
An OIG Perspective on Improving Accountability and Integrity in ESEA Programs

PERSPECTIVE PAPER



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Our mission is to promote the efficiency, effectiveness, and integrity of the Department's programs and operations.

U.S Department of Education
Office of Inspector General
Sacramento, California

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List of Abbreviations

AFGR	Averaged freshman graduation rate
ATF	Bureau of Alcohol, Tobacco, and Firearms
AYP	Adequate yearly progress
CCLC	21 st Century Community Learning Centers
Department	U.S. Department of Education
EDEN	Education Data Exchange Network
Ed-Flex	Education Flexibility Partnership Act of 1999
EDGAR	Education Department General Administrative Regulations
ESEA	Elementary and Secondary Education Act of 1965
FY	Fiscal year
GAO	U.S. Government Accountability Office
GEPA	General Education Provisions Act
GFSA	Gun-Free Schools Act of 1994
IASA	Improving America's Schools Act of 1994
IDEA	Individuals with Disabilities Education Act
IPA	Independent Public Accountant
LEA	Local educational agency
MOE	Maintenance of effort
MEP	Migrant Education Program
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act of 2001
OIE	Office of Indian Education
OIG	Office of Inspector General
OMB	Office of Management and Budget
OME	Office of Migrant Education
PBDMI	Performance-Based Data Management Initiative
PDS	Persistently dangerous schools
PCSP	Public Charter Schools Program
SBRR	Scientifically based reading research
SEA	State educational agency
SES	Supplemental educational services
USCO	Unsafe School Choice Option

EXECUTIVE SUMMARY

The No Child Left Behind Act of 2001 (NCLB), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), strengthened the flexibility and accountability that were embodied in the Improving America's Schools Act of 1994 (IASA). It called for more choices for parents of children from disadvantaged backgrounds and an emphasis on demonstrated teaching methods. The ESEA is once again due for reauthorization. This paper provides the Office of Inspector General's (OIG) perspective on the issues that the U.S. Department of Education (Department) and Congress should consider during the current ESEA reauthorization process.

Based on our work on programs and topics related to the ESEA over the last seven years, we have identified the following emerging issue areas and offer suggestions to help improve accountability and integrity in ESEA programs:

- Essential, Clear, and Consistent Requirements. Essential requirements should be written in statute and regulation to ensure compliance; the law should be written clearly to ensure uniform interpretation by users at all levels; and the appropriateness of variation in fiscal requirements across programs should be determined to facilitate compliance and alleviate confusion. We suggest that the Department and Congress consider (1) using common sense tests to evaluate what requirements are needed and their clarity; (2) ensuring essential requirements are written in statute and regulation; and (3) determining whether identified inconsistencies in fiscal requirements are appropriate.
- Data Quality. Valid and reliable data are imperative because academic assessments and accountability data are critical to the implementation of the ESEA. Our work identified weaknesses in State controls over the collection and reporting of performance data on persistently dangerous schools, graduation and dropout rates, schools in need of improvement, and the scoring of State assessments. We suggest that the Department and Congress consider (1) requiring management certifications on data validity and reliability at the Federal, State, and local levels; (2) ensuring data quality terms are defined and used consistently; (3) requiring internal controls for the collection and reporting of quality data; and (4) taking specified steps to ensure funding decisions are based on accurate child counts.
- Monitoring/Oversight. The ESEA needs to ensure compliance monitoring and enforcement of essential requirements. More and improved monitoring and oversight of ESEA programs are needed as our work continues to identify weaknesses in Departmental monitoring of State educational agencies (SEAs), and SEA monitoring of local educational agencies (LEAs). We suggest that the Department and Congress consider setting expectations for monitoring at all levels.

- Improprieties in State and Local Programs. Our work has found severe breakdowns of internal controls in State and local programs that involved millions of dollars in Federal education funds. We identified a need to avoid conflicts of interest and ensure transparency when making funding decisions, noted the availability of regulatory authority to increase oversight of high-risk entities, and identified some ways to help expose improprieties in State and local education programs. We suggest that the Department and Congress consider taking specific actions to (1) enhance transparency in decisionmaking by deterring conflicts of interest at the State and local levels; (2) ensure States identify and provide additional oversight of high-risk subgrantees; (3) establish a reporting requirement for suspected fraud and other criminal misconduct, waste, and abuse; and (4) ensure whistleblower protection for State and local employees and contractors.
- Program-Specific Issues. Our reviews of several ESEA programs have led to suggestions for Departmental and congressional consideration for the reauthorized ESEA. We suggest that the Department and Congress consider incorporating our proposals related to gun-free schools, persistently dangerous schools, supplemental educational services, and Reading First.

The Department may or may not agree with our perspective and suggestions. We have recognized in the perspective paper positive actions that the Department has taken in relation to the identified issue areas.

In the final section of this perspective paper, we have included a [Compendium of OIG Products](#) summarizing our work and suggestions for reauthorization of the ESEA in the following 11 program or topic areas: gun-free schools; Unsafe School Choice Option (USCO)/persistently dangerous schools; public school choice and supplemental educational services (SES); Reading First; schoolwide programs; migrant education; charter schools; 21st Century Community Learning Centers; assessment and accountability data; Departmental, SEA, and LEA oversight; and Title I fiscal requirements.

Both the Department and Congress have been working on the ESEA reauthorization. Departmental activities to date include issuing *Building on Results: A Blueprint for Strengthening the No Child Left Behind Act* in January 2007 to outline the Secretary's priorities for reauthorization and drafting legislative language for specific ESEA programs. The Congress has held hearings and begun the process of drafting legislative proposals. This perspective paper is intended to inform the reauthorization process by providing the OIG's perspective on improving accountability and integrity in ESEA programs. The OIG has and will continue to provide comments, when requested, on specific Departmental or congressional legislative proposals.

AN OIG PERSPECTIVE ON IMPROVING ACCOUNTABILITY AND INTEGRITY IN ESEA PROGRAMS

In anticipation of the previous reauthorization of the ESEA, we issued [*An OIG Perspective on the Reauthorization of the Elementary and Secondary Education Act*](#) (ED-OIG/S1480010, February 1999) to provide the Department and Congress our insights for making the law more “user friendly” to better achieve the flexibility and accountability provided in the Improving America’s Schools Act of 1994. When enacted in January 2002, the NCLB reauthorized the ESEA and strengthened the flexibility and accountability that were embodied in the IASA. The NCLB called for stronger accountability for results; greater flexibility for States, school districts, and schools in their use of Federal funds; more choices for parents of children from disadvantaged backgrounds; and an emphasis on teaching methods that have been demonstrated to work.

During the last seven years, the OIG completed a substantial body of work on a variety of programs and topics related to the ESEA. We also participated in the U.S. Comptroller General’s Domestic Working Group and ESEA-related conferences; collaborated with the U.S. Government Accountability Office (GAO), as well as State and local audit agencies on the key topic of State assessments and accountability; and worked with the Department on a number of oversight and program issues, including grant monitoring, high-risk grantees, and the Migrant Education Program. We performed audits, inspections, and investigations at SEAs, LEAs, schools, and contractors’ offices in most of the States and insular areas, as illustrated by the map on the next page.

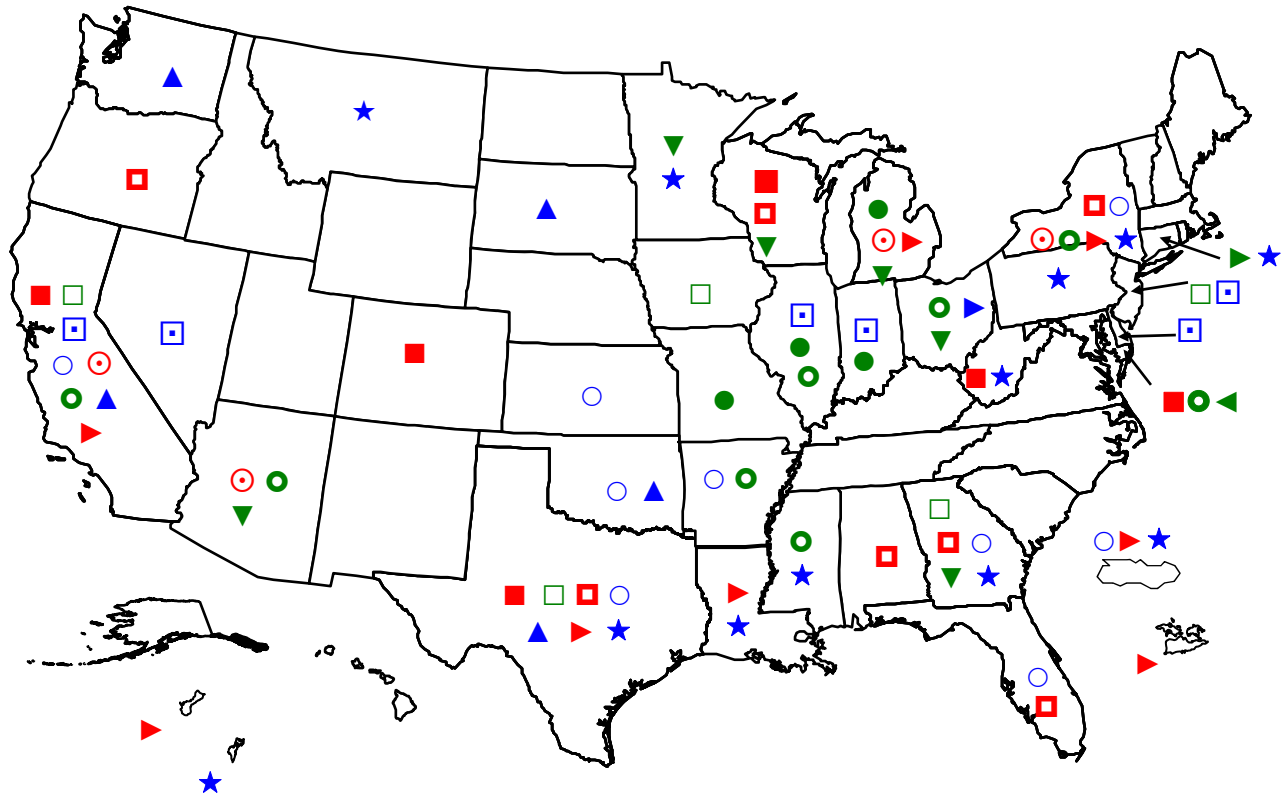
The ESEA is once again undergoing reauthorization. Based on our experience with the administration of ESEA programs over the last seven years, we have identified five emerging issue areas that the OIG believes the reauthorized ESEA should strive to address to improve accountability and integrity in ESEA programs. In our 1999 perspective paper, we identified the following three issue areas, which our more recent work indicates are still relevant for the next ESEA reauthorization:

- Essential and clear requirements, with an added need for consistent requirements across programs;
- Data quality; and
- Monitoring and oversight.

In this paper, we have added the following two issue areas:

- Improprieties in State and local programs; and
- Program-specific issues.

Locations Where OIG Has Performed Work Related to the ESEA



Program/Topic Areas

- | | |
|---------------------------------------|---|
| ■ Gun-Free Schools | ⊙ Charter Schools |
| □ USCO/Persistently Dangerous Schools | ● 21st Century Community Learning Centers |
| ▣ Public School Choice and SES | ▲ Assessment and Accountability Data |
| ◻ Reading First | ▶ Departmental, SEA, and LEA Oversight |
| ● Schoolwide Programs | ▼ Title I Fiscal Requirements |
| ○ Migrant Education | ★ Investigation Cases |

ISSUE AREA NO. 1 – Essential, Clear, and Consistent Requirements

In our 1999 perspective paper, we wrote that the ESEA should be written in “plain language” to ensure uniform interpretation by users at all levels—from the Federal to the school level. Additionally, the ESEA should be guided by common sense and include only the essential requirements to achieve the desired program results. In the paper, we provided two common sense tests to aid the Department and Congress in determining (1) what requirements should be included in the reauthorized ESEA and (2) whether the law is written clearly. (We have included these two tests with minor modifications in this section’s Suggestions for Consideration.)

