

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND
TRAINING
ADMINISTRATION**



RECOVERY ACT: THE U.S. DEPARTMENT OF LABOR NEEDS TO EVALUATE ITS ROLE IN THE HEALTH COVERAGE TAX CREDIT (HCTC) PROGRAM

**Date Issued: March 31, 2010
Report Number: 18-10-003-03-390**

BRIEFLY...

Highlights of Report Number: 18-10-003-03-390, Recovery Act: The U.S. Department Of Labor Needs To Evaluate Its Role In The Health Coverage Tax Credit (HCTC) Program.

WHY READ THE REPORT

The Recovery Act designated \$150 million for use by the Department's Health Coverage Tax Credit (HCTC) National Emergency Grants (NEG) program which provides for the cost of qualifying health insurance coverage for eligible Trade Adjustment Assistance (TAA) participants and Pension Benefit Guaranty Corporation (PBGC) recipients until they can be enrolled in the Internal Revenue Service's (IRS) HCTC program. The Employment and Training Administration (ETA) is responsible for administering the HCTC NEG program.

As of December 3, 2009, 3 grants totaling \$8 million of the appropriated \$150 million had been awarded to 6 states. The report discusses the Department's role in the HCTC program and the need for the full \$150 million given the program's low participation.

WHY OIG DID THE AUDIT

Our audit objectives were to answer the following questions:

- 1) What is the status of states applying for, and using Recovery Act funds under the HCTC NEG program?
- 2) What outreach did ETA conduct to inform states of the availability of funds?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/publicreports/oa/2010/18-10-003-03-390.pdf>.

March 2010

WHAT OIG FOUND

The TAA-certified eligible workers increased 58 percent in FY 2009 to 201,000, and PBGC total participants encompass 744,000 retirees. However, states have generally neither applied for nor used HCTC NEG Recovery Act funds. As of December 3, 2009, 3 grants totaling \$8 million of the appropriated \$150 million have been awarded to 6 states and no expenditures have been reported.

While ETA conducted various outreach activities, these outreach efforts were not completely effective as 31 percent of non-participating states were not aware of the Recovery Act HCTC NEG program. ETA did not contact states to assess their HCTC NEG funding needs and provide guidance to states on changes made to the HCTC NEG program by the Recovery Act. It is crucial that ETA issue guidance to ensure states are aware and knowledgeable of the policies and guidelines for the availability and use of HCTC NEG funds under the Recovery Act.

Low participation in HCTC NEG may have resulted from factors outside of ETA's control. Namely, enhancements to IRS' HCTC program such as reduced enrollment wait time, and the PBGC population was unknown to enable targeted outreach. Moreover, ETA's lack of urgency to provide effective outreach and issue guidance may be attributed to the apparent conflict of ETA's interpretation of HCTC NEG funds as no-year money and the Recovery Act's clear message that funds should be expended expeditiously by the end of fiscal year 2010.

As a result of the low participation, eligible individuals are not being served by the HCTC NEG program and funds were not spent as quickly as the Recovery Act intended. Therefore, \$142 million of funds may be better used if management took action to evaluate and strengthen the HCTC NEG program.

WHAT OIG RECOMMENDED

We made five recommendations to the Assistant Secretary of Employment and Training to address low participation in the HCTC NEG program.

ETA generally agreed with the recommendations and will pursue efforts to improve implementation of the HCTC NEG. In its response to the draft report, ETA took exception to our conclusion that HCTC NEG funds are not available indefinitely. This notwithstanding, our primary concern was ETA has not determined the need for the full \$150 million given the low participation in the program.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31, 2010

Assistant Inspector General's Report

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The Recovery Act was signed into law by the President on February 17, 2009, to preserve and create jobs, promote economic recovery, and assist those most impacted by the recession. As a part of the Recovery Act, \$150 million was designated for use by the Department's Health Coverage Tax Credit (HCTC) National Emergency Grants (NEG) program which allows states to provide for the cost of qualifying health insurance coverage for eligible individuals, until such time as they can be enrolled in the Internal Revenue Service's (IRS) HCTC program. States can pay this benefit for up to 3 months. The primary mechanism for HCTC assistance is a Federal tax credit administered by IRS. The Recovery Act increased the coverage from 65 percent to 80 percent. HCTC is limited to eligible Trade Adjustment Assistance (TAA) participants and Pension Benefit Guaranty Corporation (PBGC) recipients, and their qualified family members. The Recovery Act allows qualified individuals to receive benefits until December 31, 2010. At the Department, the Employment and Training Administration (ETA) is responsible for administering HCTC NEG program.

TAA provides benefits to individuals who became unemployed because of increased imports from, or shifts in production to, foreign countries. Employers or unions file a petition with the Department to have their employees TAA certified. A petition may be filed by a group of workers, a company, public agency official, One-Stop operators, partners, and unions. TAA-certified workers increased 58 percent from 127,000 to 201,000 from fiscal year (FY) 2008 to 2009.

The PBGC website stated that PBGC pays monthly retirement benefits, up to a guaranteed maximum, to nearly 744,000 retirees in 4,000 pension plans that ended. The employer can end the plan in a standard termination after showing PBGC that the plan has enough money to pay all benefits owed to participants. If the plan is not fully funded and the employer is in financial distress, the employer may apply for a distress termination. Although the eligible PBGC population for the HCTC program is unknown, PBGC is responsible for the current and future pensions of about 1,476,000 people.

OBJECTIVES

Our audit objectives were to answer the following questions:

1. What is the status of states applying for, and using Recovery Act funds under the HCTC NEG program?
2. What outreach did ETA conduct to inform states of the availability of funds?

SCOPE

The audit covered \$150 million of Recovery Act funds appropriated under amended section 174 (c) of the Workforce Investment Act (WIA) for use in the HCTC NEG program. We audited the Department's practices, policies, and procedures from February 17, 2009, through December 3, 2009. We met with ETA's Office of National Response to obtain current guidance, an overview of outreach efforts and ETA's responsibilities related to HCTC NEG funds. We reviewed a schedule of HCTC NEGs awarded, expenditures reported, and ETA outreach activities. Program-Specific Recovery Act Plans were reviewed to determine ETA's responsibilities and milestones. In addition, we requested data from the 50 states, District of Columbia, and Puerto Rico, to obtain information for HCTC NEGs eligible TAA and PBGC populations. We received 43 responses. We did not test internal controls or financial activity as this was not the objective of our audit.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF

While TAA-certified eligible workers increased in FY 2009 to 201,000, and PBGC total participants encompass 744,000 retirees, only \$8 million of the appropriated \$150 million has been awarded to states since the Recovery Act was signed into law on February 17, 2009. In addition, 8 states have \$4 million in HCTC NEG non-Recovery Act funds remaining from prior years.

