

**Chapter 12 MONITORING STATE AND LOCAL CONTRACTING AGENCIES**

- 12-1 **Introduction.** The purpose of this chapter is to establish requirements and methods to be used by HUD Labor Standards Specialists/Staff (LSS) to monitor state, local, and tribal contracting agencies (collectively known as “LCAs”) in order to assess their capacity and effectiveness in the administration and enforcement of Federal labor standards.

Monitoring conducted by the Office of Davis-Bacon and Labor Standards (DBLS) is a critical part of the Department’s management control system to ensure that HUD programs are administered in compliance with applicable laws, regulations and other directives. This chapter provides information about the DBLS monitoring process to ensure national consistency. While this information is primarily for the LSS, LCAs may benefit from understanding the DBLS process.

This chapter is subdivided into three sections:

- Section I covers the foundations of monitoring
- Section II covers the management of monitoring activities and results
- Section III covers using the monitoring review guides

In addition, this chapter draws heavily from the *HUD Monitoring Desk Guide*. It may be of value to read this guide in combination with this chapter.

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## Section I – Foundations of Monitoring

### 12-2 Primary concepts and components.

- A. **Proactive role of the LSS.** The LSS is expected to be proactive in assisting LCAs with performance and compliance issues. HUD advocates a cooperative problem-solving approach as the ideal model for enhancing LCA capacity and performance. The emphasis of this approach is on preventing, detecting, and correcting labor-related compliance issues in order to improve the LCA's performance.

The LSS is expected to assess the LCA's performance and capacity to perform labor-related compliance functions. The LSS should provide recommendations in accordance with laws, regulations, and other directives for resolving any issues related to LCA performance and capacity.

- B. **Risk assessment.** DBLS utilizes an objective risk assessment model to identify the LCAs that require monitoring and determine whether an on-site review or a remote monitoring is necessary. LCAs determined to be of higher risk are the focus of DBLS' increased oversight and technical assistance. Both Hub Directors and Deputy Directors have discretionary authority to consider other factors to determine the risk level such as: local operating conditions, program office recommendation(s), and other circumstances pertinent to the LCAs within the jurisdictions that the Deputy Directors oversees. See Section II, paragraph 12-8 for information about the Risk Analysis Worksheet.
- C. **On-site reviews.** An on-site review should occur only after the LSS has notified the LCA of the on-site review in writing. The on-site review will consist of: (1) an entrance meeting between the LCA staff and the LSS, (2) an audit of the LCA's files, (3) a review of the LCA's internal controls and processes related to labor standards compliance, and (4) identification of any labor-related compliance issues. The on-site review will conclude with an exit meeting between the LCA staff and the LSS. A formal, written report of the on-site review will be provided to the LCA and the program office (e.g., CPD, PIH, etc.). The report will include detailed results of the on-site review including any remedial actions to be completed by the LCA to become compliant with DBLS' performance and compliance standards.
- D. **Remote monitoring.** Remote monitoring is an acceptable method by which the LSS may monitor LCA performance and compliance. Remote monitoring has the same requirements for planning, examination, and communication as on-site monitoring. While remote monitoring generally includes access to fewer records than on-site monitoring, remote monitoring may be expanded to include additional records review in order for the LSS to gain sufficient information about the LCA's operations. A formal, written report of the remote monitoring must be provided to the LCA and the program office (e.g., CPD, PIH, etc.). The report must include detailed results of the monitoring, including any remedial actions to be completed by the LCA to become compliant with DBLS' performance and compliance standards.

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- E. **Cooperative problem solving.** All monitoring will involve a review and assessment of the LCA's files, processes, and procedures. The LSS will assist the LCA with identification and analysis of any labor compliance issues and decide as to the type and extent of assistance the LCA may require. The LSS is expected to work with the LCA to develop strategies and approaches to resolve problems and enhance the LCA's capacity to successfully administer and enforce Federal labor standards.
- F. **Referral to HUD program office.** The LSS is expected to develop constructive relationships with LCAs. In matters where the LCA takes actions that the LSS determines are egregious (e.g., repeatedly ignores LSS directives, violates laws and regulations, refuses to cooperate), the LSS may recommend sanctions against the LCA. Sanctions may only be applied by the HUD program office and therefore the LSS is *required* to consult with the Deputy Director and HQLS prior to any recommendation to the Program Office Director with jurisdiction over the LCA. Sanctions may include withholding funds, debarment, etc.
- G. **Risk assessment and review guides.** HQLS developed guides for DBLS staff to use in order to carry out various monitoring activities. An inventory of the guides is provided in paragraph 12-31. The guides with the form numbers HUD-4741, HUD-4742, and HUD-4743 are available on the [DBLS website](#) under Davis-Bacon and Labor Standards Forms and on [HUDClips](#).
- 12-3 **Applicability and legal authority.** This Handbook applies to the LCAs that administer the programs listed in Appendix II-4. The legal authority for the administration and enforcement of labor standards is also listed in Appendix II-4.
- 12-4 **Compliance with laws and regulations of other agencies.** HUD does not monitor compliance with state, local, or tribal laws and regulations, or laws and regulations administered by other Federal agencies. However, if the LSS believes that an LCA is not observing such laws or regulations, the LSS may refer the matter to the Deputy Director. The Deputy Director may refer any such issue to the appropriate agency for its attention.
- 12-5 **DBLS labor standards information system.** The LSS must use the Labor Standards Information System (LSIS) to record all monitoring activities. **Note:** All references to the LSIS relates to the current program/software/system instituted by HUD to manage labor compliance activity.
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## Section II - Management of Monitoring Activities and Results

- 12-6 **Focus of monitoring.** The Risk Analysis Worksheet must be utilized to ascertain whether an LCA will be the focus of an on-site monitoring or a remote monitoring. The LSS should not engage in re-reviewing the work performed by LCAs. Rather, the LSS should focus on the LCA's systems, procedures and processes, and the outcomes of those systems.
- 12-7 **Development of annual monitoring strategy.** At the beginning of each fiscal year, the Deputy Director shall develop and submit to the Hub Director an annual monitoring strategy consistent with HQLS guidance and national operating objectives. The purpose of this strategy is to establish a framework for determining the appropriate level of monitoring attention for each agency consistent with available resources. The annual monitoring strategy is subject to operating conditions such as travel allowances and the HQLS budget.
- 12-8 **Risk Analysis Worksheet.** The Risk Analysis Worksheet is the tool that DBLS uses to analyze individual agencies, establish objective priorities for monitoring, and determine where resources can be best utilized. The worksheet is intended to help the LSS identify which LCAs to monitor, which program areas or activities to cover, and the depth of the review.

