




September 23, 2024

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

FROM: JOSÉ JAVIER RODRÍGUEZ 

SUBJECT: Response to Draft Report – *ETA Needs to Improve Oversight of Disaster Dislocated Workers Grants*, Report No. 02-24-XXX-03-390

The U.S. 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). Below are ETA's observations on the draft report, followed by responses to the draft report's recommendations.

Lack of Coordination Between ETA and [Federal Emergency Management Agency] FEMA May Have Decreased Effectiveness and Timeliness of Disaster Recovery Assistance

ETA recognizes the importance of coordination with FEMA in disaster recovery and does coordinate with FEMA, including through long-standing interagency working groups on disaster response. ETA's guidance published in Training and Employment Guidance Letters (TEGL) under the Workforce Innovation and Opportunity Act (WIOA) specifically states that grant recipients should coordinate with "emergency management agencies" broadly, not just with FEMA. Coordination at the state and local level helps avoid duplication of activities and costs. For example, state emergency management agencies work with state workforce agencies to coordinate services and avoid duplication.

The OIG has presented no evidence or basis to state "ETA's failure to facilitate such coordination may have decreased the effectiveness and timeliness of [Dislocated Worker Grants] DWG disaster recovery assistance" or that any issue occurred "because of ETA's lack of written interagency agreements with FEMA." A written agreement between ETA and FEMA would only outline actions between the two federal agencies and is unlikely to influence how a state (or local areas) and FEMA or state emergency agencies would interact.

Grant recipients and their subrecipients are the entities carrying out the workforce services and are best positioned to coordinate with emergency management activities taking place in their area. Generally, grant recipients work with their state counterparts in emergency management to ensure that alignment of activities occurs. Further, this coordination is critically important because not all Disaster Recovery DWGs are awarded in response to a FEMA-declared disaster

and state agencies charged with emergency management would be involved regardless of which federal agency made the declaration.

ETA has more appropriately focused its activities on preparing states to coordinate disaster response. For instance, over the past three years, ETA's Atlanta Region has hosted a joint technical assistance summit, including subject matter experts from ETA on Unemployment Insurance and Workforce Investment, as well as experts from FEMA, the Small Business Administration (SBA), and the National Oceanic and Atmospheric Administration. The purpose of the summit is to provide pre-hurricane season technical assistance to existing and potential grant recipients. During the summit, the topics discussed include, but are not limited to, eligibility, disaster application processes, resource availability, and coordinating costs (e.g., aligning and braiding funding). The Region has also hosted two business engagement summits that focus on the importance of business services involvement, rapid response initiatives, and partnership with federal agencies to proactively prepare for disasters that may occur in the future. Similar coordination activities also take place in other ETA regions that experience frequent natural disasters.

Grant Recipients Did Not Collect Required Eligibility Documentation and ETA Performed Limited Monitoring of Participant Eligibility

In a disaster, Disaster DWG recipients should be working to deliver workforce services. Grant recipients already produce a large amount of documentation regarding services provided, participants served, as well as for financial reporting. Efforts to understand disaster survivors' experience show how a focus on paperwork and eligibility documentation traps disaster victims in an endless cycle of paperwork that delays their ability to receive help. ETA is concerned that the OIG's focus on this issue will further impact individuals getting the assistance they need, as often the documentation the OIG is seeking is either lost or destroyed in the disaster event itself.

Further, the OIG's draft report attempts to place additional requirements related to participant eligibility on a disaster DWG that is not appropriate or supportable, which has led to the OIG questioning a significant amount of costs that should not be questioned. Specifically, for the North Carolina DWG described in the draft report, the entirety of the funding was issued under TEGL No. 02-15 and guidance on eligibility documentation for states under the requirements of this TEGL were provided in the DWG grant agreements, which stated:

“Self-certification – The participant file must document participants' eligibility. Because of the circumstances surrounding the disaster, documentation of eligibility may be difficult to obtain during the initial stages. The Department is prepared to accept an individual's signed certification that they meet the eligibility criteria. The Grantee should have a system in place to verify eligibility for individuals once better data are available. If the Grantee has such a system in place, and if a participant is later found to be ineligible, the costs incurred prior to the discovery of ineligibility will not be disallowed.”

For this DWG award, the State was allowed to accept self-certification and followed the requirements outlined in TEGL No. 02-15.

The logic behind the OIG's language on page 9 of the draft report is perplexing:

“All three states were required to follow TEGL 12-19...For North Carolina, its grant modification states “[e]xcept as modified, all terms and conditions of said grant/agreement remain unchanged and in full effect.” Because TEGL 12-19 was issued before this modification and changed the terms and conditions of the grant as it relates to verifying eligibility of participants, the language in TEGL 12-19 is binding on North Carolina as well.”

This is an inaccurate statement; the last modification for this DWG was January 21, 2020, which was nearly two months **before** TEGL No. 12-19 was issued on March 18, 2020. North Carolina's DWG operated entirely under the requirements outlined in TEGL No. 2-15.

