UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 25, 2025

MEMORANDUM FOR: Craig Burkhardt
Acting Under Secretary of Commerce for Standards and Technology and Acting Director, National Institute of Standards and Technology

FROM: Richard Bachman
Assistant Inspector General for Audit and Evaluation

SUBJECT: *OIG's Evaluation of MEP's Economic Impact Reporting Process Also Identified Instances of Noncompliance at Centers, Led to NIST Action*
Final Report No. OIG-25-011-I

This report provides additional results identified during our evaluation of the National Institute of Standards and Technology's (NIST's) Hollings Manufacturing Extension Partnership (MEP) economic impact reporting, as well as actions taken by NIST in response to our work.

Background

In September 2024, we issued a report titled *NIST Overstated MEP's Economic Impacts to Congress and Other Stakeholders*, OIG-24-037-I. We reported that NIST's inadequate oversight of the MEP economic impact reporting process resulted in inaccurate and unreliable economic impacts. We are issuing this supplemental report to provide additional details on two specific instances in which our work prompted NIST to conduct its own review and issue notices of material noncompliance.

Findings and Recommendations

I. California Center and Its Subrecipient Did Not Accurately Report Program Income, Leading NIST to Issue a Notice of Material Noncompliance

NIST award terms and conditions require MEP Centers to report to NIST all program income[1] earned during the course of their award period. However, the California Center did not report over $2.5 million in program income earned between fiscal years 2022 and 2023 through its current 5-year cooperative agreement with NIST. The California Center incorrectly stated it

[1] Program income is defined as gross income earned by a recipient that is directly generated by a supported activity or earned as a result of the federal award during the period of performance. See 2 C.F.R. § 200.1.

was not required to report program income earned in excess of the NIST-approved budget for a fiscal year.

Similarly, MANEX, a subrecipient of the California Center, did not report over $200,000 in program income generated between fiscal years 2016 and 2023 as a result of funding from multiple cooperative agreements with NIST. MANEX attributed the unreported program income to revenue generated through services provided to non-manufacturing clients. However, MANEX acknowledged the revenues were generated through the use of federal funds provided by MEP and that those funds supported MANEX's total operating costs. Accordingly, the revenue met the award's definition of program income, and MANEX was required to report it to NIST as such.

We informed NIST of our concerns, noting that the California Center's failure to accurately report all program income generated by NIST funds, including program income from its subrecipients, raised concerns about whether the Center and its subrecipients were misusing federal financial assistance. We also raised questions about whether the California Center complied with award terms and conditions, including whether it adequately monitored subrecipients. After conducting its own research, NIST issued a notice of material noncompliance to the California Center to recover $1,578,816.73 in federal funds as a result of the Center's unreported program income (as noted in appendix A). NIST's notice stated that it will issue a separate letter regarding the unreported program income from its subrecipient, MANEX.

Recommendations

We recommend that the Under Secretary of Commerce for Standards and Technology and the Director of NIST do the following:

1. Recover $1,578,816.73 from the California Center as stated in NIST's notice of material noncompliance and demand for repayment.
2. Determine and recover any additional amounts owed by the California Center as a result of underreporting program income by its subrecipients.

II. Maryland Center's Use of State Grant Funds Was Unallowable and Not Properly Reported, Leading NIST to Issue a Notice of Material Noncompliance

Each MEP award pays for up to 50 percent of the Center's total project costs, while the recipient maintains responsibility for the remaining portion, called nonfederal cost share.[2] A 5-year cooperative agreement with the Maryland Center that ended in June 2023 required nearly $5.9 million in nonfederal cost share, made up in part from grants provided by the state of Maryland. However, a portion of the Maryland Center's nonfederal cost share, specifically its use of certain state grant funds to reimburse manufacturing clients, was unallowable per award terms and conditions.

[2] See 15 U.S.C. § 278k(e)(2). Sources of nonfederal cost share include contributing cash and providing in-kind (noncash) contributions.

