

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

12-1            **Introduction.** This purpose of this Chapter is to establish requirements and methods to be used by Labor Relations Specialists/staff (LRS) to monitor state, local and tribal contracting agencies (LCAs) and assess their capacity and effectiveness in the administration and enforcement of Federal labor standards. In this Chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.

The monitoring conducted by the Office of Labor Relations (OLR) 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 is offered to provide tools, techniques, structure and consistency to OLR's monitoring processes.

This Chapter is prepared in three sections: Foundations of Monitoring; Management of Monitoring Activities and Results; and Risk Analysis and Monitoring Review Guides.

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## Section I – Foundations of Monitoring

12-2

### **Primary concepts and components.**

- A. **Proactive role of the LRS.** The LRS is expected to be proactive in helping LCAs identify and address performance and compliance problems. HUD advocates a cooperative problem-solving approach as the ideal model for enhancing LCA capacity and performance. The emphasis in all monitoring is on prevention, detection and correction of problems and improvement in LCA performance. At the same time, the Department recognizes the need to take strong, decisive measures if an LCA lacks the capacity or fails to implement necessary improvements. Consequently, LRS are expected to assess LCA performance and compliance capacity.
- B. **Risk analysis.** A risk assessment model shall be used to identify the LCAs most in need of attention from OLR. LCAs determined to be of significant concern to OLR shall be the focus of increased oversight and technical assistance. RLROs shall have flexibility in fine-tuning the risk assessment model to reflect unique concerns, local operating conditions and other circumstances pertinent to the LCAs within their jurisdictions.
- C. **On-site reviews.** An on-site review may focus on anticipated problems in any or all functional areas, such as Federal Labor Standards Monitoring, Wage Decision Issuance Process, Training, Maintenance Wage Administration, etc. The LRS is expected to use risk analyses to determine which LCAs will be selected for on-site reviews and the functional areas and activities selected for review. (See 12-8 for more detail on risk analysis.)
- D. **Remote monitoring.** Remote monitoring is an acceptable method by which LRS may monitor LCA performance and compliance. Remote monitoring 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 in order to gain sufficient information about LCA operations.
- E. **Cooperative problem solving.** All monitoring will involve a review of the problem area(s), an identification and analysis of the causes of the problems, the development of strategies to implement recommended solutions, and a determination as to the type and extent of assistance to be provided. The LRS 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.
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- F. Referral to HUD program office.** The LRS is expected to develop constructive relationships with LCAs. However, the LRS must consider other methods to ensure LCA compliance if the agency repeatedly fails or refuses to make required corrective actions. Sanctions, such as requirements to repay or reprogram funds, limitations on access to funds, etc., may only be applied by the HUD program office. LRS may refer a recommendation of sanction to the appropriate director of the HUD program office with jurisdiction for the LCA *only* after consultation with the RLRO and HQLR.
- G. Risk analysis and review guides.** HQLR has developed several guides for regional and field office use to carry out various monitoring activities. An inventory of the guides is provided in paragraph 12-32 of this Chapter. All guides are available in both a fillable Word and pdf formats at HUDClips. Detailed instructions for these guides are also available at this site.
- 12-3           **Applicability and legal authority.** This Handbook applies to the LCAs that administer programs listed in Appendix II-5. The legal authority for the administration and enforcement of labor standards is also listed in Appendix II-5.
- 12-4           **Compliance with laws and regulations of other agencies.** HUD does not monitor compliance with state, local or tribal laws or regulations, or laws and regulations administered by other Federal agencies. However, if the LRS believes that an LCA is not observing such laws or regulations, the LRS may refer the matter to the RLRO. The RLRO may refer any such issue to the appropriate agency for its attention.
- 12-5           **OLR management information system.** OLR's management information system must be used to record monitoring actions. Specific data elements are described in the LR2000 Users Guide.