As of December 3, 2009, ETA has awarded three grants covering six states. Forty-four states, the District of Columbia and Puerto Rico have not applied for HCTC NEG funds. The 6 states were awarded grants in August and November 2009, and have not reported any expenditures.

Low participation may have resulted from several factors outside of ETA's control. ETA and 18 non-participating states that responded to us indicated several factors for the

low participation. Namely, enhancements to IRS HCTC program that reduced enrollment wait time to approximately one month, down from a several month wait time, and ETA and the majority of states were not aware of the number of PBGC pension recipients eligible to receive the HCTC NEG for targeted outreach. Although eligible participants have increased, participants may have health coverage from other sources, such as a spouse; and individuals may have been unable to afford the 20 percent cost of the health insurance premiums. States also told us that the lack of required systems, limited individual interest, high administrative costs, lack of qualified insurance plans, and prior-year unexpected funds contributed to low participation in the HCTC NEG program.

We also found that ETA's outreach efforts were not completely effective to inform states of the availability of HCTC NEG funds, and did not provide guidance to states on changes made to the HCTC NEG program by the Recovery Act. Approximately one third of non-participating states indicated they were not aware of the HCTC NEG program under the Recovery Act. ETA could have provided better guidance to states on changes and fund availability made by the Recovery Act for the HCTC NEG program. Also, ETA did not contact states to obtain estimated future funding needs. ETA's lack of urgency to provide effective outreach and issue guidance may be attributed to the apparent conflict of ETA's interpretation of HCTC NEG funds as no-year money and the Recovery Act's clear message that funds should be expended expeditiously by the end of fiscal year 2010. As a result, \$142 million of HCTC NEG funds may be better used if management took action to evaluate and strengthen the HCTC NEG program.

In a prior OIG audit report concerning the Department's *Performance Audit of HCTC Bridge and Gap Programs* (report number: 02-05-204-03-330, dated September 30, 2005), the OIG found that participant and expenditure levels were low, and funds were underused. The former Assistant Secretary for Employment and Training generally agreed with the recommendations to address the low participation and provided potential remedies pertaining to excess funds; however, specific action plans were not provided. One of the remedies cited by the former Assistant Secretary was that Congress passed a bill which authorized states to reprogram NEG funds to assist victims of Hurricane Katrina. Furthermore, the former Assistant Secretary believed that "progress was being made" in regard to obtaining PBGC information.

We recommend the Assistant Secretary for Employment and Training take actions to evaluate and strengthen the HCTC NEG program by assessing the need for the remaining \$142 million by obtaining an annual estimate of the amount of Recovery Act HCTC NEG funds needed by each state, and reconcile the apparent conflict concerning the period of availability of Recovery Act funds. Also, issue guidance, provide effective outreach, and coordinate with PBGC to identify eligible PBGC recipients for potential enrollment.

In her response to the draft report, the Assistant Secretary for Employment and Training stated that she appreciated the recommendations provided by the OIG and will pursue efforts to improve implementation of the HCTC NEG. However, ETA took exception to

our conclusion that HCTC NEG funds are not available indefinitely. This notwithstanding, our primary concern was ETA has not determined the need for the full \$150 million given the low participation in the program. Regarding PBGC participants, the Assistant Secretary claimed that because of privacy considerations, ETA does not have access to such information. However, the Assistant Secretary agreed to enhance ETA's relationship with both PBGC and IRS to enable states to identify potential eligible PBGC recipients and to provide them with information about the HCTC NEG program. We believe such information will be instrumental in determining the need for this program.

The Assistant Secretary agreed to obtain annual estimates from states and issue HCTC NEG guidance. However, the Assistant Secretary did not address the need for additional outreach efforts. We continue to conclude that outreach efforts be enhanced so all states become aware of the Recovery Act HCTC NEG program. ETA's response to the draft report is included in its entirety in Appendix D.

RESULTS AND FINDINGS

Objective 1 — What is the status of states applying for, and using Recovery Act funds under the HCTC NEG program?

Finding — Overall, states have neither applied for nor used HCTC NEG Recovery Act funds.

The Recovery Act designated \$150 million for HCTC NEG funds for FYs 2009 and 2010, to assist eligible TAA and PBGC individuals impacted by the recession with assistance in covering the cost of health insurance. TAA-certified eligible individuals increased in FY 2009 to 201,000, and PBGC total participants encompass 744,000 retirees. As of December 3, 2009, 3 grants¹ totaling \$8 million of the appropriated \$150 million have been awarded to 6 states in August and November 2009, while no expenditures have been reported. In addition, 8 states² have \$4 million in HCTC NEG non-Recovery Act funds remaining from prior years. As a result of the low participation, eligible individuals are not being served by the HCTC NEG program. Therefore, \$142 million of HCTC NEG funds may be better used if management took action to evaluate and strengthen the HCTC NEG program.

The purpose of the Recovery Act is to assist those most impacted by the recession, and to manage and expend funds as quickly as possible consistent with prudent management. Recovery Act Section 1899 K(a)(1)(A) made funds available to states for eligible individuals and qualified family members with health insurance coverage for a maximum of three months, or until the IRS enrolls and pays individuals under its HCTC

¹ ETA awarded 3 grants to 6 states. The three grants include Kentucky, North Carolina, and Maryland, with Maryland covering a consortium that includes Alabama, Mississippi, and South Carolina.

² The states with remaining non-Recovery Act funds include: Georgia, Maryland, Maine, North Carolina, Utah, Virginia, Washington and West Virginia.

program. Funding is provided as grants to states and ETA awards HCTC NEG to states upon request.

Low participation may have resulted from several factors outside of ETA's control. ETA and 18 non-participating states that responded to us indicated various factors for the low participation. Namely, enhancements to IRS' HCTC program such as reduced enrollment wait time to approximately one month, down from a several month wait time, and the PBGC population was unknown to enable targeted outreach. Other possible causes for low participation included, individuals may have health coverage from other sources, such as a spouse, Consolidated Omnibus Budget Reconciliation Act (COBRA), or union; and individuals may have been unable to afford the 20 percent cost of the health insurance premiums.

Furthermore, by September 30, 2010, the planned obligation of HCTC NEG funds was only \$28 million, or 19 percent, of the \$150 million appropriated. However, ETA officials were not able to provide a basis for that estimate. In addition, states have not reported any expenditure on the \$8 million HCTC NEG funds awarded as of December 3, 2009.

