
**IMPLEMENTATION OF THE STATE
LEGALIZATION IMPACT ASSISTANCE
GRANTS UNDER THE IMMIGRATION
REFORM AND CONTROL ACT OF 1986**

STATE OF TEXAS



OFFICE OF INSPECTOR GENERAL
OFFICE OF ANALYSIS AND INSPECTIONS

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This study was conducted to determine the effectiveness of Texas' implementation of the State Legalization Impact Assistance Grants funds awarded under the Immigration Reform and Control Act of 1986.

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EXECUTIVE SUMMARY

PURPOSE

The purpose of this inspection was to determine how effectively Texas implemented the State Legalization Impact Assistance Grants (SLIAG) program, to identify potential problems early in the process, and to identify good practices which all States could share.

BACKGROUND

The SLIAG program was established under the Immigration Reform and Control Act (IRCA) of 1986 to reduce the financial burden of providing public assistance, public health assistance, and educational services to eligible legalized aliens. In Fiscal Year (FY) 1988, \$928.5 million in program funds were allocated to States, and funds will continue to be allocated through FY 1991. These funds also cover administrative costs for implementing SLIAG at the State and local levels. Payments are made for public assistance activities generally available to all needy individuals and public health assistance services offered under the States' public health programs. The payments also cover educational services designed to assist eligible legalized aliens to attain a satisfactory level of performance in school and to achieve English language proficiency and citizenship skills necessary to become permanent residents. The Family Support Administration (FSA) is responsible for administering the program.

Because SLIAG was a new program, FSA realized that problems would surface early in its implementation. In addition to the normal difficulties encountered in creating new processes and procedures, FSA recognized that SLIAG would have unique problems. Some of these issues include the diversity of programs which SLIAG encompasses, cultural and language barriers associated with the service population, maintaining confidentiality of information, and the extremely short time frames for the grant award process.

METHODOLOGY

In response to the anticipated difficulties with implementing SLIAG, FSA requested that the Office of Inspector General (OIG) conduct reviews in 10 States to determine the progress of States' implementing this program. The FSA selected nine States and the District of Columbia because of the variety of programs they offered, the number of eligible legalized aliens in the population, or the amount of the grant. The nine States are Arizona, California, Colorado, Florida, Illinois, Massachusetts, New York, Texas, and Washington.

Interviews based on structured discussion guides for each major program area, as well as documentation furnished by FSA and State and local officials, built the base of information for this report. This report represents the review conducted in the State of Texas and reports on its implementation of the SLIAG program as of August 1988.

Both FSA and Texas were committed to identifying problems and developing innovative and effective solutions for them. Immediately following our on-site visits, FSA was given an outline of the State concerns identified in this report.

***FINDING:** Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.*

- The FSA held several national conferences beginning in 1987 to share information with States on SLIAG legislation, the implications for States, the application process, and the documentation of costs.
- The FSA also provided States with "Question and Answer" issuances and demographic data from the Immigration and Naturalization Service (INS).

***FINDING:** Texas established a structure to identify organizational and program needs.*

- The Executive Director of the Texas Health and Human Services Coordinating Council is the single point of contact. This council is the grantee agency for SLIAG funding purposes. This arrangement works very well for a State in which none of the participating agencies for SLIAG is the grantee agency.

***FINDING:** Texas also took steps to document expenditures and control disbursements.*

- Planned modifications to the State's computerized systems provide for the capture of SLIAG-related costs under distinct SLIAG expenditure codes.
- One county we visited during the inspection maintained eligibility data on the main computer at the county auditor's office. Once eligibility information has been obtained on an eligible legalized alien, this process will facilitate verifying the status of the applicant and reporting costs for SLIAG-funded services.

- Verifying eligible legalized alien status for educational programs will be through reviewing the I-688, Temporary Resident Card, issued by INS. A continual verification process is made to assure that only the intended population is using the SLIAG-funded educational programs.
- The Texas Education Agency has modified the Standard Application Form for Adult Education to include the costs considered allowable for SLIAG funding purposes. The areas identified on this application for providers of educational services are salary costs, contracted services, supplies and materials, travel, and capital outlays.

Nevertheless, there are some funds control vulnerabilities.

***FINDING:** The FSA's definition of public assistance includes some public health activities which created administrative and service delivery problems for Texas public health agencies.*

- The reclassification of public health and mental health programs is important as it requires identifying individuals receiving services in order to document SLIAG-related costs. In addition, asking patients about their legal status may adversely influence their willingness to access public health and mental health services.

