

## APPENDIX D

## GRANTEE RESPONSE TO DRAFT REPORT



**Consortium for Worker Education**  
275 Seventh Avenue, New York N>Y> 10001  
(212) 647-1900 Fax (212) 647-1900 [www.cwe.org](http://www.cwe.org)

January 17, 2008

Mr. Mark L. Schwartz  
Audit Director  
Office of Inspector General  
US Department of Labor  
201 Varick Street  
New York, New York 10014

Re: Comments and Response to Draft OIG Report Number 02-08-203-03-390

Dear Mr. Schwartz:

The Consortium for Worker Education appreciates the opportunity to provide formal comments and a response to the Draft OIG Report Number 02-08-203-03-390 ("Draft Report"). We respectfully disagree with each of the findings discussed in the Draft Report and believe that a review of the now-available documentation will resolve each of the issues raised. We would be happy to discuss and review that documentation with you at your convenience before the Draft Report is finalized. It is important to note that none of the draft findings deal with issues of "waste, fraud or abuse" but rather are matters related to the difficulties faced by CWE in locating files from closed centers two years after the termination of the grant and disagreements about accounting methodologies. We are confident that an overall review of documents both reviewed and now-available will resolve any of the issues addressed in the Draft Report.

#### **Background of the Emergency Employment Clearinghouse Grant**

As you are aware, the Emergency Employment Clearinghouse ("EEC") was formed by the Consortium for Worker Education ("CWE") as a partnership of the New York City Central Labor Council and the New York City Partnership and Chamber of Commerce, in order to be a highly flexible response for businesses and workers affected by the tragic events of September 11, 2001.

The EEC, administered by the CWE, was linked to and operated out of its citywide Workforce Investment Act-funded Worker Career Center network as well as a network of various small-business associations, labor-management partnerships, community-based organizations, and job training groups. The

purpose of the EEC, which operated from April 1, 2002 through December 31, 2004 was to provide the following services:

- Outreach to and provide assistance to individuals impacted by the events of 9/11
- Register affected workers for reemployment services
- Provide job training to affected workers
- Help businesses and community institutions affected by the events of 9/11 and the continuing impact from those events maintain their workforce and remain operational
- Provide wage subsidy investments to industries and businesses impacted by the events of 9/11 in order to maintain economic viability and provide employment growth at a time of severe disruption
- Provide employee retention services for affected workers through training and reemployment utilizing EEC initiatives

As approved by the Department of Labor's Regional Employment and Training Administration ("ETA") as well as the New York State's Department of Labor, eligibility for EEC services was based on individuals completing and certifying an application that their employment had been negatively impacted by the events of 9/11.

Comprehensive EEC services started with outreach to and the registration of impacted individuals and businesses across New York City. Assessment of business impact was conducted by a team of sector liaisons assigned by the industry sector expertise of the individuals. Services to impacted individuals were provided through a network of CWE-administered Worker Career Centers, contracted community-based organizations and labor unions, all of which referred affected individuals to EEC funded sites for training and reemployment services. The EEC model was developed in order to leverage partnerships with WIA, Temporary Assistance for Needy Families ("TANF"), NEG, foundation and private equity contributions to achieve the widest possible variety of service and reemployment options to impacted New Yorkers.

Certain industry sectors were immediately and severely impacted during the initial disaster phase, such as New York's healthcare industry. Hospitals were besieged with the casualties of the disaster while elective and non-critical surgeries were postponed as the Federal Emergency Management Agency ("FEMA") took direct charge of ambulatory and healthcare provisions for several months. The highest revenue generator for New York hospitals is elective surgeries. All New York hospitals were confronted with 70% or higher cancellations of elective surgeries during the first 6 months after September 11<sup>th</sup>. Similarly, the tourism and hospitality industry was decimated for months after the events of 9/11 and hotels needed direct assistance and resources to

maintain even nominal staff. The Arts and Entertainment sector, a \$5 billion dollar contributor to the City’s economy, was shut down for months. Broadway shows, musicals and other scheduled events were indefinitely postponed or canceled due to lack of ticket sales. The construction industry which had been in a growth cycle came to a halt as critical construction trade workers were mobilized for rescue, then recovery, then clean-up efforts at Ground Zero.

CWE and the NYC Partnership initially proposed a wage subsidy as a temporary stimulus package to encourage impacted industries and businesses to maintain operations in order to enable workers to maintain their employment instead of being laid off. Several models were designed to meet the various needs of differently impacted industries and businesses, as different circumstances dictated different service assistance programs.