In developing an annual monitoring strategy, the Deputy Director must consider the basic factors identified at paragraph 12-13 to complete their ranking.

The respective DBLS Hub shall retain in its official files the Risk Analysis Worksheet and annual monitoring strategy for five (5) years following the end of the fiscal year for which they were prepared. The *DBLS Risk Assessment Desk Aid* is available to assist the LSS and Deputy Director in completing the Risk Analysis Worksheet.

- 12-9 **Selection of LCAs to be monitored.** Agencies are selected for monitoring within each program and technical area using indicators grouped under five general risk factors: (1) recent monitoring, (2) program complexity, (3) local capacity, (4) HUD program office ratings, and (5) recent problems revealed through audits, investigations and/or complaints.
- 12-10 **Selection of program areas/functions to review.** The LSS conducts an analysis to identify the program areas/functions and activities for review and the depth of the review. In some cases, factors resulting in selecting an LCA for monitoring might also pinpoint areas for focus in the review. For example, an LCA with recurring monitoring findings in maintenance wage administration should again be reviewed in that area.

When staff limitations and/or the size of the program(s) preclude monitoring all functions and activities, the LSS should select representative activities or functions. LCA performance should be analyzed in sufficient depth to produce a report that is credible and useful to both HUD and the LCA.

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In the case of LCAs with significant contract activity (i.e., over \$20 million or as determined at the LSS's or Deputy Director's discretion) or agencies with multiple operating divisions administering labor standards requirements, the monitoring may need to be limited to one or two broad functions or operating divisions that can be reviewed in sufficient depth, rather than reviewing more functions or divisions in less detail.

- 12-11 **High risk activities.** DBLS considers certain types of activities as high risk, which the LSS or Deputy Director should select as appropriate for monitoring. Examples include:
- A. Economic development projects (particularly those administered by subrecipients or separate divisions/operations of the LCA).
  - B. Construction/rehabilitation activities that include permanent or takeout financing should be reviewed for compliance with the requirements/wage decision in effect at the time the work began.
  - C. Large contracts or purchase orders issued for maintenance and operation of housing developments of Public Housing Agencies (PHAs), Indian Housing Agencies (IHAs), Tribally Designated Housing Entities (TDHEs), and the Department of Hawaiian Homelands (DHHL).
  - D. Multiple activities operated simultaneously by subrecipients should be reviewed to determine LCA oversight and management as well as subrecipient compliance with applicable laws, rules, handbooks and policies.
  - E. LCAs determined "troubled" by HUD's Office of Public and Indian Housing (PIH) or equivalent status by another HUD program office.
  - F. LCAs receiving increased funding.
  - G. LCAs receiving funding from new HUD-funding sources for which LCA staff may be inexperienced or understaffed to manage labor compliance.
- 12-12 **Intensity of review.** The depth and thoroughness of the review will be dictated by: (1) the degree of involvement of the LCA in high-risk activities, (2) past monitoring history, and/or (3) past performance. LCAs with large, complicated programs or large numbers of high-risk activities may warrant more in-depth monitoring. LCAs that have not been monitored in-depth recently or whose capacity has been weakened due to staff turnover in key positions may also be candidates for more in-depth reviews. In-depth reviews may require extra time and more detailed review of one or more program areas. These reviews may also require more than one visit to the LCA or for the LCA to provide additional submissions to the LSS as requested.
- Where the LSS believes the LCA has corrected past deficiencies, has an acceptable level of performance, or has minor involvement in high-risk activities, a less comprehensive review may be appropriate.
- 12-13 **Implementation.** The Risk Analysis model, as described in the DBLS *Risk Assessment Desk Aid*, prescribes a range of numerical scores for high, medium, or low risk. Deputy Directors may develop benchmarks for scores as appropriate within these ranges. For very large LCAs, projects or activities may be individually classified or ranked to determine areas of focus for a review more clearly.

The Risk Analysis model includes:

- A. **Use of existing data.** In developing an annual monitoring strategy, the LSS should consider existing reports of LCA activities and funding in collaboration with HUD program office recommendations when selecting LCAs and their activities to be monitored. Examples of existing reports of data include:
1. Semi-Annual Enforcement Reports (SAR)
  2. Consolidated Annual Performance Evaluations Reports (CAPERS)
  3. Integrated Disbursement and Information System (IDIS) activity reports
  4. Annual investment strategies, etc.
  5. FHA multifamily production reports (for risk sharing projects)
  6. PHA PIC System
  7. Integrated Real Estate Management System (IREMS) reports

Where significant issues have been raised, on-site monitoring should be proposed so that HUD can identify and advise the LCA of problem situations before they develop into more serious issues.