Finally, the OIG's characterization that ETA performs limited monitoring of participant eligibility is inaccurate. ETA's regional offices perform monitoring reviews and check participant program eligibility based on the grant terms and conditions. Regional offices select a sample of participant files for review as a standard practice. As explained to the OIG previously, ETA's monitoring reports are written on an exception basis, meaning the monitoring report will note deficiencies found, but will not list every compliance requirement that the grant recipient met. Since there was no requirement for a state to collect documentation if the grant recipient had obtained an individual's signed certification, eligibility issues would not be included in the monitoring report, because the scope of the review did not find any issues in this area.

Delayed Approval Process for Grant Modification Caused a Two-Week Work Stoppage at a Sub-Recipient

ETA strongly disagrees with the OIG's conclusion that the approval process for providing a grant recipient additional funding was delayed and that “ETA's position is not supported that applications and requests for supplemental funding must be approved by the Secretary within 45 days of the receipt of a fundable application.” WIOA Section 170(b)(2) and 20 CFR 687.160 provide the Department 45 days from the receipt of a complete application to approve a DWG funding request. As the OIG notes in Table 1 of its draft report, the timeline from receipt of the complete application to approval was 41 days, and therefore ETA has complied with the 45-day statutory requirement. The authorizing statute (which specifies 45 days) supersedes the Uniform Guidance regulations.

ETA also conveyed during the exit conference, and afterwards through supporting data, the average approval times for DWG funding requests during the last two fiscal years was approximately 19 and 20 days, respectively, reinforcing that there is no need to further streamline a process that is already well within compliance of the program's statutory requirements.

While there are other factors outside of ETA's control that can lead to a delayed application submission, including when a state decided to submit an application, and how long it took for them to submit a complete and actionable application, ETA has taken actions to assist grant recipients with submission of incremental funding requests that have exponentially improved the approval process.

To ensure requests are submitted in a timely manner, Federal Project Officers (FPO) review the Payment Management System (PMS) frequently to compare expenditures versus the incremental funding awarded. Additionally, FPOs frequently discuss with grant recipients project implementation challenges, programmatic and fiscal needs, as well as subrecipient technical assistance needs. Through these monitoring activities, FPOs can anticipate how soon grant recipients may require additional funding, generally after 70 percent of the funds awarded have been expended. FPOs also take a proactive approach in notifying the grant recipient when 60 percent of the funds have been expended and provide instructions on how to request funds should the grant recipient need additional funds.

Responses to the Recommendations

Please find below each of the recommendations contained in the OIG's draft report, followed by ETA's response.

Recommendation 1: Coordinate with FEMA to develop a written disaster outreach plan, such as a Memorandum of Understanding or Memorandum of Agreement, to be activated during large-scale disasters that defines how ETA and grant recipients will coordinate and document their efforts with FEMA for disaster recovery.

ETA Response: ETA disagrees with this recommendation. Decisions regarding how states, tribal, or outlying areas coordinate with FEMA should be made by entities within the affected communities. ETA cannot commit to state or other grant recipient actions in an ETA Memorandum of Agreement with FEMA.

While ETA declines to be prescriptive or proscriptive about grant recipients' coordination with FEMA, ETA expects grant recipients to establish appropriate policies and procedures to meet this coordination requirement. ETA supports and strongly encourages grant recipients' coordination with state emergency management agencies and other entities participating in the recovery process.

As an alternative to this recommendation, ETA agrees to take a more assertive approach to help facilitate a grant recipient's collaboration with FEMA. ETA will notify FEMA when a large-scale disaster DWG is awarded, to support the rapid connection of the right officials at the state level, and to ensure coordination and collaboration of response efforts occurs at the state level. This change will be added to future program guidance.

In addition to directly notifying FEMA and continuing to work with state partners to ensure they can coordinate with emergency management agencies; ETA currently participates in two interagency working groups with FEMA. ETA and the Department participate in the Recovery Support Function Leadership Group, coordinated by FEMA, which focuses on federal recovery responsibilities, including operational, resource, and policy issues related to interagency recovery actions at the national level. Additionally, ETA also participates in the interagency Economic Recovery Support Function (ERSF) working group, which convenes an array of federal agencies with programs supporting disaster response and recovery. ERSF agencies include ETA, FEMA, the U.S. Economic Development Administration, SBA, the Environmental Protection Agency,

the U.S. Department of the Treasury, the U.S. Department of the Interior, the Bureau of Indian Affairs, and others. As part of the notification process described above, ETA will share information on each awarded Disaster Recovery DWG with this group, taking advantage of the ERSF's networking platform to help grant recipients better leverage all available resources in a time of need. Coordination with the ERSF will also enable other federal disaster relief stakeholders to become more aware of available ETA disaster investments within the targeted areas.

