
The Reading First Program's Grant Application Process

FINAL INSPECTION REPORT



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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
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Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

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EXECUTIVE SUMMARY

The objectives of our inspection were to:

1. Determine if the Department of Education (Department, ED, or USDE) selected the expert review panel in accordance with the No Child Left Behind Act of 2001 (NCLB), Section 1203(c) and if the Department adequately screened the panel members for possible conflict of interest issues;
2. Determine if the expert review panel adequately documented its reasons for stating that an application was unready for funding; and
3. Determine if the expert review panel reviewed the applications in accordance with established criteria and applied the criteria consistently.

The selection of the expert review panel was not in compliance with the law because the Department failed to ensure that each State application was reviewed by a properly constituted panel.

Although not required, the Department developed a process to screen expert review panelists for conflicts of interest; however, the Department's process was not effective. We identified six panelists whose resumes revealed significant professional connections to a teaching methodology that requires the use of a specific reading program. The Department did not identify any of these connections in its conflict of interest screening process; therefore, it would not have been in a position to deal with the potential conflict raised by these connections should a State have included this program in its application.

The expert review panel adequately documented its reasons for stating that an application was unready for funding; however, the Department substituted a Department-created report for the panel's comments. As a result, the Department did not follow its own guidance for the peer review process. Therefore, States did not have the benefit of the expert review panel's comments and were not always able to quickly or effectively address problems in their applications. Additionally, we found that five of the State applications we reviewed were funded without documentation that they met all of the criteria for approval. The Department has not provided any documentation that would indicate the subpanels approved the final applications for these States.

The expert review panel appears to have reviewed the applications in accordance with criteria developed by the Department and applied the criteria consistently; however, the criteria developed by the Department included language that was not based on the statutory language. As a result, State applications were forced to meet standards that were not required by the statute.

In the course of answering our three objectives, we found that Department officials obscured the statutory requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by NCLB; acted in contravention of the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*; and took actions that call into question whether they violated the prohibitions included in the Department of Education Organization Act (DEOA). The DEOA at §3403(b) prohibits Department officials from exercising any direction, supervision, or control over the curriculum or program of instruction of any educational institution, school, or school system.

Specifically, we found that the Department:

- Developed an application package that obscured the requirements of the statute;
- Took action with respect to the expert review panel process that was contrary to the balanced panel composition envisioned by Congress;
- Intervened to release an assessment review document without the permission of the entity that contracted for its development;
- Intervened to influence a State's selection of reading programs; and
- Intervened to influence reading programs being used by local educational agencies (LEAs) after the application process was completed.

These actions demonstrate that the program officials failed to maintain a control environment that exemplifies management integrity and accountability.

We recommend that the Assistant Secretary for the Office of Elementary and Secondary Education (OESE):

- 1) Develop internal management policies and procedures for OESE program offices that address when legal advice will be solicited from the Office of the General Counsel (OGC) and how discussions between OGC and the program staff will be resolved to ensure that programs are managed in compliance with applicable laws and regulations.
- 2) In consultation with OGC, evaluate OESE's processes for assessing potential conflict of interest questions, when a panel review process is used, and make those improvements necessary to strengthen the processes.
- 3) Review all Reading First applications to determine whether all criteria for funding have been met.
- 4) Review the management and staff structure of the Reading First program office and make changes, as appropriate, to ensure that the program is managed and implemented consistent with the statutory requirements of NCLB.
- 5) Request that OGC develop guidance for OESE on the prohibitions imposed by §3403(b) of the Department of Education Organization Act.
- 6) When similar new initiatives are approved by Congress, rely upon an internal advisory committee, which includes representatives from other OESE programs, OGC, and the Department's Risk Management Team, to provide feedback on program implementation issues and ensure coordination in the delivery of similar or complimentary Department programs.

- 7) Rely upon the internal advisory committee to:
 - a. Determine whether the implementation of Reading First harmed the Federal interest and what course of action is required to resolve any issues identified; and
 - b. Ensure that future programs, including other programs for which the Department is considering using Reading First as a model, have internal controls in place to prevent similar problems from occurring.
- 8) Convene a discussion with a broad range of state and local education representatives to discuss issues with Reading First as part of the reauthorization process.

BACKGROUND

The ESEA, as amended by NCLB on January 8, 2002, established the Reading First program. The purpose of NCLB is to “close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.”

Title 1, Part B, Section 1201 of the ESEA provides five purposes for the Reading First program:

- 1) To provide assistance to State educational agencies (SEAs) and LEAs in establishing reading programs for students in kindergarten through grade 3 that are based on scientifically based reading research (SBRR), to ensure that every student can read at grade level or above not later than the end of grade 3.
- 2) To provide assistance to SEAs and LEAs in preparing teachers, including special education teachers, through professional development and other support, so the teachers can identify specific reading barriers facing their students and so the teachers have the tools to effectively help their students learn to read.
- 3) To provide assistance to SEAs and LEAs in selecting or administering screening, diagnostic, and classroom-based instructional reading assessments.
- 4) To provide assistance to SEAs and LEAs in selecting or developing effective instructional materials (including classroom-based materials to assist teachers in implementing the essential components of reading instruction), programs, learning systems, and strategies to implement methods that have been proven to prevent or remediate reading failure within a State.
- 5) To strengthen coordination among schools, early literacy programs, and family literacy programs to improve reading achievement for all children.

Title 1, Part B, Section 1208(6) of the ESEA defines SBRR as research that:

- (A) applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and
- (B) includes research that —
 - (i) employs systematic, empirical methods that draw on observation or experiment;
 - (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - (iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and
 - (iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

The ESEA does not advocate any particular reading program, assessment, or other product. In fact, Section 9527(b) of the ESEA prohibits the Department from endorsing, approving, or sanctioning any curriculum.

Title 1, Part B, Section 1002(b)(1) of the ESEA authorized an appropriation for Reading First of \$900,000,000 for fiscal year 2002 and “sums as may be necessary for each of the 5 succeeding fiscal years.” The appropriations for fiscal years 2003, 2004, 2005, and 2006 were \$993,500,000, \$1,023,923,000, \$1,041,600,000, and \$1,029,234,000, respectively.

Reading First funds are allotted to SEAs by formula according to the proportion of children aged 5 to 17 who reside within the State and are from families with incomes below the poverty line. SEAs submit applications to the Department to receive Reading First funding. SEA applications are reviewed by an expert review panel and are required to meet all statutory requirements before being awarded funds.

The Department’s Office of Elementary and Secondary Education administers the Reading First program. Two Department officials, the Reading First Director and an Education Program Specialist (the Reading First Director’s assistant), were responsible for administering the Reading First application process and, through the date of this report, continued to administer all facets of the Reading First program.

INSPECTION RESULTS

FINDING 1A – The Department Did Not Select the Expert Review Panel in Compliance With the Requirements of NCLB

Our objective was to determine if the Department selected the expert review panel in accordance with Title 1, Part B, Section 1203(c) of the ESEA, which specifically describes the panel selection process. Section 1203(c)(2)(A) states that the Secretary, in consultation with the National Institute for Literacy (NIFL), shall convene a panel to evaluate applications and that, at a minimum, the panel shall include: three individuals selected by the Secretary, three individuals selected by NIFL, three individuals selected by the National Research Council of the National Academy of Sciences (NAS), and three individuals selected by the National Institute of Child Health and Human Development (NICHD). We have determined that each of the four organizations nominated at least three individuals to serve on the expert review panel; however, the Department failed to ensure that each State application was reviewed by a properly constituted panel.

Section 1203(c)(2)(C) requires a panel to recommend grant applications to the Secretary for funding or for disapproval. After selecting the panelists, the Department created subpanels made up of five panelists each to review the State applications and recommend either approval or disapproval to the Secretary. None of the subpanels possessed adequate representation from each of the organizations identified under Section 1203(c)(2)(A) of the Act.

The Department created a total of 16 subpanels to review the State applications. A majority of the panelists were nominated by the Department for 15 of the 16 subpanels; and 7 of the 16 subpanels consisted entirely of Department-selected panelists. None of the subpanels included a representative from each of the nominating organizations and there is no indication that the subpanels ever met as one large panel to review the State applications and/or recommend approval or disapproval to the Secretary.

Prior to forming these subpanels, a Department official expressed concern that the use of subpanels would not be in compliance with the law. As a result, OGC and high-level Department officials, including the Assistant Secretary for OESE at the time,¹ approved a plan for the Department to create a 12-member “Advisory and Oversight Panel” that would consist of three individuals selected by the Department, three individuals selected by NIFL, three individuals selected by NAS, and three individuals selected by NICHD, as required by the Act. The Advisory and Oversight Panel’s duties would include examining the progress of the subpanels, reviewing the recommendations of the subpanels, and making the final funding recommendation to the Secretary, thus ensuring a common, high level of quality and consistency across the subpanels. Although the Assistant Secretary for OESE and OGC officials agreed

¹ This official left the Department in January of 2003 and for purposes of consistency and clarity will be referred to in this section simply as “the Assistant Secretary for OESE.”

upon this approach, the Advisory and Oversight Panel was never created. To date, no one in the Department has offered an explanation of why this was not done.

Section 1203(c)(1) states: “The Secretary shall approve an application of a State educational agency under this section only if such application meets the requirements of this section.” Because the Department did not meet the requirements at Section 1203(c)(2)(A), it raises the question of whether any of the applications were approved in compliance with the law.

FINDING 1B – While Not Required to Screen for Conflicts of Interest, the Screening Process the Department Created Was Not Effective

Our objective was to determine if the Department adequately screened the panel members for possible conflict of interest issues. NCLB does not require panel members to be screened for conflict of interest. However, the Department decided to screen potential panelists for conflicts of interest and developed and implemented a process to do so. That process was not effective.

To assist with developing the screening process, an OGC ethics attorney provided sample conflict of interest questions to the Reading First Director’s assistant. These questions were based on questions used to screen for conflicts in the “Agreement for Grant Application Reviewers Who Receive Compensation” used for discretionary grants.

The Reading First office incorporated most of these sample questions into the conflict of interest form it provided to potential Reading First panelists. This form asked each individual to provide his or her personal information, dates of availability, and answers to six questions. Five of the six questions focused on conflicts related to States’ applications and/or States’ Reading First programs. The other question focused on conflicts related to the potential panelists’ financial interest in commercial products.

The Department’s conflict of interest form did not incorporate one of the sample questions provided by an OGC ethics attorney. This question was: “Are you aware of any other circumstances that might cause someone to question your impartiality in serving as a reviewer for this competition?”

An OGC ethics attorney informed us that the screening process was designed to exclude individuals who had financial connections to products or programs or who had the appearance of a conflict of interest. This attorney also informed us that OGC’s review of potential conflicts was informal and that OGC’s role was to provide guidance rather than decisions. We did determine that when potential panelists identified specific connections to programs, assessments, or textbooks on the conflict of interest form, the OGC ethics attorney provided appropriate guidance, and the Department took appropriate action.

The potential panelists also provided the Department with resumes. The Department did not review the resumes as part of the conflict of interest screening process. We reviewed the resumes of 25 of the approved panelists and identified six panelists whose resumes revealed significant professional connections to a teaching methodology that requires the use of a specific reading program. The Department did not identify any of these connections in its conflict of

interest screening process; therefore, it would not have been in a position to deal with the potential conflict raised by these professional connections should a State have included this program in its application.