Enhanced IRS HCTC program

ETA and state officials consistently identified the enhanced IRS HCTC program as a cause for low state participation. The efficiency of the IRS' HCTC enrollment process has improved as there is approximately one month wait time, down from several months. Under the Recovery Act, IRS received \$80 million for two years to administer changes to the HCTC program. One important change was the establishment of the IRS' reimbursement program in August 2009, which is similar to the Department's HCTC NEG program. This program also entitles participants to be reimbursed for qualified healthcare coverage payments while completing enrollment. The IRS HCTC reimbursement program is scheduled to end December 31, 2010, unless reauthorized by Congress.

Of the 18 states that provided reasons for low participation, 12 or 67 percent indicated it was due to the enhanced IRS' program. One state commented "there is no 'gap' that HCTC NEG funds need to close since the prompt connection to IRS for reimbursement of 80 percent of our clients' health insurance continuation premiums largely meets their needs." In addition, we interviewed 7 of 11 states that were unaware of the HCTC NEG program, and found 3 states have a system in place to refer eligible individuals in need of healthcare coverage assistance to the IRS HCTC program.

Currently, the IRS mails the potentially eligible participant an HCTC Program Kit, which outlines the eligibility requirements to claim HCTC as well as the monthly registration form to be completed for the advance monthly credit. While completing the eligibility and registration form, the participant may also complete a reimbursement request form for health care coverage payments. (See Exhibit A for IRS HCTC Enrollment Process.)

PBGC Population Unknown

HCTC is limited to eligible TAA participants and PBGC recipients, and their qualified family members. PBGC pays monthly retirement benefits, up to a guaranteed maximum, to nearly 744,000 retirees in 4,000 pension plans that ended. However, according to an ETA official, ETA is unaware of the PBGC population. Specifically, ETA does not have access to PBGC benefits recipients' information and only collects the number of participants in the HCTC NEG program with no breakout between TAA and PBGC participants.

Although the eligible PBGC population for the HCTC program is unknown, PBGC is responsible for the current and future pensions of about 1,476,000 people. Based on the responses from 43 states, only 4 states were able to identify their PBGC population. Had the PBGC population been known, targeted outreach could have been performed. As a result, the PBGC population was not served by the HCTC NEG program. A state suggested that to increase participation or enhance program performance, it would be helpful if states can receive contact information for PBGC-covered individuals because this will allow the states the opportunity to reach out to them.

In the prior OIG audit report *Performance Audit of HCTC Bridge and Gap Programs*, the audit found a need for effective outreach systems to identify potentially eligible PBGC individuals. The report recommended ETA coordinate with PBGC, IRS, and states to develop a system to consistently and effectively transmit potentially eligible PBGC population to the states or other designated parties to facilitate timely outreach. On September 30, 2005, the former Assistant Secretary for Employment and Training responded, "... there are confidentiality issues surrounding the release of information to states vis-à-vis PBGC eligibles.... Several states and Federal agencies have been actively seeking solutions which are not overly burdensome to any one entity, and we believe progress is being made."

Other Reasons for Low State Participation

According to ETA officials, the following may be contributing factors to the low state participation and expenditure levels: 1) Existing grant funds of \$4 million in HCTC NEG non-Recovery Act funds remained at 8 states to serve eligible participants; 2) Eligible participants may not require HCTC because they have health coverage via an employed spouse, COBRA, or union benefits; and 3) Individuals are unable to afford to pay the 20 percent cost of qualified health insurance coverage.

The OIG requested data from the 50 states, District of Columbia and Puerto Rico to determine the status of states applying for Recovery Act HCTC NEGs. Of the 43³ states that provided data, 6 participated, 1 state has a pending application, and 36 did not participate in the HCTC NEG program under the Recovery Act. Of the 36 non-

³ The remaining seven states, District of Columbia and Puerto Rico did not respond to our data request or telephone calls.

participating states, 11, or 31 percent, were not aware of the HCTC NEG program. Of the remaining 25, or 69 percent, that were aware of the program, 18 ranked the following reasons⁴ for not participating:

	Number of states responded	Average score*
Lack of Required Systems	13	3.8
Limited Individual Interest	13	3.7
High Administrative Cost	12	2.9
Lack of Qualified Insurance Plan	10	2.5
Prior-Year Unexpended Funds	4	3.8

* Participants ranked score of 1 through 5, with 5 being the most significant reason for not participating.

Some of the 25 states provided additional reasons for not participating in the HCTC NEG program. For example one state official indicated, “Have heard feedback from other states that this can be difficult to manage and take staff intensive time.”

Another reason for low participation included individuals who were unable to afford the 20 percent cost of the health insurance premiums. While ETA stated this may be a cause, we asked states whether this was an issue. Of states that responded to this issue, 9 of 20, or 45 percent, indicated the cost to participants of 20 percent of qualified health insurance coverage was prohibitive in their enrollment to the HCTC program.

Objective 2 — What outreach did ETA conduct to inform states of the availability of funds?

Finding — ETA conducted various outreach activities; however, these outreach efforts were not completely effective.

ETA conducted outreach through webinars, conference calls, emails, roundtable discussion, and forums; however, these outreach efforts were not completely effective as 11 of 36,⁵ or 31 percent, of non-participating states were not aware of the Recovery Act HCTC NEG program. Furthermore, ETA did not contact the states to assess HCTC NEG funding needs. ETA did not provide effective outreach to inform states of the availability and use of HCTC NEG funds. In addition, ETA did not provide guidance to states on changes made to the HCTC NEG program by the Recovery Act. It is crucial that ETA issue guidance to states to ensure they are aware and knowledgeable of the policies and guidelines for the availability and use of HCTC NEG funds under the Recovery Act, as changes have been made to the HCTC program. As a result, 31 percent of the non-participating states were not aware of the Recovery Act HCTC NEG program, eligible individuals for HCTC NEG may not be served, and funds were not spent as quickly as the Recovery Act intended.

⁴ Of the 25 states that did not participate and were aware of the HCTC program, 7 did not provide the reasons for not participating.

⁵ Of the 43 state responses, 36 states were not participating in the Recovery Act HCTC NEG program.

ETA's lack of urgency to provide effective outreach and issue guidance may be attributed to ETA's interpretation of HCTC NEG funds as no-year money. The Recovery Act amended WIA section 174 (c) (1) (A) and specifically provided, "(ii) \$150,000,000 for the period of fiscal years 2009 through 2010." (Underscoring added.) On the one hand, this Recovery Act language would seem to suggest that Congress intended the funds to be obligated by the end of fiscal year 2010. In fact, this interpretation is consistent with both the stated purpose of the Recovery Act to serve as a stimulus to the economy, as well as the Recovery Act's own language in section 3(b) that calls for "commencing expenditures and activities as quickly as possible consistent with prudent management." On the other hand, ETA asserts that it has been their practice, with the concurrence of OMB, to treat section 174(c)(1)(A) funds as "no-year" funds since 2002. According to ETA, an "x" account (indicating no-year funds) was established for the HCTC NEG funds in both 2002 and 2009 in consultation with OMB, thereby making the funds available to the states until expended. This interpretation does not comport with the purpose and spirit of the Recovery Act.

