that are issued to the LWDB. LWDBs shall assist, participating in any necessary activities (an entrance conference for example), ensuring access to necessary local program records, local program personnel, appropriate work space, and equipment, if necessary.

Exit Conferences and Conference Calls:

Exit Conferences and follow up conference calls are included in the QA process of Program monitoring/oversight. QA staff, the LWDB's Executive Director, and program staff will participate in an exit conference at the conclusion of the site visit. Typically the exit conference is held while QA staff are on-site; however there are also times when circumstances make it more efficient to conduct the exit conference via conference call.

During the exit conference, all potential findings are discussed with the LWDB Executive Director and local staff in attendance. QA staff will include in the final report any information provided by the LWDB 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's Executive Director and appropriate local staff of the additional findings and provide an opportunity for additional discussion via conference call.

Reports:

Upon completion of a formal Program monitoring/oversight activity, QA staff will issue a written report letter addressed to the LWDB's Executive Director summarizing the results of the review. The letter may contain findings and/or technical assistance observations (TAOs).

The term "finding" is used to identify areas where compliance requirements must be addressed. The term "technical assistance observation" is applied to situations that merit attention because they negatively impact services and performance and, if unaddressed, could lead to a finding. Suggested actions that can be taken to rectify a TAO are provided as "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;
- Correction of One-Stop Operating System (OSOS) data entered; and
- Additional training.

The report letter may also contain information provided, or action taken by, the LWDB's Executive Director and/or local staff between the time of the exit conference and development of the report letter to address findings or TAOs, and if the information/action has resolved the finding or if additional action is needed.

QA staff will make every effort to issue the report letter within 45 calendar days of the completion of the exit conference. If, for some reason, the release of the letter is delayed, QA staff will notify the LWDB's Executive Director with an updated timeline. If the report letter includes findings, the LWDB will have 45 calendar days from the date of the report letter to provide 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, please send an extension request to the appropriate Program Monitor as soon as possible, explaining the reason for the need of an extension and the anticipated revised response date. Extension requests will be reviewed on a case by case basis.

Responses/CAP review and approval:

If NYSDOL QA's report contains compliance concerns not resolvable in 45 calendar days, then the LWDB must provide to NYSDOL a written CAP containing dates and milestones for achieving compliance. QA staff will review the CAP received and will provide written notification to the LWDB if the CAP is adequate. If QA determines that the CAP is not sufficient to resolve the finding or if the CAP is not followed by the LWDB, QA staff will provide written notification including the reasons the CAP fails to resolve the finding with suggestions for improving the CAP. The LWDB will have 30 calendar days to submit an updated response, or CAP. If the LWDB does not agree with QA's determination, staff may request a conference call to discuss areas in question.

Note, QA staff will consider extension requests if circumstances arise that result in the need for one. LWDBs should request an extension as soon as possible and QA will review each on a case by case basis.

Resolution review and approval:

Should a finding remain unresolved for any reason, there is potential that it will be elevated to the following Resolution review process:

A. Initial Determination: QA Unit 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 30 calendar days of the date of the issuance of the Initial Determination letter, the CEO Grant Recipient, or his/her designee, shall submit a written response. The written response shall include all necessary supporting documentation.

B. Final Determination: Within 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 findings;
2. Address the acceptability of corrective actions taken or planned to resolve administrative findings;
3. Identify any remaining unresolved administrative findings, with corrective action required within 30 calendar days from the date of issuance of the Final Determination;
4. Advise that should the CEO Grant Recipient dispute any finding(s), it has 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 the WIOA required sanctions that apply to the findings. Note that fiscal sanctions for programmatic findings without an associated fiscal finding are rare.

Technical Assistance Activities:

QA staff is committed to providing technical assistance in the provision of WIOA programs at the local level. Goals include assisting LWDBs to achieve positive performance and maintain OSOS data integrity. Technical assistance in the forms of phone calls and emails is ongoing, and site visits for more in-depth technical assistance are available upon request. Examples of technical assistance topics include:

- OSOS data entry and allowable source documentation;
- Customer eligibility determination;
- Evaluating Quarterly Performance Reports;
- Draft Request for Proposal and/or contract review;
- Reviewing updates of local policies and procedures;
- Performance Standards guidance;
- Providing interpretations and explanations on WIOA Law, Federal Guidance, and State TAs; and
- Functions of the LWDBs, including topics on open meetings, quorums, and membership requirements.

REFERENCES

WIOA Section 129(b)(1)(E)

WIOA Section 134(a)(2)(B)(iv)

Trade Adjustment Assistance Reauthorization Act of 2015

2 CFR 200

Workforce Development System Technical Advisory (WDS-TA) #19-4: Monitoring – Subrecipient Oversight and Monitoring Responsibilities for Chief Elected Officials (CEOs) and Local Workforce Development Boards (LWDBs)

WDS-TA #16-8: Monitoring – Local Workforce Development Board (LWDB) Responsibilities Relating to New York State Department of Labor Fiscal Monitoring and Oversight

INQUIRIES

Please direct all questions to your QA Program Representative.