FINDING 2A – The Department Did Not Follow Its Own Guidance For the Peer Review Process

Our objective was to determine if the expert review panel adequately documented its reasons for stating that an application was unready for funding. Section 1203(c) of the ESEA, under the heading “Peer Review,” states that the panel will recommend grant applications to the Secretary for funding or disapproval. The Department created the *Reviewer Guidance for the Reading First Program* (Reviewer Guidance), which describes the process by which panelists will review applications and provide their comments. The Reviewer Guidance, which the Department provided to panelists, states that it is the reviewer’s responsibility to provide a rating for each review criterion and constructive strength and weakness comments on the Technical Review Form. The guidance states that the panel chair will complete an additional summary sheet, called the Panel Chair Summary, which will reflect a consensus rating and supporting comments for each criterion. The guidance also states that the Panel Chair Summary will provide an overall consensus recommendation for approval or disapproval of the application.

The *Guidance for the Reading First Program* (Reading First Guidance), provided to States in April 2002, states that the expert review panel will “recommend clarifications or changes deemed necessary to improve the likelihood of the plan’s success.” The Reading First Guidance also states that SEAs “will have an opportunity to address the issues and concerns raised by the expert panel reviewers.”

The panelists adequately documented their reasons for stating that an application was unready for funding. The panelists recorded their individual comments on the Technical Review Forms, and then met to discuss these comments. The panel chair then entered a consensus rating on a Panel Chair Summary, which was submitted to the Department’s Reading First office. The Panel Chair Summary appeared to contain constructive comments to support the panel’s ratings.

While the Panel Chair Summaries appeared to provide constructive comments, the impact of the expert review panelists’ comments on State revisions is uncertain because of actions taken by the Department’s Reading First office. After the panel chair submitted the Panel Chair Summaries to the Reading First office, the Reading First Director and his assistant created what they called an “Expert Review Team Report.” This report was provided to the States. No other documents reflecting the expert review panel’s comments were provided to the States. The Department did not explain this practice in the Reviewer Guidance or in the Reading First Guidance.

We have not found any documentation that the Department informed panelists that the Reading First Director and his assistant would write the report sent to SEAs. In fact, in e-mails to panelists the Reading First Director wrote that panelists “should look very closely at the exact panel comments made on the panel chair summary form as these comments drove the SEA’s resubmission.” Likewise, we have not found any documentation that the Department informed

States that they would receive a Department-written report rather than the expert review panel's direct comments.

The Reviewer Guidance states: "the conference call between the panelists and the SEA that will take place after the review of the SEA's application has been established so that the State may receive direct feedback from the expert review panel." In actuality, only the Reading First Director and his assistant conducted these calls. By conducting these conferences and writing the document that was sent to the SEA, the Reading First Director and his assistant cut off any direct contact between States and the expert review panelists and effectively controlled the feedback States received on their applications.

Prior to the first round of conference calls with States, the Reading First Director e-mailed the then Assistant Secretary for OESE² seeking guidance on the inclusion of panel chairs on the conference calls. The Reading First Director stated that "it's generally been mentioned to the States that they would hear directly from the Panel" but that the Department would "lose a bit of control" and the Panel Chair might say things that would "*complicate* matter [sic]" if included on the conference calls. In an earlier e-mail to the Assistant Secretary for OESE, the Reading First Director stated that "in remarks to groups...or face-to-face meetings about what the Review Panel will/won't accept the opportunities for BOLDNESS and, perhaps, extralegal requirements are many." [Emphasis in original.] We have not found any documentation that the Department informed panel chairs that they would not participate in the conference calls as outlined in the Reviewer Guidance. The Reading First Director's assistant stated that the expert review panelists were not included in the conference calls because it was too difficult to schedule.

According to the Reading First Director, he and his assistant created the Expert Review Team Reports to give States a distilled, organized version of the panel's comments that would show them which areas they needed to address. However, we found the Department's Expert Review Team Reports were not always accurate representations of the expert review panelists' comments. The Reading First Director and his assistant changed panelists' comments, left off others, and added comments of their own. In a number of cases, the Department generalized or omitted specific questions or suggestions. In other situations the Department's Expert Review Team Report exaggerated or misstated the panelists' concerns.

The following are specific examples of these practices from the twelve State application files that we reviewed.

Nevada

Nevada submitted its application five times prior to receiving approval. The Panel Chair Summary for Nevada's first submission suggested that the State access *A Consumer's Guide to Evaluating a Core Reading Program* (Consumer's Guide), a guide for evaluating programs authored by Edward J. Kame'enui and Deborah C. Simmons of the University of Oregon. The Panel Chair Summary for Nevada's third submission suggested that the State seek technical assistance on instructional assessments. The Panel Chair Summary for Nevada's fourth submission referred the State to the website at the University of Oregon, which contains a review

² This official left the Department in January of 2003 and for purposes of consistency and clarity will be referred to in this section simply as "the Assistant Secretary for OESE."

of assessments. The Department's Expert Review Team Report corresponding to each submission omitted these comments.

The author of Nevada's Reading First application, Joan Taylor, informed us that the Department's Expert Review Team Report was not specific about what the State needed to fix. She stated that the Reading First Director and his assistant worked with her through a series of conference calls to "try and figure out" what the subpanel wanted. Taylor informed us that she finally asked if there was anything more in writing and was told by the Reading First Director and his assistant that there was nothing. Taylor stated that she felt like she had to guess at what the subpanel wanted and when she did not know what else to do she asked for technical assistance. Taylor informed us that the Reading First Director and his assistant suggested that she look at the Oregon website during a phone conference. Taylor stated that she went to the Oregon website and found the Consumer's Guide.

Taylor was not aware that the document she was discussing with the Reading First Director and his assistant was in fact a Department-written summary of the subpanel's comments and told us that she would have wanted to see the actual subpanel comments. We provided her with two of the Panel Chair Summaries and asked her to compare them to the corresponding Department's Expert Review Team Reports. Taylor stated that the additional documents "would have been very helpful" and "would have saved [her] lots of time" during the application process.

New York

New York submitted its application three times prior to receiving funding. The Department's Expert Review Team Report for New York's first submission did not include specific concerns that the subpanel had about 8 of the 25 criteria. It appears as though the State was not aware of these concerns and did not address them in its resubmission because the subpanel repeated some of these concerns during its second review. The panel chair also stated in the Panel Chair Summary that the assessment, the Woodcock Reading Mastery Test (WRMT), would be inappropriate. The Reading First Director and his assistant wrote in the Department's Expert Review Team Report that only one of WRMT's subtests would be appropriate.

Georgia

Georgia submitted its application three times prior to receiving approval. The Department's Expert Review Team Report for Georgia's first submission failed to adequately summarize the subpanel's comments about instructional assessments and programs. The Department's Expert Review Team Report included the comment that "the review team expressed great concern that, according to the budget...purchasing materials for classroom libraries is a higher priority than purchasing and implementing core reading program materials." This comment was not in the Panel Chair Summary. The Department's Expert Review Team Report for the next submission omitted the subpanel's request for more information on how the Dynamic Indicators of Basic Early Learning Skills (DIBELS) assessment could be used for progress monitoring. Throughout the Georgia application review process, the Department's Expert Review Team Report used comments from individual panelists' Technical Review Forms that were not mentioned in the Panel Chair Summary as representing the consensus of the subpanel.

Wisconsin

Wisconsin submitted its application four times prior to receiving approval. The Panel Chair Summaries for Wisconsin's submissions often included comments that ran several pages for each criterion. One Panel Chair Summary was 88 pages long while the Department's Expert Review Team Report was only 4 pages and failed to capture most of what was prepared by the panel chair. Further, the Department's Expert Review Team Report often did not include any of the panel chair's specific concerns and simply restated the application criteria requirements instead.

Virginia

Virginia submitted its application three times prior to receiving approval. The Department's Expert Review Team Report for Virginia's second submission left out a comment from the Panel Chair Summary that the Partnership for Achieving Successful Schools (PASS) model was inadequately related to SBRR and simply stated that the corresponding criteria did not meet standard. In the third Panel Chair Summary, the rating for this criterion was again "does not meet standard" because this issue had not been addressed. The panel chair wrote: "PASS model requires justification...in its alignment [with] SBRR – as we requested last time." Virginia's final application includes an addendum stating that PASS schools in Virginia receiving funds through Reading First will be required to replace their existing programs with comprehensive SBRR programs.

North Dakota

North Dakota submitted its application five times prior to receiving approval. The Department's Expert Review Team Reports for North Dakota's submissions contained generalized comments that did not relate to those in the corresponding Panel Chair Summaries. The Department's Expert Review Team Reports did not include many of the specific concerns provided in the Panel Chair Summaries.

The Department, by substituting the expert review panel's comments with a Department-created report, did not follow its own guidance for the peer review process. States were not always able to quickly or effectively address problems in their applications because they did not have the benefit of the expert review panel's comments. This increased the resources required by States to apply and by the federal government to review the applications. As a result, not only was the application review process not effectively and efficiently carried out but not all recommendations for improvement were relayed to the States.

FINDING 2B – The Department Awarded Grants to States Without Documentation That the Subpanels Approved All Criteria

Of the 12 Reading First grant application files that we reviewed, it does not appear that the subpanels approved the final applications for four States and one territory: Connecticut, Nevada, New York, Virginia, and Puerto Rico. The Panel Chair Summaries for each final application provided an overall rating of "Disapproval." The Department has not provided any documentation indicating the subpanels approved the final applications for these five applicants.

For example, the Panel Chair Summary for New York's final application provided a rating of "Does Not Meet Standard" for three criteria. The three criteria were Instructional Assessments,

Coherence, and Process for Awarding Subgrants. In the Instructional Assessments and Coherence sections, the subpanel noted inconsistencies between the application narrative and the subgrant request for proposal rubric. In the “Process for Awarding Subgrants” section, the subpanel recommended that the New York State Education Department (NYSED) either change the minimum cut-off score from 75 to a minimum cut-off score of 80 or include a sentence addressed to NYSED’s expert reviewers and LEA applicants that unless all of the bulleted points for each category were addressed, the category could not be judged to have met standard. The Department has not provided additional documentation to show that these issues were resolved prior to the Reading First grant being awarded. In fact, NYSED’s application, posted as approved on its website, did not address any of the recommendations made in the Panel Chair Summary.

As a result, some applicants were funded without documentation that they met all of the criteria for approval raising a question of whether these States should have been funded.

FINDING 3 – The Department Included Requirements in the Criteria Used by the Expert Review Panels That Were Not Specifically Addressed in NCLB

Our objective was to determine if the expert review panel reviewed the applications in accordance with established criteria and applied the criteria consistently. The Department instructed the panelists to use the *Reading First: Criteria for Review of State Applications* (Reading First Criteria) when rating the 25 criteria in each State application. Each criterion was broken up into requirements for a rating of ‘Exemplary,’ ‘Meets Standard,’ and ‘Does Not Meet Standard.’ The Reading First Criteria states “the ‘Meets Standard’ column describes the conditions that reviewers will expect all State applications to meet,” while the “‘Exemplary’ column describes conditions that, when met in addition to those listed under ‘Meets Standard,’ would be expected to result in the highest quality Reading First programs.”

Additionally, the Reviewer Guidance states: “The purpose of the review criteria is to ensure that all applications meet the required standards. Panelists are to use only these criteria in evaluating applications.” The Technical Review forms and Panel Chair Summary forms, which the expert review panelists used when reviewing State applications, included the same ‘Meets Standard’ conditions as the Reading First Criteria.