The state grant funds were used to subsidize manufacturers by partially reimbursing them for the total cost of workforce development training obtained through the Maryland Center. To qualify for the reimbursement, the Maryland Center submitted documentation to the state indicating the manufacturer completed workforce training. The state then provided partial reimbursement for the workforce training costs to the Maryland Center. In turn, the Maryland Center provided cash reimbursements to its manufacturing client. The Maryland Center recorded over $700,000 in reimbursement payments toward its nonfederal cost share on its multiyear cooperative agreement. We also identified nearly $10,000 in reimbursement payments as a federal expense on another award that ended in September 2021.

We informed the Maryland Center and NIST of our concerns regarding the Maryland Center's treatment of reimbursement payments as award expenses. After conducting its own review of the matter, NIST issued a notice of material noncompliance to the Maryland Center stating that its reimbursements to clients were not authorized under MEP and that the MEP authorizing statute does not allow Centers to provide direct funding to clients. Further, NIST stated that the Maryland Center failed to report the specific use of these state funds to reimburse manufacturers and determined the Maryland Center must return $378,052.65 of NIST award funds as a result of its unallowable expenses (see appendix A). NIST also stated it will follow up separately on the Maryland Center's treatment of similar reimbursements on its other NIST award.

Recommendations

We recommend that the Under Secretary of Commerce for Standards and Technology and the Director of NIST do the following:

3. Recover $378,052.65 from the Maryland Center as stated in NIST's notice of material noncompliance and demand for repayment.
4. Determine and recover any additional amounts owed by the Maryland Center as a result of incorrectly providing cash reimbursements to clients on other NIST awards.

Summary of Agency Response and OIG Comments

On January 15, 2025, we received NIST's formal response to our draft report (see appendix B). NIST concurred with all four recommendations and described actions it has taken, or will take, to address them. However, despite agreeing with the intent of recommendation 3, NIST stated it will require repayment of $128,540.19—not $378,052.65 as specified in its notice of material noncompliance and demand for repayment. NIST stated this reduction is due in part to nonfederal cost share relief provided by Congress during fiscal years 2021–2023. We believe NIST should make every attempt to recover the full amount as permitted by award terms and conditions.

NIST also provided technical comments in a separate document. We considered those comments and made a clarification to the report accordingly. Overall, though, we have not modified our conclusions or recommendations.

We appreciate NIST's response to the report and look forward to its action plan for implementing the recommendations.

Pursuant to Department Administrative Order 213-5, please prepare and submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be posted on our website pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. §§ 404 & 420).

Pursuant to Pub. L. No. 117-263, § 5274, nongovernmental organizations and business entities specifically identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context to any specific reference. Any response must be submitted to Patricia McBarnette, Audit Director, at PMcBarnette@oig.doc.gov and OAE_Projecttracking@oig.doc.gov within 30 days of the report's publication date.

The response will be posted on our public website at https://www.oig.doc.gov/reports/. If the response contains any classified or other nonpublic information, those portions should be identified as needing redaction in the response, and a legal basis for the proposed redaction should be provided.

We appreciate the cooperation and courtesies extended to us by your staff during the evaluation. If you have any questions or concerns about this report, please contact me at (202) 793-3344 or Patricia McBarnette, Audit Director, at (202) 793-3316.

cc: G. Nagesh Rao, Acting Director and Deputy Director, NIST MEP
James Watson, President and Chief Executive Officer, California Manufacturing Technology Consulting
Mike Kelleher, Executive Director, Maryland MEP

Appendix A: Potential Monetary Benefits

Finding and Recommendation	Funds to Be Put to Better Use
Finding I and recommendation 1	$1,578,816.73
Finding II and recommendation 3	$378,052.65
Total Potential Monetary Benefits	**$1,956,869.38**

Source: OIG analysis of NIST's notices of material noncompliance

Appendix B: Agency Response

NIST's response to our draft report begins on the following page.

UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899

OFFICE OF THE DIRECTOR

January 15, 2025

MEMORANDUM FOR Richard Bachman
Assistant Inspector General for Audit and Evaluation

From: Charles H. Romine, Ph.D. CHARLES ROMINE Digitally signed by CHARLES ROMINE Date: 2025.01.15 12:04:36 -05'00'
Acting Under Secretary of Commerce for Standards and Technology &
Acting Director, National Institute of Standards and Technology

Subject: NIST Response to OIG's Draft Supplemental Report dated December 11, 2024, *OIG's Evaluation of MEP's Economic Impact Reporting Process Also Identified Instances of Noncompliance at Centers, Led to NIST Action*

This memorandum provides the National Institute of Standards and Technology (NIST) response to the draft supplemental report, dated December 11, 2024, from the Office of the Inspector General (OIG) entitled *OIG's Evaluation of MEP's Economic Impact Reporting Process Also Identified Instances of Noncompliance at Centers, Led to NIST Action* (Draft Supplemental Report). The Draft Supplemental Report identified the following findings:

I. California Center and Its Subrecipients Did Not Accurately Report Program Income, Leading NIST to Issue a Notice of Material Noncompliance; and
II. Maryland Center's Use of State Grant Funds Was Unallowable and Not Properly Reporting, Leading NIST to Issue a Notice of Material Noncompliance.

The OIG made the following four (4) recommendations to NIST in the Draft Supplemental Report:

1. Recover $1,578,816.73 from the California Center as stated in NIST's Notice of Material Noncompliance and Demand for Repayment;
2. Determine and recover any additional amounts owed by the California Center as a result of underreporting program income by its subrecipients;
3. Recover $378,052.65 from the Maryland Center as stated in NIST's Notice of Material Noncompliance and Demand for Repayment; and
4. Determine and recover any additional amounts owed by the Maryland Center as a result of incorrectly providing cash reimbursements to clients on other NIST awards.

NIST appreciates the OIG's referral of the above matters for NIST review and for appropriate remedial action. In fact, as the OIG is aware, NIST previously had conducted in-depth reviews of the matters identified at the California MEP Center and at the Maryland MEP Center, resulting in NIST's issuance of Notices of Material Noncompliance and Demand for Payment to California Manufacturing Technology Consulting (CMTC), which operates the California MEP Center and to Maryland MEP, Inc. (MD MEP), which operates the Maryland MEP Center.

NIST would like to provide additional information and context in support of the information outlined in the Draft Supplemental Report. The following provides additional detail surrounding the Notices of Material Noncompliance and Demand for Payment issued by NIST and outline the Agency's ongoing efforts to ensure proper stewardship of federal funds by CMTC and by MD MEP. Below, NIST specifically addresses each of OIG's four recommendations:

1. *Recover $1,578,816.73 from the California Center as stated in NIST's notice of material noncompliance and demand for repayment.*

   NIST concurs with recommendation #1. As is noted above, on May 8, 2024, NIST issued a Notice of Material Noncompliance and Demand for Payment to CMTC (CMTC Notice) relating to the underreporting and unauthorized use of program income. As part of the CMTC Notice, NIST disallowed in its entirety both the additional recipient share of expenditures and the additional program income purportedly expended by CMTC pursuant to the additive method for fiscal years 2022 and 2023. Instead, NIST applied the deductive method for disposing of program income resulting in $1,578,816.73 in reimbursements of federal award funds being owed by CMTC to NIST. NIST is taking appropriate steps to recover the $1,578,816.73 in unauthorized federal award funds from CMTC and is also considering appropriate enforcement action pursuant to 2 C.F.R. § 200.339, up to and including termination of the California MEP Center award.