***FINDING:** The FSA application review process created a number of significant problems for Texas. Also, the FSA's application review process interfered with the State's ability to plan for services.*

- Delay in FSA issuing the implementing regulation resulted in the State's inability to properly plan for SLIAG.
- Numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions to assist Texas in understanding SLIAG application requirements.
- The time frames were too short for submitting the initial SLIAG application, FSA review and comment, and revisions of the application.
- implementing SLIAG-funded programs was delayed because of a significant delay in notifying Texas of the grant award.

- No formal appeals process exists if programs or costs are denied in the first level review.

FINDING: *Conflicting interpretations of the term “public charge” has caused uncertainties in the alien population as to what services they are entitled to receive without fear of deportation.*

FINDING: *State guidelines are needed to determine allowable costs in public assistance and public health assistance.*

As mentioned earlier, FSA and Texas have already initiated action on some of the recommendations made in this report. Steps have been taken by FSA to provide States with more specific, formal guidelines for identifying and documenting actual program and administrative costs. However, additional actions are necessary in other areas on the part of FSA and Texas.

RECOMMENDATION: *The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.*

RECOMMENDATION: *The FSA should make its application and grant process more orderly. Specifically, FSA should*

- provide definitive written instructions on the SLIAG application requirements and establish a dialogue with Texas on SLIAG policy, compliance, and reporting issues to minimize the confusion that occurred in the initial application process;
- ensure that sufficient time is allotted to the application process including Texas’ initial application, FSA’s review and formal comment, Texas’ consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval;
- develop an appeals process to use if program or costs associated with providing services are denied in the initial application process; and
- ensure that the grant award process for approved applications is timely to permit implementing planned SLIAG programs.

RECOMMENDATION: *The FSA and the INS should further clarify what is meant by “public charge” and widely disseminate this information to the alien population who have raised concerns about its resident status.*

RECOMMENDATION: *The Texas Department of Human Services should develop a methodology to identify allowable public assistance program costs. Also, the Texas Department of Health should develop guidelines for all providers of public health assistance services indicating those costs that are allowable for SLIAG purposes.*

COMMENTS

The FSA and the State of Texas both commented on the draft report. They generally agreed with our findings and recommendations. Both reported having taken a number of steps to improve implementing SLIAG. Their comments are included as Appendices B and C, respectively.

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INTRODUCTION

PURPOSE

The Family Support Administration (FSA) requested that the Office of Inspector General (OIG) conduct an inspection in nine States and the District of Columbia to determine how effectively the States implemented the State Legalization Impact Assistance Grants (SLIAG) program awarded under the Immigration Reform and Control Act (IRCA) of 1986. The inspection included reviewing mechanisms in place to identify these funds and determining whether present or projected policies and procedures adhere to FSA guidelines. The FSA also was interested in identifying potential problems early in the process and any good practices which all States could share. This report presents the results of the inspection pertaining to the State of Texas.

BACKGROUND

Under IRCA, eligible legalized aliens may apply for permanent residency within a 1-year period after they are first eligible (i.e., by the 31st month after they receive temporary resident status).

This new population will increase the demand for State public assistance and public health assistance services significantly. It will also increase the demand for State educational services as these new residents obtain English language and civic skills needed to become U.S. citizens.

To help States defray many of the costs of providing public assistance, public health assistance, and educational services to eligible legalized aliens, IRCA authorized \$1 billion each year from Fiscal Years (FY) 1988 through 1991 for SLIAG grants, less an amount identified as the "Federal offset." With few exceptions, eligible legalized aliens are ineligible for federally funded public assistance programs such as Aid to Families with Dependent Children (AFDC), food stamps, and Medicaid. The "Federal offset" is the estimated cost to the Federal Government of providing these services or benefits to those few legalized aliens who are eligible for them. In FY 1988, the law allocated \$928.5 million to States.

To receive SLIAG funds, States must apply to the FSA Division of State Legalization Assistance, which is responsible for approving applications and administering the program. The application must be approved in total for a State to receive any SLIAG funds. The FSA also provides States with technical assistance on policy issues and on the methods used to determine costs and verify actual costs.

The basic requirement for States to claim reimbursement is that costs must be allowable, reasonable, and allocable. State public assistance and public health assistance programs must be the same ones available to the general public. States cannot create new programs in these areas specifically for eligible legalized aliens. However, States may create new or additional education programs for eligible legalized aliens. States may also claim reimbursement for program administrative and SLIAG administrative costs.

Reimbursement for public assistance and public health assistance is limited only to the amount of State and local funds expended for SLIAG-related costs. The maximum SLIAG reimbursement for educational services is an average of \$500 per year per eligible legalized alien. Determining program administrative costs is made in accordance with the final regulation at 45 CFR 402.22.