Based on our review of 12 State applications, it appears the expert review panelists reviewed the applications in accordance with the criteria provided to them and applied the criteria consistently. The criteria, however, included conditions that were not specifically required in the statute. For example, the ‘Meets Standard’ column of criterion IV(A), Key Reading First Classroom Characteristics, required State applications to meet three conditions that were not included in the statute:

- Condition 1b required, “Coherent instructional design that includes explicit instructional strategies, coordinated instructional sequences, ample practice opportunities, and aligned student materials[.]”

- Condition 1d required, “Protected, dedicated block of time for reading instruction[.]”
- Condition 1f required, “Small group instruction as appropriate to meet student needs, with placement and movement based on ongoing assessment[.]”

In a document titled, “Pre-reading notes for [the Assistant Secretary for OESE]” (Pre-reading notes document), the Reading First Director commented on a draft of the Reading First Criteria. The Reading First Director wrote that the Key Reading First Classroom Characteristics section of the Reading First Criteria was significant because “[i]t’s another example of our aggressive approach because, obviously, very little of this section can be pegged to legislative language. It just makes good sense, of course, to help the States see what we know/want RF [Reading First] classrooms to look like. OGC may not like this entire section, and I wanted to birddog it for you.” He continued:

We realize the Meets Standards column is much more fleshed-out than the Exemplary column....What we’ve done – again, extra-legally, really – is push all the characteristics that we originally had in Exemplary and moved them into Meets, because we want all of those (a, b, ...g) characteristics to define *ALL* RF classrooms, not just the star RF classrooms.

The ‘Exemplary’ column in the final Key Reading First Classroom Characteristics section only includes one condition in addition to the requirement that the section ‘Meets Standard.’ In an interview, the Reading First Director acknowledged that the Department included conditions in the ‘Meets Standard’ column of the Reading First Criteria that were not in the law.

Because the Department included language in the ‘Meets Standard’ column of its Reading First Criteria that was not based on the statute, State applications were reviewed based upon standards that were not required by the statute.

FINDING 4 – In Implementing the Reading First Program, Department Officials Obscured the Statutory Requirements of the ESEA; Acted in Contravention of the GAO Standards for Internal Control in the Federal Government; and Took Actions That Call Into Question Whether They Violated the Prohibitions Included in the DEOA

In the course of answering our objectives for the inspection, we found that the Department, acting through the former Assistant Secretary for OESE, the Reading First Director, and others:

- Developed an application package that obscured the requirements of the statute;
- Took action with respect to the expert review panel process that was contrary to the balanced panel composition envisioned by Congress;
- Intervened to release an assessment review document without the permission of the entity that contracted for its development;
- Intervened to influence a State’s selection of reading programs; and

- Intervened to influence reading programs being used by LEAs after the application process was completed.

These actions demonstrate that the program officials failed to maintain a control environment that exemplifies management integrity and accountability.

Congress was explicit about what it intended this program to achieve, how it was to be implemented, and what was to be funded. Congress provided specific legislative guidance on the application approval process, the composition of peer review panels (Title 1, Part B, Section 1203), and the respective roles of the SEAs, LEAs, and the Department (Title 1, Part B, Section 1202). Congress also spelled out an information dissemination role for NIFL. Title 1, Part B, Section 1207(a)(1) directs NIFL to “disseminate information on scientifically based reading research. . . .” As discussed below, program officials tried to purposely obscure the content of the statute and otherwise took actions that seemed to disregard Congress’ direction and intent.

The *Standards for Internal Control in the Federal Government* were issued by GAO in 1999.³ In the standards, GAO defines internal control as “[a]n integral component of an organization’s management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.” As noted in the Foreword to the standards, appropriate internal controls is a key factor in improving accountability. In the standards, GAO states: “Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management.” The first element identified in the standards as affecting the control environment is “the integrity and ethical values maintained and demonstrated by management and staff.”

Further, the Department issued an Administrative Communications System (ACS) Directive entitled “Federal Managers’ Financial Integrity Act Management/Reporting on Internal Controls” in 2003. The provisions of the directive apply to all of the Department’s program and administrative activities, and to all managers at all organizations levels. The directive states that one of the objectives of internal control is so that “Programs and operations are executed and resources are used consistently with agency mission and in compliance with applicable provisions of law, regulation, and government-wide policy requirements.” The directive also states that a major step in the internal control process is establishing management controls, including establishing and maintaining a control environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management. A guiding factor of that control environment is that “management provides leadership to ensure integrity and ethical values are maintained and demonstrated by management and staff.” As discussed below, the actions of the program officials demonstrated a lack of integrity and ethical values that created a control environment that allowed non-compliance with laws and regulations.

³ The Federal Managers’ Financial Integrity Act of 1982 (FMFIA) requires GAO to issue standards for internal control in government. The Office of Management and Budget (OMB) Circular A-123, Management Accountability and Control, revised June 21, 1995, provides the specific requirements for assessing and reporting on controls. OMB Circular A-123 was revised on December 21, 2004 and became effective beginning with fiscal year 2006.

Finally, the DEOA, which established the Department in October 1979, describes the Federal-State relationship in education as follows:

§3403(b) No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system...over the selection or content of...textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

Section 9527 of the ESEA includes a specific prohibition on endorsement of curriculum, which reinforces the language in §3403(b): “Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum...” As discussed below, the Department Officials’ actions raise questions about whether they performed their duties to avoid these prohibitions.

The Department Developed an Application Package That Obscured the Requirements of the Statute

In January 2002, the then Assistant Secretary for OESE⁴ worked closely with the Reading First Director in developing the application package to be provided to States. The package consisted of the application, the Reading First Criteria, which outlined the requirements each State application needed to meet to receive funding, and the Reading First Guidance.

The Assistant Secretary for OESE planned for the Reading First Guidance to include language that was not in the statute and exclude language that was in the statute. After reviewing a revision to the Department’s draft of the Reading First Guidance, the Assistant Secretary for OESE wrote to the Reading First Director, “under reading first plan. i’d like not to say ‘this must include early intervention and reading remediation materials’ which i think could be read as ‘reading recovery’ [a reading program]. even if it says this in the law, i’d like it taken out.” The subject phrase appears in the law twice.⁵

The Assistant Secretary for OESE later wrote, “i think we’ve lost our voice in this guidance, and returned to a business as usual, bureaucratic don’t say what we really want kind of voice.”

⁴ This official left the Department in January of 2003 and for purposes of consistency and clarity will be referred to in this section simply as “the Assistant Secretary for OESE.”

⁵ Section 1202(d)(3)(A)(ii)(I) of the ESEA provides States with the option to use a percentage of grant funds to develop and implement a program of professional development for teachers that shall include “information on instructional materials, programs, strategies, and approaches based on scientifically based reading research, *including early intervention and reading remediation materials*, programs, and approaches. . . .” (Emphasis added.)

Section 1203(b)(4)(B) of the ESEA states that State applications are required to include a description of how “the State educational agency will assist local educational agencies in identifying instructional materials, programs, strategies, and approaches, based on scientifically based reading research, *including early intervention and reading remediation materials*, programs, and approaches.” (Emphasis added.)

The Reading First Director noted that the Guidance was as bold as it could be, given the law. He wrote:

The guidance – throughout – was written in a way that ED people, and then I, thought was the strongest we were able to make it, *given the law.*...I do not want to seem insufficiently bold, but on many of the areas where you clearly want more boldness and different-ness, the summary of my on-going poll of ED insiders is “The law won’t let you do that, no matter what [the Assistant Secretary for OESE] wants/says.”

The Reading First Director also acknowledged that he expected State officials to review the Guidance closely to see that it was in accord with the statute. He added:

[I]t has been suggested to me that the Guidance may be the most problematic place to put some of your suggestions for increased boldness. Why? Guidance is the official place where the State people with the closest readings of the law will go to see where ED has overstepped what the law lets them say. In remarks to groups...or face-to-face meetings about what the Review Panel will/won’t accept the opportunities for BOLDNESS and, perhaps, extralegal requirements are many.

The approach outlined by the Reading First Director was eventually reflected in the application package that was available to every State on April 2, 2002. As discussed in Finding 3, the Department ultimately included the “bold” language that distorted the requirements of the statute in the Reading First Criteria.

In the Pre-reading notes document, the Reading First Director wrote:

OGC could likely have concerns with the overall, near-unrelenting **aggressiveness** of this application...the law does not really require what **we** are quite literally requiring in our (aggressive) application. Such examples are manifold and OGC may catch some, many or all of them. We have not highlighted them to OGC, of course, and we don’t know how many they’ll focus on. On some issues, we may be able to dodge a little by moving some ‘Meets Standards’ points to the ‘Exemplary,’ but if we do that too much, the result is a less bold application and decreased chances of overall success. We’ll need your muscle with OGC on these points across the board.

Ultimately, the Department determined that the Reading First Guidance would be used as a means of appearing to comply with the requirements of the statute. In the Pre-reading notes document, the Reading First Director wrote:

[T]here are things in the Guidance that are **not** in the application – for strategic reasons – because we did not want to remind all applicants of their existence so prominently...but we felt we had to compromise, i.e. put in the Guidance, in some places where the law makes certain things un-ignorable.

The Reading First Director illustrated this strategy by providing the following examples in the Pre-reading notes document:

Page 19, [Section] F-2, 2 b. [of the Guidance] “**Providing expanded opportunities** to students in kindergarten through grade 3 who are served by eligible local educational agencies for receiving reading assistance from alternative providers.”

We make absolutely no mention on this opportunity in the application, because we don’t like it and don’t want to open the door to this, but it is in the law and needs to be addressed somewhere reasonably official – like the Guidance – as a “best” compromise. FYI.

Also, Page 19, [Section] F-3 **Are there any required priorities for funds reserved for State use?** Yes. A State educational agency shall give priority to carrying out the activities described in Question F-2 for schools that are among the schools served by eligible local educational agencies with the highest percentages...”

Again, my belief is that this is a potential back door though [sic] which some money could flow in unwanted directions, and therefore this **required priorities for funds reserved for State use** element of the law is NOT NOT [sic] in the application, but we have to reflect that we know it exists *somewhere*, so that place is the Guidance. FYI.

In the final Reading First Guidance, Section F-2, 2b. remained unchanged from the portion quoted above. In section F-3, the substantive content from the portion quoted above remained unchanged.

The Department Took Action With Respect to the Expert Review Panel Process That Was Contrary to the Balanced Panel Composition Envisioned by Congress

Congress, through Title 1, Part B, Section 1203(c)(2)(A) of the ESEA, envisioned an expert review panel with equal representation from the Department, NIFL, NAS, and NICHD. As we reported in Finding 1A, the Department nominated a majority of the individuals serving on the expert review panel. Additionally, 15 of the 16 subpanels had a majority of Department-nominated panelists and none had the balanced composition envisioned by Congress.

The Reading First Director took direct action to ensure that a particular approach to reading instruction was represented on the expert review panel. Direct Instruction (DI) is a model for teaching that requires the use of Reading Mastery, a program published by SRA/McGraw-Hill, to teach reading. The Reading First Director formerly served as the Executive Director of the Baltimore Curriculum Project, which has implemented DI in Baltimore City schools since 1996.

The Reading First Director personally nominated three individuals who had significant professional connections to DI to serve on the expert review panel. The Reading First Director

selected these three individuals to serve on a total of seven of the 16 subpanels and one of these individuals to serve as the panel chair on five subpanels. These three individuals were collectively involved in reviewing a total of 23 States' applications.