In January 2007, the Office of Management and Budget (OMB) issued a bulletin titled *Agency Good Guidance Practices* that included principles that we believe are applicable to the issue of essential, clear, and consistent requirements. To assist its offices in meeting the Bulletin's requirements, the Department issued a *Guide for the Development and Issuance of Significant Guidance Documents* in July 2007. The Guide identifies several general principles the Department is to follow when developing guidance. Specifically, the principles are to: (1) avoid guidance documents that are inconsistent, incompatible, or duplicative of other issued guidance; (2) tailor guidance to impose the least burden on the intended users; (3) use language that is simple and easy to understand to minimize the potential for uncertainty and litigation arising from uncertainty; and (4) base guidance decisions on the best reasonably obtainable scientific, technical, economic, or other information on the need for and consequences of the guidance documents.

Essential requirements and clarity of the law, as addressed in our 1999 paper, continue to be relevant issues for the current ESEA reauthorization. In addition, inconsistent fiscal requirements across programs may unnecessarily contribute to the administrative burden placed on SEAs and LEAs.

Essential Requirements Should be Written in Statute and Regulation

Although the ESEA contains numerous requirements that the Department, SEAs, LEAs, and other grantees must adhere to,¹ the Department has published substantial guidance to clarify the law and regulation, and to provide technical assistance and information about best practices in program implementation.

Whereas regulation is legally enforceable, guidance cannot impose a legally binding requirement. Except for explicit statutory and regulatory requirements, State and local recipients are free to implement the activities addressed in guidance based on their own reasonable interpretation of the law and regulation. Unless requirements are expressly written in statute or regulation, including definition of key terms, State and local entities may adopt the guidance as they see fit.

For example, neither the ESEA nor regulation define several terms, such as a "move" and "temporary employment," which are associated with determining a child's eligibility to participate in the Migrant Education Program (MEP). The Department issued draft non-regulatory guidance in 2003 to clarify that a return home from a vacation is not a qualifying move. Yet, our work on migrant child counts identified children who were incorrectly considered eligible because their "moves" were actually a return home from a vacation or family visit during summer or holiday period. Recognizing the lack of uniform implementation of the MEP eligibility requirements and the legally non-binding nature of its guidance, the Department proposed regulations in May 2007 that would clarify and expand the eligibility definitions, including adding a definition for "move" that explicitly excludes travel or moves during or after a vacation or holiday.

¹ Title I, Part A of the ESEA alone contains 588 compliance requirements for SEAs and LEAs. [Compliance Requirements within Title I, Part A of the No Child Left Behind Act](#) (ED-OIG/S06E0027, March 29, 2006).

Need for Requirements to Be Written Clearly

Clarity of the law also affects the ability of States and school districts to carry out the purposes of statutory provisions.

Guidance is sometimes needed to clarify technical points of the law. The comparability requirement under Title I, Part A (Improving Basic Programs Operated by LEAs) of the ESEA provides such an example. At the 2007 National Title I Conference, a Departmental presentation on Title I fiscal requirements noted there was confusion about the frequency for completing different aspects of the comparability requirement, which necessitated clarification in guidance. Under the ESEA § 1120A(c)(1)(A), an LEA may receive Title I funds only if it uses State and local funds to provide services in Title I schools that are comparable to the services provided in non-Title I schools. The statute requires the LEA to maintain and update records *biennially* to document its compliance with the comparability requirement, but does not expressly require the LEA to perform comparability calculations *annually*. The Department's non-regulatory guidance on Title I, Part A fiscal issues (published in May 2006) clarifies that, since demonstrating comparability is a prerequisite for receiving Title I funds, which are allocated annually, comparability is an annual requirement.

In our February 2007 report on the Department's administration of the Reading First program,² we noted that the current ESEA may not clearly communicate the intent expressed by Congress concerning the effectiveness of reading programs. The 2006 Labor-HHS-Education appropriations bill (Public Law 109-103), dated July 2005, stated that funds available under the Reading First program were intended to be used to "encourage and support the use of reading programs with the strongest possible scientific evidence of effectiveness." The ESEA specifies that an acceptable use of Reading First funds subgranted to LEAs is for selecting and implementing a learning system or program of reading instruction based on scientifically based reading research (SBRR) that includes the essential components of reading instruction. While the current ESEA provides definitions of "SBRR" and "essential components of reading instruction," the law does not contain language on scientific evidence of effectiveness for evaluating reading programs. The reauthorization of the ESEA provides the Congress the opportunity to clarify whether reading programs should be funded on the basis of program effectiveness.

Appropriateness of Variation in Fiscal Requirements Across Programs Should be Determined

States and LEAs often face a myriad of fiscal requirements that sometimes vary across programs, which may make it difficult to comply and cause confusion. The ESEA reauthorization provides an opportunity for the Department and Congress to determine whether the variation in requirements is still appropriate.

² [*The Department's Administration of Selected Aspects of the Reading First Program*](#) (ED-OIG/A03G0006, February 22, 2007).

- **Administrative Cost Caps.** Administrative cost caps are not consistently set across ESEA programs. Depending on the program, the amount an LEA can charge against grant funds for program administration varies or is not specified in statute. For example, Title III (Language Instruction for Limited English Proficient and Immigrant Students) and Title IV, Part A (Safe and Drug-Free Schools and Communities) each stipulate a 2 percent cap on administrative costs, while Title I, Part B (Reading First) caps LEA expenditures for planning and administration at 3.5 percent. Other programs, including Title I, Part A, do not specify an administrative cost cap for LEAs. To be considered allowable in these cases, LEA expenditures for administrative costs must meet requirements that they be “necessary and reasonable,” in accordance with OMB Circular A-87. Inconsistent administrative cost caps across the various ESEA programs may make it more difficult for SEAs to effectively monitor LEA compliance and result in LEA confusion about the amount of administrative costs chargeable to a specific grant. In addition, Independent Public Accountants (IPAs) and other government audit agencies who conduct annual audits under the Single Audit Act may not make appropriate decisions on whether LEA charges for administrative costs are in compliance with legal requirements.
- **Carryover Funds.** The amount of funds that an LEA may carry over for use in the succeeding year is also inconsistent across some ESEA programs. In general, the General Education Provisions Act (GEPA) allows a State or LEA subgrantee, which does not obligate all its grant funds by the end of the fiscal year for which Congress appropriated the funds, to obligate the remaining funding during a carryover period of one additional year, unless otherwise specified in other provisions of law. The ESEA sets different carryover limits for a few programs. For example, § 1127 allows an LEA to carry over no more than 15 percent of its Title I, Part A allocation, and permits the SEA to waive the percentage limitation once every three years if certain conditions are met. For the Safe and Drug-Free Schools and Communities program, § 4114(a)(3)(B) limits carryover of Title IV, Part A funds to not more than 25 percent of the LEA’s allocation, unless the LEA demonstrates good cause and obtains SEA approval to exceed the limit.

In our audits of many key ESEA provisions, we found instances of non-compliance, inconsistent implementation, reliance on non-binding guidance, and the need for enhanced guidance. These audits involved gun-free schools, persistently dangerous schools, public school choice and supplemental educational services, schoolwide programs, migrant education, charter schools, and consolidated State performance reports. The audits are summarized in the [Compendium of OIG Products](#) at the end of this perspective paper.

Suggestions for Consideration

- 1.1 **Use common sense tests to evaluate needed requirements.** Our recommendation in the 1999 perspective paper to use two common sense tests continues to be applicable. One test would help determine what requirements should be included in the reauthorized ESEA. Examples of the types of questions the test could ask, where appropriate, include:

- Is the requirement essential for program effectiveness or financial integrity?
- Is the requirement supported by research or data?
- Does the requirement create an unnecessary administrative burden?
- Will compliance be monitored by Federal, State, and local reviewers?
- Will actions be taken if grantees fail to comply?

Having established the essential requirements, the second test would help to determine whether the requirement is written clearly. Examples of the types of questions, where appropriate, include:

- Can the requirement be understood without the need for extensive legal interpretation, guidance, or technical assistance to implement?
- Is the requirement's language consistent with the language used for similar requirements in other sections of the ESEA?
- Can the requirement be included in a cross-cutting section of the ESEA?

The questions above are not all inclusive. Other factors may need to be considered depending on the program area.

- 1.2 **Ensure essential requirements are written in statute and regulation.** To better ensure compliance with the letter as well as the intent of the law, the essential requirements should be expressly written in statute or regulation, including the definition of key terms. Where existing guidance does not sufficiently ensure that the law will be carried out as Congress intended, clarifying information should be put into law or regulation.
- 1.3 **Determine whether inconsistencies in fiscal requirements are appropriate.** To help eliminate confusion and relieve some of the administrative burden for SEAs and LEAs, fiscal requirements should be consistently defined across ESEA programs, where appropriate.

ISSUE AREA NO. 2 – Data Quality

In our 1999 perspective paper, we advised of the need for all levels (local, State, and Federal) to provide valid and reliable data, and recommended that management certifications on data validity and reliability should be considered that were similar to the management certification requirement for Department program managers.³ Additionally, the paper highlighted the need to ensure the validity and reliability of data provided at the State and local levels for use in determining student achievement and program effectiveness.

Data quality terms used in the ESEA are not currently defined in the ESEA, GEPA, or Departmental guidelines. For example, §§ 1111(b)(2)(C) and (D) of the ESEA require States to define adequate yearly progress (AYP) in a manner that is statistically valid and reliable, and ensure that other academic indicators, including graduation rates, are valid and reliable.

³ In its 1998-2002 Strategic Plan, the Department had set as an objective that, by 2000, all its managers would assert that the data used for measuring their programs' performance were valid and reliable, or had plans for improvement.

However, the statute does not define “valid” or “reliable.” In contrast, Departmental guidelines define data quality using terms, such as utility, objectivity, and integrity to refer to the data’s usefulness, accuracy, reliability, unbiased nature, and security.⁴ Given the variety of terminology used to describe the quality of data, the Department, States, and others may interpret the terms inconsistently. Our work has identified problems with the quality of State-reported data, as noted in the following section. We believe that defining the data quality terms used in the ESEA would facilitate the reporting of quality data. As used in this paper and GAO’s publication titled *Assessing the Reliability of Computer-Processed Data*, validity refers to whether the data actually represent what is being measured, and reliability means that the data are accurate and complete.

The need for quality data continues to be an ongoing and even more critical issue under the NCLB. In 2002, we completed a joint project of the U.S. Comptroller General’s Domestic Working Group where we collaborated with four other audit agencies (GAO, Texas State Auditor’s Office, Pennsylvania Department of the Auditor General, and Philadelphia Controller’s Office) to assess the quality of Title I accountability data gathered at the LEA, SEA, and Departmental levels.⁵ Data issues identified from the joint project are described in more detail in the sections below. In 2004, GAO reported that over half of the States and school districts interviewed cited being hampered by poor and unreliable student data when implementing student proficiency requirements.⁶

The ESEA ties funding directly to student achievement and accountability and requires States to report on performance in many areas. The utility of this reporting, and ultimately funding decisions, depends on the collection of reliable data. Without reliable data, the Department cannot make effective decisions on its programs or, in some cases, know if the funds it disburses are indeed reaching the intended recipients. We have performed several nationwide audits of Title I programs and concluded that management controls must be strengthened at the local, State, and Federal levels to ensure that data are valid and reliable.

