

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE EMPLOYMENT AND TRAINING ADMINISTRATION



ETA VIOLATED THE BONA FIDE NEEDS RULE AND ANTIDEFICIENCY ACT

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BRIEFLY...

ETA VIOLATED THE BONA FIDE NEEDS RULE AND ANTIDEFICIENCY ACT

WHY OIG CONDUCTED THE AUDIT

In 2015, GAO concluded a congressionally requested audit on the measures ETA had implemented to address Job Corps' financial challenges in program years (PY) 2011 and 2012. During that audit, GAO raised concerns that ETA may have violated the bona fide needs rule by improperly using unexpended funds for PYs 2011, 2012, and 2013 for the needs of PYs 2012, 2013, and 2014, respectively. The bona fide needs rule prohibits agencies from obligating funds for the purchase of services delivered outside the time period for which the funds were originally designated.

GAO referred this matter to the U.S. Department of Labor Office of Inspector General (OIG) because these concerns were outside the scope of its work.

WHAT OIG DID

We conducted a performance audit to determine the following:

Did ETA's use of Job Corps' operations funds for PYs 2011, 2012, and 2013 comply with the bona fide needs rule?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <https://www.oig.dol.gov/public/reports/oa/2017/26-17-002-03-370.pdf>

WHAT OIG FOUND

ETA's use of Job Corps' operations funds for PYs 2012 and 2013 violated the bona fide needs rule. ETA used \$22.1 million in PYs 2012 and 2013 funds for services actually provided in PYs 2013 and 2014 respectively. We did not find any bona fide needs rule violations for PY 2011.

These actions also violated the Antideficiency Act by improperly obligating the government to pay for services provided in PYs 2013 and 2014 before those years' funds were actually made available for obligation by Congress.

Furthermore, ETA could not demonstrate it complied with the bona fide needs rule and Antideficiency Act in executing nine specific contract modifications totaling \$24.6 million because these modifications lacked documentation of the time periods for the services being purchased. The start and end dates were necessary to be able to determine whether ETA complied with the bona fide needs rule and the Antideficiency Act.

In addition to the bona fide needs rule and Antideficiency Act violations, ETA allowed \$11.2 million in Job Corps' operations funds for PYs 2012 and 2013 to expire without being used. These funds could have been used to provide training services to improve the employability of economically disadvantaged youth. We had previously recommended in a December 2012 OIG audit report that ETA correct fiscal management deficiencies that had allowed millions in Job Corps funds to expire in earlier program years.

These deficiencies occurred because of insufficient management emphasis in these areas and inadequate documentation.

WHAT OIG RECOMMENDED

We recommended the Deputy Assistant Secretary for Employment and Training require Job Corps to correct any violations, improve internal controls, and use Job Corps funds more efficiently.

ETA did not agree with our conclusions. However, ETA did not provide any new information that changed our conclusions. ETA said it took corrective actions to address 3 recommendations and will take actions to address another.

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September 21, 2017

INSPECTOR GENERAL'S REPORT

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The Office of Inspector General (OIG) for the U.S. Department of Labor (DOL) conducted a performance audit to determine whether the Employment and Training Administration's (ETA) use of obligated operations funds in the Job Corps program complied with Section 1502(a) of Title 31, United States Code (31 USC), commonly known as the bona fide needs rule. The rule generally prohibits agencies from obligating funds provided by Congress for the purchase of services that would be delivered outside the time period for which the funds were designated.

In January 2015, the Government Accountability Office (GAO) concluded a congressionally requested audit¹ on the measures ETA implemented to address Job Corps' financial challenges in program years (PY) 2011 and 2012.² ETA's description of its actions with respect to its PY 2011 to 2013 funds raised concerns as to whether ETA had violated the bona fide needs rule. GAO referred this matter to DOL OIG because these concerns were outside the scope of its work.

As a result, we conducted this performance audit to determine the following:

Did ETA's use of Job Corps' operations funds for PYs 2011, 2012, and 2013 comply with the bona fide needs rule?

The scope of our audit covered the five-year period from July 1, 2010, through June 30, 2015, which included PYs 2010-2014. We interviewed management and staff at ETA's Office of Contracts Management, Office of Financial Administration, and Office of Job Corps; conferred with GAO appropriations law attorneys and audit staff who provided technical assistance for matters related to appropriations law; reviewed applicable laws, regulations, requirements, policies, guidance, processes, and controls. We non-statistically selected and reviewed \$631 million in Job Corps operations funds

¹ GAO, *Job Corps, Assessment of Internal Control Guidance Could Improve Communications with Contractors*, GAO-15-93 (January 2015)

² Job Corps operates on a program year basis that runs from July 1 to June 30. For example, PY 11 spanned the period from July 1, 2011, through June 30, 2012.

and supporting documentation (e.g., contract awards and modifications) for compliance with the bona fide needs rule.

We also assessed the reliability of Job Corps' operations funds data and determined the data were sufficiently reliable to accomplish our audit objective.

RESULTS IN BRIEF

ETA's use of Job Corps' operations funds for PYs 2012 and 2013 violated the bona fide needs rule, which prohibits agencies from obligating funds for the purchase of services delivered outside the time period for which the funds were designated. Specifically, ETA used \$22.1 million in PYs 2012 and 2013 funds for services actually provided in PYs 2013 and 2014, respectively. We did not find any violations to the bona fide needs rule for PY 2011.

These actions also violated the Antideficiency Act (31 USC, § 1341(a)(1)(B)) by improperly obligating the government to pay for services provided in PYs 2013 and 2014 before those years' funds were actually made available for obligation by Congress.

Furthermore, ETA could not demonstrate it complied with the bona fide needs rule and Antideficiency Act in executing nine specific contract modifications, totaling \$24.6 million, because ETA did not sufficiently document the timeframes during which the services purchased would be provided.