In response to the draft report, the Assistant Secretary continued to assert that, "the period of availability for obligation of the Recovery Act funds for HCTC to be as long as there are valid claims against those funds."

Additional Outreach Needed

According to ETA officials, ETA conducted two Webinars inclusive of PowerPoint presentations, three conference calls with IRS, and regional forums. Although ETA conducted these outreach activities, we cannot determine the sufficiency of these outreach activities as ETA has not provided a listing of attendees, minutes of meetings, or invitees to the meetings. Also, these outreach activities may not have enough emphasis. Based on the review of the PowerPoint presentations and regional forum report, it appeared the HCTC NEG program was mentioned within overall Recovery Act discussions and not emphasized. When contacted by OIG, 3 of 11 states that were unaware of the HCTC NEG program expressed interest in potentially participating in this program.

Another important part of outreach is to assess each state's funding needs. This issue was addressed in the prior OIG audit report *Performance Audit of HCTC Bridge and Gap Programs*. The audit recommended and the former Assistant Secretary agreed with the need for an ongoing needs assessment of appropriated NEG funds. However, in response to OIG inquiry for current Recovery Act HCTC NEG funds, ETA stated they were unable to contact the states to assess future needs of HCTC NEG funds because ETA maintained such contacts are "collections of information" covered by the Paperwork Reduction Act (PRA). However, PRA would not preclude any contact or outreach by ETA with the States to provide them with information about the HCTC NEG program or how they can receive and utilize these funds. Furthermore, even if these contacts with the States were covered by the PRA, it only required the states to take certain procedural steps, which could have been initiated months ago.

Overdue Guidance

The Program-Specific Recovery Plan stated ETA will issue a new Training and Employment Guidance Letter (TEGL) by June 2009. One year after the Recovery Act was enacted, ETA had not issued this TEGL detailing changes made to the HCTC NEG program and the availability and use of the funds under the Recovery Act. ETA issued TEGL 19-08 on April 30, 2009, to states to provide general policy guidance and directions for all NEGs funded through Recovery Act. This TEGL stated “specific details on the availability and use of Recovery Act funds for HCTC will be provided as part of a separate TEGL.”

ETA officials stated the HCTC NEG under the Recovery Act fundamentally did not change the HCTC NEG program under WIA, and therefore, the TEGL for the TAA Reform Act of 2002 under WIA NEG was still applicable. However, it is crucial that ETA issue guidance to states to ensure they are aware and knowledgeable of the policies and guidelines for the availability and use of HCTC NEG funds under the Recovery Act as changes have been made to the HCTC program. Some of these changes included the increase in credit from 65 percent to 80 percent, TAA definition change, and extended coverage for qualified family members. (See EXHIBIT B for changes to the HCTC program through the Recovery Act.)

Conclusion

The Recovery Act increased the coverage from 65 percent to 80 percent to eligible TAA participants and PBGC recipients, and their qualified family members. Overall states have not applied for nor used HCTC NEG Recovery Act funds. Only \$8 million of the appropriated \$150 million have been awarded. This was namely due to enhancements in IRS’ HCTC program and the fact that the PBGC population was unknown. Also, ETA’s outreach efforts were not completely effective to inform states of the availability of HCTC NEG funds, and did not provide guidance to states on changes made by the Recovery Act. Whether Congress intended the funds to be obligated by the end of fiscal year 2010, or if they were no-year funds, the Department needs to reevaluate its role in the HCTC program. The Recovery Act’s own language called for expenditures and activities to commence as quickly as possible to assist eligible individuals impacted by the recession. As a result, \$142 million of HCTC NEG funds may be better used if management took action to evaluate and strengthen the HCTC NEG program.

Recommendations

To address low participation in the HCTC NEG program, we recommend that the Assistant Secretary for Employment and Training take the following actions to evaluate and strengthen the HCTC NEG program:

1. Assess the need for the remaining \$142 million by obtaining an annual estimate of the amount of Recovery Act HCTC NEG funds needed by each state;

2. Coordinate with PBGC to identify eligible PBGC recipients for targeted outreach and potential enrollment;
3. Provide effective outreach activities to ensure all 50 states, District of Columbia, and Puerto Rico are aware and knowledgeable of the Recovery Act HCTC NEG program;
4. Issue proposed guidance to states for the availability and use of HCTC NEG funds under Recovery Act as changes have been made to the program; and
5. Reconcile the apparent conflict between ETA's interpretation that funds appropriated under this section are "no-year" funds, and the Recovery Act's clear message that funds should be expended expeditiously.



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Assistant Inspector General for Audit

