M e m o r a n d u m

To: ETP Policy Committee   Date: August 8, 2023
         Gretchen Newsom, Chairperson
         Rebecca Bettencourt, Member
         Rick Smiles, Member

CC: Executive Staff
         Erich Shiners, Acting Executive Director and Chief Counsel
         Peter Cooper, Assistant Director
         Jaime Gutierrez, Chief Deputy Director

From: Elisabeth Testa, Policy Manager

Subject: ETP Policy Committee Meeting
         Discussion Regarding Recordkeeping and LMSs

I.   Brief Issue Statement:

ETP is a performance-based program, not a grant program, and as such, contractors must keep records verifying the performance completed on their contracts. One of the main ways this is accomplished is through the use of rosters to document training performance.

There are three main items that address these documentation requirements: regulation 4442 lays out ETP's recordkeeping requirements; regulation 4442.2 details the requirements of any alternate recordkeeping systems; and additionally, ETP uses an LMS questionnaire within the main application for companies who desire to use a Learning Management System (LMS) to document their training activities.

Staff and stakeholders have both expressed frustration with the current tools we have available to document training activities. Today we would like to discuss first the current requirements, then point out some of the issues that have been pointed out by staff and stakeholders, and then hopefully facilitate a brainstorming session to help us find potential solutions to these issues.

II.   Background Information:

Regulation 4442 lays out the recordkeeping requirements for all types of ETP training. ETP accepts this documentation on rosters kept for each training class. There are roster templates available for contractor's use, but contractors are not required to use our exact roster templates. If a contractor decides not to use ETP's roster templates, then they

must have their documentation method approved by ETP staff to ensure that whatever recordkeeping method they are using provides all of the information that is required in regulation 4442. This regulation basically requires that documentation include things such as: the name of the course, the delivery method being used, the date/duration of the course, the instructor name and signature, and the trainees' names and signatures. These requirements are a benefit to both contractors and to ETP – to ETP, because the rosters provide a 'dual authentication' of training activities by requiring input from trainers and trainees, and because the rosters must be maintained to be available for review during monitoring and audits; and to the contractors, because they can then fully earn the complete amount of their awarded contract, and have documentation on hand to help if any disputes or questions arise.

Regulation 4442.2 allows for the use of alternate recordkeeping systems when need requires it, for example, when a contractor is required to keep federal training records that have different recordkeeping requirements than ETP's requirements. Alternate recordkeeping methods must be reviewed and approved by staff before being used on an ETP contract, again to ensure that all of the information needed for training documentation is being collected. This is a protection for contractors as well as an aid for staff.

Learning Management Systems (LMSs) are basically software programs that track training activities. Since all LMSs are not the same, the ETP allows the use of an LMS once the characteristics of that particular LMS have been reviewed and approved by staff. The LMS questionnaire reviews things like the built in security for the system, who has access to change the records, what information the LMS collects, and if that information fulfills ETP's recordkeeping requirements.

The ETP has received multiple concerns and suggestions from both staff and stakeholders over the recordkeeping requirements. In summary:

- What is a signature? Does it need to be in ink? Does it need to be in cursive? Can electronic signatures count? What is an electronic signature? Do log-ins count? What is a digital signature? Does signing on an electronic pad count? What about copy/pasted signatures?

- How do we modernize the recordkeeping requirements to account for the new remote environment that much training is taking place in? How can people sign a roster if everyone taking the class is in a different physical location?

- How do we streamline the review process for alternate recordkeeping and LMS requests? What information do we need? What do we not need? Who should be reviewing LMS requests internally?

- What types of legal or liability issues can arise as a result of a 'faulty' LMS? What should the LMS requirements be?

- Are there software systems available that are used specifically for signature tracking? Or for training documentation being used consistently across multiple industries?

One of the biggest things to keep in mind as we go through this discussion is the main purpose of needing a recordkeeping system in the first place, namely: to ensure there is documentation of the training activities on any given contract that will prove that the training took place, that the contractor has met the performance requirements of their contract in order to receive funding, and that the funding is accurately distributed based on those performance requirements. Additionally, that the records are available for monitors, auditors, and contractors in the event that a dispute or contradiction or question arises, that the training records are kept in a secure manner, and that there is some type of 'dual authentication' of the training records (which is currently met by having both trainer and trainee signatures required on the rosters). Please also note that these requirements are a protection for both contractors and for ETP.

A few final thoughts: there are multiple levels to think about here – for example, internal staff procedures; the physical rosters/LMS questionnaires; and the regulatory requirements. While we can adjust staff procedures or make edits to templates more easily, regulatory changes are more involved and can take a long time. In other words, this is a complex issue with multiple levels of solutions, and patience will be required in order to fully work through these issues.

III. Recommendation

No action items beyond soliciting and receiving any feedback from the Policy Committee, contractors, stakeholders, and public concerning ETP's recordkeeping, alternate recordkeeping, and LMS requirements.