In addition to the bona fide needs rule and Antideficiency Act violations, ETA allowed \$11.2 million in Job Corps' operations funds for PYs 2012 and 2013 to expire without being used. These funds could have been used to provide training services to improve the employability of economically disadvantaged youth. We had previously recommended in a December 2012 OIG audit report that ETA correct fiscal management deficiencies that had allowed millions in Job Corps funds to expire in earlier program years.

Finally, during the course of this audit, ETA reported two other violations of the Antideficiency Act. Specifically, ETA obligated and expended approximately \$4.9 million more than it was appropriated for PY 2009, and \$1.2 million more than it was appropriated for PY 2010. ETA sent its final report for these two Antideficiency Act violations to the President and Congress in November 2015.

ETA's insufficient management oversight and its inadequate documentation in each of the noted areas allowed violations of both the bona fide needs rule and the Antideficiency Act. In addition, these deficiencies allowed \$11.2 million in funds to expire that could have been used for program purposes. ETA's continued fiscal management challenges and repeated loss of millions of dollars in expired funds

underscore the need for ETA to significantly improve oversight of its funds management.

BACKGROUND

Job Corps has had several financial problems in recent years. In PY 2011, Job Corps had a budget shortfall of \$19.4 million, which necessitated a request to the Office of Management and Budget (OMB) to transfer funds from its construction, rehabilitation, and acquisition account to its operations account to close the gap. In May 2013, we reported internal control deficiencies in the following areas: budget execution; data supporting spending projections and monitoring; monitoring of projected to actual costs; and policies, procedures, and communication of information that could adversely affect Job Corps funds and expenditures, including contracting activities.³ Subsequently, GAO conducted a performance audit to review the measures ETA put in place to deal with these control deficiencies. As previously noted, GAO had concerns as to whether ETA had violated the bona fide needs rule and referred the matter to DOL OIG.

Bona Fide Needs Rule

Under 31 U.S.C. § 1502(a), a fixed period appropriation is available to fulfill a genuine or bona fide need arising during the period of availability for which it was designated. The period of availability refers to the time period when the government can obligate funds provided by Congress for the purchase of goods or services. Job Corps' period of availability is its program year, which runs from July 1st of the fiscal year for which the appropriation is made through June 30th of the following year. Generally, an agency may not obligate current appropriations for the bona fide needs of future years. This bedrock of appropriations law is commonly referred to as the bona fide needs rule.⁴ For example, Job Corps' operations funds for PY 2014 generally could not be used to pay for contracts for services provided in PY 2015.

The Federal Acquisition Streamlining Act allows two statutory exceptions to the bona fide needs rule. One exception allows agencies to use current year funds for contracts beginning in one fiscal year and ending in the next fiscal year for specific situations, while the second exception allows agencies to enter into multiyear contracts for specific situations. These exceptions are detailed on page 7 of this report.

Antideficiency Act

The Antideficiency Act prohibits a U.S. government officer or employee from obligating funds in excess of an appropriation or involving the government in a contract or obligation before funds have been appropriated for that purpose, unless otherwise allowed by law (31 USC, § 1341(a)(1)(B)). In an August 2013 legal decision, GAO

³ DOL OIG, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*, 22-13-015-03-370 (May 31, 2013)

⁴ GAO, *Department of Health and Human Services-Multiyear Contracting and the Bona Fide Needs Rule*, B-322455 (August 16, 2013)

determined that improperly obligating appropriations for the bona fide needs of a future year in violation of the bona fide needs rule also violated the Antideficiency Act.⁵ According to this decision, such actions improperly obligated the government to pay for services to be provided in a subsequent year before that year's appropriations were available for obligation.

RESULTS

ETA improperly obligated \$22.1 million in Job Corps' operations funds available for PYs 2012 and 2013 for services provided in PYs 2013 and 2014, respectively. These actions violated both the bona fide needs rule and the Antideficiency Act.

An additional \$24.6 million in other Job Corps contract modifications lacked timeframes for the services being funded (i.e., start and end dates), which were necessary to measure ETA's compliance with the bona fide needs rule and the Antideficiency Act.

ETA also allowed \$11.2 million in Job Corps operations funds to expire that could have been used for critical program needs.

ETA VIOLATED THE BONA FIDE NEEDS RULE AND ANTIDEFICIENCY ACT

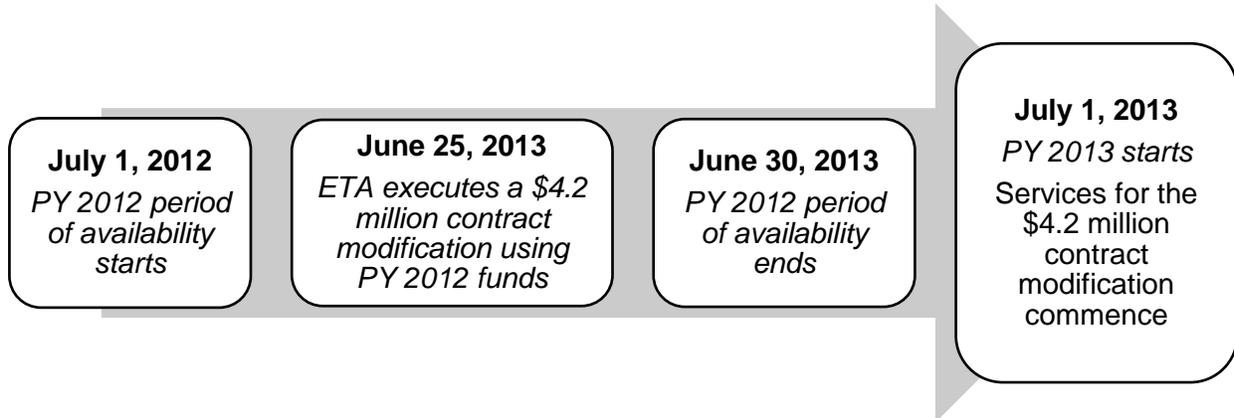
We found four contract modifications relating to two cost-reimbursement service contracts in which ETA improperly obligated \$22.1 million in Job Corps' operations funds available for PYs 2012 and 2013; to cover services that would be provided in PYs 2013 and 2014, respectively. The contracts were awarded to the Home Builders Institute (May 2013) and the United Brotherhood of Carpenters (June 2013) to provide career technical training and career placement/development services to Job Corps students. The violations occurred when ETA executed four unilateral modifications to these two contracts in the last few days of PYs 2012 and 2013.⁶

Figure 1 illustrates how ETA used one of the modifications to obligate \$4.2 million in PY 2012 funds for services performed in PY 2013, violating both the bona fide needs rule and the Antideficiency Act.