Weaknesses in State Controls Over Collection and Reporting of Performance Data

States must annually collect and report various performance data to the Department and others within their State. Data that must be reported to the Department in the consolidated State performance report include the number of persistently dangerous schools, graduation and dropout rates, assessment results, and the number of schools identified as in need of improvement. In several nationwide reviews by the OIG, GAO, and others, we collectively

⁴ *U.S. Department of Education Information Quality Guidelines*, February 2003 (for information the Department disseminates); *Improving Data Quality for Title I Standards, Assessments, and Accountability Reporting*, April 2006 (non-regulatory guidance for States, LEAs, and schools).

⁵ [A Joint Audit Report on the Status of State Student Assessment Systems and the Quality of Title I School Accountability Data](#) (ED-OIG/S14C0001, August 2002).

⁶ *No Child Left Behind Act: Improvements Needed in Education’s Process for Tracking States’ Implementation of Key Provisions* (GAO-04-734, September 2004).

found issues of noncompliance with data collection and reporting requirements, and lack of effective controls to ensure data quality.⁷

- Persistently Dangerous Schools (PDS). Our work on State and local compliance with the Unsafe School Choice Option in five States disclosed issues of non-compliance and inaccurate reporting of PDS-related data at the local level due to the lack of SEA oversight. Reporting practices varied significantly across districts in the States reviewed, and some USCO incidents went unreported. As a result of the inconsistent reporting, the data used to determine PDS may not have been sufficiently reliable to provide accurate and equitable PDS determinations across districts in each State.

In October 2006, the Secretary convened the Secretary's Safe and Drug-Free Schools and Communities Advisory Committee and held a hearing to gain input from the education community on possible changes to improve the USCO provisions. We provided testimony on our findings at the hearing and, in August 2007, issued a separate perspective paper on this topic.

- Graduation and Dropout Rates. In our 2006 reviews of the data that four States used to report graduation and dropout rates, we found that the data were not always accurate, consistent throughout the State, complete, and verifiable. For example, we found in some States that student enrollment status was incorrectly classified, a student group was not included in calculations, reportable dropouts were not reported, and inadequate or no documentation was available to verify data accuracy. We also questioned the validity of the data when calculations of the graduation or dropout rates did not meet required definitions, which resulted in the reviewed States reporting graduation or dropout rates that were overstated.

In its September 2005 report on graduation rates,⁸ GAO concluded that a factor affecting the accuracy of graduation rates was whether States verified student data, with fewer than half of the States in the nation conducting audits of data used to calculate graduation rates. GAO noted that data inaccuracies could substantially raise or lower a school's graduation rate. Moreover, data accuracy was critical to ensure consistency across States since the Department planned to provide a nationwide, comprehensive perspective by calculating interim graduation rate estimates based on data that States reported to the National Center for Education Statistics. The Department subsequently published averaged freshman graduation rate (AFGR) data for school years 2001-2002 and 2002-2003 in October 2005, and for 2002-2003 and 2003-2004 in June 2007. Both reports identified data quality as a data limitation due to the variation in the degree of

⁷ A list of OIG products that address data quality issues appears in the [Compendium of OIG Products](#) at the end of this perspective paper.

⁸ *No Child Left Behind Act: Education Could Do More to Help States Better Define Graduation Rates and Improve Knowledge about Intervention Strategies* (GAO-85-897, September 2005).

rigor with which States and school districts verify their data. In June 2007, the Department also published a report on dropout rates, which included 2005 AFGR data.⁹

- Schools in Need of Improvement. Under the auspices of the U.S. Comptroller General's Domestic Working Group, the 2002 joint audit also found that some States did not report accurate, complete, or timely school improvement data to the Department. SEA noncompliance with Title I statutory and reporting requirements resulted in misreported or underreported data on the schools identified as in need of improvement. States lacked systematic procedures and controls for developing and reporting reliable data. We also identified improvements in data quality controls needed at the Department, including using its State monitoring visits to assess data quality and distributing its current data quality standards to States.

In addition to issuing its *Information Quality Guidelines* in February 2003, the Department added procedures for its State monitoring visits, as well as suggested audit procedures in the OMB Circular A-133 Compliance Supplement for non-Federal auditors, to assess the validity and reliability of school improvement data at the SEA and LEA.

Tasked by OMB to eliminate unnecessary and burdensome collection and reporting of student achievement data, the Department launched its Performance-Based Data Management Initiative (PBDMI) in fiscal year (FY) 2003. The PBDMI was deemed critical to the success of several of the Department's programs and operations, including the implementation of the ESEA, as amended by the NCLB. In separate reports on the PBDMI published in 2005, the OIG and GAO reported that the Department had made progress but needed to improve system implementation and project management controls to accomplish project goals, including a strategy to help States provide quality data.¹⁰ When completed in September 2005, the PBDMI resulted in the development of the Education Data Exchange Network (EDEN), which is a centralized, coordinated repository of State-reported elementary and secondary educational data. Under its more recent *EDFacts* initiative, the Department has collaborated with SEAs and other industry partners to centralize the State-reported data in EDEN with other data within the Department, such as financial grant information, to enable better analysis and use of the data in policy development, planning, and program management at the Federal, State, and local levels.

⁹ Seastrom, M., Hoffman, L., Chapman, C., and Stillwell, R. (2005). *The Averaged Freshman Graduation Rate for Public High Schools From the Common Core of Data: School Years 2001-02 and 2002-03* (NCES 2006-601). U.S. Department of Education, National Center for Education Statistics, Washington, D.C.; Seastrom, M., Hoffman, L., Chapman, C., and Stillwell, R. (2007). *The Averaged Freshman Graduation Rate for Public High Schools from the Common Core of Data: School Years 2002-03 and 2003-04* (NCES 2006-606rev), U.S. Department of Education, National Center for Education Statistics, Washington, D.C.; Laird, J., DeBell, M., Kienzl, G., and Chapman, C. (2007). *Dropout Rates in the United States: 2005* (NCES 2007-059). U.S. Department of Education, National Center for Education Statistics, Washington, D.C.

¹⁰ [Audit of the Department's Performance Based Data Management Initiative](#) (ED-OIG/A11E0003, September 29, 2005); *Education's Data Management Initiative: Significant Progress Made, but Better Planning Needed to Accomplish Project Goals* (GAO-06-6, October 2005).

Need for Controls over Scoring of State Assessments

The 2002 joint audit report also disclosed that the monitoring methods States used to ensure the accuracy of test contractors' scoring and reporting did not always provide adequate assurance of accurate and complete scoring results. In a 2004 Management Information Report,¹¹ we noted that the Department had issued *Information Quality Guidelines*, but had not issued specific guidance on internal controls for scoring assessments. The ESEA provides that State assessments shall be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards. We opined that, for the assessment to be reliable, the data should be accurate and that sound business practices require an appropriate level of internal controls over the scoring of the assessments conducted in response to the ESEA. These controls would vary by the type of assessment, scoring method (electronic or manual), and question (multiple-choice or constructed response); and should cover the receipt and control, data quality, scoring, and analysis processes. While it had implemented some activities in response to our 2004 report, we subsequently advised the Department of the continued need to ensure reliable scoring of tests used by States to make determinations of student progress under the ESEA, and encouraged the Department to take a stronger leadership role in this area.

In April 2006, the Department issued non-regulatory guidance titled *Improving Data Quality for Title I Standards, Assessments, and Accountability Reporting* to address data quality issues associated with the annual Report Card required of all States, LEAs, and schools receiving Title I, Part A funds. The guidelines focus on the collection and reporting of information on academic assessments, AYP results, and teachers' qualifications, and were tailored to address recommendations in our Management Information Report related to the scoring of assessments and GAO recommendations regarding student data.¹²

Given the high stakes involved for schools that do not demonstrate AYP on academic assessments, the OIG plans to conduct more work on the need for controls over the scoring of State assessments.

System Needed to Verify Accuracy of Data Used to Determine Funding

Some ESEA programs allocate funds to grantees based on a count of eligible program participants. Our work in a few program areas found that Federal funds may have been expended on, or received for, ineligible children because of incorrect child counts. For example, our work on migrant child counts in a number of States found that a significant number of students were misidentified as eligible for the Migrant Education Program because recruiters either misinterpreted the eligibility requirements, or intentionally falsified documents to count ineligible students. We found 75 to 100 percent of the sample students reviewed were ineligible to participate in the program and, as a result, MEP funds may have inappropriately been used to provide services to ineligible children. We identified eligibility issues related to children of workers at processing plants, where the work did not appear to be either temporary or seasonal,

¹¹ [Best Practices for Management Controls Over Scoring of the State Assessments Required under the NCLB](#) (ED-OIG/X05D0016, February 3, 2004).

¹² *No Child Left Behind Act: Improvements Needed in Education's Process for Tracking States' Implementation of Key Provisions* (GAO-04-734, September 2004).

as required by law. We also identified children who were incorrectly considered eligible based on “moves” that were actually vacations or family visits during holiday or summer periods when school was not in session.

The Department’s Office of Migrant Education (OME) had been increasingly concerned that States were not implementing quality control procedures sufficient to ensure that the migrant child counts annually reported to OME were correct. Preliminary data indicated that ineligible children were recruited, counted, and served, and the defective determinations appeared attributable to errors, fraud, or abuses in the program. As a result, in July 2004, OME strongly recommended that each State re-interview parents and guardians to assess the accuracy of the 2003-2004 migrant child count reported to the Department. Additionally, OMB added suggested audit procedures in the March 2006 OMB Circular A-133 Compliance Supplement for non-Federal auditors to determine whether the SEA and participating LEAs carried out quality control processes for ensuring proper determination and verification of the eligibility of each child in the annually reported count of eligible children. The Department also published a Notice of Proposed Rulemaking on this matter in May 2007.

Continued Need for Management Certifications on Data Quality

Neither the ESEA nor GEPA requires management certifications regarding the quality of data that is provided by and used at the local, State, and Federal levels. The Department’s past strategic plans had recognized the need for quality data. To help meet the objective of being a performance-driven agency, the 1998-2002 and 2001-2005 strategic plans included a performance indicator for all Department program managers to assert or confirm that the data used to measure their programs’ performance are valid, reliable, and timely. However, while emphasizing the use of data to inform program management and performance, the 2002-2007 and 2007-2012 plans do not include an assertion from its managers similar to prior plans regarding the quality of program performance data.

The Department requires management certification as to the accuracy of State-submitted data. When States submit data to the Department’s EDEN system and for their annual Consolidated State Performance Report, the Department requires an authorizing State official, such as the chief State school officer, to certify that the reported data are accurate. For migrant child counts, the official must also certify that the data are true, reliable, and valid. The Department has also instituted data validation and verification steps and requires States to address their data issues before it will officially accept a State’s data in the EDEN system.

The Department has issued, or participated in the development of, guidance to improve data quality at the State and local levels. In particular, its April 2006 non-regulatory guidance regarding States’ annual Report Card includes as good practice an action step for schools, LEAs, and States to validate and certify the accuracy of the data before transmittal to, respectively, the LEA, State, and Federal government. The Department also worked with a task force of local, State, and Federal experts to develop a resource document, which was published in July 2007 and titled *Forum Curriculum for Improving Education Data: A Resource for Local Education Agencies*. While the document provides information for LEAs to use with school and district staff to improve data quality, it does not address the use of management certification as to the quality of the data.

Because assessment and accountability data are so critical to the implementation of the ESEA, the need for valid and reliable data are imperative. While the Department requires management certification on the accuracy of State-submitted data, we believe that adding a requirement for management certification as to the validity and reliability (accuracy and completeness) of the submitted data from high-level officials, such as SEA and LEA superintendents, in statute would promote accountability and further highlight the importance of the data at all levels. Department managers would use these management certifications to confirm that the data used to measure their programs' performance are valid and reliable.