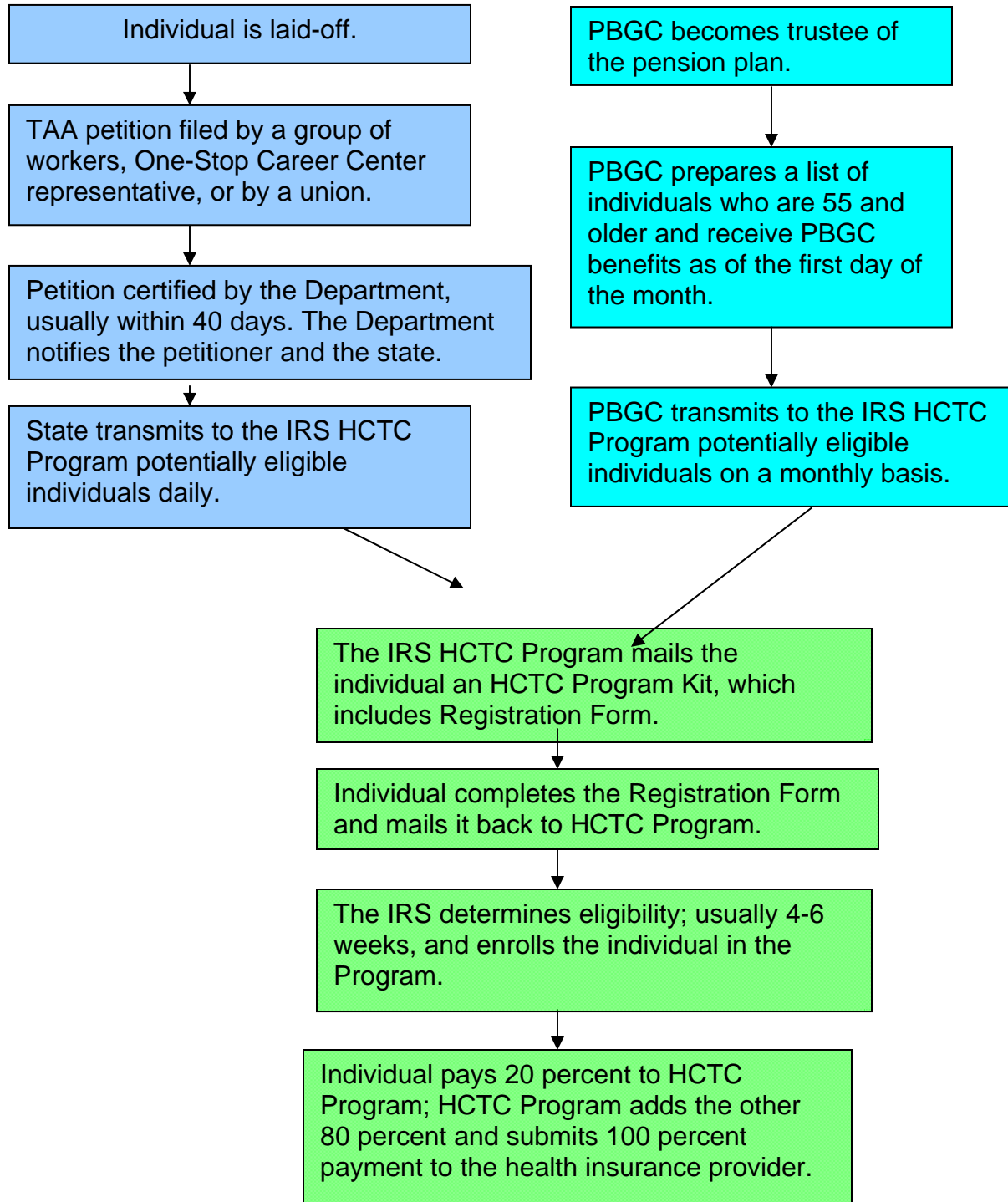
Exhibits

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IRS HCTC ENROLLMENT PROCESS

TAA

PBGC



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EXHIBIT B

CHANGES TO THE HCTC PROGRAM THROUGH THE RECOVERY ACT

The Trade Adjustment Assistance Health Coverage Improvement Act was passed as part of the Recovery Act. The Recovery Act made changes to the HCTC. These changes are in effect until December 31, 2010.

CRITERIA	HCTC Program (before the Recovery Act)	HCTC Program (after the Recovery Act)
<i>Increase in Credit (IRS & the Department)</i>	65 percent	80 percent (May 2009 – December 2010)
<i>IRS Reimbursement</i>	None	80 percent Reimbursement while enrolling in the Program.
<i>TAA Definition Change</i>	Individuals who were on break from training or who were receiving Unemployment Compensation were not eligible for the credit.	Definition changed to include individuals who are on break from Trade Readjustment Allowances (TRA) training program, and those who are receiving Unemployment Compensation and who would be eligible to receive TRA without regards to the enrollment in training.
<i>Extended Coverage for Qualified Family Members</i>	Family members were not eligible to continue receiving the credit after the primary individual becomes ineligible for the credit.	Starting January 2010, qualified family members will be able to receive the credit after the death, divorce, or Medicare enrollment of the primary individual.
<i>COBRA Benefits</i>	Individuals need to pay 100 percent of insurance premium. Cobra beneficiaries generally are eligible for group coverage for up to 18 months. Certain qualifying events may permit a beneficiary to receive a maximum of 36 months of coverage.	Individuals need to pay 35 percent of insurance premiums. COBRA benefits for TAA and PBGC recipients have been extended to December 2010.
<i>Expanded Health Insurance Options</i>	Not Applicable	Coverage through Voluntary Employees' Beneficiary Associations qualifies as a "Qualified Health Insurance" option for HCTC.
<i>U.S. Territories can now receive Monthly Credit</i>	Individuals from U.S. territories were not eligible to participate in the monthly advance credit.	Starting January 2010, eligible individuals from U.S. territories can participate in the monthly credit.
<i>63 Day Lapse Rule</i>	HCTC candidate must not have more than 62-day lapse in their insurance coverage. Individuals were not able to avoid this lapse before the Recovery Act.	Lapse period does not take into account the period of time beginning when an individual has a TAA-related loss of coverage and ending seven days after the date on their HCTC eligibility certificate.

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Appendices

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Appendix A

Background

The Recovery Act was signed into law by the President on February 17, 2009, to preserve and create jobs, promote economic recovery, and assist those most impacted by the recession. As of March 12, 2010, Congress provided \$70.6 billion to the Department. Of this, \$150 million was designated for use by the Department's HCTC NEG program.

Table 1: Department of Labor Recovery Act Funding, as of March 12, 2010

Program	Amount^a (millions)	Percent
Unemployment Insurance	\$65,687	93.00
Training and Employment Services	3,950	5.59
State Unemployment Insurance and Employment Service Operations	400	0.57
Community Service Employment for Older Americans	120	0.17
National Emergency Grants for Health Insurance Coverage	150	0.21
Job Corps	250	0.35
Departmental Management	80	0.11
Total	\$70,637^b	100.00

^a – The amounts other than “Unemployment Insurance” were obtained from the Recovery Act dated February 17, 2009. The “Unemployment Insurance” amount was provided by the Office of the Assistant Secretary for Administration and Management, and includes amounts made available for Federal and State Extended Benefits, Extension of Emergency Unemployment Compensation, 2008, and Federal Additional Unemployment Compensation programs.

^b – The total amount does not include \$6 million provided to the OIG to provide oversight over the Department's Recovery Act activities.

Funding of the HCTC NEG program is governed by section 174(c) of WIA. The Recovery Act (section 1899K of Division B) specifically amended section 174(c) of WIA and provided \$150 million in Recovery Act funds for the period of fiscal years 2009 through 2010. HCTC NEGs allow states to provide for the cost of qualifying health insurance coverage for eligible individuals, until such time as they can be enrolled in the

IRS' HCTC program. States can pay this benefit for up to 3 months. The primary mechanism for HCTC assistance is a Federal tax credit administered by the IRS. The Recovery Act increased the coverage from 65 percent to 80 percent. The HCTC is limited to eligible TAA participants and PBGC recipients, and their qualified family members. At the Department, ETA is responsible for administering the HCTC NEG program.

TAA provides benefits to individuals who became unemployed because of increased imports from, or shifts in production to, foreign countries. Employers or unions file a petition with the Department to have their employees TAA-certified. A petition may be filed by a group of workers, a company, public agency official, One-Stop operators, partners, and unions. TAA-certified workers increased 58 percent from 127,000 to 201,000 from FY 2008 to 2009.