⁵ Ibid

⁶ A unilateral modification is a contract modification that is signed only by the contracting officer.

**Figure 1: \$4.2 Million Bona Fide Needs Rule and Antideficiency Act Violations
PY 2012**



Source: OIG analysis of contracts and modifications

In total, ETA contract actions resulted in four violations of the bona fide needs rule and the Antideficiency Act totaling \$22.1 million. Contract modifications were executed just days before the periods of availability ended for each of the four violations, as follows:

- 1) \$4.2 million – On June 25, 2013, ETA executed a modification to the Home Builders Institute contract, adding \$4.2 million in PY 2012 funds to cover services to be provided in PY 2013.⁷
- 2) \$3.9 million – On June 25, 2013, ETA executed a modification to the United Brotherhood of Carpenters contract, adding \$3.9 million (\$1.1 million for contract award + \$2.8 million for the modification) in PY 2012 funds to cover services to be provided in PY 2013.⁸
- 3) \$8.3 million – On June 27, 2014, ETA executed a modification to the Home Builders Institute contract, adding \$8.3 million in PY 2013 funds to cover services to be provided in PY 2014.⁹
- 4) \$5.7 million – On June 27, 2014, ETA executed a second modification to the United Brotherhood of Carpenters contract, adding \$5.7 million in PY 2013 funds to cover services to be provided in PY 2014.¹⁰

The Federal Acquisition Streamlining Act allows two statutory exceptions to the bona fide needs rule. One exception allows agencies to enter into contracts beginning in one fiscal year and ending in the next fiscal year using current year funds for specific

⁷ Under Public Law 112–74, PY 2012 Job Corps’ operations funds were available July 1, 2012, through June 30, 2013.

⁸ Ibid

⁹ Under Public Law 113-6, PY 2013 Job Corps’ operations funds were available for the period July 1, 2013, through June 30, 2014.

¹⁰ Ibid

situations, while the second exception allows agencies to enter into multiyear contracts for specific situations. None of the four modifications met either of the two statutory exceptions.

Specifically, one exception, 41 USC, § 3902, allows agencies to enter into contracts for severable services for periods beginning in one fiscal year and ending in the next fiscal year using currently available funds, as long as the contracts do not exceed one year. The ETA modifications were for severable services, since they were for recurring technical training services at Job Corps centers. However, the severable services did not begin in one fiscal year and end in the next fiscal year.¹¹ As noted previously, the modifications in question had start and end dates that indicate the entirety of the services in question began in the next years, which did not meet the requirements for this exception outlined in 41 USC 3902.

The second exception, 41 USC, § 3903, allows agencies to enter into multiyear contracts if funds are obligated for the full period of the contract, or for the first fiscal year, in which the contract is in effect, as well as for estimated termination costs, and on a fiscal year basis thereafter. ETA's actions with these contracts did not meet these requirements because ETA did not obligate the funds for the full period of the contract (base year and four option years) or for the first fiscal year, including termination costs, on the award dates.

By executing these modifications to the two cost-reimbursement service contracts, ETA used current years' funds to procure services that would be delivered solely in future years, in violation of the bona fide needs rule. In doing so, ETA also violated the Antideficiency Act by improperly obligating annual appropriations for the bona fide needs of future program years before those future years' appropriations became available.

ETA officials said inputting errors caused the periods of performance to be incorrectly stated on the four modifications. ETA further explained that the funding was appropriately applied to the contract in the current program year, but mislabeled by the contracting officer to fund a period beginning in the next program year. Because these were unilateral modifications, signed only by the contracting officers, not by the contractor, ETA claimed the stated periods of performance were not enforceable. ETA added that, despite what the modifications stated, services actually commenced in the program year corresponding to the program year funds that were obligated. As a result, ETA maintained no violations actually occurred, but stated it has taken steps to train contract staff to ensure this situation does not recur in the future.

We disagree with ETA's overall conclusion. In reviewing the four modifications for compliance with the bona fide needs rule, we relied on the details in the modifications. The unilateral modifications were enforceable because they did not change the periods of performance outlined in each contract. ETA also did not provide any supporting

¹¹ Job Corps' period of availability is its program year, which runs from July 1st of the fiscal year for which the appropriation is made through June 30th of the following year.

documentation to show the number of months being funded on the modifications actually commenced in the program year that corresponded to the program year funds in which they were obligated. Therefore, we maintain the contracts and modifications were legally binding and violated both the bona fide needs rule and the Antideficiency Act.

CONTRACT MODIFICATIONS OBLIGATING \$24.6 MILLION LACKED KEY DETAILS TO DEMONSTRATE COMPLIANCE WITH THE BONA FIDE NEEDS RULE AND ANTIDEFICIENCY ACT

ETA could not demonstrate it complied with the bona fide needs rule and Antideficiency Act in executing nine additional contract modifications totaling \$24.6 million because the modifications lacked documentation of the time periods for the services being purchased. Due to this lack of start and end dates, ETA could not show whether these modifications obligated funds for services during the current program year, the next program year, or whether they crossed the program year and were for less than 12 months. Therefore, ETA could not demonstrate whether it complied with the bona fide needs rule and Antideficiency Act for these nine modifications totaling \$24.6 million.