- B. **Focus on high-risk areas.** The monitoring review should concentrate on those factors for which the LCA or the activity received its high-risk rating. The quality of monitoring should not be sacrificed in order to monitor greater numbers of LCAs or more program areas/activities.
- C. **Rank order of LCAs.** LCAs shall be ranked by risk score. The LSS uses this ranking to determine which LCAs should be monitored and the type of reviews that will be performed (e.g., on-site monitoring or remote monitoring).
- D. **Risk Analysis Worksheet.** The LSS converts the risk assessment factors found in the Risk Assessment Desk Aid (Desk Aid) into a numerical score. The Desk Aid prescribes a range of numerical scores for high, medium, or low risk. The Deputy Director may develop benchmarks for scores as appropriate within these ranges. For very large LCAs, projects or activities may be individually classified or ranked to more clearly determine areas of focus.

The LSS is responsible for providing a numerical score for each factor by utilizing the Risk Analysis Worksheet and Desk Aid. The total risk assessment score is calculated after scores for all five factors have been entered. The LSS will rank each LCA's risk from highest score to lowest score based on the risk assessment.

The LSS will utilize the five basic factors to analyze the risk of the agency, plus any other locally developed specific indicators which have been approved by HQLS.

Once the Risk Analysis Worksheet is updated, the LSS will identify the top 20 LCAs and submit the assessment to the Deputy Director for review and approval. Upon approval, the Deputy Director will inform the LSS which LCAs to monitor on-site and those that will be done remotely. Deviations from the risk analysis schedule may be made with proper justifications.

For example, if it is determined that a high-risk LCA will require travel to complete an on-site review that is also located near another agency that may be mid-risk, it may be cost effective for the Deputy Director to include the LCA with a lower score to have an on-site monitoring as well in order to maximize efficient and impactful use of travel funds and staff time. This deviation is acceptable if the selection to do so is noted on the Risk Analysis Worksheet.

The risk assessment is due before the end of the current fiscal year to allow the Deputy Director time to develop an annual monitoring strategy for the upcoming fiscal year, unless HQLS' operating instructions specify otherwise. If HUD program offices do not have data available until after the beginning of the following fiscal year, the LSS should use the most current data available at the time the LSS conducts the risk analysis for the LCA. Upon completing the risk assessment, the Deputy Director will send the final plan to the Hub Director, who will submit a comprehensive Hub plan to HQLS for planning and budgeting purposes.

**Note:** The Deputy Director shall make every effort to make travel as fiscally and time efficient as possible. When the Deputy Director is reviewing the risk assessment, on-site monitoring, technical assistance, outreach, and employee training should be combined where possible.

- E. **Documentation.** DBLS Hubs should retain the annual risk assessment documentation and monitoring strategy for five (5) years. These documents are the record of the Hub's recommendation of LCA/projects selected for on-site review, remote review, or technical assistance. After five (5) years, the records disposal process should be followed. **Note:** Legal holds and other such requirements for retention may extend the length of time for the region to maintain the files.
- 12-14 **Timing of monitoring.** To the extent possible, the LSS schedules monitoring, especially on-site visits, in consultation with the LCA in order to minimize disruption in the operations of the LCA. Generally, monitoring should be scheduled either at (1) the same time as a program office or other support function (e.g., FHEO, Environment) review is being conducted, or (2) at a time well separated from those reviews.
- 12-15 **Annual monitoring schedule.** As part of the annual monitoring strategy, the Deputy Director shall distribute an approved monitoring schedule for the fiscal year to the offices listed at paragraph 12-15(D). This schedule covers all HUD programs based on the criteria for selection of LCAs in this handbook and other HQLS guidance.

The annual monitoring schedule identifies the LCAs to be monitored: 1) within a specific quarter, 2) whether monitoring is on-site or remote, 3) for each program office, and 4) the function(s)/area(s) to be monitored.

- A. **Developing a monitoring schedule.** The monitoring schedule should be viewed in the context of balancing anticipated field office workload and the availability of staff and travel resources. Where possible, travel should serve multiple purposes, e.g., monitoring more than one LCA in the same geographical area on the same trip,

provision of technical assistance.

DBLS staff should not plan on reviewing lower risk projects or functional areas for an LCA except where time remains from a planned on-site visit. Monitoring lower risk LCAs may be useful in validating risk scoring, as well as identifying risk factors not previously considered.

- B. **Schedule updates.** The annual monitoring schedule should be updated at the beginning of each quarter of the fiscal year. Additional updates should also be made upon issuance of HQLS guidance requiring an alteration of the schedule or upon changes in field operations policies or conditions.
- C. **Coordination.** The annual monitoring schedule should be coordinated as follows:
  - 1. The LSS is responsible for consulting with appropriate personnel in the field office concerning their monitoring schedules for LCAs and for considering their recommendations for scheduling monitoring; and
  - 2. The LSS should also contact LCAs where reviews by more than one HUD program office or discipline are proposed to determine whether the LCA favors a series of individual reviews (e.g., DBLS on-site monitoring then CPD monitoring) or a consolidated HUD-team review (e.g., PIH and DBLS are scheduled to complete an on-site monitoring at the LCA at the same time).
- D. **Distribution of the annual monitoring schedule.** Within thirty (30) days following the beginning of the fiscal year, unless HQLS' operating instructions specify otherwise, the Deputy Director shall communicate the approved annual schedule of proposed monitoring to the offices listed below:
  - 1. The DBLS Hub Director
  - 2. The Office of Field Policy and Management via the Regional Administrator, Deputy Regional Administrator, and Field Office Director
  - 3. Program Offices (e.g., CPD, PIH, etc.) via the Directors/Administrators in the Regional and Field Offices

#### 12-16 **Pre-monitoring preparation.**

- A. **Coordinating monitoring staff.** When more than one person is participating in monitoring an LCA, the areas of responsibility for each participant should be discussed prior to the review to avoid duplication of each other's work and unnecessary use of LCA staff time.
- B. **Reviewing available data.** The LSS should review data available within HUD office(s) in preparation for the review. The data should be used to evaluate LCA activity and to identify issues or potential issues. The sources listed below are illustrative of information available for in-house review:
  - 1. HUD LCA files, including all correspondence to, from, or concerning the LCA.
  - 2. The LCA's Grantee Performance Report (GPR) or other periodic reports (including CAPERS, and IDIS reports).