Suggestions for Consideration

- 2.1 **Require management certifications on data validity and reliability.** Our 1999 perspective paper's recommendation calling for management certification of data validity and reliability at the local, State, and Federal levels continues to be applicable. To help ensure data quality, the GEPA should be amended to require a management certification as to the validity and reliability of submitted data, along with an assurance that the systems maintaining the data have been determined to have sufficient controls to ensure that the data submitted are valid and reliable. For SEAs and LEAs, a high-level official, such as the superintendent, should be required to certify that LEA data submitted to the SEA and SEA data to the Department are valid and reliable. The Department should use these management certifications to confirm that the data used to measure its programs' performance are valid and reliable.
- 2.2 **Define and use data quality terms consistently.** The GEPA should be amended to establish standard definitions for data quality terms, such as valid and reliable, that are in the ESEA and other laws authorizing Federal education programs. Additionally, the terms should be used consistently throughout statute, regulation, and guidance. The definitions used in GAO's *Assessing the Reliability of Computer-Processed Data* could serve as a model.
- 2.3 **Require internal controls for the collection and reporting of quality data.** In some areas, States have the flexibility to define terms and performance measures. To help assure quality data across States, the reauthorized ESEA and/or applicable regulation (e.g., Education Department General Administrative Regulations (EDGAR)) should, at all levels (Federal, State, and local):
 - Ensure that terms and performance measures are clearly defined; and
 - Require underlying control systems, such as the practices described in the Department's *Improving Data Quality for Title I Standards, Assessments, and Accountability Reporting* guidelines, be in place to ensure the collection and reporting of valid and reliable data when fulfilling the data requirements.

2.4 **Ensure funding decisions are based on accurate child counts.** Similar to its efforts regarding the MEP, the Department needs to ensure that other formula grant funds, which are awarded based on grantee-reported child counts, are only awarded to grantees with eligible program participants. To help ensure appropriate funding decisions, the reauthorized ESEA and/or applicable regulation (program-specific or EDGAR) should:

- Include clear eligibility definitions;
- Require management certifications by high-level officials as to the validity and reliability of grantee-reported data; and
- Require procedures be in place to independently verify the accuracy of child-count data.

ISSUE AREA NO. 3 – Monitoring/Oversight

Our 1999 perspective paper also addressed the need for the ESEA to ensure compliance monitoring and enforcement of essential requirements. To address the issue of weaknesses in SEA oversight of ESEA programs identified in our review of the FY 1996 single audits, we recommended that the Department establish the minimum standards for SEAs in monitoring LEA administration of ESEA programs. These standards should address compliance monitoring activities; technical assistance; enforcement; and documentation, analysis, and reporting of results. (We have reiterated the standards as expectations in this section's Suggestions for Consideration.) We also recommended that the Department consider ways to play a stronger role in ensuring ESEA program integrity by developing an oversight system that integrates program reviews, audits, technical assistance, grantee reporting, and evaluation studies; takes into account results of State analyses of LEA single audit findings; and otherwise ensures compliance with program requirements.

Need for More and Improved Program Monitoring and Oversight

Our work continues to uncover problems with program controls and oversight of program participants, placing billions of taxpayer dollars at risk of fraud, waste, abuse, and noncompliance.

- Weaknesses in Monitoring and Oversight Continue. We have continued to identify programmatic weaknesses in Departmental monitoring of SEAs and/or SEA monitoring and oversight of LEAs in nearly all our audits related to the ESEA, as noted in the [Compendium of OIG Products](#) at the end of this perspective paper. Examples include:
 - Choice and Supplemental Educational Services. Our review of SEA and LEA implementation of the ESEA's public school choice and SES provisions found that the six SEAs reviewed did not adequately monitor LEA and school compliance with choice and SES requirements. We also found that the SEA in two States did not adequately monitor SES providers to ensure the quality and effectiveness of services to students.

For FY 2007, the Department selected seven States to receive a targeted compliance monitoring review of, and added team members for the full Title I review scheduled in 17 States to focus on, public school choice and SES. The seven targeted States were selected based on a data analysis designed to target States with the largest percentages of schools in improvement and the largest percentage of students not participating in choice or SES. The Department plans to annually select additional States for the focused monitoring; conduct Title I reviews of all States at least once during FY 2007 through FY 2009; and develop technical assistance papers on State approval, evaluation, and monitoring of SES providers. The OIG also plans to conduct additional work on SES providers.

- Charter Schools. During our 2004 review of charter schools, we found that the Department had not established a program office responsible for oversight of SEA compliance with the ESEA requirement regarding charter schools' access to Federal funds. We also found that the SEAs and some of the LEAs in the three States reviewed did not have adequate procedures to ensure that new or expanding charter school LEAs and charter schools receive proportionate and timely access to Title I funds, special education funds under the Individuals with Disabilities Education Act (IDEA), or both. Additionally, the SEA did not monitor LEA compliance with the ESEA requirement in the two States where the LEA was responsible for providing charter schools access to the funds for which they were eligible.

In February 2005, the Department issued a memorandum to remind its program offices of their responsibilities to ensure that States and LEAs comply with statutory and regulatory requirements when allocating formula grant funds to new or expanding charter schools. The applicable program offices also changed their monitoring protocols for the Title I and IDEA programs to ensure that States and LEAs are providing a proportionate share of program funds to charter schools in a timely manner.

- Department Has Taken Steps to Improve Departmental and SEA Monitoring. Critical to the Department's mission is the successful delivery and management of grant funds provided to the education community. The Department has placed an emphasis on monitoring of States to ensure compliance with the ESEA. Monitoring efforts include assessing the level of monitoring by SEAs to ensure compliance with the law and regulation. Additionally, OMB has revised the OMB Circular A-133 Compliance Supplement to direct auditors' attention to certain compliance requirements. Notwithstanding these efforts, a Departmental presentation at the 2007 National Title I Conference noted issues related to SEA capacity to monitor grants.

Across Departmental program offices, monitoring has entailed different approaches, formats, and reports. A few Departmental units have focused their efforts on grant monitoring. For example, the Department's Risk Management Team targets high-risk grantees, and some program offices are targeting their resources based on risk factors, such as audit findings. Additionally, a few program offices have worked with staff in the Office of Chief Financial Officer, who accompany the review team on site visits and

focus on fiscal requirements. However, these efforts have not been coordinated across all ESEA programs.

The Department has recognized that effective grant monitoring is critical to its accountability and fiscal responsibilities and is an issue that needs to be addressed. In October 2006, a Departmental Executive Steering Committee commissioned a Grants Pilot Project Team to review the efficiency and effectiveness of the Department's discretionary and formula grants processes. The Team concluded that the Department needs to take a more prioritized monitoring approach for all grants given the resources available for performing grant monitoring. Stemming from this project, the Department formed a new Grants Policy and Procedures Team to consider all policies, including monitoring requirements, and develop standards applicable for all discretionary and formula grants management. Additionally, the new Team is working to establish performance management requirements for grantees, and is part of a newly established Risk Management Services office that is responsible for identifying, and taking action to manage and mitigate, risks that may adversely affect the advancement of the Department's mission.

- Minimum Requirements for Monitoring Are Not Addressed in the ESEA or EDGAR. The ESEA, as amended by the NCLB, does not address minimum requirements for SEA monitoring of LEA administration of ESEA programs. EDGAR (34 C.F.R. § 80.40) requires grantees to monitor grant- and subgrant-supported activities to ensure compliance with applicable Federal requirements and that performance goals are being achieved, but does not address minimum requirements for monitoring.

Statutory language for the Education Flexibility Partnership Act of 1999 (Ed-Flex) and regulations for the reauthorized IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004, address some minimum monitoring requirements:

- Ed-Flex – The Ed-Flex statute requires SEAs to annually monitor the activities of participating LEAs and schools, and to submit an annual report on their oversight results and the impact of the waivers on school and student performance. Departmental guidance clarifies the Ed-Flex monitoring and oversight requirement by stating that annual monitoring activities must measure performance against educational goals that are linked to State or local assessment systems.
- IDEA – Regulations at 34 C.F.R. §§ 300.600 through 300.609 and §§ 300.640 through 300.646, which were effective on October 13, 2006, establish requirements for State monitoring, enforcement, and annual reporting. The primary focus of State monitoring activities must be on (1) improving educational results and functional outcomes for all children with disabilities; and (2) ensuring that public agencies meet IDEA, Part B program requirements, with an emphasis on those requirements most closely related to improving educational results for children with disabilities. The State must monitor LEA performance using quantifiable indicators in program priority areas and such qualitative indicators as are needed to adequately measure performance in those areas.

Suggestion for Consideration

3.1 Set expectations for monitoring and develop an effective system for monitoring.

The expectations for Federal monitoring of SEAs and other grantees, as well as LEA administration of the Department's grants and programs, should be articulated in GEPA. The expectations should include: (1) sufficient compliance monitoring of SEAs and LEAs; (2) documentation of each oversight activity and the results; (3) provision of appropriate technical assistance and enforcement measures, when necessary; (4) systematic analyses of the results of SEA and LEA audits and other oversight activities to identify trends in findings and strategies for monitoring and technical assistance to reduce occurrence in similar programs; and (5) annual reporting of the results of these analyses to or within the appropriate Departmental program office(s). To enable the modification of monitoring procedures in response to changing needs and new information, the expectations can be as general as stated above. Alternatively, some programs may need more prescriptive monitoring requirements, as have been applied to the Ed-Flex and certain IDEA programs.

ISSUE AREA NO. 4 – Improperities in State and Local Programs

GAO's publication titled *Standards for Internal Control in the Federal Government* requires that agencies develop detailed policies, procedures, and practices to fit their agency's operations and to ensure that they are built into and are an integral part of operations. Policies and procedures are a part of the control activities that enforce management's directives and are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results. Control activities help to ensure that actions are taken to address risk. These standards apply to the Department. In addition, EDGAR (34 C.F.R. §§ 75.702 and 80.20) requires States, LEAs, and other direct grantees to have fiscal control and accounting procedures in place to ensure proper disbursement of and accounting for Federal funds.

Our audits, inspections, and investigations have found severe breakdowns of internal controls, which were either by-passed or nonexistent, involving millions of dollars in Federal education funds for State and local programs. In some instances, we found fraud in education programs, which may have been prevented if proper controls were in place and followed. For example, high-level SEA and LEA officials, who were in positions of authority and oversight, committed wrongdoings that resulted in millions of dollars in misspent funds in the following cases:

- **Georgia SEA.** Our investigations and the Georgia State Auditor revealed that the former State School Superintendent authorized questionable payments for technology purchases totaling over \$650,000 and funneled the funds into her failed 2002 gubernatorial campaign. The Superintendent and her co-conspirators, including an Associate Superintendent, were successfully prosecuted in Federal court.
- **Puerto Rico SEA and Contractors.** High-level SEA officials, including the former Puerto Rico Department of Education Secretary and Associate Secretary, and contractors received Federal jail terms stemming from charges related to a \$4.3 million contractor

kickback scheme. Our audit work found that the SEA lacked adequate controls to administer contracts, ensure proper contract and salary charges, prevent significant amounts of Title I funds from lapsing, and expend Title I funds properly. Our investigations have led to the conviction of payment officers in several districts for embezzling Title I funds by preparing and converting to their own use payment checks for vendors doing business with the school district.