For example, ETA executed three modifications for the United Brotherhood of Carpenters, a national training contract, (No. DOLJ131A22035) on October 25, 2013, April 4, 2014, and July 18, 2014. The modifications obligated \$9.4 million in Job Corps’ operation funds, but did not contain a timeframe for the services funded by the modifications.

All nine contract modifications, shown in Table 1 below, lacked these key details.

No.	Contract No.	No. of Modifications	Amounts
1	DOLJ131A22047	1	\$9,247,223
2	DOLJ131A22035	3	\$9,399,437
3	DOLJ141A22199	1	\$2,174,602
4	DOLJ12SA00004	1	\$774,756
5	DOLJ12QA20007	1	\$517,146
6	DOLJ131A22032	2	\$2,540,046
Totals		9	\$24,653,210

Source: OIG analysis of select Job Corps’ contract modifications and supporting documentation.

ETA officials claimed a bona fide needs rule exception applied in all nine instances, citing 41 USC, § 3902. This exception allows agencies to enter into contracts for severable services for periods beginning in one fiscal year and ending in the next fiscal year using currently available funds, as long as the contracts do not exceed one year. However, for each instance ETA did not provide support to show the estimate of services were for a period of one year or less. We maintain that without start and end dates, ETA could not demonstrate it complied with the bona fide needs rule and Antideficiency Act in executing the nine noted contract modifications.

GREATER MANAGEMENT EMPHASIS IS NEEDED

The bona fide needs rule and Antideficiency Act violations, as well as the lack of key details in contract modifications, occurred because ETA did not place sufficient management emphasis on establishing its own policies and procedures for (1) ensuring adherence to the requirements, and (2) detecting and addressing potential violations.

In November 2015, DOL sent a letter to the President and Congress through OMB reporting two Antideficiency Act violations, in accordance with, 31 USC, § 1351. The violations, which resulted from ETA's use of Job Corps' operations funds for fiscal years 2010 and 2011, totaled \$6.1 million. In the letter, ETA said it provided all-day training on internal controls and that DOL revised its policies to include "a system for positive administrative control of funds designed to restrict obligations and expenditures (disbursements) to the amount available in each appropriation or fund account." In May 2013, ETA also provided training on how to comply with the bona fide needs rule and the Antideficiency Act. Our audit results show these actions were not sufficient to prevent the \$22.1 million in bona fide needs rule and Antideficiency Act violations identified in this report.

In written comments, ETA told us Job Corps now realizes that future modifications for the funding of severable services using current program year funds should clearly indicate that the funding is for services that commence in the current program year and that these funds can only be used for a term not to exceed the contract year (12 months) consistent with 41 USC, § 3902 when services are severable. ETA also indicated it will initiate training with the Offices of the Solicitor, Contracts Management, and Job Corps to ensure its actions and future modifications are consistent with 41 USC, § 3902.

We agree that ETA should provide training on the exception specified in 41 USC, § 3902. However, broader corrective action is needed to address the bona fide needs rule and Antideficiency Act violations identified in this report. ETA needs to place greater management emphasis on establishing policies and procedures for ensuring compliance and detecting and addressing potential violations.

ETA ALLOWED \$11.2 MILLION OF JOB CORPS' OPERATIONS FUNDS TO EXPIRE WITHOUT BEING USED

In addition to the bona fide needs rule and Antideficiency Act violations, we found seven instances in which ETA allowed funding totaling \$11.2 million to expire without being used for program purposes.¹² For example:

- ETA obligated \$10 million in PY 2013 funds on June 30, 2014, to cover Job Corps contract obligations that did not transfer from a newly implemented procurement

¹² Two of the exceptions were not for current liabilities that would not be paid until the next program year, but were duplicate obligations on one of the contracts we reviewed (see Nos. 6 and 7 in Table 2.)

system into DOL’s financial management system. Of this \$10 million, ETA used \$2.4 million for one contract obligation that did not transfer. The period of availability for those funds ended on June 30, 2014. ETA deobligated the remaining \$7.6 million on May 3, 2016 (see No. 5 in Table 2.)

- ETA obligated \$1.7 million in PY 2012 funds on June 28, 2013, to pay for student bonuses earned in PY 2012, but that would not be paid out until PY 2013. The period of availability for those funds ended on June 30, 2013. None of these funds were used to pay student bonuses and were deobligated on September 11, 2013 (see No. 2 in Table 2.)

Table 2 shows the seven instances where ETA allowed funding to expire without being used for program purposes.

Table 2 No.	Amounts					Date Funds Revert to U.S. Treasury
	Obligated	Expended	De-obligated After Periods of Availability	ETA Plans to De-obligate	Could Have Been Better Used	
1 ^a	\$2,000,000	\$1,697,915	\$302,085	N/A	\$302,085	6/30/2018
2 ^b	\$1,685,600	\$0	\$1,685,600	N/A	\$1,685,600	6/30/2018
3 ^c	\$1,250,000	\$1,207,528	\$42,472	N/A	\$42,472	6/30/2019
4 ^d	\$1,000,000	\$0	\$1,000,000	N/A	\$1,000,000	6/30/2019
5 ^e	\$10,000,000	\$2,365,764	\$7,634,236	N/A	\$7,634,236	6/30/2019
6 ^f	\$257,915	\$0	N/A	\$257,915	\$257,915	6/30/2017
7 ^g	\$257,915	\$0	N/A	\$257,915	\$257,915	6/30/2020
Total					\$11,180,223	

Source: OIG analysis of Job Corps’ obligations data and documentation

^a Obligation made for contractor incentive fees earned in PY 2013, but not paid until PY 2014.

^b Obligation made for student bonuses earned in PY 2012, but not paid until first quarter of PY 2013.

^c Obligation made for the General Services Administration (GSA) Fleet expenses incurred in June 2014 but not billed until July 2014.