3. LCA monitoring file including review guides, monitoring reports, and letters closing monitoring findings.
4. Information contained in LSIS.
5. HUD multifamily housing production reports listing projects being administered by local or state agencies, such as Risk-Sharing projects administered by state housing finance agencies.
6. The LCA's risk assessment, to ensure those factors which elevated the risk standing are included in the monitoring strategy.

C. **LCA monitoring strategy.** The LSS should develop a monitoring strategy to establish the framework for conducting the review. The strategy should include the following:

1. The monitoring schedule for all LCA functions, areas, and/or operating divisions selected for review and the staff who will be involved.
2. The issues which will be the focus of monitoring.
3. The selected activities to be reviewed.
4. The interview schedule for the LCA.
5. The schedule of completed work from the review team members.

12-17 **Notification of on-site visit.** The LSS must notify the LCA in writing *at least 14 calendar days* prior to the date of the planned on-site monitoring. The LSS must coordinate with the LCA prior to any planned visit to determine availability of key LCA staff.

The LSS will send the notification letter by either certified mail or email with return receipt. The LSS will include the following details in the notification letter:

1. Function(s), area(s) and/or operating division(s) selected for review,
2. LCA staff that should be available during the on-site review (e.g., compliance officer, director, or designee, etc.),
3. Example listing of documentation, files, etc. that will be reviewed during the on-site visit,
4. Names of the HUD staff conducting and participating in the on-site review,
5. Dates the on-site visit will occur,
6. Dates/Times for meetings and interviews,
7. The anticipated location(s) at which field work will be performed, and
8. Other information as determined necessary by the LSS and/or Deputy Director.

The LCA is responsible for ensuring that its files are organized in a manner that are reviewable by the LSS.

**IMPORTANT:** For *state* grantee reviews that will include on-site reviews of the state's recipients, the notice to the state must be provided sufficiently in advance that the state grantee may provide written notice to its recipient(s) at least 14 calendar days in advance of the on-site review.

12-18 **Conducting a monitoring review.** When conducting a basic monitoring review, the following steps shall be followed (additional steps for remote and state monitoring reviews are in paragraphs 12-19 and 12-20, respectively):

- A. **Entrance conference.** The LSS (along with any other members of the review team) conducts an entrance conference with appropriate LCA staff and officials to introduce the review team and explain the review's purpose and schedule. The LSS will also identify LCA staff needed for interviews (including operating divisions, LCA compliance staff, etc.) and records that the LCA must make available for review.
- B. **LCA-generated reports and materials review.** The LSS reviews materials generated by the LCA providing detailed information on project descriptions, budget, percentage of project completion, certified payrolls, etc. The LSS determines what information is necessary and appropriate to conduct the monitoring review.
- C. **LCA file review.** The LSS shall review LCA files, including subrecipient files, for required documentation where appropriate. The LSS shall assess the accuracy of information provided to HUD and the level and effectiveness of LCA labor standards compliance activities.

The LCA is responsible for ensuring that files are organized. The LSS will not attempt to organize files for the LCA during the review. If the LCA fails to provide adequate organization of files in a manner the LSS may review them, the LSS will identify this aspect of the review in its final report under the category of the LCA's management and operational efficiency.

- D. **Interviews.** The LSS shall interview members of the LCA's staff and, as appropriate, subrecipient staff to discuss the LCA's performance and determine capacity. The LSS also determines the level of training or technical assistance the LCA may need in order to adequately perform its labor standards compliance responsibilities.
- E. **Project Site reviews.** It may be necessary for the LSS to visit project site(s) to validate LCA records. The LSS determines the necessity for project site visits based on the examination of the LCA's files and interviews with LCA staff and subrecipients.
- F. **Measure performance.** The LSS determines whether the individual activities reviewed have been correctly administered based on the review of records, interviews with persons involved in the program and any project site visits.

The LSS should measure the LCA's performance against DBLS established requirements. When deficiencies are documented, the LSS should assess:

1. The reason for the deficiency (e.g., lack of knowledge, lack of management

- control procedures, etc.);
  - 2. Whether the cause is unique or whether the problem is systemic; and
  - 3. Any corrective action the LCA is undertaking.
- G. **Analyze results.** The LSS should analyze the monitoring results and pertinent in-house data to detect strengths, weaknesses, opportunities and existing or potential problems in the LCA. The analysis shall include the outcomes of the individual activities and the action(s) the LCA is undertaking to improve/maintain performance.
- H. **Reviewer conclusions.** The LSS shall reach conclusions about:
- 1. The adequacy of the LCA's management system for the administration of labor standards (LCA operations, staff knowledge, file management, etc.);
  - 2. Whether the program is being administered in compliance with laws and regulations; and
  - 3. The accuracy of the data in the LCA's reports to HUD

For state grantees only, the LSS shall also compare and conclude accuracy of the data in the LCA's reports to DOL.

- I. **Exit conference.** The LSS shall conduct (or when part of a review team, participate in) an exit conference or other form of consultation with the appropriate LCA officials to present preliminary conclusions resulting from the on-site monitoring visit. The LSS also conducts follow-up inquiries to assure the conclusions drawn by the LSS are based on accurate information. A record of the exit conference (including attendees, date, time, items covered, preliminary conclusions, any LCA disagreements with preliminary conclusions and required follow-up actions) is a required part of the monitoring record for the review.
- 12-19 **Remote monitoring of LCAs.** Remote monitoring parallels on-site reviews except in this method the LCA submits requested documents and other information via email or other delivery method to DBLS staff for review and evaluation. If U.S. postal mail is used, certified mail with recipient signature is required. Because DBLS does not prescribe a filing system for LCAs, the records submitted by an LCA shall be returned in the same order/structure as received.