2. *Determine and recover any additional amounts owed by the California Center as a result of underreporting program income by its subrecipients.*

   NIST concurs with recommendation #2. As part of the CMTC Notice, NIST requested that CMTC provide the Grants Officer with a detailed explanation, expenditure report, and supporting documentation that disclosed the total federal and non-federal expenditures for each of CMTC's subrecipients for fiscal years 2016 through fiscal year 2023. The report was required to disclose how much program income was generated and expended by each subrecipient per year. In addition, CMTC was also required to identify whether there was any program income expended at the subrecipient level that was not approved by NIST in accordance with the MEP terms and conditions and/or whether there was any unexpended program income at the subrecipient level that was not reported to NIST by CMTC.

   NIST is reviewing the information provided by CMTC regarding its subrecipients' reporting of program income and is in the process of determining whether program income generated by MANEX and/or other subrecipients was underreported to NIST from fiscal year 2016 through fiscal year 2023. NIST is coordinating the request and collection of program income data through CMTC, which extended the NIST data collection and review timelines. At the end of its review, if NIST determines that there is underreported program income at the subrecipient level, NIST will recover unauthorized federal funds and will take appropriate enforcement actions against CMTC, which is responsible for the oversight of its subrecipients.

Separately, NIST is evaluating CMTC's action plan to ensure timely, accurate, and complete reporting of program income during the current award period.

3. *Recover $378,052.65 from the Maryland Center as stated in NIST's notice of material noncompliance and demand for repayment.*

   NIST concurs with the intent of the recommendation. However, NIST does not believe that recovery of the full $378,052.65 is warranted, but rather that a recovery of $128,540.19 from the MD MEP is appropriate based on the specific facts mentioned below and circumstances surrounding this matter.

   On June 17, 2024, NIST issued a *Notice of Material Noncompliance and Demand for Payment* to the MD MEP (MD MEP Notice). NIST disallowed in its entirety the non-federal cost share purportedly contributed by the MD MEP through funding provided by the State of Maryland pursuant to the State's EARN Program. After an in-depth review, NIST determined that the MD MEP was not authorized to provide direct funding to its clients using the subject state funding; as such, the state funding is not eligible to be claimed by the MD MEP as non-federal cost share and must be disallowed. In reaching its determination, NIST rejected MD MEP's assertion that the state funding was properly used for allowable costs (direct client reimbursements), resulting in $378,052.65 in unauthorized federal award funds being owed by Maryland MEP to NIST.

   NIST is wrapping up its review and will be establishing a debt to recover unauthorized federal award funds from the MD MEP. However, it is important to take into consideration that Congress waived the MEP Program cost share requirements for fiscal years 2021 through 2023. As a result of this "cost share relief," the Maryland MEP Center was not required to contribute any non-federal cost share to its MEP Center awards during these three years. Given the cost share relief promulgated by Congress and the proactivity of MD MEP management to seek counsel from NIST regarding its historical and current use of State of Maryland EARN funds, NIST will seek reimbursement from the MD MEP only for years in which there was a MEP Center cost share requirement (50 percent minimum). As a result, NIST will require the MD MEP to reimburse NIST in the amount of $128,540.19, which represents the amount of unauthorized federal funding accessed by the MD MEP during the years in which there was a minimum MEP Center non-federal share requirement.

4. *Determine and recover any additional amounts owed by the Maryland Center as a result of incorrectly providing cash reimbursements to clients on other NIST awards.*

   NIST concurs with recommendation #4. NIST has initiated a review of the MD MEP's supplemental MEP awards to determine whether cash reimbursements were incorrectly made to clients using state funds. The NIST review will identify any cost share requirements and what state funds were used to reimburse clients. In addition, NIST will be requesting an action plan to ensure state funding used for client reimbursements is not reported as cost share or as an allowable cost by MD MEP during the remaining award period.

NIST will develop and submit a corrective action plan, as applicable, to address the recommendation identified upon receipt of the OIG's final report.

cc: Amy Egan, NIST OIG Liaison