A Baltimore City Public Schools official contacted a Department official to express concern that two panelists were involved with or employed by DI and questioned whether those two panelists indicated their connections to DI on the conflict of interest form. In May 2002, the Department official forwarded this information to the Reading First Director who passed the concerns on to one of the panelists in question as a "Confidential FYI." This panelist replied:

I suspect that [the Baltimore City Public Schools official's] assumption is that USDE must be warned that there may be DI infiltrators and that somehow USDE knows how dangerous that can be. You may remember that [the Baltimore City Public Schools official] is a whole language (now called Balanced Literacy) proponent.

The subsequent e-mail response from the Reading First Director suggests his intention to ensure a DI presence on the expert review panel: "Funny that [the Baltimore City Public Schools official] calls *me* to inform that there may be some pro-DI folks on *my* panel!!! Too rich!" The panelist then asked, "Does he know who you are? Past and present?" The Reading First Director replied, "That's the funniest part – yes! You know the line from Casablanca, 'I am SHOCKED that there is gambling going on in this establishment!' Well, 'I am SHOCKED that there are pro-DI people on this panel!'"

Shortly before this exchange, a Department employee reported to the Reading First Director that the Department had received a question from a member of the media about the panel composition. The response by the Reading First Director suggests that he may indeed have intended to "stack" the expert review panel. The employee stated: "The question is...are we going to 'stack the panel' so programs like Reading Recovery don't get a fair shake[?]" The Reading First Director responded, "'Stack the panel?'...I have never *heard* of such a thing....<harumph, harumph>[.]"

A few days before the Department publicly announced the panelists it had chosen to serve, one of the Department-nominated panelists contacted the Reading First Director and shared his strong bias against Reading Recovery and his strategy for responding to any State that planned to include Reading Recovery in its application. The Reading First Director responded: "I really like the way you're viewing/approaching this, and not just because it matches my own approach :-), I swear!" This individual later served as the panel chair for the subpanel that reviewed Wisconsin's State application and in response to the State's plans to use Reading Recovery, he included an 11-page negative review of Reading Recovery in his official comments on the application.

Around the same time, Reid Lyon, the former Chief of the Child Development & Behavior Branch at the NICHD, advised the Reading First Director, the Assistant Secretary for OESE, and the Senior Advisor to the Secretary at the time that one of the panelists had been "actively working to undermine the NRP [National Reading Panel] Report and the RF initiatives." Lyon

further stated, “Chances are that other reviewers can trump any bias on her part.” In a written response to all of the people involved, the former Senior Advisor to the Secretary stated, “We can’t un-invite her. Just make sure she is on a panel with one of our barracuda types.”

The statute envisioned that the expert review panel would be balanced with representatives from the Department and three other named organizations. In fact, virtually all of the subpanels had a majority of Department-nominated panelists. Against this backdrop, the actions of the Director and the former Senior Advisor to the Secretary become particularly problematic.

Additionally, the first element identified in GAO’s *Standards for Internal Control in the Federal Government* as affecting the control environment is “the integrity and ethical values maintained and demonstrated by management and staff.” The apparent intent of the Reading First Director to include and to give a significant role to panelists who reflected his personal preference in reading programs; his specific encouragement to a panelist who held views similar to his on Reading Recovery; and the intention of the former Senior Advisor to the Secretary to control another panelist raise significant questions about the control environment in which the program was being managed.

The Department Intervened to Release an Assessment Review Document Without the Permission of the Entity That Contracted for Its Development

Title 1, Part B, Section 1207(a)(1) of the ESEA directs NIFL to “disseminate information on scientifically based reading research. . . .” NIFL contracted for the University of Oregon’s Institute for the Development of Educational Achievement (IDEA) to perform a review of assessments. The Reading First Director inappropriately intervened to release the report produced as a result of this review.

In January and February of 2002, the Department held “The Secretary’s Reading Leadership Academies” (SRLAs). *The Reading Leadership Academy Guidebook* (the Guidebook) was published after the SRLAs and collected “the essential materials offered to more than 600 state-level administrators and policy makers at the academies.”

The Guidebook included a PowerPoint presentation on “the dimensions of assessment important to reading instruction” by a group referred to as the “Reading First Academy Assessment Committee.” This committee consisted of eight members, led by Edward Kame’enui, the Director of IDEA. In the presentation, this committee listed a sample of assessments that it planned to review.

The committee’s final report, “An Analysis of Reading Assessment Instruments for K-3,” does not mention any connection to the Department or to NIFL. Additionally, the committee does not refer to itself as the “Reading First Academy Assessment Committee,” but rather only as the “Assessment Committee.”

The report includes an analysis of 29 assessments. Of these 29, the Assessment Committee found 24 to have “‘sufficient evidence’ for use as screening, diagnosis, progress monitoring, and/or outcome instruments to assess one or more essential reading components at one or more

grade levels K-3.” The Assessment Committee found the other five assessments “not to have ‘sufficient evidence’”

The report, which can be found on the IDEA website, states: “there are literally hundreds of reading assessment instruments available in the marketplace.” The report states that the Assessment Committee, as a starting point, used the Southwest Educational Development Laboratory’s (SEDL) “Reading Assessment Database for Grades K-2: Statewide Assessments” to help select the assessments it would review. According to the report, this database yielded 154 possible early reading assessment tools. In addition, the Assessment Committee members submitted 27 personal recommendations of reading assessment measures.

Of the 29 assessments the Assessment Committee selected to review, 11 were chosen solely from the SEDL database and the remaining 18 were on the list of personal recommendations.

Of the 24 assessments the Assessment Committee found to have “sufficient evidence,” seven were directly tied to Assessment Committee members:

- Five were developed or co-developed by Assessment Committee members;
- One lists an Assessment Committee member as the individual who can provide technical information; and
- One is the product of a company that is directed by an Assessment Committee member.

Although NIFL funded the Assessment Committee’s review, the Director of NIFL, Sandra Baxter, informed us that she decided not to issue the Assessment Committee’s final report. NIFL officials were concerned that releasing the report might appear as though NIFL was endorsing specific products. Baxter sought guidance on the endorsement issue from the Department’s OGC on whether NIFL should release the report. It is unclear if this guidance was ever provided to NIFL.

When we notified Baxter and Lynn Reddy, the Deputy Director of NIFL, that the report was released on the IDEA website, Baxter informed us that she was surprised to learn this. Reddy expressed the view that the Assessment Committee’s report should not have been posted on the IDEA website.

The Reading First Director was in frequent contact with Kame’enui and Doug Carnine, a research associate at IDEA and professor at the University of Oregon, concerning the release of the Assessment Committee’s report. In e-mail correspondence with Carnine in May 2002, Kame’enui wrote, “If I am asked, who do I say initiated and funded this effort?” Carnine responded, “Say you received funding from RMC [RMC Research Corporation, a Reading First contractor]. If they ask who funded RMC say the Dept of Ed. You should not need to answer such questions in writing.”

Carnine forwarded this string of e-mails to the Reading First Director and wrote, “Should [Kame’enui’s] report go to RMC? Should it be on the web before being sent to you?” The Reading First Director responded, “As I/we try to weigh all the elements and make the best

decision, I'd like to know whether the Assessment work is ready to go fully live...?" Carnine responded, "They are ready to go live but I see now that [the Assistant Secretary for OESE] wants to review." In a later e-mail, Carnine asked, "Is [the Assistant Secretary for OESE] thinking of killing [the report]?" The Reading First Director responded, "I don't *think* so, and I am arguing strenuously against that. Very strenuously."

The Reading First Director sent Kame'enui an e-mail requesting that he send the Assessment Committee's report to the Assistant Secretary for OESE "prior to the 'release' to the public." Kame'enui asked the Reading First Director whether he should send a set of report materials for him too. The Reading First Director responded, "Yes, please! Then I can become a better-informed ambassador and advocate for the Assessment Committee's work!"

While waiting for the approval to release the Assessment Committee report, Kame'enui consulted with the Reading First Director over what to tell publishers that asked about it. Kame'enui asked, "should I say the report is completed but under review or do I simply say it is not ready for public release?" The Reading First Director advised Kame'enui to "go with... 'not ready' for the reason that the 'under review' option could lead to the non-trivial question, 'Under review by whom?' which then gets into the next issue of, 'is this a NIFL doc, or an ED doc?'"

Kame'enui, in correspondence with the Assessment Committee members and the Reading First Director shortly before the release of the report, wrote: "[T]he report will be presented and represented publicly as an independent report completed under the auspices of our institute, the Institute for the Development of Educational Achievement (IDEA) in the College of Education at the University of Oregon. It will not be identified as a Reading First document." Kame'enui also made the decision to present the report itself as a "singular effort" on his part, rather than as the effort of the Assessment Committee. One reason he provided was: "Because several of [the Assessment Committee members] are authors or co-authors of the assessment instruments [the Assessment Committee] reviewed, the perception of a conflict of interest in shaping the final report was a concern."

In May 2002, the Reading First Director asked the Assistant Secretary for OESE if he could give Kame'enui permission to put the report on the IDEA website and stated, "[NIFL] will slow us down." The Assistant Secretary for OESE informed the Reading First Director that Kame'enui had not yet shared the report with NIFL.

A few days later, the Reading First Director asked the Assistant Secretary for OESE if he had "permission to bug Sandra Baxter about the...assessment work," writing that "[s]tates are desperate for that critical work." In response, the Assistant Secretary for OESE informed the Reading First Director that the report could be put on the IDEA website and then the report would go on The Partnership for Reading⁶ (Partnership) website after Baxter approved it.

Later that day, the Reading First Director wrote to Kame'enui:

⁶ The Partnership for Reading is administered by NIFL and, according to its website, is "a collaborative effort by three federal agencies - the National Institute for Literacy (NIFL), the National Institute of Child Health and Human Development (NICHD), and the U.S. Department of Education - to bring the findings of evidence-based reading research to the educational community, families, and others with an interest in helping all people learn to read well."

Please post your splendid work on your IDEA website, announce it in any way(s) you choose, and I will inform you when we can post it as well on the Partnership website, NIFL, maybe even ED's...I will worry about the Baxter/NIFL angle – you are completely covered, [The Assistant Secretary for OESE] has approved this specific step. No worries on your end.

One day later, Baxter wrote in an e-mail to the Reading First Director: “The copy of the final report just reached us today...I’ll let you know...what our timeline for releasing the results will be.” A few days later, Baxter wrote to the Reading First Director: “Clearly, [the Assessment Committee’s final report] is not in shape for publication as submitted. I’ll need at least a few days to read the entire report and determine just how to streamline it into a document that is useful to our intended audience.” The Reading First Director forwarded this e-mail to the Assistant Secretary for OESE, who responded, “at this rate, it may never get up on the nifl website.”

The Assessment Committee’s final report never appeared on NIFL’s or the Partnership’s website.

The Department Intervened to Influence a State’s Selection of Reading Programs

As noted above, the Department is prohibited from endorsing curriculum and from mandating, directing or controlling a State’s curriculum or program of instruction.