- **Long Island School Districts.** A 2005 New York State Comptroller report¹³ found that the Superintendent and Assistant Superintendent manipulated one school district's financial accounting system to use over \$11 million for personal expenses. Additional reported issues further illustrate the breakdown of the entire control system in this district, including (1) the lack of oversight by the Board of Education, the Internal Claims Auditors, and the district treasurer; (2) conflicts of interest by the district's IPA, whose substandard performance and flawed audit failed to identify the fraud; and (3) weak internal controls in the district's financial accounting system. Our work in two other school districts found similar issues—weak controls over the district's financial accounting functions and/or IPA conflicts of interest—which resulted in \$6.6 million in inadequately supported Title I and Title II (Preparing, Training, and Recruiting High Quality Teachers and Principals) expenditures in one district, and false expenditure reports totaling over \$500,000 and criminal prosecution of several high-level officials in the other district.

Need to Avoid Conflicts of Interest and Ensure Transparency in Decisionmaking

Our audit and inspection work, as well as a February 2007 GAO report,¹⁴ on Reading First found that the Department did not maintain a control environment that exemplified management integrity and accountability during its grant application process and in providing program information and support to States and school districts. The appearance of bias towards selected reading programs, conflicts of interest by peer reviewers and personnel at technical assistance centers, and failure to adhere to established policies and procedures during the State application process could have been avoided if appropriate controls had been in place. The Secretary agreed to implement our recommendations, and reinforced them in an internal memorandum to senior officers. To strengthen the management and administration of programs throughout the Department, the Secretary also distributed internal guidance on: (1) impartiality and prohibitions against interpreting laws to control and direct curriculum and instruction in accordance with the Department of Education Organization Act, GEPA, and ESEA; and (2) the use of peer reviewers in formula grant programs—built on the internal *Handbook for the Discretionary Grant Process* regarding the selection of reviewers, conflict of interest, and information provided to successful and unsuccessful applicants.

¹³ *Roslyn Union Free School District Anatomy of a Scandal*, Office of the New York State Comptroller (2005M-21, March 2005).

¹⁴ A list of OIG products related to the [Reading First](#) program appears in the [Compendium of OIG Products](#) at the end of this perspective paper; *Reading First: States Report Improvements in Reading Instruction, but Additional Procedures Would Clarify Education's Role in Ensuring Proper Implementation by States* (GAO-07-161, February 2007).

Our work has also disclosed a need for similar integrity and accountability controls for the Department's grantees and their sub-grantees, personnel, and vendors.

- Reading First Program at the State Level. Our audits in two States also found issues of conflict of interest by grant reviewers in the State's approval process for awarding Reading First subgrants to LEAs.¹⁵ For example, one of the SEAs did not ensure that a grant reviewer recused himself from reviewing the application of LEAs that selected the reading program he had authored.
- Conflicts of Interest at District and School Levels. We have investigated cases where district and school employees, who have authority to obligate grant funds, have had conflicts of interest with the vendors with which the district or school does business. These conflicts have sometimes resulted in fraudulent activities. In one case, the U.S. Attorney's Office reported the arrest of an individual who allegedly wrote a textbook while he was a school district official and subsequently caused the district to pay nearly \$4 million in Title III funds to purchase the textbook from his publisher. This scheme reportedly netted him nearly \$1 million in royalties and fees, in violation of State conflict of interest laws and the district's code of ethics. In another case, a former top SEA official responsible for overseeing charter schools diverted funds to various bank accounts that she controlled, and awarded no-bid contracts whose beneficiaries were friends and for which she received kickbacks.

High-Risk Designation Helps to Increase Oversight

Designating a grantee or subgrantee as "high risk" helps to ensure entities with serious performance and accountability issues receive more oversight. Since enactment of the NCLB, we have identified significant accountability and compliance issues in the Virgin Islands, Puerto Rico, and the Pacific Outlying Areas. The Department has designated as high-risk grantees the education departments in those insular areas as well as the District of Columbia because of either serious recurring deficiencies in their fiscal and programmatic administration of Department programs, or untimely and incomplete single audit reports. We also identified other entities, including school districts, to the Department for consideration of high-risk status and appropriate special conditions due to significant accountability and compliance issues in their administration of Department programs. To help protect program integrity, our work has highlighted the need for program managers' increased awareness of their responsibility to oversee programs carefully, rather than focus exclusively on technical assistance.

The Department has made risk management a priority and has expended significant resources to monitor and work with its high-risk grantees. Its interoffice Risk Management Team undertakes projects to address accountability and compliance issues identified by our audits, referrals, and single audits; and works with program offices to designate grantees as high-risk. The Department has also sent multidisciplinary teams into key locations to review and assess high-risk, and potential high-risk, entities' progress in addressing their weaknesses.

¹⁵ Our State reports related to the [Reading First](#) program are listed in the [Compendium of OIG Products](#) at the end of this perspective paper.

Federal regulations (EDGAR) enable the Department to consider a grantee as high-risk in situations such as those described for the insular areas and District of Columbia above, and gives SEAs similar authority over LEAs. Under 34 C.F.R. § 80.12, an awarding agency may designate a grantee or subgrantee as high risk if it determines that the grantee/subgrantee:

- (1) has a history of unsatisfactory performance, or
- (2) is not financially stable, or
- (3) has a management system which does not meet the management standards set forth in this part, or
- (4) has not conformed to terms and conditions of previous awards, or
- (5) is otherwise not responsible; . . .

Once in high-risk status, the awarding agency may place special conditions or restrictions on the entity's grant/subgrant, including payment on a reimbursement basis and requirements for additional reports and monitoring.

During our audit of the Orleans Parish School System (New Orleans),¹⁶ we alerted the Department of the need to advise the Louisiana SEA to consider placing special conditions on grants it makes to the LEA. The SEA subsequently used the authority provided by EDGAR (34 C.F.R. § 80.12) to place the LEA in high-risk status for all Federal grant programs because of problems in the LEA's financial management system.

To the extent that any of the over 14,000 school districts in the nation receive Federal education funds in the form of subgrants, the SEA has ultimate monitoring and oversight responsibility to ensure LEA compliance with applicable financial accountability and program performance requirements. Ensuring that States use the authority provided in EDGAR to designate subgrantees as high risk would help to safeguard Federal funds and ensure additional oversight where warranted.

Reporting Requirements and Whistleblower Protection Would Help Expose Improprieties

Instances of significant fraud, waste, and abuse of Federal education funds often come to our attention by referrals from the Department and calls to our hotline. Establishing reporting requirements and whistleblower protection in statute could help to further expose improprieties that may be occurring in State and local education programs.

- **Referral Provision.** Neither the ESEA nor Federal regulation expressly requires grantees participating in ESEA-authorized programs to report suspicions of fraud and other criminal misconduct, waste, or abuse to the Department. Federal regulation at 34 C.F.R. § 80.40(d) states only that the grantee must inform the Federal agency of "significant developments," such as problems, delays, or adverse conditions, that will materially impair the ability to meet program objectives.

In addition to fraudulent activities involving improper use of funds and kickbacks, the issue of grade fixing and test tampering is of concern. In one New Jersey school district, an SEA investigation found irregularities in some schools' test-score data that raised

¹⁶ [Title I Funds Administered by Orleans Parish School Board](#) (ED-OIG/A06E0008, February 16, 2005).

concern of “adult interference” in the testing situation, and a district investigation concluded that a district administrator participated in or facilitated the illicit tampering of test answer sheets at another school.

The Department has agreed to amend EDGAR to include reporting requirements for fraud and criminal misconduct in connection with all ESEA-authorized programs. Modeled on reporting requirements for programs administered by the Department’s Federal Student Aid office, the regulatory provision would require any government entity, grantee, or subgrantee participating in an ESEA program to refer to the OIG for investigation any information related to fraud or other criminal misconduct.

- **Whistleblower Protection.** Federal employees, former Federal employees, and applicants for Federal employment, have Federal protections should they disclose information about workplace improprieties, including a violation of law, rule, or regulation; gross mismanagement and waste of funds; abuse of authority; or a substantial danger to public health or safety. The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) holds Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. These Federal protections do not apply to non-Federal employees operating under Federal grants or employees of Federal contractors.

Based on our audit and investigation work, we are aware of several examples where non-Federal employees claimed to have lost their jobs for blowing the whistle on possible improprieties in the respective programs. We have concluded that these individuals, and others like them, would not have any Federal protection if their employer did take retaliatory action, such as termination or demotion, and would need to seek protection under State law, if available. If protections are not available at the State or local level regarding Federal education funds, Federal whistleblower protection would increase the potential for State, district, school, and contractor employees to come forward and provide information about possible fraud, especially in situations where they fear retaliatory action.

Suggestions for Consideration

- 4.1 **Enhance transparency in decisionmaking by deterring conflicts of interest.** To deter conflicts of interest that may result in fraudulent activities at the State and local levels, the Department and Congress should consider including statutory language requiring State, district, and school employees and contractor personnel, who have the authority to obligate Federal education funds, be subject to certain provisions of the Federal bribery and conflict of interest provisions codified in criminal statute at 18 U.S.C. §§ 201-216. The Department and Congress should also consider statutory language requiring individuals with the authority to obligate Federal grant funds to: (1) recuse themselves from doing business with vendors that they or family members own or control; (2) certify that they will not do business with companies that they have an interest in; and (3) if they do conduct business with such an entity that is the sole source capable of providing the required service, require closer scrutiny of the grant activity by an independent person. The certification should include language warning that falsification is a violation of 18 U.S.C § 1001 and subject to criminal and/or civil sanctions.

- 4.2 **Ensure States identify and provide additional oversight of high-risk subgrantees.** The Department should make sure that SEAs are aware of their ability to consider a subgrantee as high-risk, and have systems in place to identify and oversee high-risk entities, pursuant to Federal regulation at 34 C.F.R. § 80.12. Additionally, the Department and Congress should consider statutory language requiring States to advise the Department when the SEA has designated a subgrantee as high-risk and the reasons for doing so.
- 4.3 **Establish a reporting requirement for suspected fraud and other criminal misconduct, waste, and abuse.** While the Department has agreed to add a reporting requirement in EDGAR, the Department and Congress should also consider including a reporting requirement in the GEPA. Examples of the type of information that should be referred include:
- Falsification of applications for funding or of counts of eligible children;
 - Theft or embezzlement of Federal education program funds;
 - Misapplication or improper use of Federal education funds;
 - Bribery or kickbacks; and
 - Test or grade tampering to improve student and/or school performance results.
- 4.4 **Consider whistleblower protection for State and local employees and contractors.** Where State whistleblower protection regarding Federal funds may not be available, the Department and Congress should consider language in the GEPA and/or regulation requiring States to establish a system that protects non-Federal whistleblowers, as a condition to the receipt of Federal funds. Similar to the Federal protections, State and local employees and contractors should be protected from retaliatory actions should they disclose credible evidence of improprieties involving Federal education funds, including fraud, waste, abuse, gross mismanagement, or substantial and specific danger to public health or safety.

ISSUE AREA NO. 5 – Program-Specific Issues

Prior to and since the enactment of the NCLB, we reviewed several ESEA programs that led to a number of suggestions for Departmental and congressional consideration for the reauthorized ESEA. We summarize the program-specific issues below and our specific suggestions in the [Compendium of OIG Products](#) at the end of this perspective paper.

Suggestions on Gun-Free Schools Requirements Not Incorporated in Law

Prior to the NCLB, we had completed a series of audits of SEA and LEA compliance with the Gun-Free Schools Act of 1994 (GFSA) in seven States. Based on that work, we developed a perspective paper on issues surrounding the GFSA to assist Departmental officials and Congress in determining if revisions to the statute were necessary.¹⁷ In the paper, issued March 2001, we offered five issues for consideration in amending the law to expand the types of weapons

¹⁷ [An OIG Perspective on the Gun-Free Schools Act of 1994](#) (ED-OIG/S03A0018, March 2001).

covered; require information on incidents involving firearms at school; and clarify several sections of the law.