Many workers who permanently lost their jobs as a result of the events of 9/11 needed skills training services to transition into new jobs and career pathways. Some businesses redesigned jobs or developed new business models due to changes in the business environment, so upgraded and transitional training courses were made available. EEC resources allowed industries and workers to partake of an extensive offering of training, re-training and upgraded training offerings.

**The EEC contract set performance expectations at the following levels:**

- Contacts 103,000
- Outreach and Recruitment 30,900
- Registered for Services 20,600
- Job Placements 5,150
- Wage Subsidy 3,331
- Training and Education 5,701

CWE met and or exceeded each of these milestones set forth in the grant.

**Objective 1 – Were Reported Costs Allowable, Allocable, and Reasonable in Accordance with Federal Requirements?**

**A: Unsupported or Excessive Wage Subsidy Costs of \$5,359,333**

i. Unsupported Healthcare Employer Costs of \$5,122,654

The Draft Report states on page 9, paragraph 3 that CWE officials explained that Healthcare employers did not go through the grant-required application and

qualification process; rather, that hospitals and health care facilities were awarded wage subsidies based only on undocumented oral discussions with representatives of the hospital workers union (Local 1199). Further, the Draft Report states that CWE did not provide any other documentation that documented the impacts, such as expected layoffs, job openings not being filled or business decline, that the hospitals and health care facilities experienced as a result of the events of September 11.

**CWE Response:**

On December 5, 2007, CWE provided to the OIG copies of background documentation related to the healthcare wage subsidy program. Documents provided included: a) the initial January 2, 2002 proposal from health care labor and management outlining the current state of affected healthcare institutions; b) letters from specific hospitals substantiating the need for wage subsidies; and c) signed subcontracts between identified impacted hospitals and CWE. These documents substantiated that CWE appropriately pre-qualified and vetted the affected healthcare institutions for wage subsidy allocations, demonstrated industry impact by the emergency takeover of NYC hospitals by FEMA, and, included letters from affected institutions describing both impact and need of assistance.

In particular, the January 2, 2002 proposal submitted to CWE from healthcare Local 1199, on behalf of the League of Voluntary Hospitals, documented the immediate impact on various healthcare institutions of the events of 9/11 and its aftermath. Further evidence was the fact that a majority of major NYC hospitals were thrust into emergency service mode and functioned under the direction of FEMA while sustaining revenue losses in the hundreds of millions of dollars.

The proposal proposed a proactive approach to addressing the ongoing erosion of the existing healthcare workforce which would have further devastated a dramatically weakened industry. Local 1199 and the League of Voluntary Hospitals acted as the representatives of the industry in identifying specific issues relative to obtaining letters of attestation as to the affects of the events of 9/11 and its impact on each institution. Due to FEMA's primary role as coordinator of services for all NYC hospitals, there were significant delays with respect to obtaining the written impact statement letters from each affected healthcare institution. Those letters, which were eventually received, are accurate documentation of the impact on the applicable institutions.

CWE worked in partnership with Local 1199, Hospital League representatives, and local USDOL ETA representatives during that period to coordinate communications and develop institutional financial remedies from the EEC grant, while constructing the final details and contract language. This resulted in execution of signed sub-contract agreements with various hospitals between February and July 2002.

These ongoing efforts were all well-documented in the quarterly reports being submitted by CWE to ETA personnel.

ii. Unsupported and Excessive Wage Subsidy Costs of \$236,679

On page 9 of the Draft Report under the sub-heading "Unsupported and Excessive Wage Subsidy Costs", the Draft Report states "CWE paid some wage subsidies that did not comply with Federal requirements of the terms of the grant. This occurred because CWE did not maintain effective controls to ensure compliance with grant terms. As a result, we question wage subsidy costs of \$236,679 based on unsupported participant payroll records of \$225,478, and \$11,201 which either exceeded negotiated grant terms or lacked documentation.

**CWE response:**

CWE disagrees with this finding. CWE's back-up payroll records and adjustments for wage subsidy payments of \$225,478 are demonstrably accurate and are in compliance with grant guidelines. CWE is willing and able to provide the documented evidence and explanation of those documents that will resolve any concerns or misunderstandings that the auditors might have.

Regarding the \$11,201 classified as "excessive payments and lack of documentation", CWE notified responsible personnel at ETA that a limited amount of wage subsidy costs exceeded the hourly salary guidelines submitted as part of the grant proposal. We notified ETA that under special circumstances, i.e., the employer was to have begun work projects in the Twin Towers shortly after September 11<sup>th</sup>, that we would amend our general limitation policy. We believe the immediate impact (layoff of their entire workforce) of their inability to remain afloat due to the loss of this contract was a unique circumstance reasonably acceptable of wage subsidy investment flexibility.