In July 2003, the Reading First Director received information from the Maryland State Department of Education’s (MSDE) Director of Reading First concerning a clarification to the State’s plans for selecting a list of core reading programs. The Reading First Director then forwarded this information to Carnine and Jerry Silbert, a consultant to RMC, and stated:

This CONFIDENTIAL update comes after a direct call I made to MD [Maryland] after a tip/suggestion from [Silbert]. This “clarification” represents a marked shift from their earlier comments and, although not settled completely yet, bodes well for DI in Baltimore. Who knows [Michael] Coyne [an Assistant Professor at the University of Connecticut] well? We need to ENSURE that when MD *does* do its application of...Consumer Guide that Reading Mastery [a DI reading program published by SRA/McGraw-Hill] is NOT relegated to supplemental status, which would be HORRIBLE for so many...schools in Balt[imore].

On August 1, 2003, Carnine sent Kame’enui an e-mail and asked him to forward it to Michael Coyne. In this e-mail, Carnine stated:

Just mention that [Baltimore] has many schools using RM [Reading Mastery] as a core program with EXCELLENT results but that MSDE, for all the wrong reasons, left to its own devices could well shunt RM off to the side with the kiss-of-death as a “supplemental” or “intervention” program. And, once MSDE did something like that, it would be much harder to have them un-do it. . . .The way

it's set up, if, while applying [the Consumer's Guide] tool, [MSDE] were to classify RM as a comprehensive program...MSDE couldn't un-do it.

After obtaining Coyne's e-mail address, Carnine stated to Coyne in an e-mail, dated August 2, 2003:

Please let me know if you have questions. Also feel free to ask [the Reading First Director] to confirm that RM can legitimately be treated as a core program...For more on DI results (as a core program) in MD you can contact Muriel Berkeley [the President and CEO of the Baltimore Curriculum Project who also served as an expert review panelist]. . . .

Carnine ensured that the Reading First Director and Berkeley were fully informed of his actions by forwarding both of the August 2003 e-mails to them.

In November 2003, MSDE issued the "Final Report of the Maryland Committee for Selecting Core Reading Programs." The report stated that all LEA representatives on the committee "were required to participate in a full day of training by Dr. Michael Coyne on September 16, 2003."

The report then stated:

Also during August [2003], Dr. Deborah C. Simmons [the former Associate Director of IDEA at the University of Oregon] and her associate, Dr. Michael Coyne, were in frequent communication with [MSDE's] Office of Reading First to plan how to use the *Consumer's Guide for Evaluating a Core Reading Program* (Simmons & Kame'enui, 2003) in order to achieve the goal of establishing a Fall 2003 list of Maryland Approved Core Reading Programs.

Dr. Simmons advised that Maryland base the work of its statewide Committee on the *Oregon Reading First Center: Review of Comprehensive Programs* (Curriculum Review Panel, July 2003). Oregon's distinguished panel of reviewers...evaluated nine core reading programs. . . .

...From the list of nine programs reviewed by Oregon, MSDE, responding to the consultant guidance of Drs. Simmons and Coyne, selected the following seven core programs receiving the highest Oregon ratings for the Maryland Committee's work:

- Houghton Mifflin, *The Nation's Choice 2003*
- SRA, *Open Court 2002*
- SRA/McGraw-Hill, *Reading Mastery Plus 2002*
- Macmillan/McGraw-Hill, *Macmillan/McGraw-Hill Reading 2003*
- Harcourt, *Trophies 2003*
- Success for All Foundation, *Success for All*
- Scott Foresman, *Scott Foresman Reading 2004*[.]

The report stated, “Maryland’s approved application for funding under Reading First specifies that every Reading First School, kindergarten through third grade, must implement a core reading program from this list that is based on scientifically based reading research (SBRR).”

As a result of the actions taken with regard to MSDE’s process for selecting core reading programs, the Reading First Director’s initial fear that Reading Mastery would be “relegated to supplemental status” was not realized since MSDE, with the help of Simmons and Coyne, selected Reading Mastery as one of its seven core reading programs. The Reading First Director’s actions raise a question as to whether he was acting with the restraint envisioned by Congress in the endorsement of curriculum prohibitions of the DEOA and the ESEA.

The Department Intervened to Influence Reading Programs Being Used by LEAs After the Application Process Was Completed

After certain States completed the application process and received funding, the Reading First Director became aware that certain LEAs in these States were using the Rigby Literacy (Rigby) and Wright Group Literacy (Wright Group) programs. The Reading First Director worked closely with a Department staff member, a former expert review panelist, who undertook a review of both of these programs.

In e-mail correspondence with the staff member regarding the Wright Group, the Reading First Director stated:

Beat the [expletive deleted] out of them in a way that will stand up to any level of legal and [whole language] apologist scrutiny. Hit them over and over with definitive evidence that they are not SBRR, never have been and never will be. They are trying to crash our party and we need to beat the [expletive deleted] out of them in front of all the other would-be party crashers who are standing on the front lawn waiting to see how we welcome these dirtbags.

The Reading First Director forwarded the above e-mail to Lyon and stated:

Confidential FYI. Pardon in-house language I use...with fellow team members and friends. Do you know—on the QT—if anyone has done any good review of the Wright Group stuff, to date? We have beaten Maine on Rigby and this is cut from the same cloth. We are proceeding, of course, but if you knew of a good piece of work dissecting The Wright Group’s stuff, it could further strengthen our hand.

Lyon responded that he would obtain this information and added, “I like your style.” In response, the Reading First Director stated, “Additional firepower...may help us make this a one-punch fight.”

After reviewing the programs, the staff member provided the Reading First Director with notes and talking points critiquing these programs. The Reading First Director used this information to convince States using Rigby and Wright Group to change programs. In an e-mail to Lyon, the Reading First Director wrote, “I spoke to Fred Carrigg [the former New Jersey Director of

Reading First]...with a roomful of others on their end and they are HALTING the funding of Rigby and, while we were at it, Wright Group. They STOPPED the districts who wanted to use those programs.”

In a later e-mail to Lyon, the Reading First Director stated:

As you may remember, RF got Maine to UNDO its already-made decision to have Rigby be one of their two approved core programs (Ha, ha – Rigby as a CORE program? When pigs fly!) We also as you may recall, got NJ [New Jersey] to stop its districts from using Rigby (and the Wright Group, btw) and are doing the same in Mississippi. This is for your FYI, as I think this program-bashing is best done off or under the major radar screens.

In a formal letter to Carrigg, the Reading First Director did not specifically name Rigby and Wright Group as not being aligned with SBRR. The Reading First Director wrote, “It appeared that New Jersey had not fulfilled its responsibility to ensure that all LEAs and schools selected to participate in Reading First...would implement comprehensive reading programs that are fully aligned with scientifically based reading research.” The Reading First Director informed us that he could not definitively say why he did not formally state in the letter that those specific programs were not in line with SBRR.

Massachusetts, North Dakota, and Kentucky also encountered post-application problems concerning the implementation of their reading programs. Massachusetts was approved in its Reading First application to develop its own guide for LEAs to select reading programs. North Dakota was approved in its Reading First application to develop a State list of approved programs using the Consumer’s Guide. Kentucky was approved in its Reading First application to adopt the Massachusetts guide. LEAs in all three of these States selected reading programs that were later questioned by the Reading First Director or his assistant.

Massachusetts

In Massachusetts, the Reading First Director raised questions over the SBRR qualifications of programs in four districts. The Coordinator of the Massachusetts Reading First Program, Cheryl Liebling, who had worked for RMC as a consultant during the application process, informed us that the Reading First Director contacted her with concern over the programs currently in use in these districts. This concern was raised even though the State had approved the LEAs’ choices for reading programs using the expert review panel-approved criteria. The programs used by the four districts were Wright Group, Rigby, Literacy Collaborative, and Harcourt Collections. Liebling said that she contacted the districts and suggested a change, telling the districts that the Reading First Director had concerns about their programs. The district using Wright Group elected not to change its program, even after Liebling’s recommendation. This district eventually had its funding taken away. The three other districts agreed to change to other programs and all three districts continue to be funded.

North Dakota

During North Dakota’s first year of LEA grants, three schools used the State list of approved programs to select Rigby as their reading program. After the State approved their use of Rigby,

the three schools implemented the program. The North Dakota Reading First Assistant Director, Gail Schauer, in an e-mail to the Reading First Director, wrote, “[The Reading First Director’s assistant] indicated that North Dakota Reading First could not use the Rigby Literacy Program as a core reading program. The Rigby Literacy Program, however, could be used as a supplemental program.” Schauer requested that the three schools “be allowed to implement the Rigby Literacy Program in their Reading First schools until their three-year subgrant period is completed...based on the fact that the Rigby Literacy Program was an approved program at the time they wrote their grant, received approval, and began the implementation phase.” Schauer contacted the Reading First Director’s assistant two months later to ask whether any decisions were made on the schools’ use of Rigby. The Reading First Director’s assistant responded that the Department was waiting for feedback on the State’s monitoring visit to make a final determination.

A month and a half later, Schauer contacted the Reading First Director’s assistant again asking for information on Rigby. The Reading First Director’s assistant replied that the Department did not have the full findings from the monitoring report, but the preliminary report “found that the core program used in the Fargo School District did not appear to be systematic, explicit or sequential” and the report found “instruction in classrooms to focus on strategies such as cueing systems, which are not aligned with scientifically based reading research.” Schauer informed us that given a choice between receiving Reading First funds or continuing their use of Rigby, the three schools opted to stay with Rigby. All three lost their funding after the first year of implementation.

Kentucky

The Reading First Director questioned the use of Reading Recovery and Rigby in three Kentucky districts. The Reading First Director informed us that he asked the State to provide more justification of both programs’ alignment with SBRR. State officials informed us that they spoke with the Reading First Director in a conference call and informed him that they believed Reading Recovery and Rigby were sufficiently SBRR. State officials said that the Reading First Director told them he had concerns about Reading Recovery and urged them not to use Reading First funds on the program. The State officials said that they asked for this request in writing, but the Reading First Director told them that he would not do so and invited them to defend the two programs instead. The State officials subsequently provided support for the programs in writing, but they informed us that they did not receive a response from the Department. A State official informed us that the districts in question are still using Rigby and Reading Recovery. Despite the Reading First Director’s assertion that these programs were not SBRR, when the State provided documentation to support the use of the programs, the Department did not respond.

The actions taken by the Reading First Director again call into question whether his intervention in these circumstances violated provisions of the DEOA and NCLB that prohibit the Department from exercising control over the curriculum or program of instruction of any school system.

RECOMMENDATIONS

We recommend that the Assistant Secretary for OESE

- 1) Develop internal management policies and procedures for OESE program offices that address when legal advice will be solicited from OGC and how discussions between OGC and the program staff will be resolved to ensure that programs are managed in compliance with applicable laws and regulations.
- 2) In consultation with OGC, evaluate OESE's processes for assessing potential conflict of interest questions, when a panel review process is used, and make those improvements necessary to strengthen the processes.
- 3) Review all Reading First applications to determine whether all criteria for funding have been met.
- 4) Review the management and staff structure of the Reading First program office and make changes, as appropriate, to ensure that the program is managed and implemented consistent with the statutory requirements of NCLB.
- 5) Request that OGC develop guidance for OESE on the prohibitions imposed by §3403(b) of the Department of Education Organization Act.
- 6) When similar new initiatives are approved by Congress, rely upon an internal advisory committee, which includes representatives from other OESE programs, OGC, and the Department's Risk Management Team, to provide feedback on program implementation issues and ensure coordination in the delivery of similar or complimentary Department programs.
- 7) Rely upon the internal advisory committee to:
 - a. Determine whether the implementation of Reading First harmed the Federal interest and what course of action is required to resolve any issues identified; and
 - b. Ensure that future programs, including other programs for which the Department is considering using Reading First as a model, have internal controls in place to prevent similar problems from occurring.
- 8) Convene a discussion with a broad range of state and local education representatives to discuss issues with Reading First as part of the reauthorization process.