The FSA is responsible for administering the program. Because SLIAG was a new program, FSA realized that problems would surface early in its implementation. In addition to the normal difficulties encountered in creating new processes and procedures, FSA recognized that SLIAG would have unique problems. Some of these issues include the diversity of programs which SLIAG encompasses, cultural and language barriers associated with the service population, maintaining confidentiality of information, and the extremely short time frames for the grant award process.

METHODOLOGY

The FSA selected nine States and the District of Columbia for the inspection because of the variety of programs offered, the number of eligible legalized aliens in the population, or the amount of the grant. The nine States are Arizona, California, Colorado, Florida, Illinois, Massachusetts, New York, Texas, and Washington. This report reviews Texas' implementation of the SLIAG program as of August 1988.

Prior to conducting the inspection, the OIG developed structured discussion guides for each major program activity at the State and local levels. Interviews were held in Austin with appropriate staff, including the single point of contact and State representatives from public assistance, public health assistance, and education. In addition, appropriate staff were interviewed in Travis County agencies. Also interviewed were staff from providers of services in health and education. The purpose of these local contacts was to obtain information from local governing bodies as to their planned implementation of the SLIAG program.

The information obtained from using discussion guides and documentation furnished by FSA and State and local officials created a base of information as to implementing the SLIAG program. Information-gathering included reviewing policies and procedures established by the State for administering SLIAG funds, and compiling SLIAG application data and information on program participation.

TEXAS' ORGANIZATIONAL STRUCTURE

Each State designated a single point of contact to administer and coordinate the SLIAG program. For the State of Texas, the contact is the Executive Director of the Texas Health and Human Services Coordinating Council. The State legislature has designated the council to be the State agency to apply for SLIAG funds. The council is charged with applying for these funds and distributing them to agencies responsible for providing services to newly legalized aliens in accordance with IRCA. The coordinating council is also responsible for coordinating State initiatives, application development, continuing oversight, and drawdown of Federal funds.

In Texas, the program components administering the SLIAG program, and their responsibilities, are as follows: the Department of Human Services (public assistance), the Department of Health and the Department of Mental Health and Mental Retardation (public health assistance), and the Texas Education Agency (education). The inspection revealed that the counties exercise significant autonomy and control over programs and other matters within their respective jurisdictions.

PUBLIC ASSISTANCE

The Department of Human Services is responsible for State administrative functions associated with effectively implementing public assistance programs to be funded by SLIAG. An assistant commissioner of the Family and Children's Services has been appointed to administer functions funded by SLIAG. This staff is responsible for the agency's support of emergency assistance programs administered by local agencies. The department, through the county structure, will grant benefit payments to eligible legalized aliens for emergency relief. This includes providing utilities, food, housing, and clothing through vouchers and purchased services.

PUBLIC HEALTH ASSISTANCE

The Department of Health is responsible for the direct administration of SLIAG funds for general public health assistance. This responsibility rests in four offices in the department: Community and Rural Health, State Health Data and Policy Analysis, Grants Management, and Budget. A coordinator will be responsible for SLIAG activities. A data analyst will provide data analysis of reimbursable costs and the eligible population. Financial coordinators will prepare and approve contracts with providers, prepare reports for the coordinating council, and monitor individual providers to validate SLIAG funding.

MENTAL HEALTH

The Department of Mental Health and Mental Retardation provides organizational and programmatic direction and coordination of mental health programs. The SLIAG functions are coordinated under the direction of the Budget and Fiscal Services director. The department provides administrative oversight, quality assurance, and supportive services to the mental health programs operated by State facilities and community mental health and mental retardation centers.

EDUCATION

The Texas Education Agency is responsible for administering the SLIAG-funded education programs in the State. Three positions have been designated in the agency to coordinate those functions related to SLIAG. A SLIAG coordinator is supported by an elementary and secondary education coordinator and an adult education coordinator. Elementary and secondary education are provided primarily through local school districts. Adult education is provided through 63 adult education cooperatives.



FINDINGS AND RECOMMENDATIONS

Both FSA and Texas were committed to identifying problems and developing innovative and effective solutions for them. Immediately following our on-site visits, FSA was given an outline of the State concerns identified in this report.

FINDING: Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.

- The FSA held several national conferences beginning in 1987 to share information with States on SLIAG legislation, the implications for States, the application process, and the documentation of costs.
- The FSA also provided States with “Question and Answer” issuances and demographic data from the Immigration and Naturalization Service (INS).

FINDING: Texas established a structure to identify organizational and program needs.