The result of this flexibility was the contractor was able to maintain their full-time, experienced core of workers and generate additional business to keep the company operational after the subsidy period ended. This episode demonstrates why CWE offered a variety of flexible wage subsidy models. We anticipated that not all companies, circumstances and situations would fit into a narrow program model prescription.

The CWE disagrees with the Draft Audit assertion that we inappropriately exceeded wage subsidy limits

**B. Unsupported FSR Costs of \$2,468,540**

The Draft Report states CWE claimed costs for Indirect costs (\$1,039,691); Other Expenses, Supplies, and Wage Subsidies (\$1,013,182); and Pre-Award Costs (\$415,667) without maintaining adequate supporting documentation, As a result, the Draft Report questions unsupported costs of \$2,468,540.

Indirect Costs (\$1,039,691)

**CWE Response:**

In 2003, CWE applied to the Department of Labor for a preliminary indirect cost rate of 21.34%. CWE received that approval from the Department of Labor. The approved rate of 21.34% was in excess of the 15% rate allowed pursuant to the terms of the ECC grant. All grant draw-downs were based on the capped 15% indirect rate. The CWE is currently working with the Department of Labor's Division of Cost Determination to complete the application for a final approved indirect rate for the years in question (2002, 2003, and 2004). This application will be completed and submitted to the Division of Cost Determination by March 1, 2008. We fully expect the final indirect rates for 2002, 2003 and 2004 will be well in excess of the 15% indirect rate allowed by the ECC grant.

Other Expenses (\$703,260), Supplies (\$229,371), and Wage Subsidies (\$80,551)

**CWE Response:**

CWE disagrees with the Draft Report's conclusion that CWE did not appropriately classify expenses within budget line items. At issue is how certain costs were allocated to line items. The basis for allocation of line item charges is a correlation of percentage of staff directly charged to the grant. This methodology was consistent with the methodology used in previous grant and contracts with the State and City of New York.

Pre-Award Costs (\$415,667)

**CWE Response:**

The CWE was specifically authorized by Department of Labor and regional ETA officials to apply costs incurred for grant related activities from January 2002 through April 1, 2002, prior to the formal award of the EEC grant.

CWE disagrees with the Draft Audit report’s statement that CWE could not identify these costs in CWE’s general ledger. Despite the Draft Audit’s assertions with respect issues with CWE’s “crosswalk” general ledger, CWE’s program costs spent during the approved pre-award timeframe are both appropriate and demonstrable.

**C. Unallocable Instructors’ Salary Costs of \$2,175,923**

The Draft Report states that CWE instructor salaries were not properly allocated to the grant based on the proportional benefit received. The Draft Report further states that CWE did not provide appropriate labor distributions, allocation worksheets or timecards to support the allocation of the amounts reported. The Draft Report further states that class rosters show both EEC and non-EEC students attended classes.

**CWE Response:**

The CWE documented instructor salaries by timesheets through a memorandum of understanding (“MOU”) with various training service providers. Every contracted training provider was advised in advance that in order to pay for 100% of the instructor’s time, a minimum of 10 students were necessary to fund the class. CWE only paid the instructor cost when the class roster had been verified. Additional students that are enrolled that were not specifically EEC recipients were allowed to attend classes that already met the minimum student enrollment. Instructor costs for those students were never charged to any other grant. Other costs for those students were appropriately charged to other sources of funds when available and appropriate.

CWE has the documentation available to support these statements and would be happy to review it with the Office of Inspector General.

**Objective 2 – Did CWE Establish the EEC and Provide Employment Services to participants Impacted by the Events of September 11, 2001?**

**A. CWE Overstated Participant Enrollments**

Page 14 of the Draft Report states that CWE overstated enrollments by 3,682 and costs of \$151,225 are questioned for the two centers with missing documentation.

Reported to ETA	24,195
Less:	
<i>Duplicative Enrollments</i>	2,492

<i>Unexplained Difference</i>	934	
<i>2 Centers Missing Documentation</i>	<u>256</u>	<u>3,682</u>
<u>Documented Enrollments</u>		<u>20,513</u>
<b>Contract Enrollment Goal</b>		<b>20,600</b>

**Duplicative Enrollments**

**CWE Response:**

CWE provided services to thousands of 9/11 affected workers across the five boroughs of New York through a network of more than 30 sites. It is possible that workers occasionally traveled from one center to another seeking a quicker lead to a job or faster access to training on demand. Registration was ongoing and concurrent with sign-up for WIA and TANF related programs. Charities such as Safe Horizon were referring individuals to CWE sites at a rate of up to 400 per day for the initial 6 months of the grant.