DEPARTMENT COMMENTS

On August 29, 2006 we received a letter from the Secretary of Education that stated the Department concurred with all of our recommendations and that her letter would be followed by a more detailed response. On September 19, 2006 we received a second letter from the Secretary that reiterated the Department's concurrence with all the recommendations in the draft and outlined a series of steps that the Secretary would take in response to our report. The letter also stated that while the Department found the draft recommendations and much of the discussion in the report to be helpful, it did not agree with all of the key points made in the draft findings. An attached letter from the Assistant Secretary for OESE provided a detailed response to our draft. We have summarized the Department's comments and provided our responses below. All of the Department's response letters, in their entirety, are attached.

FINDING 1A – The Department Did Not Select the Expert Review Panel in Compliance With the Requirements of NCLB

Department Comments

The Department agreed with our finding that it did not fully adhere to the statutory requirement for establishing the expert review panel. The Department acknowledged that it had considered and OGC had recommended the establishment of a twelve-member "Advisory and Oversight Panel" made up of individuals nominated by NAS, NICHD, and NIFL. The Department stated that it is not aware of any information to show that not establishing this panel resulted in any inappropriate effects or disadvantage to any State, but stated that it will discuss this issue with State representatives and review applications to determine if there were any inappropriate effects.

OIG Response

No changes have been made to this finding. The Department acknowledged that it did not establish an expert review panel in a manner that was consistent with the statutory language.

FINDING 1B – While Not Required to Screen for Conflicts of Interest, the Screening Process the Department Created Was Not Effective

Department Comments

The Department stated that it had some concerns with this finding. The Department stated that it was not required to screen for conflicts of interest, but decided to take the extra step and establish a screening process in cooperation with the Ethics Division of OGC. The Department stated that the integrity of the panel process was important, and it took appropriate action to ensure that no conflict occurred.

The Department stated that it reasonably adapted the competitive grant conflict of interest procedures to the Reading First program. The Department stated there was no available information to show that the inclusion of six panelists who had connections to a teaching methodology resulted in any problematic behavior or that any of these panelists reviewed a state application that included such a program. The Department stated that it used the standard of “avoiding financial connections” to programs or products and that OIG suggests that the appropriate standard should have been “significant professional connections to a teaching methodology that requires the use of a specific reading program,” which it labeled as not easy to define and implement.

The Department stated that the OIG finding suggests that the Department could have been better off by just meeting the minimal requirement of the law, which is that no conflict of interest screening process is required, and none needed to be implemented.

OIG Response

No changes have been made to this finding.

As we stated in our report, the Department was not required to screen for conflicts of interest. However, since it wisely chose to do so, we evaluated the effectiveness of the process it selected. Our objective was not to discourage the Department from taking such actions, but rather to point out simple additional actions that might have improved the process, such as including relevant questions regarding impartiality and reviewing resumes.

The six panelists mentioned had significant professional connections to Direct Instruction (DI), a model for teaching that requires the use of the program Reading Mastery. At the time of the screening process, the Department anticipated that States would include specific programs in their applications. Based upon the screening process used, the Department would not have known of the potential conflict posed by having any of the six individuals review a State application that included Direct Instruction.

FINDING 2A – The Department Replaced What the Law Intended to be a Peer Review Process With its Own Process

Department Comments

The Department stated that it did not replace the process required by the statute, and that the statute does not establish the role of reviewers’ comments. The Department stated that although the program office originally intended in its Reviewer Guidance to have reviewers provide comments directly to the applicants, it found that this did not always ensure that applicants knew what needed to be addressed.

The Department stated that its staff did a further review of the summaries of the comments and overall, the staff found that the summaries did not deviate significantly from the reviewers’ comments.

The Department stated that it modified the process after it was initiated without amending the original planning documents and that in the future it will take steps to ensure that all plans for review of applications are followed or amended when necessary.

OIG Response

We have modified the wording of the report to clarify what occurred. The statute did not provide a process for expert review; however, the Department issued guidance to establish the role of reviewers' comments. The process actually undertaken by the Reading First program office, however, differed from the process outlined in its guidance. There is no evidence to show that the Reading First program office communicated these changes to either reviewers or applicants. In addition, there is no evidence that the Reading First program office ever sent the actual Panel Chair Summaries to applicants. The report outlines those instances where the Department-prepared summaries deviated significantly from the reviewers' comments and were not always accurate representations of the reviewers' comments.

FINDING 2B – The Department Awarded Grants to States Without Documentation That the Subpanels Approved All Criteria

Department Comments

The Department stated that the program statute did not require the panel to approve final applications and that the panels were advisory, even though the program office tried to follow the recommendations of the panels. The Department also stated that in a number of cases a review of a resubmitted application revealed minor remaining issues, and it was not practical to always reconvene a subpanel.

OIG Response

No changes have been made to this finding.

We recognize that the panel served an advisory role in recommending the approval of final applications. In the specific examples provided in our report, the remaining issues were not minor.

FINDING 3 – The Department Included Requirements in the Criteria Used by the Expert Review Panels That Were Not Specifically Addressed in NCLB

Department Comments

The Department commented that our report suggested the guidance issued by the Department may not include review criteria not specifically stated in the statute. The Department stated that the Reading First Criteria sets forth guidance on what criteria the subpanels are likely to use in reviewing State applications for Reading First grants. The Department further stated that States were reminded that they must meet all program requirements in order to receive funding and that this document was merely guidance.

The Department stated that the “Meets Standard” column would describe the conditions that reviewers will expect all State applications to meet. The Department acknowledged that in a few instances, the information in the “Meets Standard” column was not specifically required; it merely provided information on a submission that would be good practice and was helpful in ensuring good program management by the State.

The Department also stated that it did not receive complaints from States that the guidance was onerous.

OIG Response

No changes have been made to this finding.

We recognize the Department’s interest in developing high-quality programs; however, criteria not specifically stated in the statute should not have been included in the “Meets Standard” column, but rather in the “Exemplary” column, which was the place identified by the Department to list additional criteria that it believed would help encourage high-quality projects.

Despite the Department’s assertion that the document was merely guidance, the Reviewer Guidance states that panelists who reviewed the applications were to use *only* the criteria provided in the guidance.

FINDING 4 – In Implementing the Reading First Program, Department Officials Obscured the Statutory Requirements of the ESEA; Acted in Contravention of the GAO Standards for Internal Control in the Federal Government; and Took Actions That Call Into Question Whether They Violated the Prohibitions Included in the DEOA

Department Comments

The Department stated that this section of the report cites a number of informal internal communications. In the introduction to its specific comments, the Department expressed concern that it may be too easy (and inaccurate in some instances) to read interpretations into, or draw conclusions about, a person’s professional intent or actions solely from raw, unfiltered, informal snapshots of information.

The Department commented that while it is clearly the State’s responsibility to select and approve programs for use by participating LEAs, the Department must ensure that only programs that meet statutory requirements are implemented. The Department further stated that when it becomes aware of programs that may not meet these provisions, it is incumbent upon the Department to raise that issue and question that action. The Department stated that it is not aware of information showing inappropriate actions to require particular programs or approaches.

OIG Response

No changes have been made to this finding.

The statements quoted in our report were not informal communications. The Reading First Director's communications were written using a Department e-mail account in his role as the Reading First Director. In preparing its response, the Department reviewed all of the e-mail communications quoted in this report. The Department's response does not suggest any instances where quotations were used out of context or inaccurately.

We agree that the Department must ensure that only programs that meet statutory requirements are implemented. If the Department was aware of programs that did not meet the statutory requirements, it should have shared that information formally and transparently. In this instance, that is not what occurred.

While the Department stated that it is not aware of information showing inappropriate actions to require particular programs or approaches, the actions reflected in this report raise serious concerns about the conduct of Department officials with respect to the limitations imposed by §3403(b) of the Department of Education Organization Act.

Other Department Comments

In the introduction to its specific comments, the Department fully acknowledged its responsibility to implement programs with fairness and integrity and to follow the law and its own guidance. We strongly concur. When, as here, that does not occur, it can only serve to undermine the public's confidence in the Department and its implementation of major programs, such as Reading First. As the Department notes, it is incumbent upon all Department employees "to take painstaking care to maintain the public trust."

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our inspection were to:

1. Determine if the Department selected the expert review panel in accordance with the No Child Left Behind Act of 2001, Section 1203(c) and if the Department adequately screened the panel members for possible conflict of interest issues;
2. Determine if the expert review panel adequately documented its reasons for stating that an application was unready for funding; and
3. Determine if the expert review panel reviewed the applications in accordance with established criteria and applied the criteria consistently.

Through the course of our fieldwork, we identified a fourth item of concern related to actions that were contrary to statutory requirements of the ESEA, the GAO *Standards for Internal Control in the Federal Government*, and the DEOA.

We began our fieldwork on September 28, 2005, and we conducted an exit conference on July 18, 2006.

We interviewed Department staff in the Reading First program office and in OGC. We reviewed Department guidance and other documentation. In addition, we reviewed Department correspondence related to the Reading First program.

We also reviewed the applications from the following 11 States and one territory: Connecticut, Georgia, Kentucky, Massachusetts, Michigan, Nevada, New York, North Carolina, North Dakota, Virginia, Wisconsin, and Puerto Rico. We also reviewed the individual panelists' Technical Review forms, the Panel Chair Summary forms, the Department's Expert Review Team Reports, and the official grant file for each of the 12 applicants.

Our review focused on nine of the 25 criteria each application was required to meet:

- State Outline and Rationale for Using SBRR;
- Instructional Assessments;
- Instructional Strategies and Programs;
- Instructional Materials;
- Instructional Leadership;
- District and School Based Professional Development;
- Evaluation Strategies (Improving Reading Instruction);
- State Professional Development Plan; and
- Evaluation Strategies (State Reporting and Evaluation).

We interviewed officials from 10 of the States in our sample.

We also obtained documentation relating to the nomination of panelists. We interviewed appropriate officials from NIFL, NICHD, and NAS about the panel nominations. We also obtained completed conflict of interest questionnaires and panelist resumes.

Our inspection was performed in accordance with the 2005 President's Council on Integrity and Efficiency Quality Standards for Inspections appropriate to the scope of the inspection described above.



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

August 29, 2006

MEMORANDUM TO JACK HIGGINS

FROM: Margaret Spellings /s/

RE: Draft Inspection Report: *The Reading First Program's Grant Application Process*

I am in receipt of the Draft Inspection Report: *The Reading First Program's Grant Application Process* (Control Number ED-OIG/I13-F0017) of August 2006 and cover memo of August 8, 2006, from Cathy Lewis, your Assistant Inspector General for Evaluation, Inspection, and Management Services, to Dr. Henry Johnson, Assistant Secretary for Elementary and Secondary Education. Thank you for your hard work on this project.

I have reviewed the report, concur in all the recommendations, and will proceed to implement the recommendations immediately. The Department will separately provide formal, detailed comments on the draft report prior to the deadline of September 7, 2006.

Because of its effectiveness in improving student achievement, I am deeply committed to the successful continuation of No Child Left Behind's (NCLB) Reading First program, the largest and most focused early reading initiative in our nation's history. Reading First is one of the best tools we have to achieve the NCLB goal of bringing every student in America up to grade level in reading and math by 2014.