Generally, remote monitoring will be conducted for less complex LCAs and LCAs where the factors contributing to a higher risk score may be evaluated remotely. Remote monitoring may also be performed of higher risk and/or more complex LCAs when DBLS staffing and travel resources are limited.

The steps for remote monitoring include:

- A. **Initial contact with LCA.** The LSS makes initial telephone contact with the LCA to coordinate the timing of the remote monitoring review consistent with paragraph 12-14.

- B. **Entrance conference.** The LSS will discuss with the LCA the following:
1. Activities subject to prevailing wage requirements;
  2. LCA structure;
  3. The areas that will be reviewed and the documentation, records and other materials likely to be requested for review; and
  4. That telephone interviews with staff may be necessary as part of the review.

*Note:* If the LCA has multiple operating divisions/agencies or functions, the LSS covers the same preparatory items with an overarching entity of the LCA or with the separate operating divisions/agencies as appropriate.

In some cases, during the initial telephone contact, the LSS and LCA can agree on the projects/contracts that will be reviewed and the information and documents the LCA must submit to the LSS for review. In such cases, the LSS may bypass steps C and D below and confirm in writing the agreements reached. The date of this letter constitutes the “Entrance Conference Date” for remote monitoring and the beginning HUD Review Date.

- C. **Confirmation of documents requested.** The LSS sends the LCA email confirmation of the initial contact (*aka* initial notification) detailing the documents requested during the initial contact.

This correspondence will also describe the remote monitoring procedures. The list of activities will form the basis for the LSS’s selection of individual projects/contracts to review, and will consist of the following elements:

1. Project name and identifier (if any) agency officials use to refer to the activity.
  2. Contract/budget amount.
  3. Brief description of the key elements of the work that is triggering the labor standards activity (e.g., “rehabilitation of a 2-story, 16-unit apartment building”).
- D. **Review of LCA information and request for records.** The LSS shall review the information submitted by the LCA along with other relevant data and, based on this review, select the operating divisions/agencies or functions, and the activities that will be assessed during the monitoring. The LSS transmits the request for records and instructions for submission. The request identifies the activities that will be assessed and describes the records that are needed. The request instructs the LCA to email records with an inventory of the contents. The date of this transmittal constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date.
- E. **Confirmation and review of records received.** The LSS provides confirmation to the LCA of the records received, noting any requested records that were not included. The LSS examines the materials submitted. Additional discussions between the LSS and LCA may be necessary to assess staff understanding of labor standards requirements, clarify issues and resolve questions during the review

process.

Discoveries from the review of the initial submission may necessitate expanding the scope of the review to validate conclusions.

- F. **Review conclusions.** The LSS shall formulate and document conclusions following the analyses of the submissions and interviews with LCA staff. The conclusions shall address the same elements as those relating to on-site monitoring (see paragraph 12-18(H)).
  - G. **Exit conference.** The LSS shall conduct an exit conference with the LCA by telephone or other acceptable conferencing system (e.g., visual conferencing platforms). A record of the exit conference is required documentation for the monitoring record (see paragraph 12-18(I)). The date of the exit conference is the HUD closing review date.
  - H. **Monitoring report.** The LSS shall prepare the monitoring report consistent with paragraph 12-14, including content, consultation, distribution of reports, documentation, records maintenance, and tracking responses to resolution. When the monitoring report is delivered to the LCA (or acceptable alternative), it is recorded in the LSIS.
  - I. **Supporting documentation.** The LSS shall make copies of the LCA's documents, as needed, to support the conclusions/recommendations in the report. If evidence of the same problem is repeated on multiple documents, the LSS should copy only as many of the documents as needed to support the conclusions and to track any issues to full resolution.
- 12-20 **State program reviews.** The State Community Development Block Grant Program (State CDBG) and state-administered HOME Investment Partnerships Program (HOME) have many similarities to the corresponding programs administered by units of general local government; however, there are some differences. State monitoring reviews are conducted following the same principles and processes as are applicable to cities, counties, etc., except that:
- A. **State flexibility.** States have a great deal of flexibility in establishing their own procedures and requirements for administering state CDBG funds and providing oversight of its recipients. A finding of noncompliance may be determined based on evidence of failure to comply with a state's own requirements, as well as mandatory HUD and/or DOL requirements.
  - B. **Review of state recipients.** States distribute funds to units of local government (State Recipients). Every state program monitoring does not require State Recipient-level review; but such reviews should be conducted periodically to assess the state's support to, and oversight of, its State Recipients.
  - C. **Disposition of findings at state-recipient level.** Because the principal intent of

monitoring State Recipients is to measure state performance in training and overseeing their program, problems detected at the State Recipient level are identified as problems in the State's oversight of its respective programs (e.g., CDBG, HOME).

The LSS may make findings at the State Recipient level; however, the state oversees the corrective action taken by the State Recipient and reports resolution(s) back to HUD DBLS. The LSS provides the State with corrective actions to improve its systems and processes as well as to address the deficiencies at the State Recipient level.

- D. **Frequency of DBLS monitoring of state CDBG grantees.** The HUD Community Planning and Development (CPD) operating divisions prescribe annual on-site monitoring of state grantees by their staff, while DBLS' participation is driven by its annual risk assessment and monitoring plan. Generally, DBLS' monitoring report of a state program is consolidated into a broader monitoring report sent from either the CPD Director or Field Office Director (see paragraph 12-23).
- E. **State CDBG monitoring review guides.** The review guide for the state program is form HUD-4743 (Federal Labor Standards Review Guide: State-CDBG and HOME).

12-21 **Evidence and evaluation.** During the monitoring review, information is discovered and gathered. This is considered evidence to support the conclusions contained in the final monitoring report.