The PBGC website stated that PBGC pays monthly retirement benefits, up to a guaranteed maximum, to nearly 744,000 retirees in 4,000 pension plans that ended. The employer can end the plan in a standard termination after showing PBGC that the plan has enough money to pay all benefits owed to participants. If the plan is not fully funded and the employer is in financial distress, the employer may apply for a distress termination. Although the eligible PBGC population for the HCTC program is unknown, PBGC is responsible for the current and future pensions of about 1,476,000 people.

In a prior OIG audit report concerning the Department's *Performance Audit of HCTC Bridge and Gap Programs* (OIG Report Number 02-05-204-03-330, dated September 30, 2005), the audit found that participant and expenditure levels were low, and that funds were underused. Several barriers were identified that led to low participation including participant premium cost, up-front participant cost, most states not electing to participate in the program, effective exclusion of the PBGC population, program awareness, and overall program complexity. The former Assistant Secretary for Employment and Training generally agreed with the recommendations to address the low participation and provided potential remedies pertaining to excess funds; however, specific action plans were not provided. One of the remedies cited by the former Assistant Secretary was that, "Congress recently passed a bill which authorizes states to reprogram NEG funds previously awarded to assist victims of Hurricane Katrina." (Underscoring added.) Furthermore, the former Assistant Secretary believed that "progress was being made" in regard to obtaining PBGC information.

Appendix B

Objective, Scope, Methodology, and Criteria

OBJECTIVES

Our audit objectives were to answer the following questions:

1. What is the status of states applying for, and using Recovery Act funds under the HCTC NEG program?
2. What outreach did ETA conduct to inform states of the availability of funds?

SCOPE

The audit covered \$150 million of Recovery Act funds appropriated under amended section 174 (c) of WIA for use in the HCTC NEG program. We audited the Department's practices, policies, and procedures from February 17, 2009, through December 3, 2009. We met with ETA's Office of National Response to obtain current guidance, an overview of outreach efforts, and ETA's responsibilities related to HCTC NEG funds. We reviewed a schedule of HCTC NEGs awarded, expenditures reported, and ETA outreach activities. Program-Specific Recovery Act Plans were reviewed to determine ETA's responsibilities and milestones. We did not test internal controls or financial activity, due to the audit objectives, the timing of three grants that were awarded, and there were no reported expenditures.

Fieldwork was conducted at ETA Office of National Response located in Washington, D.C. In addition we requested data from the 50 states, District of Columbia, and Puerto Rico, to obtain information for HCTC NEGs eligible TAA and PBGC populations. We received 43 responses.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

METHODOLOGY

The audit was performed using data gathered from several sources. We met with officials from ETA's Office of National Response to clarify their role and responsibilities in administering the Recovery Act HCTC NEGs, and to determine the potential factors contributing to low participation and expenditure levels. We interviewed an IRS official to obtain an understanding of the IRS' HCTC program under the Recovery Act.

We reviewed ETA's Program-Specific Recovery Act Plan for HCTC NEG, which documented ETA's major planned program milestones and expected completion dates. We obtained documentation supporting their milestones related to issuing guidance, technical assistance, outreach and training. We also reviewed a prior OIG audit report *HCTC Bridge and Gap Programs* (OIG Report Number 02-05-204-03-330, dated September 30, 2005).

The OIG requested data from the 50 states, District of Columbia, and Puerto Rico to determine the status of states applying for Recovery Act HCTC NEGs, and outreach performed by ETA to inform states of the availability of funds. We also requested data from all non-participating states to assess their awareness of the Recovery Act HCTC NEG, to determine ETA's outreach efforts to states, and their reasons for not applying for HCTC NEG funds. Data was also requested from participating states to assess ETA's outreach efforts to states, and a suggestion to increase participation and/or enhance program performance.

In total, we received 43 responses to our data request. Of the 43 states that provided data, 6 participated, 1 state has a pending application, and 36 did not participate in the HCTC NEG program under the Recovery Act. We evaluated the responses to determine the overall level of awareness of HCTC NEG, the nature and extent of ETA's outreach efforts, and barriers contributing to low participation in the HCTC NEG program. Sampling was not performed as data requests were sent to all 50 states, District of Columbia, and Puerto Rico; therefore, projection was not necessary.

CRITERIA

We used the following to perform this audit:

- American Recovery and Reinvestment Act of 2009, February 17, 2009
- Trade Adjustment Assistance Reform Act of 2002, August 6, 2002
- Training and Employment Guidance Letter (TEGL) 19-08, *National Emergency Grants Funded with American Recovery and Reinvestment Act of 2009 Resources*, dated April 30, 2009
- Training and Employment Guidance Letter (TEGL) 20-02, *Use of National Emergency Grant (NEG) Funds Under the Workforce Investment Act (WIA), as Amended, to Support Health Insurance Coverage Assistance for Trade-Impacted Workers*, March 3, 2002
- Training and Employment Guidance Letter (TEGL) 20-02, Change 1, May 13, 2004
- Training and Employment Guidance Letter (TEGL) 10-02, *Use of National Emergency Grant Funds Under the Workforce Investment Act, as Amended, to*

Develop Systems for Health Insurance Coverage Assistance for Trade-Impacted Workers, October 10, 2002

- Paperwork Reduction Act of 1980

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Appendix C

Acronyms and Abbreviations

COBRA	Consolidated Omnibus Budget Reconciliation Act
Department	Department of Labor
ETA	Employment and Training Administration
FY	Fiscal Year
HCTC	Health Coverage Tax Credit
IRS	Internal Revenue Service
NEG	National Emergency Grant
OIG	Office of Inspector General
OMB	Office of Management and Budget
PBGC	Pension Benefits Guaranty Corporation
PRA	Paperwork Reduction Act
Recovery Act	American Recovery and Reinvestment Act of 2009
TAA	Trade Adjustment Assistance
TEGL	Training and Employment Guidance Letter
TRA	Trade Readjustment Allowances
WIA	Workforce Investment Act

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Appendix D

Department's Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

MAR 30 2010

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary
for Employment and Training

SUBJECT: Response to Draft Report No. 18-10-003-03-390
"Recovery Act: The U.S. Department of Labor Needs to
Evaluate its Role in the Health Coverage Tax Credit
Program"

Thank you for the opportunity to comment on the findings and recommendations provided by the Office of Inspector General (OIG) in the draft report resulting from your audit of the Health Coverage Tax Credit (HCTC) National Emergency Grant (NEG) program under the American Recovery and Reinvestment Act of 2009 (Recovery Act). HCTC NEGs were created by the Trade Adjustment Assistance Reform Act of 2002, as an amendment to the Workforce Investment Act of 1998 (WIA). The HCTC NEGs, which are the subject of the OIG audit, support the Internal Revenue Service (IRS)-administered HCTC program.