One issue in our 2001 perspective paper concerned the types of weapons covered by the GFSA. The statute defines a weapon as a *firearm* under Title 18 U.S.C. § 921, which does not consider as firearms: BB guns, pellet guns, antique firearms, and replicas of antique firearms. The Bureau of Alcohol, Tobacco, and Firearms (ATF) is the agency responsible for providing a definitive statement about the types of weapons that do not qualify as a firearm under Title 18 U.S.C. § 921. Yet, both the Centers for Disease Control and Prevention and the Consumer Product Safety Commission had noted that high-velocity airguns may cause serious injury or death in some instances. In addition, our work found that some conventional firearms and airguns can be similar in appearance.

The NCLB reauthorized the GFSA and incorporated some of our suggested changes. We believe that the issues that were not addressed in law are still important and relevant, and should be considered in the ESEA reauthorization. In particular, the law should:

- Include as weapons covered by the statute (in addition to the ATF definition of a *firearm*): imitation firearms capable of projecting an object with deadly force, such as airguns (i.e., BB guns and pellet guns); antique firearms; and replicas of antique firearms;
- Require SEAs and LEAs to collect and report information on the *incidents* involving firearms at schools and the resulting disciplinary actions (e.g., expulsion, modified expulsion, other action, or none); and
- Clarify applicable sections of statute to ensure consistent use of terms such as *firearm*, *weapon*, and *possess*, to eliminate confusion.

Incorporating these proposed changes in the law would address problems we had found in the States reviewed, and ensure correct and effective implementation by SEAs and LEAs, including accurate counts of expulsions under the statute. Additionally, the Department and SEAs would be able to better assess program success and determine consistency in enforcement of the GFSA provisions.

Proposals to Strengthen Other Statutory Provisions

Since enactment of the NCLB, our reviews of several ESEA programs have identified other areas of statute and/or regulation that could be strengthened to better ensure compliance with the intent of law.

- Unsafe School Choice Option/Persistently Dangerous Schools. Our work on SEA and LEA compliance with the USCO provision raised concerns that States were not using effective criteria to identify persistently dangerous schools. As a result, some State policies may not meet the intent of the statute. In a February 2006 memorandum to the Office of Safe and Drug Free Schools, we suggested several basic requirements that State USCO policies should meet. In our October 2006 testimony before the Department's Safe and Drug-Free Schools and Communities Advisory Committee, we identified

legislative changes that may be needed to ensure the intent of the USCO provision is met. We also prepared a separate perspective paper on this topic, which detailed our findings and proposed corrective actions.

- Public School Choice and Supplemental Educational Services. Our November 2006 perspective paper on selected SES provisions raised questions about the SES eligibility criteria and suggested several alternate approaches to defining SES eligibility that could expand coverage to a greater number of low-achieving students. We also suggested that the Department consider changing applicable regulations and explore strategies for assessing the quality of LEA and school SES providers that are in improvement status.
- Reading First. Since the initiation of the Reading First legislation, there appears to be movement toward more emphasis on the scientific evidence of reading programs' effectiveness rather than merely the inclusion of the five essential components of reading currently in statute. In our February 2007 audit report and April 2007 congressional testimony on the Department's administration of the Reading First program, we suggested that the Department and Congress clarify whether reading programs need to have scientific evidence of effectiveness in order to be eligible for program funding.

In April 2007, legislation was introduced in the House of Representatives to improve the Reading First program. The proposed bill would require the Department and its contractors to screen Reading First peer reviewers for potential conflicts of interest, among other provisions related to the peer review process and curriculum prohibitions. In May 2007, a Senate report recommended that Congress should adopt new restrictions to safeguard against financial conflicts of interest among Federal employees, contractors, and subcontractors associated with elementary and secondary education programs funded under the ESEA.¹⁸

We also have ongoing work in the areas of the Title I comparability requirement and graduation and drop-out rates. These efforts may also address issues for the Department and Congress to consider during the ESEA reauthorization.

Suggestions for Consideration

- 5.1 **Incorporate suggested changes to gun-free schools requirements.** The Department and Congress should incorporate our previously reported suggestions regarding the gun-free schools requirements in the reauthorized ESEA and other appropriate statutes, particularly with respect to the inclusion of imitation firearms capable of projecting an object with deadly force, such as airguns.
- 5.2 **Consider other program-specific proposals to strengthen statutory provisions.** The Department and Congress should consider incorporating our proposed changes to statutory and regulatory provisions regarding persistently dangerous schools, supplemental educational services, and Reading First.

¹⁸ *The Chairman's Report on the Conflicts of Interest Found in the Implementation of the Reading First Program at Three Regional Technical Assistance Centers*, U.S. Senate Health, Education, Labor, and Pension Committee (May 9, 2007).

COMPENDIUM OF OIG PRODUCTS RELATED TO THE ESEA

We have conducted audits, inspection, and investigations involving key aspects of the ESEA, as amended by the IASA in 1994 and the NCLB in 2001. This compendium summarizes this work by 11 program or topic areas. In instances where our products made suggestions for reauthorization of the ESEA, they have been included. The Compendium also provides electronic links to OIG products that are posted on our website at <http://www.ed.gov/about/offices/list/oig/reports.html>. For each program or topic area, we have summarized the issue areas, which have emerged from our work, in the table below.

Program or Topic Area	Issue Area				
	Essential, Clear, and Consistent Requirements	Data Quality	Monitoring/Oversight	Improprieties in State & Local Programs	Program-Specific Issues
Gun-Free Schools	X	X	X		X
Unsafe School Choice Option/Persistently Dangerous Schools	X	X	X		X
Public School Choice & SES	X		X		X
Reading First			X	X	X
Schoolwide Programs	X		X		
Migrant Education	X	X	X	X	X
Charter Schools	X		X	X	
21st Century Community Learning Centers	X		X		
Assessment and Accountability Data	X	X	X		
Departmental, SEA, and LEA Oversight	X		X	X	
Title I Fiscal Requirements		X	X		

After we issue an audit report, the Department responds to our recommendations by either submitting a corrective action plan or issuing a program determination letter to the grantee specifying required corrective actions. Thus, recommendations for the Department contained in the OIG products listed in the Compendium may have been fully or partially implemented since the reports' issuance.

Gun-Free Schools

Fast Facts:

Our GFSA work included suggestions to improve the law, and was completed before the ESEA was reauthorized by the NCLB. While some of our suggestions were incorporated in the NCLB, we believe that a number of our remaining concerns and suggestions for legislative change to help clarify and strengthen the GFSA are still applicable for the next ESEA reauthorization.

OIG Products on the Topic

[Perspective Paper](#) (S03A0018, 3/9/01)

[Capping Report](#) (A03A0018, 2/1/01)

State Reports:

[California](#) (A03A0008, 9/27/00)

[Colorado](#) (A09A0008, 9/13/00)

[Maryland](#) (A0390023, 7/26/00)

[New Mexico](#) (A06A0006, 9/28/00)

[Texas](#) (A06A0005, 6/20/00)

[West Virginia](#) (A03A0007, 8/7/00)

[Wisconsin](#) (A05A0011, 8/21/00)

Issue Areas:

- Essential and clear requirements
- Data quality
- SEA and LEA monitoring/oversight
- Program-specific issues

Overview

As originally enacted in 1994, the Gun Free Schools Act (GFSA) required States to have in effect a law requiring LEAs to expel from school for at least one year any student who brings a firearm to school. It allowed the LEA's chief administrative officer to modify the expulsion requirement on a case-by-case basis. The GFSA required LEAs to comply with the State law, provide an assurance of compliance, annually report expulsion information to the SEA, and implement a policy requiring referral to a criminal justice or juvenile delinquency system of any student who brings a firearm to school. In addition, it also required SEAs to report to the Department information on firearm expulsions every year.

In 2000 and 2001, we conducted a series of audits in 7 States and 43 LEAs to determine whether SEAs and LEAs were in compliance with provisions of the GFSA. We interviewed more than 1,500 officials from the Department, SEAs, LEAs, and school administrators, teachers, counselors, students, parental organization representatives, and law enforcement officials. Based on our work, we identified a number of cross-cutting issues and made a number of recommendations for the Department to help ensure States and districts comply with the GFSA. We also identified legislative changes that were needed to clarify and strengthen the law.

Suggestions for Reauthorization of the ESEA

Determine if the GFSA should be amended to:

- (1) Include air guns (i.e., BB guns and pellet guns), antique firearms, and replicas of antique firearms;
- (2) Specifically require SEAs and LEAs to report on incidents of students found to have brought firearms to school and the resulting disciplinary action; and
- (3) Clarify items in specified sections of the statute to ensure SEAs and LEAs correctly implement the GFSA.

The NCLB incorporated some of the technical clarifications we had suggested, and the Department subsequently issued non-regulatory guidance calling for SEAs and LEAs to include information in their annual compliance reports on incidents of students bringing firearms to school. However, the guidance did not require information on resulting disciplinary actions.

Unsafe School Choice Option/ Persistently Dangerous Schools

Fast Facts:

School violence appears more prevalent than USCO results indicate. Research shows that most violence is concentrated in a few schools. According to the National Center for Education Statistics, 7 percent of public schools (5,400 schools) accounted for 75 percent of serious violent incidents in 1999-2000. USCO data shows that 7 states and Puerto Rico identified a total of 46 PDS for 2006-2007.

OIG Products on the Topic

[Perspective Paper](#) (S03G0015, 8/2/07)

[Testimony](#) (10/23/06)

Alert Memorandum (State and Local No. 06-02, 2/9/06)

State Reports:

[California](#) (A09E0025, 3/24/05)

[Georgia](#) (A04E0007, 6/7/05)

[Iowa](#) (A07E0027, 6/14/05)

[New Jersey](#) (A03E0008, 8/30/05)

[Texas](#) (A06E0028, 6/15/05)

Issue Areas:

- Essential and clear requirements
- Data quality
- Departmental and SEA monitoring/oversight
- Program-specific issues

Overview

The issue of safe schools is one the OIG has been examining since 1999, and the Unsafe School Choice Option (USCO) specifically since 2004. USCO requires States receiving ESEA funds to establish and implement a policy requiring that a student attending a persistently dangerous public school, or who becomes the victim of a violent criminal offense on school grounds, be provided the opportunity to transfer to a safe school within the district. As a condition of receiving ESEA funds, each State must certify in writing to the Department that the State is in compliance with these requirements. In 2002, the Department issued its *Unsafe School Choice Option Draft Non-Regulatory Guidance*, which provided the framework for developing and implementing a USCO policy (the final guidance was issued in May 2004). Full compliance with USCO was expected as of July 1, 2003.

We conducted five State audits to assess State and local compliance with the USCO provisions, and additional nationwide research on States' criteria for determining PDS. Based on our findings, we made a number of suggestions and proposals for the Department to help ensure States and districts comply with the provisions of the law. In October 2006, we testified before a Departmental Advisory Committee meeting, which was convened to gain input from the education community on strategies to improve USCO policy. At the meeting, we identified legislative changes that may be needed to ensure that the intent of the USCO provision is met. We also prepared a perspective paper on the topic, detailing our findings and proposing corrective actions for the Department and Congress to consider during the ESEA reauthorization process.

Suggestions for Reauthorization of the ESEA

Strengthen the USCO provisions by ensuring that:

- (1) All violent incidents, consistent with State code, are factored into the PDS determination, without the use of disciplinary action qualifiers;
- (2) Benchmarks for determining PDS are set at reasonable levels that are supported by objective and reliable data; and
- (3) The PDS are identified based on the most current year of data.