- A. **Types of Evidence.**
1. **Physical:** direct observation of people, property, or processes. This is considered the most dependable type of evidence and is essential in determining adequacy of internal controls.
  2. **Documentary:** digital or hard-copy files, records, photographs, etc. This is evidence used to verify reliability of evidence gained through other methods.
  3. **Testimonial:** interviews and other verbal or written statements of activities from LCA staff, workers, and others. This type of evidence requires corroboration before it can be used in support of a finding.
  4. **Analytical:** data-driven evidence supported by computations, reasoning, comparisons, and industry standards applied to information retrieved from various sources.
- B. **Standards for determining usability of evidence; definitions.** Evidence used in the final report to support LSS conclusions must meet all three standards in this subsection. DBLS has adopted the following standards and definitions:
1. **Sufficient:** Factual and credible evidence which would lead a reasonable person who is not an expert in the program area to reach the same conclusion as the reviewer.
  2. **Reliable:** Trustworthy and verifiable evidence (such as sworn affidavits,

certified statements, testimony under oath, etc.) that is obtained by using reasonable review methods. If there is any reason to question the validity or completeness of a piece of evidence, additional measures must be taken to support the validity of the evidence before it will be deemed “reliable” evidence as defined herein.

3. **Relevant:** Evidence that is linked directly to the monitoring review objectives and has a logical, reasonable, and legitimate relationship to the issue(s) being reviewed for compliance.

- C. **Evaluation.** The evaluation phase of the monitoring review is ongoing. It is in progress from the initial contact between the LCA and the LSS until the submission of final monitoring review report.

The LSS evaluates records examined, interviews conducted, and observations made during the on-site visit or remote monitoring review to make final conclusions. The significance of deficiencies and whether they need to be placed in the official report (rather than handled verbally) is at the discretion of the LSS. The following points provide some guidance to the LSS when determining whether deficiencies warrant inclusion in the final report:

1. Importance to the accomplishment of the mission and vital functions of the program;
2. Pervasiveness of the condition or issue (isolated or widespread);
3. Indication of fraud, waste, abuse, or illegal acts;
4. Extent of the deficiency; and
5. Importance to the maintenance of adequate controls (for example, discrepancies that are “harmless” when evaluated individually may be considered “detrimental” when taken together to form a pattern in administering labor standards requirements).

- 12-22 **Monitoring reports.** The LSS shall submit a final monitoring report detailing the results of the monitoring visit to the following entities/individuals upon conclusion of the on-site visit or remote monitoring review:

1. the LCA program director who administers HUD funding for the LCA,
2. the executive director of a PHA, IHA or TDHE (with copies to appropriate LCA operating divisions or agencies), and
3. the Deputy Director.

Every conclusion in the monitoring report must be supported by evidence consistent with this chapter. The LSS must apply applicable law, regulation, handbook, or other directive to the evidence submitted to determine compliance with labor standards requirements.

When labor standards monitoring is conducted in conjunction with a HUD team visit, a single monitoring report is submitted to the LCA (see paragraph 12-22(N)).

- A. **Timing.** The LSS should issue the report as early as possible, particularly if there are major findings. The monitoring report shall be issued within thirty (30)

calendar days of the exit conference.

- B. **Content of monitoring report.** The monitoring report to the LCA must include:
1. The LCA monitored (including PHA number for housing authorities and the grant type of each grant monitored for CPD-funded LCAs);
  2. The LSS who conducted the review;
  3. The date(s) of the review;
  4. Whether the review was performed on-site or remotely;
  5. The scope of monitoring (including the operating divisions, agencies or functional areas, if less than the entire LCA is reviewed (e.g., maintenance wage administration, housing development program, etc., for PHAs), and activity/contract/project records reviewed);
  6. Any areas, functions or operating divisions identified in the notification letter that were not reviewed, with a statement explaining the reason(s) these were not covered (e.g., time constraints, lack of documentation, etc.);
  7. Monitoring conclusions for each function/area reviewed and for the LCA's administration of labor standards collectively (supported by the facts considered in reaching the conclusions and limited to the functions/areas reviewed);
  8. Specific corrective actions the LCA must take to resolve each finding and/or address each concern and, where appropriate, an indication that findings/concerns were resolved during the review;
  9. The date by which the correction action(s) must be taken;
  10. The opportunity to contest findings; and
  11. As appropriate, a statement that technical assistance was provided on-site, or an offer of technical assistance if conditions precluded on-site technical assistance in sufficient depth.

**Note:** When negative conclusions are identified in a monitoring report, they should be clearly labeled as either a finding or as a concern in accordance with the definitions of these terms provided at paragraph 12-22(E). Also, when appropriate and feasible, the findings should be quantified. For example, describe the finding as *“The agency failed to notify ABC Contracting that a comparison of 20 payrolls to the applicable wage decision revealed underpayments to 14 workers totaling \$14,380.00...”* rather than *“A review of payrolls revealed substantial underpayments to workers.”*

- C. **Tone of monitoring report.** Generally, the tone of the monitoring report is constructive and assistive, describing objective performance of the LCA.

Deficient performance is evaluated using the criteria laid out in this chapter and highlights violations of law and regulations and then assesses DBLS-specific rule noncompliance. The disclosure of major findings and concerns should be accompanied with recommendations and offers of technical assistance to correct the deficient performance.



**Note:** It is appropriate to recognize the LCA for making significant improvement in previously identified deficiencies.