Attempts were made to consolidate registered participants on a monthly basis. However, the fluidity of new entries to the system caused numerous crashes to our data collection systems. We made the programmatic decision to reconcile enrollments at the close of grant activity. Given the oversubscription of enrollees to the stated grant goal, CWE still achieved the specified levels for overall enrollment into the program. CWE does not believe any "penalties" should be attributed to the over-attainment of the project.

**Unexplained Difference**

**CWE Response:**

CWE believes there were instances where it under-reported on enrollments due to closeouts at multiple intake sites. Furthermore, given the multiple streams of intake sources across the city, initial reports of enrollments may have been greater than what was initially captured. CWE is continuing to resolve any discrepancies with actual enrollments through reconciliation of EEC, WIA and TANF and other referral intakes. We are preparing a full reconciliation with back-up documentation and will make it available upon request.

**Two Centers Missing Documentation**

**CWE Response:**

The CWE has obtained the archived file records of subcontractors Fort Green SNAP and IAM Cares, the two closed centers for which records could not be located during the audit process. We can now make those records available upon request.



### **B. CWE Claimed Ineligible Participants**

Page 15 of the Draft Report states that CWE did not provide adequate documentation to support the eligibility of 366 program participants. It cites "WIA Title I, Subtitle E, Section 188(a)(5), Prohibition on Discrimination Against certain Non-citizens, requires that participation in programs shall be for individuals authorized to work in the United States. According to the Social Security Administration ("SSA"), without exception individuals must have a valid Social Security Number ("SSN") in order to work in this country. Further, the grant states that to be eligible for the program, a participant was required to complete and sign a self-certification form attesting that they were impacted by the events of September 11, 2001.

The Draft Report states that CWE enrolled 357 participants without documentation that the individuals were authorized to work in the United States.

- 201 participants had invalid SSNs according to SSA's valid range of issued numbers, and
- 156 participants were enrolled without documentation of their SSNs

The Draft Report further states that CWE did not document nine (9) sampled participants who were impacted by the events of September 11. These nine participants did not have self-certification forms required by the grant.

#### **CWE Response:**

The CWE operated EEC intake at various citywide venues. Their goals were to intake and register workers whose jobs were negatively impacted by the events of September 11. As noted above, a self-attestation document was created with the approval of New York State's Department of Labor and ETA to provide simplified access for workers to qualify for employment and other related services. The concern with establishing a more comprehensive document verification process was that many workers could not produce these items in a timely manner to meet government demands to provide workers with access to critical reemployment services so that they could rejoin the workforce.

The CWE and its intake centers relied solely upon the veracity of the self-attestation claim that these individuals were impacted by 9/11. Furthermore, the EEC was not a WIA program and therefore not bound by the eligibility guidelines of document procurement as a verification measure. Therefore, verification of social security numbers was not a requirement for CWE to ascertain from prospective participants. In fact, when CWE proposed to the NYS DOL that we have access to the wage reporting system to verify employment data for validation, the request was summarily rejected by DOL officials who cited concerns with respect to individual privacy.

**CWE Could Not Demonstrate That a Statistical sample of Non-Wage Subsidy Participants Received Employment Services.**

Page 16 of the Draft Report describes a series of judgmental samples used to test participant eligibility. The Draft Report states CWE was unable to provide files for 100 participants requested under a sample, and cites a July 14, 2006 letter from the CWE Executive Director that affirms CWE made available "all" files. The Draft Report extrapolates from the missing 100 sample that CWE could not confirm eligibility and employment services to 17,373 un-sampled non-wage subsidy participants.

**CWE Response:**

The CWE made every attempt to locate all participant document folders during the fieldwork phase of their audit between January and July of 2006. CWE staff attempted to convey the complexities involved with locating participant records from multiple sites, which had been archived at storage facilities for several years.

During the 16 month period in which CWE had no contact with the auditors upon completion of their fieldwork review, CWE was unaware this would result in an extrapolated finding for demonstrating eligibility and services on 17,373 additional records. During the meeting on November 28, 2007, CWE noted that these files had been located and that CWE could make them available within a reasonably short timeframe. Since that meeting CWE has been able to locate 95 of the 100 records in the "missing sample" and can make them available for review at your request.

We appreciate the opportunity to provide comments on the Draft Report.

Sincerely,

Joseph McDermott  
Executive Director