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## Section II - Management of Monitoring Activities and Results

- 12-6            **Focus of monitoring.** When monitoring an LCA's capacity to administer and enforce labor standards and its execution of those responsibilities, the focus is on the analyses of the LCA's systems and the outcomes of those systems, rather than on re-reviewing the work performed by LCAs. The LRS shall direct his or her efforts to those LCAs determined to be in the greatest need of attention. LCAs expected to have no performance or compliance problems will generally not be monitored on-site.
- 12-7            **Development of annual monitoring strategy.** At the beginning of each fiscal year, the RLRO shall develop a monitoring strategy consistent with HQLR 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.
- 12-8            **Use of risk analysis.** Risk analysis is the tool OLR uses to establish priorities for monitoring and to determine where resources can be best utilized. Risk analysis is intended to help the LRS identify the LCAs to be monitored, the program areas or activities to be covered, and the depth of the review. The selection process should ensure those LCAs and activities representing the greatest vulnerability to fraud, waste, and mismanagement are monitored within the resources available. In developing an annual monitoring strategy, RLROs shall utilize the basic factors identified at 12-9 of this Chapter, plus any other locally developed indicators approved by HQLR, to complete their ranking system implementing risk analysis. The risk analyses of all LCAs in the jurisdiction shall be completed prior to developing the annual monitoring strategy portion of the Regional Operating Plan containing the proposed schedule of agencies to be monitored. OLR regional and field staff shall use forms HUD-4740-T, *Risk Analysis Table*, and HUD-4740-FS, *Field Office Summary*, to conduct and record risk analyses. Instructions are provided in form HUD-4740-I.
- The risk analysis table(s), summaries of risk analysis scoring, the regional office summary and annual monitoring strategy shall be retained in the respective OLR regional or field office official files for five (5) years following the end of the fiscal year for which the risk analyses, summaries and annual monitoring strategy were prepared.
- 12-9            **Selection of LCAs to be monitored.** Consistent with the Region's operating plan, agencies shall be selected for monitoring within each program and technical area using indicators grouped under five general risk factors: recent monitoring, program complexity, local capacity, HUD program office ratings and recent problems revealed through audits, investigations and/or complaints. The following examples are illustrative of selection criteria for each risk factor:

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- A. **Recent monitoring.**
1. Recurring findings;
  2. Inability to clear findings adequately;
  3. Need to review actions taken to clear previous findings;
  4. Not monitored in past 3-5 years; and/or
  5. Issues remaining from previous monitoring.
- B. **Program complexity.**
1. Large grant or loan guarantee amount;
  2. Large number of projects;
  3. Economic development activities;
  4. Projects undertaken by subrecipients and subgrantees;
  5. Projects with complicated transactions or involving multiple Federal funding sources or multiple parties;
  6. Large amount of multifamily rehabilitation or new construction; and/or
  7. Large financial exposure for the Department.
- C. **Local capacity.**
1. Turnover in key staff responsible for labor standards activities;
  2. Inexperienced staff;
  3. Past difficulty in administering labor standards;
  4. Lack of reports or poor quality reports; and/or
  5. Substantial increase in volume of covered work with no increase in staff resources.
- D. **Program office rating.**
1. Known/suspected administration of labor standards issues;
  2. Contracting/procurement issues affecting the administration of labor standards; and/or
  3. Summary rating from program office risk analysis/performance rating system.
- E. **Recent problems.**
1. Inaccurate or incomplete semi-annual or other enforcement reports;
  2. Audit findings or failure to provide an audit when required;
  3. Investigations or worker/citizen complaints; and/or
  4. Failure to meet schedules.

12-10 **Selection of program areas/functions to review.** The LRS shall conduct an analysis to identify the program areas/functions and activities for review and the depth of 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 LCA's

program(s) preclude monitoring all functions and activities, the LRS should select representative activities or functions. However, the LRS should be mindful to include activities more likely to have issues needing identification for the LCA. LCA performance should be analyzed in sufficient depth to produce a report that is credible and useful to both HUD and the LCA. In the case of LCAs with significant contract activity (e.g., over \$50 million), 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/divisions in less detail.