- D. **Overall assessment of the LCA’s administration of labor standards.** The LSS concludes whether the LCA’s management operations and performance, when measured by the functions/areas and information reviewed, are adequate. Further, the LSS may conclude activities are exemplary or exhibit significant improvement or achievement.
- E. **Findings and concerns.** The monitoring report should particularly highlight any findings and concerns likely to result in significant negative consequences if not corrected. It may be appropriate to summarize the major conclusions, both positive and negative, in the body of the transmittal letter, while the details of the review are in the report.
1. **Finding:** A finding is noncompliance with statute, regulation, handbook, or official directive. Each finding should be clearly titled “Finding,” and include the following information:
    - a. **Condition:** A description of the problem;
    - b. **Criteria:** The program requirement (and citation thereto);
    - c. **Effect:** Results or adverse impact(s) of the condition;
    - d. **Required corrective action:** Addresses the condition and prevents recurrence; and
    - e. **Time frame for response:** The date by which action is to be completed and reported to DBLS.
  2. **Concern:** A nonconformance with a standard or guidance *other* than a statute, rule, handbook or other official directive, or a condition that, if not altered, is likely to result in noncompliance with a statute, rule, handbook, or other official directive. Each concern should be clearly titled “Concern” and include the condition, cause, effect, and may include recommended actions.
- F. **Recommended or required corrective actions.** Corrective actions shall be based on sound management principles or other programmatic guidelines. For negative conclusions that are Concerns, the LSS recommends actions and offers technical assistance.

The level of attention given to performance problems should reflect the seriousness of the problem, whether or not corrective action can be required. The monitoring report may include references and an overview of technical assistance provided; however, the detailed summary of technical assistance subject matter should be included in a separate transmittal to the LCA.

- G. **Goal of corrective actions.** Corrective actions are designed to prevent a continuance of the deficiency; mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and prevent a recurrence of the same or a similar deficiency. Whenever possible, the outcome should also result in

improving the operational capacity of the LCA. There may be a number of acceptable solutions to resolving a deficiency and the LCA should be allowed to respond to each problem with any reasonable solution of its choice.

- H. **Exemplary practice.** When the LSS observes an especially innovative, outstanding or useful labor standards practice by an LCA that is replicable for other LCAs, the recognition of an exemplary practice is appropriate for inclusion in the monitoring report. In addition to including a synopsis of the practice and benefits in the review, LSS should forward a complete description of the practice through their Deputy Director to HQLS so that the practices, processes and systems can be distributed as a model for similar organizations.
- I. **Referral to OIG or DOL.** If deficiencies or issues are found that are egregious, or that violate law that is within the purview of the OIG and/or DOL (e.g. fraud, FLSA violations, etc.), the LSS brings the situation to the attention of the Deputy Director for possible referral to OIG and/or DOL for further response. The Deputy Director maintains a record of referrals to OIG and/or DOL for a period determined by HQLS.
- J. **Clarity of communication.** The LSS strives to be clear and concise when communicating monitoring results to ensure that the report will be understandable to the LCA and interested parties beyond the LSS. Citations for findings should be precise, rather than general, with corrective actions clearly addressing the deficiency and its cause(s). When possible, completion of the corrective actions should enhance the LCA's capacity and prevent recurrence.

When the LSS documents several, related noncompliance activities in an LCA's administration of labor standards under a single, consolidated description, the LCA is prompted to focus on systemic improvements to its management practices and oversight.

- K. **Objectivity of report.** The monitoring report is objective and dispassionate, avoiding subjective statements or conclusions that are not relevant to the scope. The methodology and materials generated during the on-site visit or remote review should be such that an independent reviewer can adequately assess the quality and accuracy of the monitoring and the evidence supporting the report.

*Note:* The monitoring report and record may be a basis for further action by the Department, if circumstances warrant.

- L. **Opportunity to contest findings, appeals.** The monitoring report or its transmittal includes the opportunity and instructions for an LCA to appeal HUD's determinations regarding compliance, the proposed corrective actions and/or date(s) for required corrective action(s). The LCA's appeal must include evidence supporting its position, proposed revised corrective action(s) and/or revised corrective action completion date(s). The appeal shall be addressed to the signatory of the transmittal of the monitoring report. If the report contains no negative

conclusions, this language is not required. Chapter 7, paragraph 7-4 provides more details.

- M. **Consultation prior to issuing report.** Prior to issuing the report to the LCA, the LSS consults with the Deputy Director, or a designated authority, on the evidence, conclusions and required/recommended actions resulting from the review. The purposes of the consultation are for the Deputy Director to:
1. Assess the quality and accuracy of the monitoring;
  2. Ensure consistency in handling deficiencies;
  3. Ensure proper detection and correction of deficiencies;
  4. Identify systemic deficiencies; and
  5. Ensure that HUD makes appropriate, supportable judgments and draws sound conclusions.
- N. **Distribution of report.** In addition to the principal Program Director or Executive Director of the LCA and operating agencies addressed in the transmittal letter of the report, the LSS (or Deputy Director) shall provide copies of the monitoring report to the following:
1. The Regional Administrator or Field Office Director within whose operational jurisdiction the LCA is located;
  2. Directors of the HUD program office(s) with jurisdiction for the LCA;
  3. The Deputy Director, if the report is issued at the field office level; and
  4. Other appropriate individuals as determined by the Deputy Director.
- O. **Documentation.** Monitoring activities and results must be well documented. The monitoring report is supported by any working papers, including the completed review guides used in the monitoring review. All correspondence and working papers relating to the monitoring and conclusions must be in DBLS' LCA file. This documentation must include:
1. Initial written notification correspondence;
  2. Entrance conference notes (including attendees);
  3. Completed review guides;
  4. Review notes;
  5. Supporting documentation;
  6. Exit conference notes;
  7. Monitoring report; and
  8. Records of follow-up actions through close-out (including LCA responses).
- P. **Record retention.** The office generating the report shall maintain monitoring records for a period of five (5) years or for a period to include the records for the most recent and immediate past monitoring reports if longer retention is necessary to accommodate these two report records.
- 12-23 **Consolidated monitoring reports.** In situations where the monitoring report is being consolidated into a broader monitoring report with the program office and/or other specialty function, the program office will request the concurrence of the LSS or Deputy Director who prepared the labor standards portion of the report. The reasons for any non-

concurrence must be discussed with the HUD program office and agreement reached prior to the issuance of the report.