State programs funded by Reading First have already served more than 1.7 million students and more than 101,000 teachers have benefited from professional development. The program helps teachers translate scientific research on how children learn to read into practical tools for effective classroom instruction. While the Reading First program is still in its early years, we are encouraged by its success thus far. Thanks to Reading First, students struggling with reading are far more likely to get the help they need from teachers with professional development training.

The program is producing positive results for America's students and examples of its success are evident across the nation. The long-term trend data from the National Assessment of Educational Progress (NAEP), indicate that over the last five years, more reading progress has been made among nine-year-olds than in the previous 28 years combined. Reading scores for African-American and Hispanic-American nine-year-olds have reached all-time highs. I believe that this is due in part to the contributions of Reading First and other programs under the No Child Left Behind Act.

A study by researchers at the University of Michigan showed Reading First students in that state are making continuous gains across the board from year to year. In the state of Washington, Reading First students – 84 percent of whom are from low-income families – demonstrated

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a 22-percentage point gain after the program had been implemented for two years. Over that same period, the numbers of students from each of the various other subgroups participating in Washington's Reading First program reading at or above grade level have also increased very significantly. We are receiving positive reports about the success of Reading First programs in a number of states.

With your recommendations, we will build on the promise and successes of Reading First thus far. Thank you again for your work in helping to ensure the effectiveness and integrity of the Department's programs.

cc: Cathy H. Lewis
Dr. Henry Johnson



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

September 19, 2006

MEMORANDUM TO JACK HIGGINS

FROM: Margaret Spellings /s/

SUBJECT: Draft Inspection Report: *The Reading First Program's Grant Application Process*

I am writing in further response to the Draft Inspection Report: *The Reading First Program's Grant Application Process* (Control Number ED-OIG/I13-F0017) of August 2006, and the cover memo of August 8, 2006, from Cathy Lewis, Assistant Inspector General for Evaluation, Inspection, and Management Services, to Dr. Henry Johnson, Assistant Secretary of Elementary and Secondary Education.

I once again want to thank you and your staff for your hard work in preparing this draft report. I provided an initial response to the report on August 29, 2006, and as I indicated in that response, I concur in all the recommendations in the draft and I have begun to take steps to address each of the recommendations in an effective and expeditious manner, and I am planning to take actions beyond the recommendations outlined in the report. I have included information on some of the steps I have taken or intend to take in the attachment to this response.

The main focus of this memorandum and attachment, and a separate letter and an enclosure from Dr. Henry Johnson, is to provide you with detailed comments on the draft report. I have worked with Dr. Johnson in reviewing the draft report very carefully and while we found the draft recommendations and much of the discussion in the draft findings in the draft report to be very helpful, we do not agree with all of the key points made in the draft findings. I asked Dr. Johnson to respond more fully to the findings in the draft report. In the enclosure to his letter, he has summarized in detail our comments and reactions to the findings.

I acknowledge that some of the actions taken by Department officials as described in the draft report reflect individual mistakes. Thus, I am disappointed by what I have read about some aspects of the early implementation of the Reading First program. Although the events occurred before I became Secretary of Education in 2005, that does not lessen my concern about these actions and my commitment to address them.

The Department has over 4,000 employees and administers a budget of about \$88.9 billion per year in fulfilling our critical mission. I am proud to work with dedicated and talented professionals. When we have fallen short, whether in professional judgment, or in the management of programs, it is our job to move forward quickly and effectively to

address those mistakes, and strengthen the management and administration of our programs.

The Office of the Inspector General has a serious and difficult responsibility to help us ensure that the programs of the Department are run effectively and efficiently, as well as to help ensure that the people of the Department operate at the highest levels of performance and with the utmost integrity. I remain confident in the overall integrity of the Reading First program, and I am very encouraged by its success. But I am disturbed, at a minimum, by any conduct that even has the appearance of affecting the credibility of or undermining confidence in the Department's work. I believe that taking steps to implement your recommendations will address these matters.

I am mindful of the current information available on the effectiveness of the Reading First program. As I mentioned in my earlier response, early evidence indicates that the Reading First program has been very successful since its enactment in 2002 as one of the key components of *No Child Left Behind* (NCLB). As noted in late July when the Department's interim report was released evaluating the early implementation of the Reading First program, Reading First has had a significant positive impact for the students and teachers it has served. The program is helping millions of children and providing teachers with high-quality, research-based support.

As we push ahead toward our ultimate goal of every child reading and having math skills appropriate to their grade levels by 2014, the Reading First program is an important tool in our efforts. I am committed to using the recommendations in your report to build on the early successes of the program and improve the management and effectiveness of the program further. Integrity, objectivity, and professionalism are critical to effective program operations and public confidence in the operation of those programs. I am passionately committed to those principles.

We serve the public, and their trust and confidence is paramount to our work. I will continue to work to honor that trust and confidence, expecting the highest standards of integrity and excellence from Department staff.

Attachment

Action Steps Addressing Draft Inspection Report Recommendations

Here are some of the steps that I have taken or will take in the near future to address the recommendations in the Draft Inspection Report: *The Reading First Program's Grant Application Process* (Control Number ED-OIG/I13-F0017) of August 2006 --

- I have reassigned the leadership of the Reading First program within the Office of Elementary and Secondary Education so that it can be more closely managed. We will be forming a new management team for the program in the very near future, and I will be directing the new team to individually contact each of the State Reading First Directors to discuss progress to date and any concerns or questions they may have in moving forward with the Reading First program. I also will direct the new team to send a notice to each contractor to emphasize the importance of providing objective, impartial technical assistance and other support in their work.
- By October 1, 2006, the Department will be sending a letter to the State Reading First Directors that will provide an opportunity for any State to notify the Department if it has concerns about the expert panel process used in 2002 and 2003 to make recommendations to then-Secretary Paige regarding their State's application.
- By December 31, 2006, Department staff will complete a review of all Reading First applications approved by the Department to determine whether all applications were approved consistent with applicable requirements, and whether amendments will be necessary.
- Staff from a cross-Department team will review publicly disseminated guidance and other materials related to the Reading First program to ensure that they are accurate and impartial. If there is inappropriate material in the guidance, I will make appropriate changes. I will also have this team help guide the future management of the Reading First program and the implementation of programs under the Elementary and Secondary Education Act after its scheduled reauthorization.
- Staff from our Grants Policy and Oversight Staff and the Office of the General Counsel will –
 - Review and expand the protocol for reviewing potential conflicts of interest when the Department uses outside review panels, to include both formula and discretionary grant panels; and
 - Develop a protocol for the handling of review panel evaluations to improve transparency and communication in the application and review process. For example, if summaries are made of panel comments that are to be provided to applicants, the protocol at a minimum should call for

copies of those summaries to be provided to review panels when the summaries are sent to applicants. In addition, staff will consider whether the protocol should provide a draft of summaries to review panels for comment before they are sent to applicants.

- Each Principal Officer in the Department will discuss with their respective program managers any concerns related to program management or administration, and provide me with any recommendations for further strengthening those areas.
- I will be sending a memorandum to all Department program managers reminding them of the importance of impartiality in the performance of their duties, and the importance of adhering to all relevant program and grant statutory provisions in the Department of Education Organization Act, the General Education Provisions Act and the NCLB Act, including the prohibitions against controlling and directing curriculum and instruction. That memorandum will also emphasize the importance of early consultation with our Office of the General Counsel on legal issues, including matters of legal ambiguity or interpretation of statutes and regulations, as well as the need to adhere to the advice received from our legal counsel.
- I will require annual training on the standards for internal controls, similar to existing annual training requirements for ethics and for computer security, so that our systems, processes, and behaviors provide strengthened assurance of professional responsibility and full compliance with laws and regulations, as well as effective and efficient operations (and reliability of financial reporting, which is a major control category not at issue in this report). The training will address the statutory prohibitions discussed above against controlling and directing curriculum and instruction, and will incorporate the five standards for internal control, each of which apply to the programmatic, compliance, and financial aspects of the Department's operations –
 - Control Environment that sets a positive and supportive attitude toward internal control and conscientious management;
 - Risk Assessment from both external and internal sources;
 - Control Activities to help ensure that management directives are implemented;
 - Information and Communication that is relevant, reliable, and timely; and
 - Monitoring to assess the quality of performance over time.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SEP 19 2006

Honorable John P. Higgins
Inspector General
U.S. Department of Education
Washington, D.C. 20202

Dear Mr. Higgins:

I am writing in further response to the Draft Inspection Report: *The Reading First Program's Grant Application Process* (Control Number ED-OIG/I13-F0017) of August 2006 and the cover memo of August 8, 2006 from Cathy Lewis, Assistant Inspector General for Evaluation, Inspection, and Management Services. As mentioned in the Secretary's letter on this subject dated today, I am responding more fully to the findings in the draft report.

We have reviewed the draft report very carefully and while we found the draft recommendations and much of the discussion in the draft findings in the draft report to be very helpful, we do not agree with all of the key points made in the draft findings. As noted in the enclosure, there are a few matters described in the draft report that are subject to more than one interpretation. I have summarized in detail our comments and reactions to the findings in the enclosure.

I once again want to thank you and your staff for your hard work in preparing this draft report. Please let me know if you have any questions about our response.

Sincerely,


Henry L. Johnson

Enclosure: Specific Comments on the Draft Inspection Report Findings

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation

Enclosure: Specific Comments on the Draft Inspection Report, *The Reading First Program's Grant Application Process* (Control Number ED-OIG/I13-F0017)

Introduction: The Office of the Inspector General (OIG) has an important role in helping the Department preserve the public trust and in helping the Department ensure that its implementation of programs and other processes are fair and appropriate and have integrity. The law must be followed, and we take very seriously the duty to execute and implement the laws faithfully, and the OIG's work helps to strengthen our effectiveness and efficiency by being vigilant in looking out for instances of waste, fraud, and abuse. We know that the OIG is well aware that the law is not simple, and often, implementation is not easy. The responsibility of the Department in administering some of the more intricate programs such as Reading First, demands very sophisticated interpretations of law and the role of the Executive Branch.

The larger context in which the Executive Branch works is critical to appreciating an agency's responsibility to faithfully implement legislation passed by Congress and signed into law by the President, sometimes with very little time to carry out its responsibilities. It is incumbent on the Executive Branch and the agency in particular to fill in the details left out by Congress, consistent with the law. Much of what is included in regulations or guidance will not specifically have been required or addressed by the statute. In fact, the absence of substantive or procedural detail in many statutes is the primary reason why regulatory or guidance documents are issued.

In considering the findings outlined below, we are mindful of the complex provisions that were being put in place in the Reading First program, and needed to be implemented in the early months just after the statute was enacted. Guidance describing and strongly encouraging a high standard for performance that is consistent with, but not specifically required by a statute, is often crucial to implementing a program effectively and carrying out its statutory purposes.

With this background, I have a few areas of concern with regard to the draft report. In the early months of implementation, some statements made by program officials demonstrated poor judgment. However, they may have been taken out of context and they should not be construed to be the goals of Department implementation. Additionally, I am concerned that sometimes actions taken in the interest of strengthening the integrity of the process are criticized for not going even further. For example, the peer review subpanels properly could have been established under the statute and proceeded without a process to identify potential conflicts of interest. The Department established a peer review process that was fair and had integrity

Like you in the Office of Inspector General, as public servants, integrity is our watchword. Personal views cannot be allowed to interfere with professional responsibilities. However, it worries me that in today's world of constant communication via text messaging, instant messaging, and e-mails, it may be too easy (and inaccurate in some instances) to read interpretations into, or draw conclusions about, a person's

professional intent or actions solely from raw, unfiltered, informal snapshots of information.