- The Executive Director of the Texas Health and Human Services Coordinating Council is the single point of contact. This council is the grantee agency for SLIAG funding purposes and is the coordinating and oversight entity for all State agencies involved in health and human services. This arrangement works well for a State in which none of the participating agencies for SLIAG is the grantee agency, and the staff have good rapport with the various agencies involved in SLIAG.

FINDING: Texas also took steps to document expenditures and control disbursements.

- Planned modifications to the State’s computerized systems provide for the capture of SLIAG-related costs under distinct SLIAG expenditure codes.
- One county we visited during the inspection maintained eligibility data on the main computer at the county auditor’s office. Once eligibility information has been obtained on an eligible legalized alien, this process will facilitate verifying the status of the applicant for SLIAG-funded services. Weekly reports are

prepared for the auditor's office on the services and benefit dollars involved. For future reference, the local welfare office can obtain information readily on each eligible legalized alien for which eligibility has been determined.

- Verifying eligible legalized alien status for educational programs will be through reviewing the I-688, Temporary Resident Card, issued by INS. Each student signs in for each class attended using the assigned "A" number from the card. A continual verification process is made to assure that only the intended population is using the SLIAG-funded educational programs.
- The Texas Education Agency has modified the Standard Application Form for Adult Education to include the costs considered allowable for SLIAG funding purposes. The areas identified on this application for providers of educational services are salary costs, contracted services, supplies and materials, travel, and capital outlays.

Nevertheless, there are some funds control vulnerabilities. Findings and recommendations concerning these vulnerabilities follow under major topic areas.

PUBLIC ASSISTANCE

Assistance or Service Activities

Public assistance services to be funded by SLIAG include Medicaid health care services, Medicaid foster care assistance, the Early Periodic Screening and Diagnostic Treatment program, the Family Planning Title XIX program, the Vendor Drug program, the Emergency Nutrition Temporary Emergency Relief program, and the local pass-through program. The department also administers the Family Planning Title XX program as a public health program for SLIAG.

No new programs have been established. Family Planning is provided directly by the State. Other programs are provided through counties or providers. The Emergency Nutrition Temporary Emergency Relief program is administered by the counties and community action agencies jointly.

A local county office indicated that services provided directly by the county or under contract are nutrition, utilities, rental assistance, and medical services, which include hospital/physician services, dental care, transportation, the battered womens' program, and indigent burials. The local welfare office has access to the county auditor's main computer data base for eligibility information.

Documentation of Eligible Legalized Alien Status

Eligible legalized aliens will be identified generally in the same manner as they are identified for all other programs. A few additional questions will be asked and the INS card information will be obtained. Periodic reviews will be made at the counties and providers to assure the intended population is getting SLIAG-funded services. At the county level, screening and in-depth application forms will be used to obtain necessary information.

Program Costs

The State intends to develop guidelines to capture program costs expended for services at the servicing level. The State will identify the eligible legalized alien and then tabulate costs expended for services rendered. When services are furnished under contract, quarterly reports will be submitted by providers requesting payment from the State for costs incurred. Periodic sampling will be conducted at these providers to assure the costs are correct. Submitted invoices will be validated on a sample basis. Two object expenditure codes will be added to the systems for controlling costs.

At the time of this inspection, the State had provided no guidance to the counties for determining allowable program costs. However, one county we visited during the inspection had initiated action on its own to identify program costs by establishing cost centers, identifying food vouchers for eligible legalized aliens, working with the county auditor's office which records costs and pays bills, setting up line item accounts for each category—SLIAG-Food, SLIAG-Rent, and SLIAG-Utilities, and stamping "SLIAG" on each voucher identified for eligible legalized aliens going to the auditor's office for payment. This problem is addressed in greater detail in the section dealing with crosscutting issues.

Administrative Costs

To identify administrative costs, the State will determine the total number of persons receiving the service at the county or community action agency. Then the State will determine the number of eligible legalized aliens out of that total. Finally, the State will take that ratio and multiply it by the total administrative cost to determine the share pertinent to SLIAG. The department has an indirect cost allocation rate established by the Department of Health and Human Services (HHS). While the FY 1988 application only included State costs, the FY 1988 update and the FY 1989 application added local pass-through administrative costs, which had previously been overlooked (only State costs had been included, not county costs).

These costs are to be reimbursed by SLIAG. The costs were based on data from eight counties and then projected to all counties.

At the county level, administrative costs will be determined on the basis of a sample. The SLIAG usage will be determined as a percentage of the total administrative costs. There is no indirect cost rate at the county level for public assistance.