The Employment and Training Administration (ETA) appreciates the opportunity to work collaboratively with the OIG audit team to clarify the intent of and the use of HCTC NEGs. As your team knows, when describing the HCTC benefit, it is critical to make the distinction between the HCTC program operated by the IRS and the HCTC NEGs administered by the U.S. Department of Labor (Department). The Recovery Act, signed into law on February 17, 2009, provided the Department with \$44.9 billion. Specifically, the Trade Adjustment Assistance (TAA) Health Coverage Improvement Act of 2009, which can be found in Section 1899 of the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) in Division B of the Recovery Act, appropriated \$150 million to the Department for HCTC NEGs by amending section 174(c)(1)(A) of the WIA. HCTC NEGs allow states to request funds that provide for a portion of the monthly cost of qualifying health insurance coverage for eligible individuals, until such time as they can be enrolled in the IRS' HCTC program which serves eligible TAA participants, Pension Benefit Guaranty Corporation (PBGC) recipients, and their qualified family members. States may pay this benefit with their own funds or with HCTC NEG funds for up to 3 months. However, the primary mechanism for providing HCTC assistance is through a Federal tax credit administered by the IRS. At the Department, ETA is responsible for administering HCTC NEGs.

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Audit Objectives

The audit objectives, as stated in the OIG’s report, included: (1) the status of the states applying for, and using Recovery Act funds under the HCTC NEG [program]; and, (2) a review of the outreach ETA conducted to inform states of the availability of funds.

Objective 1 – What is the status of states applying for, and using Recovery Act funds under the HCTC NEG program?**Finding – Overall, states have neither applied nor used HCTC NEG Recovery Act funds.**

While the Department agrees that the purpose of the Recovery Act is to assist those most impacted by the recession, the premise of the audit, and the objective stated above, is that HCTC NEGs are subject to the same obligation timeframes as other Recovery Act resources and that funds appropriated for HCTC NEGs must be obligated by the end of Fiscal Year (FY) 2010. As noted in the report, ETA has stated from the initiation of this audit that HCTC NEGs are not and should not be subject to the same obligation timeframes as other appropriations in the Recovery Act. HCTC NEGs were created by the Trade Adjustment Assistance Reform Act of 2002, which amended WIA to create HCTC NEGs. HCTC NEGs were included in Division B of the Recovery Act as part of the reauthorization of the TAA program. While the Recovery Act appropriated \$150 million for HCTC NEGs, it did so by amending the section of WIA that created the program in 2002. As such, the Recovery Act did not merely add supplemental funds to the existing program, as was done in Division A of the Recovery Act for the other WIA programs. Rather, it appropriated HCTC NEG funds by amending WIA section 174(c)(1)(A). Funds under this section of WIA are available on a ‘no-year basis,’ remaining available for Federal obligation during the pendency of any outstanding claim under the Trade Act of 1974, as amended by the Trade Act of 2002 and TGAAA, and do not carry the same obligational life as other funds appropriated under Division A of the Recovery Act. Attached is the Office of Solicitor’s opinion, sent December 14, 2009, by the Associate Solicitor of the Division of Management and Administrative Legal Services. While ETA has strongly encouraged and taken significant steps to ensure that states and local areas spend Recovery Act funds quickly and well, the Office of the Solicitor’s opinion concludes:

“...Both the 2002 and the 2009 versions of Section 174(c)(3) specify that the funds appropriated by Section 174 (c)(1)(A) remain available for obligation during the pendency of any outstanding claim under the Trade Act of 1974, as amended by the Trade Act of 2002. In light of the connection between the Health NEGs and the TAA and ATAA recipients, we believed in 2002 that the most reasonable interpretation of the intent of section 173(c)(4) of WIA was that, as long as any individual had an outstanding claim for TAA benefits under the Trade Act of 1974 and therefore, remained eligible for assistance under the Health NEGs and HCTC, the funds appropriated to carry out the Health NEGs would remain available for Federal obligation. Our conclusion is the same in 2009. Moreover, both versions of Section 174(c)(1)(A) use similar wording in referring to funds appropriated “for fiscal year 2002” and “for the period of fiscal years 2009 through 2010,” SOL’s view is that this language must be harmonized with the language of Section 174(c)(3) and that the most reasonable interpretation of

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Section 174 overall is to read Section 174(c)(1)(A) as governing when the funds become available (that is, the first day of the fiscal year identified) and Section 174(c)(3) as governing when the period of availability ends.

In summary, this is the most reasonable interpretation of Section 174, is consistent with principles of statutory construction, and is consistent with DOL's and OMB's practice of treating Section 174(c)(1)(A) funds as "no year" funds since 2002...."

In other words, the Office of the Solicitor (SOL) has interpreted the period of availability for obligation of the Recovery Act funds for HCTC to be as long as there are valid claims against those funds.

To further underscore the assertion by the OIG that funds must be Federally obligated by the end of FY 2010, it was cited that "As of December 3, 2009, ...6 states were awarded grants in August and November 2009, and have not reported any expenditures." However, expenditures for those new awards were not available, as the first report for those awards was not due until February 12, 2010. As additional eligible workers participate in the HCTC program and states choose to call on HCTC NEGs to assist with program payments, the Department would expect to see reported expenditures increase.

The draft report questioned the expediency by which ETA planned to obligate \$150 million for HCTC NEGs. It is correct that ETA estimated that it would obligate \$28 million by September 30, 2010. This estimate was based on the assumption that a significant increase in HCTC-eligible TAA-certified workers would have been enrolled in TAA by September 2010. The fact that those workers have just recently become eligible has caused ETA to revise its estimates. Additionally, it should be noted that both the HCTC program and the associated HCTC NEGs remain available for eligible workers and are funded through an x-year account and will remain available for Federal obligation after September 30, 2010, unlike many other Recovery Act appropriations with a definitive sunset date.

PBGC

Throughout the report, the OIG recommends that ETA provide states with information identifying eligible PBGC recipients. However, the HCTC program through which eligible PBGC and TAA recipients receive health insurance coverage benefits is an IRS-operated program. As the OIG audit team recognizes, there are privacy considerations about identifying "eligible PBGC recipients" at the state level, and ETA does not have access to such information.

Objective 2 – What outreach did ETA conduct to inform states of the availability of funds?

Finding – ETA conducted various outreach activities; however, these outreach efforts were not completely effective.