The LSS must maintain a copy of the DBLS-only monitoring report for the DBLS file.

12-24 **Follow-up action.**

- A. **Evaluation of LCA response.** When the LCA's response has been received, the LSS shall review the corrective action proposed or taken by the LCA. The LSS review should be completed and a written evaluation communicated to the LCA within thirty (30) calendar days of receipt of the response. If the response satisfies the requirements of the corrective action, an evaluation letter closing the finding shall be issued. If the review indicates the action was less than satisfactory, an evaluation is sent to the LCA specifying additional action(s) needed with an action due date.
- B. **Extension of due date/on-site follow-up.** The action due date(s) may be extended where the LCA demonstrates good faith efforts to resolve the finding. Written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report. A follow-up visit may be necessary to verify corrective action or to provide technical assistance when the LCA has been unable to resolve or correct the finding.
- C. **LCA response overdue.** In the event the LCA fails to meet a target date for corrective action or response, a telephone call is appropriate and is documented in the monitoring file. In cases where unforeseen obstacles to complete required actions by the target date warrant extension of that date, written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report.
- D. **LCA response 30 days overdue.** If the LCA has not responded within thirty (30) calendar days after the due date for corrective action, a letter shall be sent to the LCA requesting the status of the corrective action and warning of the possible consequences for failure to comply, as provided under applicable regulations.
- E. **Referral for sanctions.** The LSS, after consulting with the Deputy Director and HQLS, shall transmit to the appropriate Program Office Director a recommendation to impose sanctions against an LCA that fails to make good faith efforts to respond to repeated follow-up requests, or repeatedly fails to make the required corrective actions. The recommendation shall be accompanied with copies of all documentation listed at paragraph 12-22(O).

12-25 **Closing monitoring findings.** As the LCA completes and reports satisfactory corrective action(s), the LSS shall provide written confirmation of such status to the LCA. The confirmation is copied to all parties addressed or copied on the original report.

12-26 **Monitoring activities tracking system.** The Department requires that certain dates and events relating to monitoring activities are recorded and systemically tracked.

- A. **Dates and events to track.**
1. Date of written notification of planned monitoring review;
  2. Actual date(s) of monitoring review;
  3. Dates of entrance and exit conferences;
  4. Date the monitoring report was sent;
  5. Target dates for resolution of any findings or concerns;
  6. Date LCA response is received;
  7. Date of notification of final close-out;
  8. Date unresolved and/or unaddressed noncompliance findings were referred and to whom; and
  9. Final resolution of any referral.
- B. **Use of DBLS management information system.** DBLS' LSIS is used to the greatest extent feasible to record and track the events listed in paragraph 12-26(A). In addition to serving as a task-management tool for the DBLS nationwide, the system serves as the basis for reporting to HQLS.

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### Section III – Using the Monitoring Review Guides

- 12-27 **The LCA monitoring review guides.** The LCA monitoring review guides are designed to provide structure in the review processes, guide the LSS in collecting and recording data and observations, and provide objective evaluation criteria in determining LCA performance. The guides are available on the DBLS website.
- 12-28 **Format of review guides.** The review guides are designed to elicit "yes" or "no" answers. A “no” answer does not necessarily mean that an LCA has done something wrong, but when the reviewer concludes a requirement has not been met, more descriptive responses and details should be referenced and recorded on supplementary pages. Not applicable or "N/A" should be checked for the questions that do not apply to the function or activity under review. Although this approach may take more time up-front, it will yield higher quality review results providing a more complete representation of the LCA's performance and provide comprehensive data for the monitoring report. These guides are used in discussions with HUD program office staff and/or DBLS managers, as well as for any future LSS assigned to the LCA and for others who have a need to review the LCA's performance.
- 12-29 **Drawing conclusions from data recorded on review guides.**
- A. **Isolated versus systemic problems.** Where no problem, or only minor problems, are found during the review of selected activities falling within a given review area, such as the Wage Decision Issuance, the LSS can generally conclude each of the LCA's activities falling within that review area is in compliance.
- Conversely, where a pattern of significant problems is disclosed, it is reasonable to conclude similar problems are likely to exist with other projects or contracts in the same review area. For instance, if each contract prepared by one department of an agency omitted required labor standards provisions, while contracts prepared by other departments did not, the LSS concludes the problem is not agency-wide, but a pattern within the one department.
- B. **Expanding the review.** If the slate of selected review activities shows problems within a review area, as time permits, other activities are spot-checked to determine whether the problem is isolated or systemic within that review area. Also, if during the review, operating divisions/agencies within the LCA that are associated with labor standards administration are newly identified, expanding the review to include the newly identified operations should be considered. When the original scheduled time for the review does not permit expansion, the LSS may, with the approval of the Deputy Director and in consultation with the LCA, extend the on-site review period.
- If the review time cannot be extended, the area with problems is flagged for a more thorough review during the next monitoring visit and the LCA should be advised of this problem and/or asked to review this area and notify the LSS of its conclusions.

- 12-30 **Regional/local amendments to monitoring review guides.** The Deputy Director may approve amendments to the review guide areas and elements in order to accommodate special circumstances presented in the organization or operation of an LCA or class of LCAs in its jurisdiction. The Deputy Director must ensure that any added review items are properly classified as to whether the standard is required by statute, regulation, handbook, or other official directive.
- 12-31 **Inventory of Risk Assessment and monitoring guides.**
- A. Risk Assessment.
    - 1. Risk Assessment Desk Aid
    - 2. Risk Analysis Worksheet
  
  - B. Monitoring Guides.
    - 1. HUD-4741 Federal Labor Standards Agency On-site Monitoring Review Guide
    - 2. HUD-4742 Federal Labor Standards Agency Remote Monitoring Review Guide
    - 3. HUD-4743 Federal Labor Standards Review Guide: State CDBG and HOME