

Appendix D

Agency Response to Draft Report

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September 19, 2005

Mr. John F. Riggs
Regional Inspector General for Audit
United States Department of Labor - OIG
Dallas/Denver Regional Office
525 Griffin Street, Room 415
Dallas, Texas 75202

Dear Mr. Riggs:

This is the State of New Mexico's response to the August 18, 2005 discussion draft of Audit Report No. 06-05-03-390. The draft audit concludes that New Mexico improperly used Workforce Investment Act grant-in-aid funds to help finance its Unemployment Insurance (UI) claims system re-engineering project.

This response is submitted jointly by the New Mexico Office of Workforce Training and Development and the New Mexico Department of Labor. On January 22, 2004 the New Mexico Office of Workforce Training and Development was designated by the Governor as the State agency responsible for administration of Workforce Investment Act (WIA) funds. This designation includes responsibility for repayment of any disallowed WIA costs. We have already furnished a copy of the Governor's Executive Order to the auditors. The New Mexico Department of Labor was the designated State WIA grant administrator at the time the questioned costs were incurred. The discussion draft is in error in stating that the New Mexico Department of Labor is liable for repayment of disallowed WIA funds. We agree that the recommended administrative finding regarding the financial controls applies to the New Mexico Department of Labor.

In your discussion draft you recommend the disallowance and recovery, from non-Federal funds, of \$1,648,018 of WIA funds. This recommendation is based on a premise that pro-rata costs for unemployment insurance claims from WIA rapid response participants could not be charged to the WIA program under 20 CFR 665.310(a) of the WIA Regulations.

New Mexico respectfully disagrees: A WIA Rapid Response event is a jointly conducted activity involving multiple funding sources which combine their efforts and deliver integrated program services for the benefit of dislocated workers. These services include "information and access to unemployment insurance" for the workers being laid off. "Access to unemployment insurance" is a shared cost objective that may properly be allocated to WIA Rapid Response funds.

This interpretation of the law, although different from the interpretation of WIA relied upon by the auditors, is a reasonable reading of 20 CFR 665.310(a)(5) and it is the interpretation of law provided to

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the State's decision-makers by their former legal counsel. The State's policy makers acted in good faith when they relied upon the written opinion of legal counsel as the basis for allocating unemployment insurance benefits system costs to WIA. In point of fact, the cost methodology used to allocate these costs was specifically recommended by legal counsel.

The State's utilization of WIA Rapid Response funds for the UI automation project was discussed several times with the United States Department of Labor ETA Regional Office staff. The Federal/State Team Review of the New Mexico Department of Labor Fiscal Year 1999 Infrastructure Grant and Telephonic Claims Grants, a joint report prepared by the State and the USDOL Regional Office staff, specifically identifies Rapid Response as one of three funding sources for the automation project. Additionally, the State Labor Department financial staff spoke with our WIA federal liaison about the specific cost allocation methodology for allocation of pro-rata costs to Rapid Response and was told by the federal representative "the methodology is good." The State staff members who engaged in these communications with the USDOL Regional Office staff were never interviewed by the auditors.

There is an unsupported conclusion in the draft report that Rapid Response funds were used to cover a deficit in the automation project. This conclusion about the motivation of the State's policy makers is not based on fact. The auditors never verified available fund balances nor did they interview the staff who made the decision to use Rapid Response funds. The State had several million dollars of Reed Act funds available for appropriation for the automation project. Rapid Response funds were used because the State's legal advisor and financial management staff thought this was a legal and proper use of these funds.

The discussion draft finds that the UI automation project does not benefit the Rapid Response program. This finding is not consistent with 20 CFR 665.300(a) and 20 CFR 665.310(a)(5) which specifically recognize that provision of unemployment insurance benefits to Rapid Response participants is a legitimate Rapid Response activity. Accordingly, costs for provision of unemployment insurance are therefore "necessary and reasonable for the program and efficient performance and administration" of the WIA program.

The draft audit fails to acknowledge that State policy makers requested a federal review when presented with staff concerns about the automation project. When these concerns were presented in July 2004, the Office of Workforce Training and Development and the State Department of Labor jointly requested the USDOL Regional Office to conduct an on-site review and to provide guidance.

In our review of the discussion draft, we find some important facts regarding the allocation of WIA Rapid Response funds were omitted or misstated. We request that you add the following findings:

1. Effective January 22, 2004 New Mexico Office of Workforce Training and Development became the State agency responsible for administration of WIA funds and it is the agency responsible for resolution of any disallowed costs as a result of this audit.
2. New Mexico's decision to allocate WIA Rapid Response funds for pro-rata costs of unemployment insurance claims for Rapid Response participants was based upon advice of legal counsel. The methodology used to allocate these costs was specifically recommended by legal counsel and was specifically discussed with USDOL Regional office staff.
3. On July 16, 2004 the Director of the New Mexico Office of Workforce Training and Development and the Cabinet Secretary of the New Mexico Department of Labor notified the United States Department of Labor ETA Regional Office about concerns regarding the allocation of WIA funds

for the UI automation project and requested the Regional Office to conduct an on-site review and provide guidance to the State administrators.

We request that you correct multiple misstatements in the audit report regarding your conclusion that Rapid Response funds were used to "cover a deficit" in the agency's claims system re-engineering project. There was no budget deficit. Fund balances were available. Furthermore, the State had more than thirty million dollars in Reed Act funds available for appropriation.


The State was always open and forthcoming about the decision to use Rapid Response funds. If there was a problem with the propriety of this decision, the federal officials with whom we dealt never alerted our responsible decision makers. Now we are faced with this serious problem which might have been avoided if we had been notified that the legal opinion upon which the State relied was not in accord with the federal interpretation.

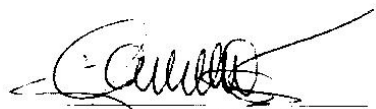
We believe our interpretation of the Workforce Investment Act is valid and that the Rapid Response expenditures should be allowed. Nevertheless, if the arguments we have provided do not resolve the issues, we want to correct this problem. According to the draft audit report, all of the questionable costs for the project should have been borne by the Unemployment Insurance program. Our solution is to make appropriate accounting adjustments to charge the questionable costs to New Mexico's available Reed Act appropriations, funds which may be properly used for unemployment insurance administration expenses.

If permitted, we would like another opportunity to personally present our arguments to the auditors.

Finally, we want you to know we appreciate the work of your auditors, Ms. Mary Stepney and Mr. Orval Harden. Although we do disagree with some aspects of the audit, we consider them to be very professional.

Sincerely,


Reese Fullerton, Director
Office of the Workforce
Development Center


Conroy Chino, Cabinet Secretary
Department of Labor

cc: Joseph Juarez