Recommendation 2: Update Dislocated Worker Grant program guidance to clarify how recipients should coordinate with FEMA, state emergency management agencies, and other relevant federal agencies, including instructions on fulfilling and documenting these coordination efforts.

ETA Response: ETA disagrees with this recommendation, as ETA does not want to be prescriptive or proscriptive about grant recipients' coordination efforts.

However, TEGL No. 12-19, Change 1 already requires grant recipients to coordinate with the appropriate emergency management agencies in their state. ETA is in the process of updating its program guidance, and as an alternative to address the intent of this recommendation, will require applicants to identify a point of contact within the state emergency management structure and describe any coordination that has occurred by the time of the application, or any plans for coordination post-award, between the grant recipient and the relevant emergency management agency or individuals.

Recommendation 3: Reinforce the use of the indicator specified in the National Dislocated Worker Grant (DWG) Supplement to the Core Monitoring Guide, April 2021, to test for FEMA coordination during monitoring reviews.

ETA Response: ETA disagrees with this recommendation to reinforce the use of the existing indicator for FEMA coordination in the Core Monitoring Guide (CMG) supplement. ETA already provides training to FPOs on existing DWG guidance and grant administrative requirements (Uniform Guidance), and the CMG supplement for DWGs already notes that FEMA is a required partner. As an alternative to address the intent of this recommendation, ETA will provide internal training to FPOs and external training to grant recipients on the forthcoming guidance, including underscoring the importance of coordination between federal, state and local agencies on disaster responses. ETA will not require the use of this indicator in every monitoring review, in keeping with the Agency's flexible and risk-based approach to monitoring.

Recommendation 4: Adjust language to ensure consistency between Training and Employment Guidance Letters and the grant agreement on requirements for grant recipients to follow-up when self-certification is used for eligibility.

ETA Response: ETA partially agrees with this recommendation. While the grant agreements reviewed under this audit were in alignment with TEGL Nos. 2-15 and 12-19, ETA agrees that

there should be consistency between the current guidance in effect and the grant agreements. ETA will ensure that future DWG agreements are updated to align with guidance revisions.

However, it should be noted that under virtually all programs under WIOA, save DWGs, a participant eligibility determination is a one-time activity. Eligibility is determined at the time of program enrollment, and once a participant is enrolled through a process in alignment with WIOA requirements and existing state or local policy and procedure, there is no additional eligibility determination or follow-up required under statute or regulations. Self-certification is an allowable procedure for determining participant eligibility under WIOA. Revisions to ETA's program guidance will further clarify the use of self-certification as a participant eligibility determinant and clearly align the process for DWGs with the requirements that apply to all WIOA-funded programs.

Recommendation 5: Reinforce the use of the indicator specified in their National Dislocated Worker Grant (DWG) Supplement to the Core Monitoring Guide, April 2021, to test for participant eligibility when self-certification is used for eligibility.

ETA Response: ETA does not agree with this recommendation. Self-certification, especially in a disaster situation, is a complete response and an allowable mechanism for an eligibility determination.

ETA is updating program guidance to clarify that self-attestation does not require further documentation. Therefore, ETA does not plan to reinforce indicators on participant eligibility solely because self-certification is used.

Recommendation 6: Provide training to Federal Project Officers to expedite urgent DWG modification requests.

ETA Response: ETA disagrees with this recommendation. As noted in ETA's comments on the topic area of **Delayed Approval Process for Grant Modification Caused a Two-Week Work Stoppage at a Sub-Recipient** above, ETA promptly processes requests for funding within the timelines required by the statute.

In addition, it should be noted that ETA already trains FPOs to support states in submitting DWG requests. As part of FPO training, FPOs are encouraged to review quarterly grant recipient financial report data and are shown how to evaluate the expenditures compared to the award amount. Further, new tools such as Tableau have been implemented for FPOs to use to aid with monitoring fiscal burn rates. Finally, FPOs generally meet with grant recipients to provide programmatic and fiscal insight, which allows the FPO to be proactive when addressing the grant recipient's funding and technical assistance needs.

Recommendation 7: Recover costs of \$1,592,760 for participants served that lacked adequate documentation to support eligibility.

ETA Response: ETA agrees with this recommendation, notwithstanding the fact that ETA believes the amount being questioned by the OIG is inflated, due to the OIG's misapplication of TEGL No. 12-19, and its associated standards, to the North Carolina DWG.

ETA respectfully requests that the OIG provide ETA specific information related to the participants in question and the associated costs, so that ETA can follow its audit resolution process to determine if these costs are associated with ineligible participants. Initial and final determinations will be issued, per the process outlined in the Department of Labor Manual Series (DLMS) 8, Chapter 300. 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 8: Recover \$17,273 in costs not allocable to the grant.

ETA Response: ETA concurs with this recommendation. 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 in question, per the process outlined in DLMS 8, Chapter 300, to determine if these costs are in fact not allocable to the grant, and, if so, the disallowed 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.