^d Obligation made for student travel for return trips from summer break which began in June 2014 (PY 2013) and ended in July 2014 (PY 2014).

^e Obligation made for contracts whose obligations did not flow from a newly implemented procurement system into DOL’s financial management system.

^f Duplicate obligation for Job Corps’ Puerto Rico Center facility lease in DOL’s financial management system.

^g Duplicate obligation for Job Corps’ Puerto Rico Center facility lease in DOL’s financial management system.

ETA deobligated some of these funds because the anticipated costs were not incurred.¹³ However, since these funds are outside the periods of availability, they generally cannot be used for other Job Corps needs. As a result, up to \$11.2 million may be canceled and returned to the general fund of the U.S. Treasury rather than being used for critical program needs, such as providing training services to improve the employability of economically disadvantaged youth.

¹³ ETA stated it would deobligate the duplicate obligations (see Nos. 6 and 7 in Table 2.)

ETA's history of fiscal management challenges and repeated loss of millions in funds underscore the need for the agency to significantly improve its funds management oversight. In June 2012, ETA had a \$19.4 million shortfall in Job Corps operations funds, which necessitated a budget transfer to cover the gap and a decision to temporarily suspend new student enrollment. In a December 2012 audit report, we stated ETA's ineffective fiscal management allowed \$32.9 million in Job Corps' maintenance funds to expire or approach expiration that should have been used to pay for needed center repairs. This occurred because Job Corps did not track and monitor the status of obligated funds to ensure they were either used as intended or properly reallocated within deadlines so they could be used to address other program needs.

ETA did not establish effective policies and procedures to regularly review Job Corps' operations funds to determine whether obligated balances should be deobligated and the funds used for other program needs, instead of letting the funds expire. Also, if ETA improves its oversight of Job Corps operations funds, it will be better able to avoid budget shortfalls similar to the one that occurred in June 2012.

OIG RECOMMENDATIONS

We recommended the Deputy Assistant Secretary for Employment and Training require ETA to:

1. Develop and implement clear policies and procedures to prevent a reoccurrence of the bona fide needs and Antideficiency Act violations noted in this report. This includes establishing policies and procedures that direct compliance and detect and address potential violations.
2. Provide training to ETA contracting personnel on the bona fide needs rule and related Antideficiency Act requirements.
3. Provide regular oversight of contract modifications and obligated funds to ensure proper contracting actions are taken and documentation is complete and accurate.
4. Report, in accordance with 31 USC, §1351, §1517(b), the Antideficiency Act violations caused by the bona fide needs rule violations identified in this report.
5. Develop and implement clear policies and procedures to improve funds management, which should include regularly monitoring obligations to identify unexpended Job Corps' funds that can be deobligated during the periods of availability and used for program needs, instead of being left to expire.

MANAGEMENT RESPONSE

ETA did not agree with our conclusions. However, ETA's response to our draft report did not provide any new information that changed our conclusions. ETA stated it took corrective actions to address recommendation numbers 1-3 and will take additional actions to address recommendation number 4. ETA's response to our draft report is included in its entirety in Appendix B.

We appreciate the cooperation and courtesies that ETA management and staff extended to the OIG during this audit. OIG personnel who made major contributions to this report are listed in Appendix C.



Elliot P. Lewis
Assistant Inspector General
for Audit

Appendices

APPENDIX A

**OBJECTIVE, SCOPE, METHODOLOGY, AND
CRITERIA**

OBJECTIVE

We conducted this performance audit to determine if ETA's use of Job Corps' operations funds for PYs 2011, 2012, and 2013 complied with the bona fide needs rule.

SCOPE

Our audit scope generally covered the five-year period spanning July 1, 2010, through June 30, 2014 (PYs 2010 – 2014). We conducted fieldwork at ETA's Office of Contracts Management (OCM), Office of Financial Administration (OFA), and Job Corps in Washington, D.C.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

METHODOLOGY

To accomplish our audit objective, we met with management and staff at OCM, OFA, and Job Corps to gain an understanding of Job Corps' obligated and unexpended operations funds. In general, Job Corps verifies budgeting and funding availability, OFA ensures Job Corps' obligations stay within budget, and contracting officers from OCM issue the modifications and are responsible for contract award and administration. For PY 2012 we gained an understanding of ETA's actions reported to Congress regarding cost-savings measures that resulted in Job Corps ending PY 2012 with \$40 million in obligated but unexpended operations funds.

In addition, we conferred with GAO appropriations attorneys and staff who made the audit referral and discussed the extent of GAO's work, criteria applicable to the audit, and our bona fide needs rule and Antideficiency Act testing results. We reviewed the laws and regulations applicable to the audit, and we reviewed GAO's guidance¹⁴ and ETA's policies and procedures to help ensure obligations with Job Corps' operations funds complied with the bona fide needs rule or one of the two statutory exceptions. We followed up on the status of the corrective actions that ETA and Job Corps implemented

¹⁴ GAO, *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP (January 2004) and GAO, *Principles of Federal Appropriations Law*, Third Edition, Volume II, GAO-06-382SP (February 2006)

to address recommendations related to our audit objective in our May 2013 report noted earlier.¹⁵

Data Reliability

To assess the reliability of Job Corps' operations funds data in the New Core Financial Management System (NCFMS), DOL's financial system, we used an approach consistent with GAO's *Assessing the Reliability of Computer-Processed Data* (GAO-09-680G, July 2009). For PYs 2011-2013, we reviewed information in transaction detail reports (TDR) obtained from NCFMS. The TDRs contained the total obligations and paid expenditure amounts for the program year (July 1 through June 30) and each transaction in the TDRs contained a unique document number. We used the information in the TDRs to calculate Job Corps' obligated and unexpended operations funds (total obligations less paid expenditure amounts) at the end of the program year for each document number, analyzed the obligated and unexpended operations funds for the different document type categories, assessed the risk of a bona fide needs rule violation for each category, and judgmentally selected a sample of document numbers to test for compliance with the bona fide needs rule. Based on our data reliability assessment and tests, we concluded that the total obligations and paid expenditure amounts in the TDRs were sufficiently reliable to meet our objective.