- 12-11            **High risk activities.** Certain types of activities are considered high risk and should be selected 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 involving permanent/takeout financing should be reviewed for compliance with the requirements/wage decision in effect at the time the work began.
  - C.     Large contracts/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.     Agencies determined “troubled” by HUD’s Office of Public and Indian Housing (PIH) or equivalent status on an agency by another HUD program office.
  - F.     Agencies receiving substantially larger funding and/or new HUD funding sources than current staff may have time or experience to handle.
- 12-12            **Intensity of review.** The depth or thoroughness of the review will be dictated by the degree of involvement of the LCA in high-risk activities, past monitoring history, or 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 set of submissions from the LCA. Where the LRS 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 format prescribes a range of numerical scores for high, medium or low risk. RLROs 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.

- A. **Use of existing data.** In developing an annual monitoring strategy, the LRS should consider existing reports of LCA activities and funding, together 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.
  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).

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. This ranking and the staff and other resources available will be used to determine which LCAs will be monitored, and the reviews that will be performed on-site versus remotely.
- D. **Documentation.** Regional OLR offices should retain their annual risk analyses documentation and monitoring strategy for five years. These documents are the record of the Region's recommendation of LCA/projects selected for on-site review, remote review, or technical assistance.

12-14 **Timing of monitoring.** To the extent possible, the LRS shall schedule monitoring, especially on-site visits, in consultation with the LCA and seek to minimize disruption in the operations of the LCA. Generally, monitoring should be scheduled either at the same time as program office or other support function (e.g., FHEO, Environment) reviews are being conducted, or at a time well separated from those reviews.

12-15 **Annual monitoring schedule.** As part of the annual monitoring strategy, the RLRO shall prepare and distribute to the offices listed at 12-15(D), a monitoring schedule for the operating plan year. This schedule shall cover all HUD programs based on the criteria for selection of LCAs in this Handbook and other Headquarters guidance. The annual schedule will identify by quarter the LCAs to be monitored,

whether on-site or remotely, for each program office, and the functions/areas to be monitored.

**A. Developing a schedule.**

1. 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, i.e., monitoring more than one LCA in the same geographical area on the same trip, provision of technical assistance, etc.
2. OLR staff should not plan on reviewing lower risk projects or functional areas for an LCA except where time remains from a planned visit. Monitoring other than high 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 Headquarters 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 LRS 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 LRS 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 or one team review.

**D. Distribution of the annual monitoring schedule.** Within 30 days following the beginning of the fiscal year, unless Headquarters operating instructions specify otherwise, the RLRO shall communicate the annual schedule of proposed monitoring to the offices listed below:

1. HQLR
2. Regional Administrator.
3. Field Office Director.
4. Regional and field office program directors.

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- A. Coordination of 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. Review of available data.** The LRS 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 problems or potential problems. 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 OLR's management information system (LR2000).
  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 LRS 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.** LCAs shall be given adequate notice in advance of an on-site monitoring review. Written notification shall be provided to LCAs at least 14 calendar days prior to the date of the planned on-site monitoring. The LCA shall be advised of the functions, areas and/or operating divisions selected for review, the names of the HUD participants, the dates of the visit, the LCA staff that should be available, the files or information needed for review, and the location(s) at which field work will be performed. The dates/times for meetings and interviews will be coordinated with the LCA prior to any planned visit. 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 monitoring review, the following steps shall be followed: (Additional considerations for remote monitoring and state monitoring reviews follow this paragraph at 12-19 and 12-20, respectively.)

- A.        **Entrance conference.** The LRS and any other members of the review team shall conduct an entrance conference with appropriate LCA officials to introduce the review team and explain the review's purpose and schedule. The LRS should indicate the LCA staff, including LCA operating divisions, that should be available for interview and the records that must be made available for review.
- B.        **LCA-generated reports and materials review.** The LRS/review team shall review, as necessary and appropriate, materials generated by the LCA providing detailed information on project descriptions, budget, status, percentage of completion, etc.
- C.        **LCA file review.** The LRS/review team shall review LCA files, including subrecipient files, where appropriate, for required documentation. The LRS will assess the accuracy of information provided to HUD and the level and effectiveness of LCA labor standards compliance activities.
- D.        **Interviews.** The LRS/review team shall interview members of the LCA's staff and, as appropriate, subrecipient staff to discuss the LCA's performance and assess capacity.
- E.        **Site reviews.** It may be necessary for the LRS/review team to visit a sampling of project sites to validate LCA records. Based on the examination of the LCA's files and interviews with LCA staff and subrecipients, the need for visits to other project sites or operational agencies may be indicated.
- F.        **Measure performance.** The LRS/review team should determine whether the individual activities reviewed have been correctly administered based on the review of records, interviews with persons involved in the program and any site visits. The LRS should measure the LCA's performance against Departmental requirements and guidance. When deficiencies are documented, the LRS should assess:
  - 1.        The reason for the deficiency;

2. Whether the cause is unique to the individual contract, project or function or whether the problem is systemic; and
3. Any corrective action the LCA is undertaking.

