

**APPENDIX B: AGENCY RESPONSE**

U.S. Department of Labor

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



SEP 26 2019

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

FROM: JOHN PALLASCH

SUBJECT: Response to Office of Inspector General (OIG) Draft Audit Report  
No. 06-19-001-03-391, *ETA Had No Reasonable Assurance That  
\$183 Million in H-1B TST Grant Funds Helped Participants Get  
H-1B Jobs*

Thank you for the opportunity to respond to the draft audit report related to the H-1B Technical Skills Training (TST) program. The report provides the opportunity for the Employment and Training Administration (ETA) to reflect on how its H-1B funded grants have been designed and implemented, and how they can be improved.

In reviewing the draft audit report from OIG, it is apparent that ETA did not fully convey its expectations for preparing workers for high-growth jobs and targeted sectors to align with Section 414(c) of the American Competitiveness and Workforce Improvement Act (ACWIA) of 1998 (codified at 29 USC § 3224a). ETA commits to working with OIG to ensure that its solicitations reflect the legislative authority to train American workers for in-demand occupations within targeted industry sectors.

**H-1B Occupations and Industries under ACWIA**

Section 414(c) of ACWIA requires the Department to use funds generated by the H-1B program<sup>1</sup> for demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers. As specified in 29 USC § 3224a(2)(A), H-1B funds “may be used to provide job training services and related activities that are designed to assist workers (including unemployed and employed workers) in gaining the skills and competencies needed to obtain or upgrade career ladder employment positions in the industries and economic sectors identified pursuant to paragraph (4),” which states:

*High growth industries and economic sectors*  
*For purposes of this section, the Secretary of Labor, in consultation with State workforce*

<sup>1</sup> 8 USC § 1356(s)(2) requires that 50 percent of amounts deposited into the H-1B Nonimmigrant Petitioner Account remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 3224a of Title 29.

*investment boards, shall identify industries and economic sectors that are projected to experience significant growth, taking into account appropriate factors, such as the industries and sectors that—*

*(A) are projected to add substantial numbers of new jobs to the economy;*

*(B) are being transformed by technology and innovation requiring new skill sets for workers;*

*(C) are new and emerging businesses that are projected to grow; or*

*(D) have a significant impact on the economy overall or on the growth of other industries and economic sectors.*

For each solicitation, applicants are asked to provide evidence that they are designing their programs to support occupations and industries that fall within the broad categories above. The H-1B training grants may be used to provide low-skilled participants with entry-level training that gives them the skills needed to eventually be employed in middle- to high-skilled positions.

#### **ETA's Responses to OIG's Recommendations**

OIG made the following recommendations based on its review of ETA's grant award processes, oversight and performance measurement. It came to these conclusions by reviewing a sample of three grantees out of a total of 79, and drawing a sample of 400 participants out of the 87,000 individuals served by the program. While OIG did review training plans for all 79, it applied the information gleaned from its limited review to the entire program.

**OIG Recommendation 1: A policy to ensure future H-1B training grants are evaluated and awarded on applicants clearly demonstrate in their career pathways and proposals how participants will transition from the training into H-1B occupations.**

ETA Response: ETA agrees with this recommendation and has worked to refine the selection criteria for awarding grants that clearly demonstrate career pathways to jobs within in-demand or high-growth jobs within targeted sectors. More than one-half of the evaluation factors contained in the solicitation reflected an emphasis on H-1B industries and occupations. However, while ETA placed an emphasis on H-1B industries and occupations within the TST scoring criteria, it did not provide panelists specific guidance that connected the information that applicants conveyed in their project narratives to the scoring criteria. ETA has already made improvements in the precision of its scoring factors in its most recent Funding Opportunity Announcements (FOA) by assigning point values to all scoring factors within each of the scoring sections.

**OIG Recommendation 2: Monitoring procedures to ensure future H-1B training grantees provide the proposed training to help participants obtain employment in an H-1B occupation or advance along the career pathway.**

ETA Response: ETA does not agree with this recommendation for two reasons. First, ETA already has a core monitoring guide that its Federal Project Officers use to monitor all ETA's grant recipients. H-1B funded training programs are by their nature demonstration grants and change program design with each FOA. ETA has worked to standardize the monitoring of all

ETA-administered grants and it would not be an effective or efficient use of resources to develop specific monitoring guides for each individual H-1B grant program.

Second, the TST grants were monitored using ETA's core monitoring guide in accordance with ETA standard operating procedures for monitoring. Part of the monitoring process is ensuring that the grant recipient is providing training and is otherwise operating in a manner that is consistent with what was published in the FOA and what the grant recipient proposed in response to the FOA. Thus, ETA monitored the TST grant recipients according to these standards and the training discussed in their grant awards.

**OIG Recommendation 3: Performance measures that require future H-1B training grantees to report H-1B related training and H-1B training-related placement outcomes.**

**ETA Response:** ETA agrees with this recommendation and has designed performance management systems to capture these outcomes. ETA required TST grant recipients to provide projections for the entire project and track outcomes quarterly for each of the following outcome categories for all participants served with grant funds:

- Total participants served;
- Total participants beginning education/training activities;
- Total participants completing education/training activities;
- Total participants who complete education/training activities who receive a degree, or other type of credential;
- Total number of credentials each participant is expected to receive;
- Total participants who complete education/training activities who enter unsubsidized employment;
- Total participants who complete education/training activities who are placed into unsubsidized employment, who retain an employed status in the first and second quarters following initial placement; and
- The average wage that participants will earn at placement into unsubsidized employment.

The draft audit report asserts on page 9 that "ETA could not determine if the 87,000 [participants] received training in H-1B or non H-1B occupation [sic] ...." However, ETA maintains that the TST performance data accurately reflect that participants received training in either H-1B occupations or occupations that are along a career ladder leading to an H-1B occupation as allowed by ACWIA.

Regarding the statement on page 9 of the draft audit report that ETA's performance measures for the TST program did not identify the types of jobs participants obtained after training, ETA acknowledges that there was no specific performance outcome measure that captured the specific occupations participants entered into after training. However, as noted in the draft audit report, grant recipients were required to track and report "training-related employment" outcomes. This measure indicated whether, after training program completion, the participant entered employment that used a substantial portion of the skills taught in the training received by the individual. As the intent of the TST grants was to "assist workers in gaining the skills and competencies needed to obtain or upgrade employment in high growth industries and

occupations, or along the career pathways for such industries and occupations,” ETA believes this “training-related employment” measure more accurately reflects grant outcomes.

ETA appreciates the opportunity to respond to your draft audit report and its recommendations. In addition, ETA looks forward to working with OIG to continue to refine its FOAs that use H-1B funding to train individuals along career pathways to attain high-growth, middle- to high-skilled jobs within targeted sectors all defined in the statutory language. If you have questions, please contact Kim Vitelli, Acting Administrator, Office of Workforce Investment, at 202-693-3639.