Drawdown of Funds and Cash Balances

The procedures for drawdown are being worked out by the coordinating council. Generally, the State does not make cash advances to counties or providers. However, if cash balances were created at the counties or providers, then subsequent payments would be reduced.

PUBLIC HEALTH ASSISTANCE

Assistance or Service Activities

The Department of Health provides or contracts for a wide range of public health services, including:

- health protection;
- health promotion/health education;
- prevention, detection, and referral of diseases and disabilities;
- ambulatory care/emergency medical services;
- short-term institutional care;
- long-term institutional care and alternatives;
- health care costs and health professions;
- statistics bureaus; and
- maternal and child health.

Other public health programs have been designated as public assistance programs for purposes of SLIAG. These are:

- chronically ill and disabled children;
- habilitation and rehabilitation (kidney health care);
- health care costs and health professions (primary care);
- University of Texas system professional services;
- Texas Tech Health Science Center professional services;
- women, infants, and children nutrition; and
- maternal and child health/family planning.

No new programs have been added because of SLIAG funding. The State furnishes services through its public health hospitals, and contract services are furnished through the various county health departments. The same services offered by the State are generally offered at the county level. Whether a county contracts with the department depends upon the services rendered. Some services are also provided through contract with other than county providers.

Documentation of Eligible Legalized Alien Status

For public health services, the percentage method is used to determine the ratio of eligible legalized aliens to the population served. Data from the HHS are used to determine the number of eligible legalized aliens and special agricultural workers.

For public health assistance programs considered public assistance, an individual eligible legalized alien determination must be made. Various INS documents are being considered for use in verifying eligible legalized alien status.

FINDING: The FSA's definition of public assistance includes some public health activities which created administrative and service delivery problems for Texas public health agencies.

Several programs administered by the Department of Health are considered public assistance programs for SLIAG reimbursement purposes. The distinction is important because identifying a service as public assistance requires documenting costs incurred for individual eligible legalized aliens served. If a program or service is considered public health, the population ratio method for establishing costs can be used. Applying this method, costs are determined by comparing the percentage of eligible legalized aliens using the service to the

percentage of the general population using the same service. This percentage is applied to total program costs to determine how much can be reimbursed with SLIAG funds.

While there is no quarrel with the logic of FSA's definition of public assistance versus public health, the distinction created serious administrative and service delivery problems for public health agencies. These agencies, not the public assistance agencies, must develop and implement new processes for identifying individual eligible legalized aliens in order to document costs. Public health officials in Texas are concerned that asking patients about their legal status will seriously impact the willingness of patients who are illegal residents to access public health services. These people often enter the country with highly contagious diseases and need treatment immediately. The effect of this policy on the public health in general is not known at this time.

RECOMMENDATION: *The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.*

Program Costs

The State will use a cost allocation method to determine actual costs. This will allocate all pertinent, allowable costs to arrive at an average cost per client for those public health programs considered public assistance. For public health assistance, the percentage or ratio method will be used. To arrive at actual costs for the 130 public hospitals (public is defined where ownership is by a county or city or hospital district), the State intends to use the following methods:

- For Inpatients - The State will use cost and billing information from these hospitals to obtain a daily rate. This rate will be used to identify the cost of services for an eligible legalized alien.
- For Outpatients - At the time of the on-site review, the State planned to use actual charges for services to eligible legalized aliens.

The reports submitted by providers of services (e.g., family planning services) will list all revenue sources. This information will enable the State to assure against duplicate funding. Desk audit procedures will be instituted to verify that services were rendered and payment would match the services rendered.

No guidelines had been received at the county level on determining actual costs. The Department of Health was working on them at the time of this review.

Administrative Costs

A ratio of eligible legalized aliens to the total State population will be used to arrive at an administrative cost. The ratio method described above would keep the administrative costs separate.

For one county health department, an indirect cost rate of 23 percent had been established. Purchase orders and invoices (vouchers) will also be used to identify SLIAG administrative costs.

Drawdown of Funds and Cash Balances

The drawdown function is the responsibility of the coordinating council. The State's policy is to issue a 2-month advance to get a new program underway. Large cash balances could occur when SLIAG funds are requested, received, and not spent. If such cash balances are identified and the cause is related to SLIAG, subsequent SLIAG funds would be reduced.

MENTAL HEALTH

Assistance or Service Activities

The activities of the Department of Mental Health and Mental Retardation to be rendered and funded under SLIAG are client and family support services, hepatitis-B screening and vaccination, and genetics screening services. No new programs have been established by the department. Plans are to claim only those costs for services classified as public health assistance.