Sampling

The population of Job Corps operations funds that were available for obligation in PYs 2011-2013 totaled \$4,140,491,085. Using a risk-based approach, we reviewed the population using two main criteria for non-statistically selecting our test sample. One was to isolate obligated and unexpended operations funds at the end of PYs 2011-2013, since GAO's audit referral identified a risk for bona fide needs rule violations related to these years. Secondly, based on our preliminary review of two Job Corps contracts, we identified a potential risk that Job Corps center contracts in their initial two-year base period might be at a higher risk for bona fide needs rule violations. We determined four document types (DOL's working capital fund, Job Corps contracts, miscellaneous obligations, and payroll obligations) contained the majority of obligated, unexpended Job Corps Operations funds.¹⁶ We excluded the documents related to DOL's working capital fund because DOL's Office of the Chief Financial Officer, not Job Corps, determines the amount and timing of these obligations.

¹⁵ DOL OIG, *The U.S. Department of Labor's Employment and Training Administration Needs to Strengthen Controls Over Job Corps Funds*, 22-13-015-03-370 (May 31, 2013)

¹⁶ The other document types, such as employee reimbursements, mailing and credit card obligations, had small or zero balances. The aggregate balance of these document types was only \$1,340,959 in obligated and unexpended operations funds at the end of PYs 2011-2013, which was below our materiality level for sample selection. We therefore excluded these amounts from further analysis.

Using this approach, we non-statistically selected 38 document numbers,¹⁷ which related to 21 Job Corps contracts,¹⁸ 10 miscellaneous obligations, and 2 payroll obligations, to test for bona fide needs rule violations. We tested all obligations for this sample, which totaled \$630,556,340 of Job Corps’ operations funds obligated generally during PYs 2011-2013. In two instances, this included reviewing obligations made prior to PY 2011¹⁹, and for some of the contracts, reviewing obligations made during PY 2014.²⁰ A breakout of the \$630,556,340 in tested obligations is presented in the table below.

Total Obligation Testing Summary		
Document Type	Document #(s) from Sample Related to Document Type	Total Obligations Tested for Compliance with Bona Fide Needs Rule
Contracts	26	\$513,961,985
Payroll	2	\$90,583,755
Miscellaneous	10	\$26,010,600
Total	38	\$630,556,340

Source: OIG analysis of Job Corps’ obligations data and documentation

Bona Fide Needs Rule Testing

We determined whether ETA’s actions with the contracts, payroll obligations for PY 2012 Job Corps student allowances and allotments, and miscellaneous obligations complied with the bona fide needs rule.

Contracts

We reviewed ETA’s actions on 20 Job Corps’ contracts and 1 lease agreement, which obligated \$513,961,985 in Job Corps operations funds during PYs 2010-2014. We reviewed the contracts, modifications, and supporting documentation (e.g., ‘Award/Contract’ and the ‘Amendment of Solicitation/Modification of Contract’ forms) for the following information:

- Date signed
- Operations fund code
- Operations total obligation
- Description of contract or amendment/modification
- Funding amount for the applicable cost categories, which included equipment, GSA vehicle rental, career transition services (CTS), career technical skills training (CTST), outreach/admissions (O/A), and center operations

¹⁷ Document numbers are unique identifiers used in NCFMS for different types of financial transactions such as contracts or grants.

¹⁸ During PYs 2011-2013, ETA used six different document numbers for one of the sampled contracts, #DOLJ11SA00003. Therefore, the 21 contracts that we reviewed had obligations recorded in 26 document numbers.

¹⁹ During our preliminary audit work, we reviewed two contracts that had obligations in PY 2010.

²⁰ 20 of the contracts we reviewed also had obligations of \$194,529,844 in PY 2014.

- Funding period for the applicable services cost categories, which included GSA vehicle rental, CTS, O/A, and center operations
- Documentation for the equipment and CTST materials/supplies purchased, the dates received, and the dates delivered
- Funding amounts and the funding period for the national training contracts

After reviewing this information and ETA's responses to our questions, we determined whether ETA's and Job Corps' actions complied with the bona fide needs rule or met the requirements of one of the statutory exceptions to the bona fide needs rule (41 USC, § 3902 or 41 USC, § 3903).

Payroll

The two payroll obligations in our non-statistical sample obligated \$90,583,755 in Job Corps' operations funds for PY 2012 Job Corps student allowances and allotments. We reviewed the supporting documentation for the operations obligation (i.e., operations funds code and timing of obligations and paid expenditures), reviewed ETA's responses to our questions, and determined whether ETA's and Job Corps' actions complied with the bona fide needs rule.

Miscellaneous Obligations

The ten miscellaneous obligations in our non-statistical sample obligated \$26,010,600 in Job Corps' operations funds. We reviewed the supporting documentation for these obligations (i.e., description of the need, operations funds code, and timing of obligations and paid expenditures), reviewed ETA's responses to our questions, and determined whether ETA's and Job Corps' actions complied with the bona fide needs rule.

Antideficiency Act Violations Testing

For the bona fide needs rule violations that we identified, we assessed whether ETA's actions were also Antideficiency Act violations or might result in Antideficiency Act violations.

Internal Controls

In planning and performing our audit, we considered only ETA's internal control for Job Corps' operations funds relevant to our audit objective. We obtained an understanding of ETA's internal controls, and assessed the internal control risks relevant to our audit objective. The objective of our audit was not to provide assurance on ETA's internal control. Therefore, we did not express an opinion on ETA's internal controls as a whole. Our consideration of ETA's internal controls relevant to our audit objective would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal control, noncompliance may nevertheless occur and not be detected.