**G. Analyze results.** The LRS/review team should analyze the monitoring results and pertinent in-house data to detect possible trends and existing or potential problems. The assessment shall include both the results of the review of individual activities and the action(s) the LCA is undertaking to improve performance.

**H. Reviewer conclusions.** The LRS/review team shall reach conclusions about:

1. The adequacy of the LCA's management system for the administration of labor standards;
2. Whether the program is being administered in compliance with required guidance; and
3. The accuracy of the data in the LCA's reports to HUD, and to DOL (states grantees, only).

**I. Exit conference.** The LRS shall conduct or participate in an exit conference or other form of consultation with the appropriate agency officials to present preliminary conclusions resulting from the visit and to assure the conclusions are based on accurate information. A record of the exit conference, including attendees, date, time, items covered, preliminary conclusions, any disagreements 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 labor standards administration documents and other information via mail or other delivery method to OLR staff for review and evaluation. In order to spare the LCA the burden and expense of making copies, the LCA will be asked to send the original documents via a shipping method requiring signature on delivery. The LRS is responsible for returning the records to the LCA with signature on delivery. Because OLR 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 of less complex agencies or of agencies where the factors contributing to the higher risk score may be evaluated remotely. Remote monitoring may also be performed of higher risk and/or more complex agencies when staffing and travel resources are limited. The various steps for remote monitoring include:

**A. Initial contact with LCA.** The LRS makes initial telephone contact with LCA to discuss LCA's selection for review and to negotiate the timing of the review (see 12-14). The LRS will discuss with the LCA the activities

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subject to prevailing wage requirements, agency structure, and the areas that will be reviewed and the documentation, records and other materials likely to be requested for review. The LRS should advise the LCA that telephonic interviews with staff may be necessary as a part of the review. Also, if the LCA has multiple operating divisions/agencies or functions, the LRS should, as appropriate, cover the same preparatory items with an overarching entity of the LCA or with the separate operating divisions/agencies.

1. In some cases during the initial telephone contact, the LRS and LCA can agree on the projects/contracts that will be reviewed and the information and documents the LCA must submit to the LRS for review. In such cases, the LRS may bypass steps B and C (below) and confirm in writing the agreements reached. The date of this letter constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date. This document is entered as an incoming request for remote monitoring materials (IRM).

**B. Confirmation of documents requested.** The LRS shall send to the LCA written confirmation of the initial contact (*aka* initial notification) and of the information requested, which shall include a description of the agency structure and list of personnel and contact information, and a list of current and/or recent activities. Such activities may include contracts (or purchase orders) for maintenance, construction, modernization, emergency work, etc. If telephone contact could not be made, this letter will also describe the remote monitoring process. The list of activities will form the basis for the LRS’s selection of individual projects/contracts to review, and will consist of the following elements:

1. Project name and identifier - the name and project number (if any) agency officials use to refer to the activity.
2. Brief Description – a brief description of the key elements of the work. A description relating to the labor standards-triggering activities is helpful. The LRS may consult with the LCA staff to ensure that the information provided is useful. Examples of preferred descriptions include: “rehabilitation of a 2-story, 16 unit apartment building” or “purchase order for roof repairs at PHA administrative building.
3. Contract/budget amount.

**C. Review of LCA information and request for records.** The LRS 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 LRS shall transmit a request for records and instructions for submission.

The request shall identify the activities that will be assessed and describe the records that are needed. The request shall instruct the LCA to submit the original records with an inventory of the contents and to send the records via a shipping method that requires signature on delivery. The date of this transmittal constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date. This document is entered as an incoming request for remote monitoring materials (IRM).

