

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT


U.S. Department of Labor

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



September 26, 2023

MEMORANDUM FOR: CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM: BRENT PARTON 
Principal Deputy Assistant Secretary

SUBJECT: Response to Draft Report: *COVID-19: The Employment and Training Administration Needs to Improve Oversight of Grants Awarded in New Jersey*, Report No. 19-23-XXX-03-391

The Department of Labor's (Department) Employment and Training Administration (ETA) appreciates the opportunity to respond to the above-referenced draft report from the Office of Inspector General (OIG).

ETA greatly appreciates that the OIG afforded ETA the opportunity to review two prior versions of the OIG's draft report. As a result of these reviews, ETA provided significant feedback and technical comments to the OIG regarding the grantor/grant recipient relationship, the intent behind and how the Workforce Innovation and Opportunity Act (WIOA) formula programs are operationalized, and also expressed concerns on the OIG generalizing its review findings of grants in New Jersey to ETA's entire grant universe. While ETA recognizes and appreciates that the OIG made some revisions to the draft report, some of ETA's significant input and concerns were not adequately addressed. As a result, ETA notes the following concerns regarding the draft report.

Areas of Concern with the OIG's Draft Report

The draft report continues to ascribe ETA a larger role responsibility for grant activities than is appropriate. ETA takes its responsibility for monitoring and providing oversight to its grant recipients seriously, and dedicates significant resources to doing so, including providing guidance and appropriately engaging with state grant recipients to ensure that they are able to carry out their responsibility to conduct oversight of their subrecipients. However, as ETA raised in comments on prior versions of this draft report in May 2023 and June 2023, the OIG is assigning ETA a more expansive role in the grantor/grant recipient relationship than provided in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). ETA is responsible for monitoring its grant recipient, New Jersey or Bergen Community College (BCC), as it carries out grant activity. Monitoring subrecipient actions is the grant recipient's responsibility.

As a Federal grant-making agency, ETA enters into grant agreements to achieve a public purpose (i.e., providing employment and training services). Per 2 CFR 200.1, a grant agreement is a legal instrument of financial assistance between a Federal awarding agency, or grantor (i.e., ETA) and a non-Federal entity, or grant recipient (in this draft report, New Jersey or BCC). A grant agreement is distinguished from a cooperative agreement in that it does **not** provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

Further, 2 CFR 200.300(b) states that the “non-Federal entity is responsible for complying with all requirements of the Federal award” and 2 CFR 200.329(a) states that “The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved.” Finally, 2 CFR 200.332(d) indicates that non-Federal entities/pass-through entities must “Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.”

Unfortunately, the section headings in the Results section of the OIG’s draft report continue to indicate that ETA did not ensure subrecipients performed grant activities, which is primarily the responsibility of the grant recipient according to 2 CFR part 200, and instead the draft report tries to place these responsibilities with ETA by making a reference to Office of Management and Budget Circular No. A-123. In a similar manner, on page 9, the OIG states that potentially ineligible individuals were served because “ETA did not provide sufficient oversight to ensure grantees assessed and enrolled eligible individuals.” However, for three of the four grants discussed in this section, enrollment of individuals occurs at the project operator/subrecipient level, not the grant recipient level, as the OIG discusses later on this same page. Similarly, on page 12, the OIG indicates that “ETA did not identify issues with the sub-recipient contracts,” when monitoring subrecipient actions is a grant recipient responsibility per 2 CFR part 200. These examples seem to ascribe to ETA the level of responsibility for monitoring subrecipients that belongs to the grant recipient.

ETA fulfills its grant monitoring responsibilities by working with its direct grant recipients to ensure they are able to carry out their monitoring and oversight responsibilities of their subrecipients. This is shown on page 15 of the draft report regarding ETA’s involvement with New Jersey’s monitoring of the subrecipient that did not have a sufficient accounting and financial management system in place. However, on this same page, the OIG states “Subsequent to the audit, ETA indicated that it has restricted the grantee’s ability to draw down funds and that expenditure documentation is being reviewed by NJ DOL.” This is an inaccurate statement. ETA did not restrict New Jersey’s ability to draw down grant funds. Rather, as part of its responsibility to manage its subrecipients, New Jersey restricted the ability of the subrecipient in question to draw down funds until the State could review expenditure documentation and validate that these expenditures were allowable, allocable, and reasonable to be paid for with

grant funds. ETA has been collaborating with the State and providing technical and compliance assistance as the State closes out this corrective action against its subrecipient.

The overbroad generalizations made in the “What OIG Found” section of the draft report. ETA agrees that the OIG found some potential issues with specific New Jersey grants, including questioned costs, and ETA is committed to looking into these issues and recovering any costs that are based on New Jersey and its subrecipients providing services to ineligible participants, incurring unallowable costs, etc.