CRITERIA

We reviewed the following criteria to perform this audit:

- 31 USC, § 1341
- 31 USC, § 1342
- 31 USC, § 1349
- 31 USC, § 1351
- 31 USC, § 1502
- 31 USC, § 1517
- 31 USC, § 1552
- 31 USC, § 1553
- 41 USC, § 3902
- 41 USC, § 3903
- OMB Circular A-123, *Management's Responsibility for Internal Control* (December 21, 2004)
- *Standards for Internal Control in the Federal Government*, GAO-14-704G (September 10, 2014)
- *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP (January 2004) and *Principles of Federal Appropriations Law*, Third Edition, Volume II, GAO-06-382SP (February 2006)
- GAO, Department of Health and Human Services-Multiyear Contracting and the Bona Fide Needs Rule, B-322455 (August 16, 2013)
- *Assessing the Reliability of Computer-Processed Data*, GAO-09-680G (July 2009)
- DOL Manual Series 2, Chapter 833(G) and (H)

APPENDIX B

ETA'S RESPONSE

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



SEP 20 2017

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: BYRON ZUIDEMA 
Deputy Assistant Secretary

SUBJECT: Response to the Office of Inspector General (OIG) Draft Report
No. 26-17-002-03-370, *ETA Violated the Bona Fide Needs Rule
and Antideficiency Act*

Thank you for the opportunity to review the above referenced Office of Inspector General (OIG) Draft Report. As noted below, this response addresses the OIG's findings and summarizes the Employment and Training Administration's (ETA's) position on the complex procurement and appropriations law issues raised by the OIG. ETA had discussed its views with the OIG during the course of its work, and in light of the disagreement between ETA and the OIG, ETA may seek resolution from an authoritative third party.

In the Draft Report, the OIG stated that:

- ETA improperly obligated \$22.1 million in Job Corps' operations funds available for Program Years (PYs) 2012 and 2013 for services provided in PYs 2013 and 2014, respectively. These actions violated both the bona fide needs rule and the Antideficiency Act.
- An additional \$24.6 million in other Job Corps contract modifications lacked timeframes for the services being funded (i.e., start and end dates), which were necessary to measure ETA's compliance with the bona fide needs rule and the Antideficiency Act.
- ETA also allowed \$11.2 million in Job Corps' operations funds to expire that could have been used for critical program needs.

ETA disagrees with the OIG's conclusion that "ETA Violated the Bona Fide Needs Rule and Antideficiency Act," and disagrees with the premise underlying the finding that "ETA allowed \$11.2 million in Job Corps' operations funds for PYs 2012 and 2013 to expire without being used."

The Draft Report appears to rely primarily on the OIG’s interpretation of the applicable statutory provisions, rather than any binding third party opinion from authoritative tribunals or subject matter experts regarding compliance with 31 U.S.C. § 1502(a) and 41 U.S.C. § 3902 in the context of the ETA funding modifications at issue.¹ Fundamental differences between ETA’s and the OIG’s views on the requirements of 31 U.S.C. § 1502(a) and 41 U.S.C. § 3902 exist.

1. ETA did not violate the bona fide needs rule or the Antideficiency Act.

The “bona fide needs rule” is a concept developed over the years by the Government Accountability Office (GAO) as a short-hand reference to 31 U.S.C. § 1502(a). Section 1502(a) requires that the balance of an appropriation “limited for obligation to a definite period” -- such as a particular PY -- be used to “complete contracts properly made” within that period of availability and properly obligated consistent with 31 U.S.C. § 1501 (the recording statute). In other words, section 1502(a) contains two requirements: first, that the contract be “properly made” within the fiscal year being charged and, second, that the contract be “obligated” -- i.e., recorded as an obligation -- consistent with the recording statute. In addition, 41 U.S.C. § 3902 authorizes an agency to obligate current year funds under a contract for severable services that begin in one PY and extend into the next PY not to exceed 12 months of performance. Because ETA complied with the recording statute and the requirements of 41 U.S.C. § 3902 outlined above, ETA submits that the four contract modifications identified by the OIG were properly executed and document a proper obligation within the meaning of 31 U.S.C. § 1502(a).

With respect to the alleged Antideficiency Act violations, ETA did not obligate PY funds in advance or in excess of a PY appropriation. As noted in the Draft Report, the subject modifications pertain to two Job Corps contracts: one with the Home Builders Institute (HBI Contract) and the other with the United Brotherhood of Carpenters (United Brotherhood Contract.) Each of these cost-reimbursement contracts is for a period of one year with four one-year options. Each of the four contract modifications was executed by Job Corps during the period of availability of the PY charged, and funded services delivered during a 12-month option period that commenced in one PY and extended into the next PY. As a result, ETA did not incur obligations in excess of the amount of the PY appropriation, nor did it incur obligations in advance of a PY appropriation. Therefore, ETA did not violate the Antideficiency Act, 31 U.S.C. § 1341(a).

2. Neither the inclusion nor the absence of dates in the unilateral contract modifications that the OIG reviewed constitute evidence of non-compliance with the bona fide needs rule.

In the Draft Report, the OIG has, on one hand, concluded that the inclusion of dates in some of the contract modifications it reviewed constituted a violation of 31 U.S.C. § 1502(a), but on the

¹ See, Draft Report, at 5-9. Further, we note that the four Job Corps contract modifications at issue predate the Comptroller General’s decision in *Department of Health and Human Services (HHS)—Multiyear Contracting and the Bona Fide Needs Rule*, B-322455 (August 16, 2013) cited in the Draft Report. See Draft Report, at 4 n. 4. In addition, based on the information available in that Comptroller General decision, ETA believes the facts surrounding the Job Corps contract modifications are distinguishable from the HHS contract at issue there. Accordingly, B-322455 is of limited precedential value, if any.

other hand, implied that the *absence* of the dates in the other contract modifications is improper. The OIG's contradictory assessment of the dates as legally significant is misplaced.