- D. **Confirmation and review of records received.** The LRS shall provide confirmation to the LCA of the records received, noting any requested records that were not included. The LRS shall examine the materials submitted using HUD-4742, Parts A-E, as appropriate. Additional discussions between the LRS and LCA may be necessary to assess staff understanding of labor standards requirements, clarify issues and resolve questions during the review and analysis process. Discoveries from the review of the initial submission may necessitate expanding the scope of the review to validate conclusions.
- E. **Review conclusions.** The LRS 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 12-18(H)).
- F. **Exit conference.** The LRS shall conduct an exit conference with the LCA; the exit conference may be accomplished by telephone. A record of the exit conference is required documentation for the monitoring record (see 12-18(I)). The date of the exit conference is the ending HUD review date.
- G. **Monitoring report.** The LRS shall prepare the monitoring report. The requirements for content, consultation, distribution of reports, documentation, records maintenance, and tracking responses to resolution are identical to those for on-site monitoring. When the monitoring report is mailed it is recorded as outgoing correspondence remote monitoring report (ORM) in the OLR management information system.
- H. **Supporting documentation.** The LRS shall make copies of the LCA’s documents, as needed, to support the conclusions/recommendations in the report. If evidence of the same a problem is repeated on multiple documents, the LRS should copy only as many of the documents as needed to support the conclusions and to track any issues to full resolution.
- I. **Return of LCA documents.** The LRS shall return to the LCA, via shipping method that requires signature on delivery, the records submitted by the LCA for the review along with an inventory of the records enclosed. The LCA shall ask the LCA to confirm receipt of the records returned.

- 12-20      **State program reviews.** The State Community Development Block Grant program and State HOME Investment Partnerships program have many similarities to the corresponding programs administered by units of general local government; however, there are some differences. States 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/DOL requirements.
  - B.      **Review of state recipients.** States distribute funds to units of local government (state recipients). Every state program monitoring does not require recipient-level review; but such reviews should be conducted periodically to assess the state's support to, and oversight of, its 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 presented as problems in state oversight, with corrective actions for the state to improve its systems as well as to address the deficiencies at the recipient level. The LRS may make findings at the recipient level; however, the state will oversee and report on the resolution to HUD.
  - D.      **Frequency of OLR 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 OLR's participation is driven by its annual risk assessment and monitoring plan. Generally, OLR's monitoring report of a state program is consolidated into a broader monitoring report sent from either the CPD Director or Field Office Director (see 12-23).
  - E.      **State CDBG monitoring review guides.** The review guides for the state programs are HUD-4743-A, Part A, *Agency Labor Standards Administration*; HUD-4743-B, Part B, *State Recipient Monitoring*; and HUD-4742-X, *Exit Conference Record*.
- 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 report.

**A. Types of Evidence**

1. Physical: direct observation of people, property, or processes – most dependable type of evidence and is essential in determining adequacy of internal controls.
2. Documentary: files, records, etc. – excellent method of verifying reliability of evidence gained through other methods.
3. Testimonial: interviews – considered least dependable – information thus obtained requires corroboration before it can be used in support of a finding.
4. Analytical: developed by making judgments about other forms of evidence through computations, reasoning, comparisons, etc.

**B. Standards of evidence.** Evidence must meet three standards to support a review conclusion:

1. Sufficient: There must be enough factual and convincing evidence to lead a reasonable person who is not an expert in the program area to the same conclusion as the reviewer. Determining adequacy of evidence requires judgment, especially when there is conflicting evidence. Sufficient evidence is needed to back up the conclusion. Records/staff selected for examination, observation, or interview should be sufficient to give the reviewer reasonable assurance adequate controls are in place.
2. Reliable: The evidence must be reliable and the best obtainable through using reasonable review methods. If there is any reason to question its validity or completeness, additional measures must be taken to ensure the validity of the evidence.
3. Relevant: The evidence must be linked to the monitoring review objectives and have a logical, sensible relationship to the issue being proved or disproved.