Public School Choice and Supplemental Educational Services

Fast Facts:

Interim Departmental data indicates that the SES option is not being fully utilized, with only about 17 percent of eligible students participating in SES programs in 2003-2004. All students in Title I schools in improvement are afforded the choice option, but only low-income students are afforded the SES option.

OIG Products on the Topic

SES:

[Perspective Paper](#)

(S09G0007, 11/28/06)

California Providers:

[Capping Report](#) (X09G0007,

9/21/06) – SES provider reports are listed in the Capping Report.

Choice and SES State Reports:

[Delaware](#) (A03F0002, 11/22/05)

[Illinois](#) (A07F0003, 8/23/05)

[Indiana](#) (A05E0014, 2/18/05)

[Michigan](#) (A05F0007, 8/2/05)

[Nevada](#) (A09F0002, 7/14/05)

[New Jersey](#) (A02F0006, 9/14/05)

Issue Areas:

- Essential and clear requirements
- SEA monitoring/oversight
- Program-specific issues

Overview

The ESEA, as amended by the NCLB, requires LEAs to offer all students attending schools in improvement status the option to transfer to another public school that is not in improvement status (public school choice). If a Title I school fails to make AYP after its first year in improvement status, the LEA must also offer SES to all enrolled low-income students. SES consists of tutoring, remediation, and other educational interventions that are in addition to instruction provided during the school day. State-approved SES providers must offer services tailored to help participating students meet academic standards. LEAs must continue to offer school choice and SES until the school exits improvement status by making AYP for two consecutive years.

We completed a body of work related to school choice and SES, including audits of five SES providers operating in one State and their relationship with the LEA, as well as reviews of SEA and LEA implementation of school choice and SES requirements in six other States and multiple LEAs. Based on our findings, we made a number of recommendations and proposals for the Department to help ensure States and districts comply with the provisions of the law. We also identified issues for Congress to consider during ESEA reauthorization relating to SES eligibility.

Suggestions for Reauthorization of the ESEA

Determine whether the focus of SES eligibility should be based on academic proficiency rather than family income and consider amending the ESEA to:

- (1) Limit eligibility for SES to only those students that are both economically disadvantaged and academically underachieving;
- (2) Make SES available to all low-achieving students attending Title I schools in improvement status; or
- (3) Offer SES to all low-income students as well as low-achieving students that do not meet the income criteria.

Reading First

Fast Facts:

Reading First is a \$1 billion per year program that was established to provide kindergarten through third grade reading programs based on scientifically based reading research. In response to allegations that the Department was promoting and excluding, and using consultants with ties to, specific programs and assessments, we conducted a series of reviews of this program.

OIG Products on the Topic

[IG Testimony](#) (4/20/07)

[Contract Administration](#)
(A03F0022, 3/7/07)

[Department Administration](#)
(A03G0006, 2/22/07)

[Grant Application](#) (I13F0017,
9/22/06)

State Reports:

[Georgia](#) (A04G0003, 1/18/07)

[New York](#) (A02G0002,
11/3/06)

[Wisconsin](#) (A05G0011,
10/20/06)

[Alabama](#) (A04F0001,
10/3/05)

Issue Areas:

- SEA monitoring/oversight
- Program-specific issues
- Improprieties in State & local programs

Overview

The ESEA, as amended by the NCLB, established the Reading First program aimed at helping every child in every State become a successful reader by the end of third grade. The program was designed to develop, implement, and provide professional development for teachers using scientifically based reading research (SBRR) programs, and to ensure accountability through ongoing, valid, and reliable screening, diagnostic, and classroom-based assessment. The Department allots monies to SEAs based on the proportion of low-income children who reside within the State. SEAs submit grant applications to the Department to receive the funds, and award subgrants to LEAs on a competitive basis.

We conducted reviews on various aspects of the program: (1) the Department's grant application process; (2) the Department's administration of selected aspects of the Reading First program; (3) a Department contractor's administration of technical assistance contracts; and (4) State compliance with the Reading First provisions in three States where we sought to determine whether the SEA developed and used criteria for selecting the SBRR programs and approved LEA applications in accordance with laws, regulations, and guidance. We also reviewed SEA administration and the use of Reading First program funds in one State, where we had no adverse findings.

Suggestions for Reauthorization of the ESEA

- (1) Clarify whether reading programs need to have scientific evidence of effectiveness in order to be eligible for funding under Reading First; and
- (2) Clarify conflict of interest requirements in federally funded programs.

Schoolwide Programs

Fast Facts:

Whereas Title I targeted assistance programs provide educational services only to eligible individual students, schoolwide programs allow schools with high concentrations of low-income students to redesign their entire educational program to serve all students. The emphasis in schools that operate a schoolwide program is to raise the academic achievement of all students by serving all students, improving all structures that support student learning, and consolidating all allowable resources.

OIG Products on the Topic

Consolidating Funds:

[Combining Funds](#) (A0490008, 3/29/00)

[Department Activities](#) (A07F0014, 12/29/05)

[Illinois](#) (A07E0029, 6/9/05)

[Missouri](#) (A07E0018, 12/20/04)

Schoolwide Plans:

[Indiana](#) (A05G0034, 3/15/07)

[Michigan](#) (A05G0018, 11/6/06)

Issue Areas:

- Clear requirements
- Departmental, SEA, and LEA monitoring/oversight

Overview

The IASA included a provision allowing LEAs to use Title I funds in combination with other Federal, State, and local funds to upgrade the entire educational program in an eligible school. The NCLB expanded school eligibility for schoolwide programs by lowering the poverty threshold from 50 percent to 40 percent of enrolled children needing to be from low-income families, and further required SEAs to modify or eliminate State fiscal and accounting barriers so that schoolwide programs can easily consolidate funds from other Federal, State, and local sources.

Since 2000, we have conducted a series of reviews related to schoolwide programs. First, we reported the results of interviews with officials from 15 SEAs, 16 LEAs, and 13 schools about combining funds in schoolwide programs. In 2004 and 2005, we conducted additional reviews of SEA administration of consolidating funds, involving 11 SEAs and 76 LEAs, to determine whether (1) the SEAs had encouraged schools to consolidate funds in their schoolwide programs, (2) the SEAs had modified or eliminated State fiscal and accounting barriers to consolidating funds, and (3) schools were consolidating funds. We also reviewed the Department's efforts in assisting the SEAs in consolidating funds. More recently, we reviewed SEA, LEA, and school implementation of schoolwide plans in two States.

Migrant Education

Fast Facts:

Our work identified significantly high error rates in States' migrant child counts. Subsequent to our audit, one SEA voluntarily withdrew from the program and returned to the Department over \$13 million in MEP funds, which had been expended on ineligible students.

OIG Products on the Topic

Priority for Services:

[Capping Report](#) (X06D0021, 9/30/03)

State Reports:

[California](#) (A06C0033, 5/30/03)

[Florida](#) (A06C0031, 5/2/03)

[Kansas](#) (A06C0032, 5/15/03)

[Texas](#) (A06C0030, 2/5/03)

Migrant Child Counts:

Memorandum (8/31/05)

State Reports:

[Arkansas](#) (A06F0016, 8/22/06)

[California](#) (A09F0024, 12/1/06)

[Georgia](#) (A04F0011, 1/12/06)

[Oklahoma](#) (A06F0013, 3/21/06)

[Puerto Rico](#) (A02E0019, 3/30/05)

Focused Review:

[Mid-Hudson \(NY\)](#) (A02G0009, 1/31/07)

Overview

The Migrant Education Program (MEP) provides funds to States to support high-quality educational programs for migrant children, help reduce the educational disruption and other problems from repeated moves, and ensure that migrant children benefit from State and local system reforms. Federal regulations define an eligible migratory child as a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker (including a migratory dairy worker) or a migratory fisher, and, who, in the preceding 36 months, has moved from one school district to another to obtain temporary or seasonal employment in agricultural or fishing work. Funds are allocated to SEAs, based on each State's per pupil expenditure for education and counts of eligible migratory children, aged 3 through 21, residing within the State. Under the MEP's "priority for services" provision, States are to identify and target services to migratory children who are failing, or most at risk of failing, to meet State standards and whose education was interrupted during the regular school year.

From 2003 to 2006, we conducted a series of audits on two key aspects of the MEP: (1) SEA and subgrantee compliance with the priority for services provision in four States; and (2) SEA controls for ensuring the accurate count of children eligible to participate in the MEP in five States. We have also reviewed allegations of inflated migrant student counts in other States. Based on our findings, we made a number of recommendations and proposals for corrective action. We also conducted a review of a local migrant education outreach program in one State, focusing on adherence to student eligibility rules and lobbying activities, where we had no adverse findings.

Issue Areas:

- Clear requirements
- Data quality
- Departmental and SEA monitoring/oversight
- Improprieties in State and local programs
- Program-specific issues

Charter Schools

Fast Facts:

The Center for Education Reform reported that about 4,000 charter schools were operating nationwide, serving more than a million children in 40 States and the District of Columbia, as of September 2006.

OIG Products on the Topic

Access to Funds:

[Capping Report](#) (A09E0014, 10/26/04)

State Reports:

[Arizona](#) (A09D0033, 8/24/04)

[California](#) (A09D0018, 3/29/04)

[New York Title I](#) (A09D0014, 7/28/03)

[New York IDEA](#) (A09C0025, 11/19/03)

Use of Funds:

State Reports:

[Michigan](#) (A05B0038, 9/6/02)

[Arizona](#) (A05D0008, 11/6/03)

Arizona PCSP Schools:

[A05D0018](#) (10/30/03)

[A05D0019](#) (9/22/03)

[A05D0023](#) (10/14/03)

[A05D0024](#) (9/30/03)

[A05D0025](#) (9/30/03)

[A05D0026](#) (10/10/03)

[A09D0027](#) (11/21/03)

[A09D0028](#) (11/19/03)

[A05D0029](#) (10/31/03)

[A09D0030](#) (9/26/03)

Investigation Press Releases:

[District of Columbia](#) (8/9/07)

[Minnesota](#) (5/24/06)

[Philadelphia](#) (3/21/06)

[Houston](#) (7/1/04)

Overview

Charter schools are public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools. Section 5206 of the ESEA requires the Department and States to take measures to ensure that every charter school receives the Federal funds for which it is eligible no later than five months after the school first opens or expands enrollment. The statute covers the Department's major formula grant programs, including ESEA Title I and IDEA Part B, as well as discretionary grant programs such as the Public Charter Schools Program (PCSP). State laws significantly influence the development of charter schools and vary from State to State. When a State considers charter schools to be LEAs, the SEA must treat the schools like other LEAs in the State when allocating funds under Federal programs; where a State considers charter schools to be public schools within an LEA, the LEA must treat charter schools like other public schools within that LEA.

In 2003 and 2004, we completed a series of reviews to assess charter schools' (1) access to Title I and IDEA funds in three States, as well as Departmental actions to ensure charter schools' access to these funds; and (2) use of Title I, IDEA, and PCSP funds in two States. Our work revealed a number of weaknesses in these areas, to which we made a number of recommendations to help the Department ensure that SEAs and LEAs comply with the ESEA funding provisions for charter schools, as well as help ensure charter schools expend their funds in accordance with applicable laws, regulations, and guidance. In addition to our audit work, we have investigated cases involving fraud in a number of charter schools.

Issue Areas:

- Clear requirements
- Departmental and SEA monitoring/oversight
- Improprieties in State and local programs

21st Century Community Learning Centers

Fast Facts:

The CCLC initiative is the only Federal funding source dedicated exclusively to afterschool programs, with Congress setting aside \$40 million for the program in 1998. That amount has grown to about \$1 billion per year since the passage of the NCLB in 2002, which transferred program administration from the Department to the SEA in each State.