Outreach

We appreciate OIG's acknowledgement of ETA's outreach on HCTC NEGs. However, in the audit report, the OIG stated "ETA conducted outreach through webinars, conference calls,

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emails, roundtable discussion, and forums; however, these outreach efforts were not completely effective as 11 of 36, or 31 percent, of non-participating states were not aware of the Recovery Act HCTC NEG program.”

Training on the reauthorized TAA program was provided to all states through six training sessions this past summer and fall. ETA partnered with the IRS to provide training on the HCTC program and associated HCTC NEG, and to promote this benefit. The IRS’ HCTC experts participated in each of the six sessions and the availability of HCTC NEG was explained and discussed. Additional outreach was provided to the states through multiple presentations at the Recovery and Reemployment Summits, the TAA Forums, and through numerous webinars, all of which outlined the availability of HCTC NEG funds. The draft report further stated that the OIG could not “determine the sufficiency of these outreach activities as ETA has not provided a listing of attendees, minutes of meetings, or invitees to the meetings.” While ETA did not provide attendee lists or meeting minutes for every summit, forum, and webinar, this information was presented to the OIG when available, including: the agenda for all of the TAA forums, attendance lists for the TAA forums in the Philadelphia and Dallas regions, the PowerPoint presentations and the electronic invites for the webinar presentations, as well as summaries and invitee information for meetings with the IRS in May, July and December 2009.

Guidance

The OIG cited that ETA had not released guidance “detailing changes made to the HCTC NEG program and the availability and use of the funds under the Recovery Act.”

While \$150 million was appropriated for HCTC NEG and there were some changes to the IRS-administered HCTC program, such as the increase in the amount of health insurance costs covered by the credit (an increase to 80 percent from 65 percent); there were no changes to the process to apply for HCTC NEG. The fact that \$150 million was appropriated for HCTC NEG was stated in Training and Employment Guidance Letter (TEGL) 19-08, even though this is of little consequence to applicants as the fund source for these NEG is immaterial to a potential grantee. Applicants have had and continue to have the ability to apply for HCTC NEG. Guidance on how to apply for HCTC NEG has been available since 2002 in TEGLs 10-02, 20-02, and 20-02, Change 1. ETA provided this guidance to the OIG on December 3, 2009. ETA remains committed to issuing new guidance; a new HCTC NEG TEGL is currently in Departmental clearance. It will consolidate language already included in the existing three TEGLs. Months of discussions among SOL, the Employee Benefits Security Administration (EBSA) and the IRS’ attorneys did not allow additional flexibility in the use of these funds beyond what was already available.

It is important to note that statutory changes to the HCTC program under the TGAAA are included in the Department’s Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009. This document was distributed to all states, used in training on the reauthorized TAA program, and is available on the ETA website.

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OIG Recommendations

ETA appreciates the recommendations provided by the OIG and will pursue efforts to improve HCTC NEG spending. Each of the OIG's recommendations and ETA's responses to the recommendations follow:

- (1) Assess the need for the remaining \$142 million by obtaining an annual estimate of the amount of Recovery Act HCTC NEG funds needed by each state.

ETA Response: ETA agrees that obtaining annual estimates from states on the need and intention to apply for HCTC NEG funds for infrastructure support and "gap filler" payments for eligible workers, in light of the enhanced IRS HCTC program, may assist in determining how the HCTC NEG program could better address state needs and produce more accurate projections of annual usage of HCTC NEG funds. The demand for HCTC NEG funds is dependent on several factors, many of which are out of ETA's control and purview. ETA will explore and initiate such efforts in Fiscal Year 2010. ETA will also continue to explore any flexibility that may be available to reprogram HCTC NEG funds, if necessary.

- (2) Coordinate with PBGC to identify eligible PBGC recipients for targeted outreach and potential enrollment.

ETA Response: The HCTC program under which eligible PBGC and TAA recipients receive health insurance coverage benefits is an IRS-administered program. As the OIG audit team recognizes, there are privacy considerations about identifying "eligible PBGC recipients" at the state level, and ETA does not have access to such information. To further strengthen coordination, ETA will enhance its relationship with both the PBGC and the IRS to determine how best to provide information about the HCTC program to states, encouraging them to inform potentially eligible PBGC recipients and their families of the HCTC benefit.

- (3) Provide effective outreach activities to ensure all 50 states, District of Columbia, and Puerto Rico are aware and knowledgeable of the Recovery Act HCTC NEG program.

ETA Response: ETA appreciates OIG's acknowledgement of its outreach on HCTC NEGs. This outreach was conducted in two broad methods, one focusing on the reauthorized TAA program, the HCTC benefit, and HCTC NEGs specifically, and the second by integrating the information on HCTC NEGs as part of a larger agenda where ETA provided information on the rapid implementation of all Recovery Act funds. An example of the former was the six training sessions ETA conducted, in partnership with the IRS, for state personnel on the reauthorized TAA and HCTC programs and HCTC NEGs. An example of the latter was the inclusion of HCTC NEG information during the ETA-sponsored Recovery and Reemployment Summits and various webinars. While ETA was unable to provide invitations, attendee lists, and meeting minutes for each event, we believe that we provided sufficient examples to the OIG team.

- (4) Issue proposed guidance to states for the availability and use of HCTC NEG funds under Recovery Act as changes have been made to the program.

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ETA Response: ETA acknowledges that it has not yet issued a new TEGL confirming the information provided by ETA through other outreach efforts. While TEGL 19-08 provided general guidance on NEG funds, including HCTC NEGs, under the Recovery Act, and TEGLs 10-02, 20-02, and 20-02, Change 1 provide guidance specifically tailored to HCTC NEGs, ETA plans to issue a new TEGL on HCTC NEGs which is currently in Departmental clearance. In doing so, the new TEGL will consolidate previous guidance language.

- (5) Reconcile the apparent conflict between ETA’s interpretation that funds appropriated under this section are “no-year” funds, and the Recovery Act’s clear message that funds should be expended expeditiously.

ETA Response: ETA does not believe that there is any “apparent conflict” that needs to be reconciled. While ETA has strongly encouraged and taken significant steps to ensure that states and local areas spend most Recovery Act funds quickly and well, it remains cognizant that HCTC NEG funds support the HCTC program serving eligible PBGC and TAA-certified workers. As such, these funds are to remain available as long as there are valid claims against them and are available on a ‘no year’ basis.

Please let me know if you or the audit team have any questions or want to discuss this response in more detail.

Attachment

Office of the Solicitor Analysis of the Availability of WIA HCTC NEG Appropriations

Appendix E

Acknowledgements

Key contributors to this report were Mark Schwartz (Audit Director), Nadeem Afzal, Lisa Larosa, Charmaine Thorne, and Cardelia Tsoi.

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