However, the OIG’s review of four grants in New Jersey and the relatively small amount of questioned costs when compared to the total grant award amounts do not rise to the level to support the OIG’s sweeping statements in the Briefly section that “ETA did not ensure grantees and sub-recipients utilized grant funds for the intended purposes during the COVID-19 pandemic” and “Given these grant funds did not serve their intended purpose, potential eligible job seekers were not provided the services to succeed in the labor market and potential employers were not matched with the skilled workers needed before, during, and subsequent to the COVID-19 pandemic” (also repeated in the Results section).

First, the intended purposes of the WIOA formula program funds (referred to as “statutory” in the draft report) are well defined in statute, regulations and associated guidance, and the Scaling Apprenticeship Through Sector-Based Strategies purpose is defined in the Funding Opportunity Announcement that was used to solicit applications for this competitive funding opportunity. Second, the OIG’s conclusion about effectiveness appears to be largely drawn from comparisons between the cost per participant between the WIOA formula programs and the Scaling Apprenticeship program – a different grant with different services and different intended participants.

WIOA formula programs/Statutory Grants. ETA disagrees with the OIG’s suggestion on page 5 of the draft report to adopt a cost-per-participant measure or similar budget metric. WIOA reporting is extensive, as the OIG acknowledges, and appropriately focuses on the outcomes of the grants rather than the outputs. More importantly, a generalized metric such as a cost-per-participant measure often results in grant recipients instituting one-size-fits-all caps on supportive service and training costs that limit what actually works for participants, and particularly undercuts grant recipients’ abilities to provide comprehensive services to participants from historically underserved communities. Evidence shows that supportive services, which increase cost-per-participant, can improve program completion and credential attainment. Likewise, the cost of training is one of several factors used to determine a training program’s worth, and cost-per-participant measures can drive a focus on inexpensive training rather than the training program’s employment outcomes, which are most important, and which WIOA performance measures already assess.

The OIG continues to assert that ETA should have been more responsive to the COVID-19 pandemic’s impact on the health care industry. ETA is disappointed that page 8 of the OIG’s draft report continues to state that “ETA could have been more responsive to the COVID-19 pandemic’s impact on the health care industry and the grantee’s inability to achieve agreed upon goals.” For example, the OIG asserted that “ETA could have assisted BCC in determining

alternative methods to satisfying the training requirements in order to continue the program” even though ETA previously indicated to the OIG that it could not change the scope of work to support an alternate method of training. BCC’s grant was competitively awarded to focus on apprenticeship, under the Scaling Apprenticeship Through Sector-Based Strategies grant program. ETA does not change the sector focus of competitive grants after award when the sector is a fundamental part of the grant application. BCC competed against other applicants and was selected to receive an award based on creating apprenticeship opportunities in the health care industry, thus ETA could not change the sector focus post-award without undermining the grant competition. Further, apprenticeship training requirements are designed to meet industry standards and are not set by either BCC or ETA. Consequently, there was no scenario where ETA and BCC could have agreed on new training requirements that still prepared participants for the targeted health care occupations.

Responses to the OIG Recommendations

Below, please find each of the OIG’s recommendations contained in the draft report, followed by ETA’s proposed corrective actions to address each of the OIG’s recommendations.

Recommendation 1: Develop and implement risk tolerance for the amount of participants being served under the WIOA Adult, Youth and Dislocated Workers program.

ETA Response: ETA partially agrees with this recommendation. By statute, state and local workforce development boards determine the combination of education and training services to prepare individuals for work and to help them improve their prospects within their state and local labor markets. ETA provided guidance to states and local areas on strengthening policies and procedures to maximize the use of their resources serving those with barriers to employment in Training and Employment Guidance Letter (TEGL) No. 7-20¹. ETA’s grant relationship is with the states in the WIOA formula program, and by statute does not directly hold local areas accountable, where most direct services to participants takes place.

As discussed above, ETA does not agree with, and has not established, a maximum cost per participant or similar metric for the WIOA Adult and Dislocated Worker programs because doing so would run counter to the priorities of serving low-income individuals with multiple barriers to employment who need individualized services that meet their specific needs.

ETA agrees with the concept of reviewing enrollment patterns as part of its monitoring of state grant recipients. However, ETA does not agree with establishing any cost limitation that could result in serving more individuals with less comprehensive services and not yield positive employment outcomes or retention in the short and long term.

As an alternative to this recommendation, ETA will incorporate the review of enrollment patterns as part of its grant management technical assistance (TA) to states to identify extreme cases of potential program mismanagement. To guard against blunt cost-per-participant

¹ TEGL 7-20: Effective Implementation of Priority of Service Provisions for Most in Need Individuals in the Workforce Innovation and Opportunity Act (WIOA) Adult Program (<https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-07-20>)

limitations which hinder economic mobility, ETA will also provide TA to grant recipients on the need to provide participants with supportive services and to adapt the total cost of services to meet participant needs.

Recommendation 2: Regularly monitor Bergen Community College’s performance and provide the necessary assistance to ensure \$7.2 million in remaining funds are used as intended by the completion of the one-year extension period.

ETA Response: ETA concurs with this recommendation. ETA will continue to monitor BCC’s quarterly performance through the period of performance extension and will provide necessary TA to ensure the \$7.2 million in remaining funds are used as intended.