As ETA explained in its discussions with OIG staff, the inclusion of the phrase "period of performance" in the four contract modifications identified was an administrative error, and was not intended to, nor did it have the legal effect of, modifying the period of performance in the underlying contract. There is no legal requirement that a contract modification to increase funding on a cost-reimbursement contract also modify the existing period of performance. Nor has the OIG provided any legal support for its conclusion that the inclusion of the dates operated to modify the existing period of performance.

We agree with the OIG that each unilateral contract modification is enforceable. In fact, for that very reason, as explained above, the modifications represent a proper obligation under 31 U.S.C. § 1502(a). However, ETA disagrees with the OIG's conclusion that the modifications also effected an enforceable change in the period of performance of the underlining contract. For the period of performance of a contract to be changed, both parties must mutually agree by signing a bilateral modification. None of the modifications at issue were bilateral.

3. The expiration of \$11.2 million of Job Corps' operations funds was not due to the improper management of funds.

Given the nature of the Job Corps program and the variables associated with funding Job Corps' operations (especially at the end of a PY), it is not always possible to precisely predict the level of funding needed over a specified period of time. As a PY progresses, conditions change and program priorities are reassessed. Ultimately, the money that had been obligated for a specific contract or need may not have been fully utilized.

Contrary to the OIG's assertion, the money is not lost. The unexpended funds remained available to properly liquidate obligations that were properly incurred during the period of availability (i.e., the payment of late invoices or expenses incurred as a result of contract claims or bid protests.) It is not uncommon to resolve a claim or receive a final invoice after the PY funds have expired.

Given the unresolved differences between the OIG and ETA regarding the procurement and accounting principles involved in both of the OIG findings, a definitive decision from an authoritative third party may be necessary to resolve these opposing views on the applicability of the above-referenced statutes, and the issues relating to expired funds. Such a decision may also assist the OIG in their continued efforts to protect the public financial interest.

Notwithstanding ETA's disagreement with the findings in the OIG Draft Report, ETA does recognize the importance of maintaining clear policies and procedures regarding Job Corps' contracting practices to avoid future administrative errors, such as occurred with regard to the transactions identified in the Draft Report. ETA's Office of Contracts Management (OCM), in coordination with its Office of Financial Administration (OFA), is providing OCM's Contracting Officers, OFA's Budget Analysts, and Job Corps' Contracting Officer Representatives with annual training on all requirements of appropriation laws, including the bona fide needs rule and the Antideficiency Act. Such training is detailed in our response to the OIG's Recommendations below.

OIG Recommendations

- 1. Develop and implement clear policies and procedures to prevent a recurrence of the bona fide needs and Antideficiency Act violations noted in this report. This includes establishing policies and procedures that direct compliance and detect and address potential violations.**

Response: Since Fiscal Year (FY) 2016, Job Corps has been reviewing and updating its Acquisition Handbook to address almost all aspects of the procurement process. When completed, the new Acquisition Handbook will include internal guidance related to "Time Availability of Appropriations."

- 2. Provide training to ETA contracting personnel on the bona fide needs rule and related Antideficiency Act requirements.**

Response: On October 12, December 13, and December 14, 2016, OFA provided regional Contracting Officer Representative staff with 3 hours of training related to the proper funding of contracts, which included training addressing the bona fide needs rule and the Antideficiency Act.

In March 2017, ETA's OCM provided 32 hours of appropriations law training to all OCM staff to reinforce the staff's knowledge of contract funding as it relates to incremental funding consistent with the bona fide needs rule and funding services delivered across PYs. An appropriation law expert consultant from Management Concepts, Inc. conducted the training. In addition, OCM implemented weekly Contracting Officer training sessions to discuss ongoing issues and share best practices. Compliance with the bona fide needs rule and related Antideficiency Act requirements are discussed during these meetings.

ETA is committed to continuous training of all procurement staff to increase staff awareness and compliance with all requirements related to the Antideficiency Act and the bona fide needs rule.

- 3. Provide regular oversight of contract modifications and obligated funds to ensure proper contracting actions are taken and documentation is complete and accurate.**

Response: The training noted in ETA's response to Recommendation 2 will enable Contracting Officers, Budget Analysts, and Contracting Officer Representatives to gain a better understanding of the requirements related to contract modifications and the funding of obligations.

- 4. Report, in accordance with 31 USC, §1351, §1517(b), the Antideficiency Act violations caused by the bona fide needs rule violations identified in this report.**

Response: ETA did not incur obligations in excess of the amount of the PY appropriation. Further, because 41 U.S.C. § 3902 authorizes the use of current PY funds for future needs, ETA was not required to charge the four contract modifications identified by the OIG in the Draft Report to the subsequent PY. Accordingly, ETA did not violate the Antideficiency Act and will not implement the OIG's recommendation. Rather, ETA may seek a third party

determination regarding the applicability of the Antideficiency Act and bona fide needs rule to the four contract modifications.

5. **Develop and implement clear policies and procedures to improve funds management, which should include regularly monitoring obligations to identify unexpended Job Corps' funds that can be deobligated during the periods of availability and used for program needs, instead of being left to expire.**

Response: In June 2014, the Department of Labor issued a Contracting Officer's Representative (COR) Handbook identifying and explaining the many responsibilities normally associated with a COR appointment. The Acquisition Handbook will be supplemented to provide additional guidance, including instructions to improve funds management and required monitoring activities to maximize the timely identification of unexpended Job Corps funds that can safely be deobligated during the periods of availability and used for other programmatic needs.

APPENDIX C

ACKNOWLEDGEMENTS

Key contributors to this report were: Ray Armada (Audit Director), Jon Ling (Audit Manager), Elizabeth Garcia and Aaron Talbert (Team Leads), Arijit Bandyopadhyay (Auditor) and Carolyn Cayode-Gorman (OIG Attorney).

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