**C. Evaluation.** The evaluation phase of the monitoring review is ongoing from the time information is collected prior to the arrival on-site or the agency's submission of requested records and information, through the examination and exit conference, to the preparation of the monitoring review report. The reviewer makes judgments about all records examined, every interview conducted, and every observation made to determine if a piece of evidence might link or relate to other evidence gathered. The materiality of deficiencies and whether they need to be placed in the official report (rather than handled verbally) is the reviewer's judgment. This should be based on available evidence, extent of the problem, risk to program delivery, and monitoring review objectives. The following points provide some guidance 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 (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, such as a pattern of small, related discrepancies, which by themselves would not warrant mention, but which taken together could be detrimental to the program.

12-22

**Monitoring reports.** A monitoring report shall be sent to the principal program director who administers HUD funding for the LCA or the executive director of a PHA, IHA or TDHE, with copies to appropriate LCA operating divisions or agencies, reporting the results of the monitoring review. When the labor standards monitoring is conducted in conjunction with a team visit including other support functions and/or the HUD program office monitoring, a single monitoring report should be sent (see 12-22(M)). It is particularly important that all conclusions reached are well supported by facts stated in the report. Staff that concur on monitoring reports should assure all findings have been correctly identified and, as such, are based on applicable law, regulation, handbook or other directive.

**A. Timing.** Issuance of the report should occur as early as possible, particularly if there are major findings. The monitoring report shall be issued within 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. Labor Relations staff 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);
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 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 12-22(E) of this Chapter. 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 should be constructive. Deficient performance should be placed in perspective. The disclosure of major findings and concerns should be accompanied with recommendations or offers of technical assistance directed to help correct the deficient performance. It is appropriate to recognize the LCA for making significant improvement in an area of previously identified deficiency.
- D. **Overall assessment of the LCA’s administration of labor standards.** The LRS’s report should conclude whether the LCA’s system and performance, when measured by the functions/areas and information reviewed, are adequate. Further, the LRS 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, rule, handbook or official directive. Each finding should be clearly titled “Finding,” and include the following information:
    - a. **Condition:** A description of what was wrong or of the problem;
    - b. **Criteria:** The program requirement and citation not met;

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- 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 OLR.
2. **Concern**: A nonconformance with a standard *other* than a statute, rule, handbook or other official directive, or a condition, 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 also 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 LRS should recommend actions and recommend or offer 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, detailed recapitulation of technical assistance subject matter should be included in a separate transmittal to the LCA.
- G. Goal of corrective actions.** Corrective actions should be 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 LRS observes an especially innovative, outstanding or useful labor standards practice by an LCA that is replicable for other agencies, 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, LRS shall forward a complete description of the practice through their RLRO to HQLR so that the practices, processes and systems can be distributed as a model for similar organizations.
- I. Clarity of communication.** The LRS should strive 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 LRS. Citations for findings should be precise, rather than general, with corrective actions
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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 LRS documents several related non-compliances in an LCA's administration of labor standards, often reporting those conditions as a single, consolidated description can focus the LCA on systemic improvements, while addressing the various condition and corrective action components.

- J. Objectivity of report.** The monitoring report should be objective and dispassionate, avoiding subjective statements or conclusions that are not relevant to the scope. The presentation of the conclusions from condition to corrective actions should persuade readers the conclusions are valid and any corrective actions are appropriate. The working papers 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. The monitoring report and record may be a basis for further action by the Department, if circumstances warrant.
- K. Opportunity to contest findings.** The monitoring report or its transmittal will include 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.
- L. Consultation prior to issuing report.** Prior to issuing the report to the LCA and reviewers are required to consult with their supervisor, or a designated authority, on the evidence, conclusions and required/recommended actions resulting from the review. The purposes of the consultation are for the supervisor 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.
- M. 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 LRS (or RLRO) shall provide copies of the monitoring report to the following:
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1. The Regional Administrator or Field Office Director within whose operational jurisdiction the LCA is located;
2. The directors of the HUD program office(s) with jurisdiction for the LCA; and
3. The RLRO, if the report is issued at the field office level.