Recommendation 3: Update the ETA’s Core Monitoring Guide to specifically identify the high risk associated with low enrollment levels in combination with the high burn rate of grant funds.

ETA Response: ETA agrees with the spirit of this recommendation but does not agree that this should be included in ETA’s Core Monitoring Guide (CMG). The CMG is used to conduct formal monitoring reviews, which normally occur in the second half of a grant’s period of performance, which is not the appropriate point in the grant’s lifecycle to identify such issues. As an alternative, ETA will provide instruction, through the upcoming revision/replacement of Employment and Training Order (ETO) No. 2-21, to consider spending patterns versus enrollments, as ETA staff perform quarter-end analysis of fiscal and programmatic performance.

Recommendation 4: Resolve the \$265,040 in questioned costs associated with ineligible participants and ineligible payments.

ETA Response: ETA concurs with this recommendation. Following the issuance of the OIG’s final report, ETA respectfully requests that the OIG provide ETA specific information related to these questioned costs, so that ETA can follow its audit resolution process. Initial and final determinations will be issued to the grant recipient(s) in question as per the process outlined in the Department of Labor Manual Series (DLMS) 8 Chapter 300 to determine if there are disallowed costs subject to repayment and, if so, the amounts. Once the audit resolution process is complete, ETA will provide the OIG with a copy of the final determination and evidence of any repayment of disallowed costs, if any.

Recommendation 5: Establish and implement a plan to improve monitoring activities to ensure grantees and sub-recipients are properly documenting eligibility.

ETA Response: ETA disagrees with this recommendation. ETA’s CMG already contains tools to facilitate participant eligibility reviews and ETA staff already review participant eligibility during ETA monitoring reviews. As discussed with the OIG during the course of this audit, ETA samples case files to review eligibility determinations in the same manner that the OIG does. Additionally, ETA does not have the staff resources to conduct 100 percent verification of eligibility determinations during monitoring reviews, as discussed with the OIG previously. As an alternative, ETA will emphasize TA and/or training around subrecipient enrollment practices and participant eligibility with states through the TA cooperative agreement that is available to

the public workforce system and partners². ETA will also provide TA on eligibility determinations, as needed, throughout the grants management lifecycle.

Recommendation 6: Establish and implement a plan to increase the level of technical assistance and monitoring for grantees and sub-recipients to ensure they properly administer contracts and reimburse on-the-job training costs.

ETA Response: ETA partially agrees with this recommendation. ETA does not agree with the portion of the recommendation that suggests that ETA increase its level of monitoring. As indicated in the response to Recommendation 5 above, ETA does not have the staff resources to significantly increase the level of monitoring beyond its current levels.

However, ETA does agree with the part of the recommendation that discusses ensuring proper administration of contracts and reimbursement of on-the-job training costs. ETA already has a Procurement Standards and Methods training module as well as a Procurement and Contract Administration training module available for grant recipients that is recorded and available for viewing³. ETA's regional offices will provide training on these and other modules contained in ETA's SMART (Strategies, Monitoring, Accountability, Risk Mitigation and Transparency) training series to grant recipients, on an as needed basis, as part of their TA and oversight efforts.

Additionally, in Fiscal Year 2023, ETA made available to all regional staff a TA cooperative agreement where TA is made available to the public workforce system and partners, assisting them at the state and local level to improve services. Further, as discussed in the response to Recommendation 3, ETA is currently in the process of revising ETO No. 2-21, which will emphasize providing more TA in the regular grant monitoring process.

Recommendation 7: Resolve the \$6.9 million in questioned costs associated with unaccounted expenditures and assist the New Jersey Department of Labor in expediting the closure of corrective action related to its accounting system.

ETA Response: ETA concurs with the portion of this recommendation regarding resolving questioned costs. Following the issuance of the OIG's final report, ETA respectfully requests that the OIG provide ETA specific information related to these questioned costs, so that ETA can follow its audit resolution process. Initial and final determinations will be issued to the grant recipient(s) in question as per the process outlined in DLMS 8 Chapter 300 to determine if there are disallowed costs subject to repayment and, if so, the amounts. Once the audit resolution process is complete, ETA will provide the OIG with a copy of the final determination and evidence of any repayment of disallowed costs, if any.

Regarding closing the corrective action related to the accounting system, ETA, in collaboration with the New Jersey Department of Labor, has been working through a multi-step corrective action plan through monthly technical and compliance assistance calls. New Jersey has taken over operational control of the subrecipient and recently hired a fiscal agent to oversee the subrecipient's finances, including the development and implementation of a financial

² Technical Agreement to Public Workforce System and Partners - <https://nextlevelnow.workforcegps.org/>

³ <https://grantsapplicationandmanagement.workforcegps.org/resources/2022/11/16/16/59/SMART-4-0-Conference>

management system. This represents the penultimate step within the corrective action plan. ETA will continue to work with its grant recipient (i.e., New Jersey Department of Labor) to ensure resolution of this finding through already established compliance assistance calls.