Other services are provided by the department through mental hospitals, nonprofit community mental health centers, and State mental health centers. The department did not apply for approval of these services for SLIAG funding because the services according to FSA policy are considered as public assistance. The department either did not want to or could not identify eligible legalized aliens seeking these services. By law, the department is required to

furnish these services. If the services were classified as public assistance, department personnel were concerned that some persons would not apply for mental health services because the department would have to seek personal data to obtain SLIAG-related eligibility information.

Also, if the department would choose to claim costs for these services on each of the approximate 200,000 persons now receiving services, the State estimates that it would be necessary to add 55 persons to conduct an additional half hour of interview time.

Documentation of Eligible Legalized Alien Status

The Department of Mental Health and Mental Retardation plans to use a ratio or percentage of the eligible legalized aliens to total service population which is to be consistent with the SLIAG regulations. No distinction is made between eligible legalized aliens and special agricultural workers. Both alien categories are based on data from HHS, but no effort is made to separate them.

Program Costs

Actual costs will be based on budgeted costs and then corrected by actual cost outlays at the end of the State's fiscal year (August 31, 1988). Vouchers are sent in for payment and checked to determine if categories of services have been rendered. The process involves allocation of costs to each service, number of clients proposed to be served, quarterly reports, and yearly audits of units (e.g., regional clinics) by certified public accountant firms. Modifications will not be made to the accounting system as there will be no difficulty in identifying the SLIAG-related services.

Administrative Costs

A ratio of eligible legalized aliens to the total Texas population will be used to determine administrative costs for SLIAG purposes. For indirect costs, the department will use the rate assigned by the cognizant agent.

Drawdown of Funds and Cash Balances

The drawdown function will be the responsibility of the coordinating council. The department will obtain SLIAG funds through the interagency voucher system. As reimbursement is made for expenses, there should not be cash balances for SLIAG.

EDUCATION

Assistance or Service Activities

The Texas Education Agency will receive SLIAG funding for two types of educational programs: elementary and secondary education and adult education.

Eligible legalized aliens in elementary and secondary schools will receive the following supplemental and basic instructional services:

- special language programs;
- remedial programs in the basic skills;
- guidance and counseling services; and
- special materials and supplies.

Adult education will include English, language instruction, and citizenship training.

Documentation of Eligible Legalized Alien Status

The normal enrollment process will be used for eligible legalized aliens entering elementary and secondary schools. For adults, the Texas Education Agency will request the I-688, Temporary Resident Card, and the "A" number be obtained. The first survey for data on eligible legalized aliens in elementary and secondary schools was taken in May 1988 (an update was planned to be conducted in August/September 1988). The agency had to wait for August/September 1988 enrollments to obtain additional information. The survey showed 38,000 eligible legalized aliens; FSA then reduced that number to 32,000 and then to 13,000.

The reason for this reduction was that most school districts could not meet the statutory and regulatory requirements for funding. The agency estimated about 390,000 adults will qualify for enrollment by October 1988.

At the provider level, the documenting involves verifying eligibility status through the I-688 card issued by INS. All students will sign into each class using their assigned "A" number.

Program Costs

For eligible legalized aliens at the elementary and secondary levels, the State will use the average cost per student (\$2,500) per year to document program costs. The agency staff indicated that this is the only Federal program where an average cost has been used. The agency is concerned the Federal Government will not allow an average cost, forcing them to identify actual cost. In addition, a student needing bilingual training will cost about \$700 more. For adults, the cost of education is about \$3 per hour, and using tutors would increase this figure. Any program income would be deducted from SLIAG payments. Invoices submitted by contractors would also be reviewed by fiscal agents. The Standard Application Form for Adult Education contains information covering allowable costs such as salary, contracted services, supplies and materials, travel, and capital outlays. All costs must be reasonable, allowable, and allocable to SLIAG.

Administrative Costs

Direct administrative costs will be determined by using time sheets designed to capture expended time on a daily, weekly, or monthly basis. For indirect costs, the department will use the rate assigned by the cognizant agency. Using time studies is consistent with existing procedures for other programs administered by the department.

Drawdown of Funds and Cash Balances

The drawdown functions are performed by the coordinating council. The department can advance up to 25 percent of the estimated cost for the school year at the beginning of the year to some school districts for elementary and secondary educational services to eligible legalized aliens. Cash advances are also made to providers of adult education services. No request must be made for this advance. Information on cash balances at providers and educational institutions would be included in their regular monthly or quarterly reports. If

large cash balances were noted, the next allotment to the provider would be reduced. The SLIAG funds will be expended on the basis of costs incurred.

CROSSCUTTING ISSUES

The lateness in issuing the final regulations has caused problems for the State. The State could not award contracts until the regulation process was finalized. This has reduced the period of retroactivity during which providers would claim SLIAG funds.