Overview

Under the IASA, the 21st Century Community Learning Centers (CCLC) program provided three-year grants to rural and inner city schools or consortia of schools to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural, and recreational needs of the community. The grant enabled schools to stay open longer and set up community learning centers. The Department administered a nationwide competition and directly awarded program funds to local grantees. Under the NCLB, the Department allocates funds to SEAs by formula, the SEA awards grants to eligible organizations and local programs on a competitive basis, and the SEA is responsible for ensuring all statutory requirements are met.

Between 2000 and 2005, we completed a series of audits to determine whether CCLC grantees accounted for and used CCLC funds in accordance with applicable law, regulations, and grant terms. In total, we reviewed 12 grantees, including 9 grantees at the request of the Department due to persistent problems identified through its program oversight efforts. Based on our work, we identified a number of common issues and risk areas associated with grantees' administration of CCLC grants, and made a number of proposals and recommendations for the Department to help ensure CCLC grantee compliance.

OIG Products on the Topic

[Capping Report](#) (X05E0019, 10/22/04)
 Alert Memorandum (L09E0016, 5/6/04)
 Grantee Reports:
[Alliance](#) (A05A0021, 6/28/00)
[Alum Rock](#) (A09D0012, 3/17/04)
[Baltimore](#) (A03D0010, 6/2/04)
[Community Consolidated](#) (A05C0022, 2/24/03)
[East Cleveland](#) (A05C0012, 9/18/02)
[Elk Grove](#) (A09E0010, 7/20/04)
[Gonzales](#) (A09D0015, 12/19/03)
[Mt. Judea](#) (A06D0014, 9/29/03)
[New York City](#) (A02D0007, 11/24/03)
[Project ASCEND](#) (A06D0017, 2/11/04)
[Rockford](#) (A05B0039, 2/11/02)
[Sanders](#) (A09F0011, 8/4/05)

Issue Areas:

- Clear requirements
- Departmental monitoring/oversight

Assessment and Accountability Data

Fast Facts:

The NCLB ties funding directly to student achievement and accountability, and requires States to measure and report on performance in many areas. Based on audits of various aspects of the Title I program, we concluded that internal controls must be strengthened at the local, State, and Federal levels to ensure that the data are valid and reliable.

Overview

The ESEA requires States receiving Title I, Part A funds to implement a statewide accountability system, including creating academic standards, testing students' progress toward the standards, and holding schools, districts, and themselves accountable for making AYP toward meeting the State standards. The NCLB placed more emphasis on accountability for results and increases the importance of data. Performance must be publicly reported in district and State report cards, and schools are subject to increasingly rigorous consequences if they continually fail to make AYP. In addition to student assessments, the State accountability system must include a high school graduation rate indicator when determining AYP. States must also annually collect and report various assessment and accountability data to the Department.

OIG Products on the Topic

School Improvement Data:

[Joint Report](#) (S14C0001, 8/30/02)

[Department Report](#) (A03B0025, 3/22/02)

[California Controls](#) (A09C0002, 3/25/02)

[California Reporting](#) (A09B0019, 2/15/02)

Data Initiative:

[PBDMI](#) (A11E0003, 9/29/05)

Scoring Assessments:

[NAEP](#) (A05C0010, 6/17/03)

[State Assessments](#) (X05D0016, 2/3/04)

Migrant and LEP Students:

[California](#) (A09F0003, 10/25/05)

Graduation and Dropout Rates:

[Oklahoma](#) (A06G0008, 10/23/06)

[South Dakota](#) (A06F0021, 6/7/06)

[Texas](#) (A06F0020, 3/21/06)

[Washington](#) (A09G0009, 11/14/06)

Since 2002, we have completed a considerable body of work to assess the quality of data collection and reporting for specific ESEA requirements. In 2002, we completed a joint project of the U.S. Comptroller General's Domestic Working Group by reviewing school improvement data in one State, and Departmental controls to ensure the quality of this data from all States. In 2003 and 2004, we reviewed Departmental controls over scoring the National Assessment of Educational Progress (Nation's Report Card or NAEP) and, based on that work, conducted a study to provide information for the Department on controls over the scoring of State assessments. In 2005, we reviewed the Department's implementation of its Performance-Based Data Management Initiative designed to streamline data collection and project management processes, and the inclusion of migrant and limited English proficient students in one State's assessment and accountability system. Most recently, we examined data that four States had reported to the Department on their graduation and dropout rates. While the specific subject areas varied, each of these audits produced similar results: issues of non-compliance with elements of data collection and reporting; a lack of effective internal controls to ensure data reliability; and the need for enhanced guidance and direction from the Department.

Issue Areas:

- Clear requirements
- Data quality
- Departmental, SEA, and LEA monitoring/oversight

Departmental, SEA, and LEA Oversight

Fast Facts:

Federal funding for ESEA programs totaled over \$23 billion in 2007. Our audits and investigations continue to uncover problems with internal controls and oversight of Federal education funds, placing billions of taxpayer dollars at risk of fraud, waste, abuse, and noncompliance.

OIG Products on the Topic

The 28 products we have issued, as well as investigation press releases, are listed on the following page.

Issue Areas:

- Clear requirements
- Departmental, SEA, and LEA monitoring/oversight
- Improprieties in State and local programs

Overview

We have conducted a substantial body of work assessing Departmental, SEA, and LEA oversight of ESEA program funds. We reviewed Departmental monitoring procedures over grantees' drawdown of excessive cash and adherence to matching fund requirements of applicable programs. We also reviewed SEA monitoring in several States where we examined their procedures for ensuring LEAs administered ESEA program funds properly, or LEAs adhered to the requirement for a single audit. In four States (including a number of LEAs in Louisiana and on Long Island, New York), we looked at LEAs' use of Title I and/or Title II expenditures, Title I parental involvement funds, or Title I summer and after-school program funds. We similarly reviewed Departmental grantees' use of Early Reading First and Migrant Even Start grant funds at a pre-school in California, and the Title II Teaching American History Grant at an LEA in Texas. We also examined LEA administration of Title I, Part A set-aside programs in two school districts. Additionally, we reviewed the administration of Federal grants or contracts by three insular area grantees, which the Department had designated as high-risk because of either serious and recurring deficiencies in their fiscal and programmatic administration of Department programs, or untimely and incomplete single audit reports. In total, we identified over \$100 million in questioned and unsupported costs across our audits on this topic.

Based on our work, we made a number of recommendations and proposals to the Department to improve oversight of its operations and accountability by its program offices, grantees, and their subgrantees and contractors, as well as strengthen the stewardship of Federal funds at the Federal, State, and local levels. In addition to our audit work, we investigated a number of cases involving fraud, waste, and abuse in several locations.

Departmental, SEA, and LEA Oversight (continued)

OIG Products on the Topic

Departmental Oversight:

[Excessive Cash Draws](#) (X19F0025, 10/16/06)

[Matching Requirements](#) (A05F0015, 3/22/06)

SEA Oversight:

[Ohio Monitoring of Single Audits](#) (A05E0011, 6/4/04)

[Louisiana Monitoring of Title I Funds](#) (A06F0002, 8/4/05)

LEA Oversight:

Administration of Title I Funds (Louisiana):

[Beauregard Parish](#) (A06E0017, 12/16/04)

[Caddo Parish](#) (A06E0012, 12/7/04)

[East Baton Rouge Parish](#) (A06E0018, 6/8/05)

[Orleans Parish](#) (A06E0008, 2/16/05)

Title I and/or Title II Expenditures (Long Island, New York):

[Hempstead](#) (A02G0007, 4/11/07)

[William Floyd](#) (A02F0030, 3/30/06)

[William Floyd](#) (A02E0030, 12/19/05)

Interim Audit Memorandum – William Floyd (E02F0010, 3/10/05)

[Wyandanch](#) (A02E0031, 9/14/05)

Title I Set-Aside Programs:

[Cleveland](#) (A05D0009, 8/6/03)

[Detroit City](#) (A05D0021, 11/21/03)

Title I Parental Involvement Funds:

[Detroit](#) (A05F0018, 6/22/06)

Title II Teaching American History Grant:

[Dallas](#) (A06E0015, 9/16/04)

Other Departmental Grantees:

Early Reading First and Migrant Education Even Start:

[Pittsburg Pre-School](#) (A09F0010, 3/17/06)

Title I Summer and After School Programs:

[New Haven School District](#) (A02F0005, 4/11/06)

Department-Designated High-Risk Grantees:

Puerto Rico Department of Education:

[Salinas Administration of Title I Funds](#) (A02F0017, 7/25/06)

[Rock Solid Technologies Contracts](#) (A02E0007, 9/8/04)

[Salaries](#) (A02D0023, 6/2/04)

[Title I Expenditures](#) (A02D0014, 3/30/04)

Virgin Islands Department of Education:

[Learning Point Associates Contract](#) (A02F0023, 1/30/07)

[Management of Federal Education Funds](#) (A02C0012, 9/30/03)

[St. Croix Equipment Inventory](#) (A02C0019, 3/31/03)

[St. Thomas/St. John Equipment Inventory](#) (A02C0011, 6/5/03)

Guam Department of Education:

[Consolidated and Special Education Grants](#) (A09E0027, 4/18/05)

Investigation Press Releases:

[Georgia](#) (7/12/06)

[Dallas](#) (3/28/07)

[Orleans Parish](#) (2/8/07)

[William Floyd](#) (2/6/07)

[New Haven](#) (1/24/07)

[Edcouch Elsa \(TX\)](#) (6/20/06)

[American Samoa](#) (1/27/05)

[Puerto Rico](#) (1/23/02)

Title I Fiscal Requirements

Fast Facts:

Title I fiscal requirements are critical to the success of the program because they ensure that the Federal investment has an impact on at-risk students the program is designed to serve.

OIG Products on the Topic

Title I Allocations:

[Georgia](#) (A04E0002, 11/8/04)
[Michigan](#) (A05D0038, 6/25/04)
[Minnesota](#) (A05C0029, 9/30/03)

Comparability:

[Arizona](#) (A09G0020, 3/26/07)
[Illinois](#) (A05G0033, 6/7/07)
[Ohio](#) (A05G0015, 11/13/06)

MOE and Supplement/ Not Supplant:

[Ohio](#) (A05E0027, 1/11/05)
[Wisconsin](#) (A05E0016, 9/30/04)

Issue Areas:

- Data quality
- SEA monitoring/oversight

Overview

The Title I, Part A program is authorized under the ESEA, as amended by the NCLB, and provides financial assistance through SEAs to LEAs and schools with high numbers or percentages of poor children to help ensure that all children meet State academic standards. In allocating Title I funds to schools, LEAs are subject to several restrictions to ensure that the funds are targeted to schools with the highest percentages of children from low-income families. To ensure that Title I funds provide services beyond the regular services that participating children normally receive, LEAs must meet three fiscal requirements related to the expenditure of State and local funds. The LEA must: (1) maintain fiscal effort with State and local funds from one year to the next, which means that the LEA cannot reduce its own spending for public education and replace those funds with Federal funds (maintenance of effort (MOE)); (2) ensure that Title I schools receive their fair share of State and local resources by using State and local funds to provide services in Title I schools that are at least comparable to services provided in non-Title I schools (comparability); and (3) use Title I funds to supplement, not supplant regular non-Federal funds, which ensures that Title I services are in addition to regular services and do not replace services that an LEA would ordinarily provide to all its students (supplement/not supplant).

Since 2003, we have completed several reviews to assess SEA and LEA compliance with these fiscal requirements. We examined LEA allocations of Title I, Part A funds to schools in three States, as well as the SEA allocation to LEAs in one of the States. We also reviewed SEA controls to ensure LEAs in three other States complied with the comparability requirement. Additionally, we assessed SEA and LEA compliance with MOE and supplement/not supplant requirements in two States, where we had no adverse findings.