**N. Documentation.** Monitoring activities and results must be well documented. The monitoring report must be 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 OLR's LCA file. This documentation shall include:

1. Initial notification letter
2. Entrance conference notes, including attendees
3. Completed review guides
4. Review notes
5. Supporting documentation
6. Exit conference notes
7. Monitoring report
8. Records of follow-up actions through close-out, including LCA responses
9. Confirmation of the LCAs receipt of records returned (remote monitoring)

**O. Record retention.** Monitoring records shall be maintained by the office generating the report for a period of five 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 LRS or RLRO who prepared the labor standards portion of the report. The reasons for any non-concurrence shall be discussed with the HUD program office and agreement shall be reached prior to the issuance of the report.

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

**A. Evaluation of LCA response.** When the LCA's response has been received, the LRS shall review the corrective action proposed or taken by the LCA. The LRS review should be completed and a written evaluation communicated to the LCA within 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 shall be 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 shall be 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 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 LRS, after consultation with the RLRO and HQLR, shall transmit to the appropriate program office director a recommendation to impose sanctions against an LCA that fails 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 12-22(N).

12-25 **Closing monitoring findings.** As the LCA completes and reports satisfactory corrective action(s), the LRS shall provide written confirmation of such status to the LCA. The confirmation shall be 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
9. Final resolution of any referral

**B. Use of OLR management information system.** OLR's management information system, LR2000, will be used to the extent possible to record and track the events listed in 12-25(A). More detailed guidance is included in the LR2000 User Guide and its supplements. In addition to serving as a management tool for the OLR regional and field offices, the system serves as the basis for reporting to HQLR.

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### Section III – Risk Analysis and Monitoring Review Guides

- 12-27      **Risk analysis/LCA monitoring review guides.** Risk analysis and LCA monitoring review guides are designed to provide structure to the assessment and review processes, guide the LRS in collecting and recording data and observations and assist the LRS in evaluating LCA performance. The guides are available in both fillable Word and pdf formats at the OLR Website: [www.hud.gov/offices/olr](http://www.hud.gov/offices/olr).
- 12-28      **Format of review guides.** The review guides have been 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. "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, for use in discussions with HUD program office staff and/or OLR managers, as well as for any future LRS assigned to the LCA and for others who have a need to review the LCA's performance.
- 12-29      **Interpretive legend to review standards.** All questions proceeded with an asterisk (\*) are not related to requirements imposed by statute, regulation, handbook or other official directive. These are included to assist the reviewer to understand the LCA's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Therefore, negative conclusions to asterisked questions may result in a "concern" being raised but not a "finding".
- 12-30      **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 reviewer 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 reviewer could conclude 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 should be spot-checked to determine whether the problem is isolated or systemic
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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 LRS may, with the approval of the RLRO and in consultation with the LCA, extend the on-site review period. If the review time cannot be extended, the area with problems should be 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 LRS of its conclusions.

12-31 **Regional/local amendments to monitoring review guides.** The RLRO 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 RLRO 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.

12-32 **Inventory of risk analysis and review guides.**

**A. Risk analysis.**

1. HUD-4740-I – Risk Analysis Instructions
2. HUD-4740-T – Risk Analysis Table
3. HUD-4740-FS – Field Office Summary of Risk Analysis Scoring

**B. Local agency on-site monitoring.**

1. HUD-4741-A – Part A Agency labor standards administration
2. HUD-4741-B – Part B Agency labor standards contract compliance – Davis-Bacon – covered projects
3. HUD-4741-C – Part C Agency maintenance wage rate administration
4. HUD-4741-D – Part D Agency contract labor standards compliance – HUD-determined wage rates
5. HD-4741-E – Part E Agency labor standards compliance – force account work
6. HUD-4741-X – Exit conference

**C. State agency on-site monitoring.**

1. HUD-4732-A – Part A Agency labor standards administration
2. HUD-4732-B – Part B State agency monitoring
3. HUD-4732-X – Exit conference

**D. Remote monitoring.**

1. HUD-4742-A – Part A Agency labor standards administration
2. HUD-4742-B – Part B Agency labor standards contract compliance – Davis-Bacon – covered projects

3. HUD-4742-C – Part C Agency maintenance wage rate administration
4. HUD-4742-D – Part D Agency contract labor standards compliance – HUD-determined wage rates
5. HD-4742-E – Part E Agency labor standards compliance – force account work
6. HUD-4742-X – Exit conference