***FINDING:** The FSA application review process created a number of significant problems for Texas. Also, the FSA's application review process interfered with the State's ability to plan for services.*

- Delay in FSA issuing the implementing regulation resulted in the State's inability to properly plan for SLIAG.
- Numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions to assist Texas in understanding SLIAG application requirements.
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- The time frames were too short for submitting the initial SLIAG application, FSA review and comment, and revisions of the application.
- Implementing SLIAG-funded programs was delayed because of a delay in notifying Texas of the grant award.
- No formal appeals process exists if programs or costs are denied in the first level review.

According to final regulations published March 10, 1988, States had to submit the FY 1988 application no later than May 16, 1988. Revisions to the application had to be submitted by July 1, 1988, and the FY 1989 application had to be submitted no later than July 15, 1988. Applications were to contain brief descriptions of the States' programs or services, estimates of the States' SLIAG-related costs for each program or activity for that particular fiscal year (including information on the number of eligible legalized aliens residing in the State), and a brief explanation of the methodology used to estimate these costs.

Due largely to these short time frames, FSA provided no formal feedback on revisions necessary in the Texas FY 1988 application. The information was transmitted by telephone or in meetings. The time frames to make necessary revisions did not accommodate the organizational structure or the need to communicate with or seek approval from the program components impacted by revisions requested by FSA. The Texas grant award was delayed approximately one month due to an error by the Grants Administration staff in sending the award to an incorrect address.

The FSA would not grant partial funding nor would FSA conditionally approve applications. If changes were not made in accordance with FSA suggestions, the entire application was disapproved. In addition, FSA did not provide Texas with an appeals process when programs, costs, or methodologies were not approved. Texas had no recourse other than to delete the program entirely from its application or forfeit all of the SLIAG funds for that fiscal year.

RECOMMENDATION: *The FSA should make its application and grant process more orderly. Specifically, FSA should*

- provide definitive written instructions on the SLIAG application requirements and establish a dialogue with Texas on SLIAG policy, compliance, and reporting issues to minimize the confusion that occurred in the initial application process;
- ensure that sufficient time is allotted to the application process including Texas' initial application, FSA's review and formal comment, Texas' consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval;
- develop an appeals process to use if program or costs associated with providing services are denied in the initial application process; and
- ensure that the grant award process for the approved applications is timely to permit implementing planned SLIAG programs.

FINDING: *Conflicting interpretations of the term "public charge" has caused uncertainties in the alien population as to what services they are entitled to receive without fear of deportation.*

State and local officials report that the alien population often misconstrue the term “public charge.” These aliens are afraid that accepting certain allowable SLIAG program benefits “ could subject them to possible deportation. To compound this problem, State program managers indicated that some Texas counties have received conflicting information from local INS offices on the subject of “public charge.” This has caused various interpretations of what constitutes “public charge” by different counties.

RECOMMENDATION: *The FSA and the INS should further clarify what is meant by “public charge” and widely disseminate this information to the alien population who have raised concerns about its resident status.*

FINDING: *State guidelines are needed to determine allowable costs in public assistance and public health assistance.*

At the time of this inspection, the State had not informed the counties of FSA guidelines for determining allowable costs in public assistance programs under the SLIAG program. However, since the State had not issued any guidelines, the county visited during the inspection was moving ahead to develop its own guidelines for determining these costs.

Also, guidelines had not been received at the county level covering determining actual public health assistance program costs. County health staff indicated that they were told the Department of Health was working to draw up these guidelines.

The State of Texas should recognize that there are limitations on the direction that FSA can provide which will cover the various internal processes and operations of every State. Guidelines must be flexible enough to accommodate variations in State systems and internal processes. Ultimately the State, as the grantee, is responsible for development and implementation of SLIAG program activities, and for the fiscal documentation of costs and expenditures.

RECOMMENDATION: *The Texas Department of Human Services should develop a methodology to identify allowable public assistance program costs. Also, the Texas Department of Health should ensure that all providers of public health assistance services are informed of FSA guidelines for identifying allowable costs.*

OIG RESPONSE TO COMMENTS

The FSA and the State of Texas both commented on the draft report.

THE FSA

The FSA has generally agreed with the OIG report findings and recommendations. The FSA has taken a number of steps to improve implementing the SLIAG program including clarifying program policies and procedures. The State had several concerns about how FSA administered the program. We have modified certain aspects of the report based on FSA's comments.