In short, having carefully reviewed the draft findings of the report, we agree with some of the findings, but have some concerns about others. Nonetheless there is room for differing, reasonable interpretations in some of the details. Public service is a noble calling, and we need to take painstaking care to maintain the public trust. In that spirit, even when we have some concerns with portions of OIG findings, as mentioned earlier, the Department will implement all of the recommendations made by the OIG that will further ensure the integrity of the Department's implementation of programs.

Below, I discuss each of the findings in the draft and our responses to them. I very much appreciate the opportunity to comment.

Finding 1A – The Department Did Not Select the Expert Review Panel in Compliance with the Requirements of NCLB

We have reviewed this finding and agree with the OIG finding to the extent that the requirement for establishing the expert panel as required by the statute was not fully adhered to. As confirmed in the draft report, the Department consulted with the National Academy of Sciences (NAS) and the National Institute of Child Health and Human Development (NICHD) and the National Institute for Literacy (NIFL) and each organization nominated at least three panelists. We also agree that the Department had considered and the Office of the General Counsel had recommended the establishment of a twelve-member "Advisory and Oversight Panel" made up of individuals nominated by the NAS, the NICHD, and NIFL in order to meet statutory requirements. It is regrettable that this panel was not established. In the early period of the implementation of the Reading First program, it is clear that there was an effort to expedite the initial steps to get the program up and running quickly and effectively to get needed services and resources into States' classrooms for the sake of the students. In a few instances noted in the OIG draft report, this resulted in some steps being overlooked; at the same time, many effective measures were taken.

We are not aware of any information that would show that the lack of establishing a twelve-member "Advisory and Oversight Panel," that would have met the requirements of the statute, resulted in any inappropriate effects or disadvantage to any State. However, the Department will undertake to discuss with State representatives and review applications to determine if there were such effects, and by December 31, 2006, the Department will determine whether all applications were approved consistent with applicable requirements, and whether amendments will be necessary.

Finding 1B – While Not Required to Screen for Conflicts of Interest, the Screening Process the Department Created Was Not Effective.

We have some concerns with this finding. As acknowledged in the draft report by the OIG, the Department was not required to screen for conflicts of interest in this process.

The Department decided to take that extra step and establish a screening process. We know that while additional steps could have been taken, the steps we took were effective and more than what was required by law.

Even though it was not required to establish a screening process, the Department voluntarily did so, because the integrity of the subpanel process was very important to the Department. The Reading First program office went beyond what it was required to do and, with the cooperation of the Ethics Division of the Department's Office of the General Counsel (OGC), developed its own screening process, and it was faithfully implemented. When potential panelists were identified as having specific connections to programs, assessment, or textbooks on the Conflict of Interest form (a form that OIG concedes the Department did not have to use), an OGC ethics attorney provided guidance to the program office, and in each instance, and the Department took appropriate action to ensure that no conflict occurred.

Although Reading First is not a true competitive grant program and as such not subject to requirements for establishing formal processes to avoid conflict of interests, the Department used the conflict of interest process and forms from its competitive grant programs as its guide. The Department reasonably adapted the competitive grant conflict of interest procedures to the Reading First program.

OIG identified six panelists whose resumes revealed "significant professional connection" to a teaching methodology that requires the use of a specific reading program. There is no available information to show that that these connections resulted in any problematic behavior or that that any of these panelists reviewed a state application that included such a program.

The Reading First program office also established subpanels of five members (in the discretionary grant process in which avoiding conflicts of interests is even more necessary, the panels or subpanels are generally only three members). This provided an additional check to screen out or eliminate the impact of any alleged biases of individual reviewers.

The draft report suggests that an inappropriate process with inappropriate standards were used. The Department used the standard of "avoiding financial connections" to programs or products as the standard. The OIG suggests that the appropriate standard should have been "significant professional connections to a teaching methodology that requires the use of a specific reading program." This standard is not easy to define, and implement, and could rule out many practitioners who worked on a particular approach, thus eliminating the most experienced and qualified practitioners. The OIG draft report demonstrated no conflict of interests and no ill effects of any alleged issues in this area.

The OIG finding suggests that the Department could have been better off by just meeting the minimal requirement of the law, which is that no conflict of interest screening process is required, and none needed to be implemented. But this is not the path the Department took. The Department continues to strive to ensure integrity beyond just meeting the

minimal requirements of the law. The Department provides significant training and services in the area of ethics, and did more than necessary to ensure that there was integrity in this aspect of the Reading First program. The Department is committed to taking even more steps to ensure integrity and, where appropriate, will increase its conflict of interest procedures in programs in which outside panels are involved in selecting and recommending the selection of grant awards.

Finding 2A – The Department Replaced What the Law Intended to be a Peer Review Process with Its Own Process.

In the draft report, the OIG equates the fact that the program office summarized the reviewers' comments into a concise and more focused form as "replacing the...intended...process with its own process." The Department did not replace the process required by the statute. The statute does not establish the role of reviewers' comments. In fact, the peer reviewers on the subpanels were considered to be advisory and the Department utilized them in a role consistent with the statute.

While the peer reviewers were generally helpful with their comments, the program office found that some panelists provided comments that were difficult to read or digressed somewhat from the criterion under review. Although the program office originally intended in its *Reviewers Guidance* to have reviewers provide comments directly to the applicants, they found that this did not always ensure that applicants knew what needed to be addressed. The program office took steps to try to improve the process and, in a number of cases, this resulted in a more efficient process that was easier for States to use.

While we acknowledge that there may be examples where the reports could have been clearer about the subpanels' comments, in a number of cases, the summaries clarified the comments so that they could be addressed more effectively. Department staff did a further review of the summaries of the comments and overall, they found that the summaries did not deviate significantly from the reviewers' comments. This change in plan did not replace a process required by law.

In this case, however, the process was modified after it was initiated without amending the original planning documents. In the future, the Department will take steps to ensure that all plans for review of applications are followed or the plans will be amended when necessary.

Finding 2B – The Department Awarded Grants To States Without Documentation that the Subpanels Approved all Criteria.

The OIG found in its draft report that of twelve application files reviewed by OIG, in four cases there was no documentation to show that the subpanel finally approved the plans. As discussed, the program statute did not require this step, and the subpanels were advisory, even though the program office tried to follow in good faith, the recommendations of the subpanels in any event.

However, this step must be viewed in the perspective of the overall review process. In some instances, the process with a State went through a number of revisions and took over a year to complete. In a number of cases, a review of a resubmitted application revealed minor remaining issues, and it was not practical to always reconvene a subpanel, especially when it was just being asked review minor changes. Generally, our actions in this area prevented undue demands on the panelists' time and prevented the lapse of time that it would have taken to convene an additional subpanel meeting or call to discuss a minor issue. It is appropriate that Department officials are the primary source of communication in these matters with the State representatives. The Department made public announcements of all grant approval and awards, and the panelists were generally kept aware of all approvals; there was never any instance in which a panelist complained that they were not involved in the final approval or that a final approval was inappropriate.

While we have some concerns with the OIG's finding in this case, we acknowledge that better documentation of the Department work with a subpanel's decision could have been maintained, and, in some cases, it would have been more appropriate to reconvene a subpanel. This will be done in future uses of panelists for this and other programs.

Finding 3 – The Department Included Requirements in the Criteria used by the Expert Review Panels That Were Not Specifically Addressed in NCLB.

This finding concerns guidance issued by the Department, in which the OIG in its draft reports seems to suggest that the Department may not include review criteria not specifically stated in the statute. The OIG found that the expert subpanel reviewers reviewed the application in accordance with criteria provided to them in the guidance and applied the criteria consistently. But the OIG appears to have concerns, because the criteria included conditions not specifically required in the statute.

This guidance document sets forth guidance on what criteria the expert subpanels are likely to use in reviewing State applications for Reading First grants. In the introduction to the guidance, States were reminded that they must meet all program requirements in order to receive funding, and that this document was merely guidance. The information in the document is provided in a lengthy, multi-paged chart that is divided into three columns, a "Meets Standard" column which describes the conditions that reviewers will expect all State applications to meet, an "Exemplary" column which describes conditions that, when met in addition to those listed under 'Meets Standard,' would be expected to result in the highest quality Reading First programs, and a 'Does Not Meet Standard' column which provides guidance on conditions that would not meet the standard for each criterion.

In general, the entries in the "Meets Standard" column were consistent with the program statute. In a few instances, the information in that column was not specifically required; it merely provided information on a submission that would be good practice and was helpful in ensuring good program management by the State. These few instances that "went beyond the statute" were generally minimal and did not appear to involve

exceeding the authority of program officials as provided in the Department of Education Organization Act and other enabling legislation. We did not receive complaints from States that the guidance was onerous; it is our understanding that the guidance was helpful.

The OIG draft report identifies that three criteria addressing “coherent instructional design” and “a protected dedicated block of time,” and “small group instruction as appropriate” are the specific criteria suggested in the guidance that were not specifically in the statute. Each of these criteria was logical and a matter of good instructional practice that would be very helpful to the establishment of high quality programs; it is what we would want most programs to contain. All are supported by research as effective practices.

Another example of where the guidance goes beyond the specific language of the statute was that the guidance appeared to require the submission of more information on the planned subgrant competitions that would be held by each State. This is an effective way to help ensure that States would run efficient, effective and fair competitions for subgrants consistent with section 1202(b)(4) of the Reading First statute. The material in the "Exemplary" column also appeared to set forth excellent practices as suggestions for submitting a good application.

While the OIG cites e-mails from the Reading First program director in which he indicates that this is an “aggressive approach,” the guidance merely adds good examples to the language of the statute. We should continue the Department’s effective practices in many programs to encourage high-quality projects that go beyond the minimum standards of the statute. Overall, the Reading First guidance has proven to be helpful and it is consistent with the law, and consistent with helping ensure the submission of high quality applications.

Finding 4 – In Implementing the Reading First Program, Department Officials Obscured the Statutory Requirements Of ESEA; Acted in Contravention of the GAO “Standards for Internal Control in the Federal Government”; and Took Actions That Call into Question Whether they Violated the Prohibitions Included in the DEOA.

This section of the report cites a number of informal internal communications, which show “behind-the-scenes” bravado, if not loose and inappropriate language on the part of the Reading First program director. The communications often show the intention of the program director to be bold and aggressive in drafting documents. The program officials took actions that were often intended to get guidance out to States quickly when the States were eager for materials on good reading practices and approaches that they might consider.

At the same time, the Department continuously and clearly stated that there was no approved list of approaches or programs in the Reading First program. These documents

are still posted on the Department website and widely disseminated, and were heralded by then Secretary Paige on numerous occasions.

While it is clearly the State's responsibility to select and approve programs for use by participating local educational agencies, the Department must ensure that only programs that meet statutory requirements are implemented (for example, that they be "based on scientifically based reading research"). When the Department becomes aware of programs that may not meet these provisions, it is incumbent upon the Department to raise that issue and question that action. We are not aware of information showing inappropriate actions to require particular programs or approaches.

We agree that there were mistakes made by a program official, but ultimately, it is officials at all levels in the Department that are responsible for the effective and efficient management of the Reading First program. That is why we are taking actions to ensure the integrity and the proper implementation of the program.