The FSA questioned the statement that the new population would significantly increase public assistance and public health assistance services. Early estimates indicated that large numbers of aliens would qualify to access the SLIAG program. The report recognized that information obtained during the review determined that substantial increases in workloads and expenditures could occur in these areas as well as in education. However, we understand from recent discussions with States' officials that demand for services nationally is falling behind earlier projections.

The FSA's definition of public assistance included some public health activities which created administrative and service delivery problems for Texas public health agencies. The OIG recommended that FSA reconsider this position.

The FSA replied that they see this position primarily as an issue of identifying costs and that they will work with the States to develop methods of documenting costs which are consistent with FSA's responsibilities as stewards of public funds. We believe that FSA's actions to identify alternative methods is responsive to our concerns.

We continue to believe that a strict interpretation which permits public health costs to be claimed only for specific eligible legalized aliens is burdensome to the States. In many cases, the interpretation would require considerable revisions to the States' system or statutory requirements. However, we do agree that FSA's use of alternative systems, such as the Cost Documentation System and a revised population ratio method system which reflects usage, would be a positive effort to enhance cost effectiveness without requiring States to develop new systems or make considerable revisions to present systems. The population ratio method could be revised to consider not only eligible legalized aliens in the service population but also usage of those services by these aliens based on information already obtained from program experience. Where appropriate, other alternatives might be used which would

produce a more efficient system for the States and address congressional intent that the States would not be required to establish new or elaborate systems.

We reported that no formal appeals process exists if program costs are denied in the first level review. We agree with FSA's statement that the Grant Appeals Board does have jurisdiction over matters for withholding and repayment of SLIAG funds. However, it was the States' concern that an effective appeals mechanism be in place for issues involving programs or costs at the first level of FSA's review in the application process.

The FSA made numerous comments to clarify certain matters of fact, policy, or procedure. We have included these comments verbatim in Appendix B.

The State of Texas

The State has generally agreed with the OIG report findings and recommendations. Their comments are included verbatim in Appendix C. Since the time of the on-site review, the State has taken significant steps to effectively implement the SLIAG program through procedural and system changes.

The State comments indicate that guidelines have been developed for determining allowable program costs for use by county agencies and providers of services. In addition, Texas has clarified State organizational responsibilities concerning implementing the SLIAG program where several State agencies are involved.

Recognition is made of the State's concern regarding classifying some public health assistance activities as public assistance. Reference should be made to our comments above concerning this issue as addressed to FSA.

APPENDIX A

GOOD PRACTICES

A number of practices have been identified that other States could share.

1. The Executive Director of the Texas Health and Human Services Coordinating Council is the single point of contact. This council is the grantee agency for SLIAG funding purposes and is the coordinating and oversight entity for all State agencies involved in health and human services. This arrangement works well for a State in which none of the participating agencies for SLIAG is the grantee agency, and the staff have good rapport with the various agencies involved in SLIAG.
2. The Travis County Welfare Office maintained eligibility data on the main computer at the county auditor's office. Once eligibility information has been obtained on an eligible legalized alien, this process will facilitate verifying the status of the applicant for SLIAG-funded services. Weekly reports are prepared for the auditor's office on the services and benefit dollars involved. For future reference, the local welfare office can obtain information readily on each eligible legalized alien for whom eligibility has been determined.
3. Verifying eligible legalized alien status for educational programs will be through reviewing the I-688, Temporary Resident Card, issued by INS. Each student signs in for each class attended using the assigned "A" number from the card. A continual verification process is made to assure that only the intended population is utilizing SLIAG-funded educational programs.
4. The Texas Education Agency has modified the Standard Application Form for Adult Education to include the costs considered allowable for SLIAG funding purposes. The areas identified on this application for providers of educational services are salary costs, contracted services, supplies and materials, travel, and capital outlays.
5. Planned modifications to the State's computerized systems provide for the capture of SLIAG-related costs under distinct SLIAG expenditure codes.

APPENDIX B

FSA'S COMMENTS



Memorandum

Date: June 27, 1989

From: Acting Assistant Secretary
for Family Support

Subject: OIG Draft Report: Implementation of the State Legalization
Impact Assistance Grants Under the Immigration Reform and Control
Act of 1986 - State of Texas (OAI-07-88-00449)

To: Richard P. Kusserow
Inspector General

Attached are the Family Support Administration comments on the above draft report. Many of our comments are technical in nature due to the complexity of the legislation and the fact that the SLIAG program was very new at the time of the review.

We appreciate the assistance and cooperation we have received from you in response to our request to conduct this round of reviews of the SLIAG program. The reports we received are very useful to us in understanding how States are implementing the program.


Catherine Bertini

Attachment

**OIG DRAFT REPORT: Implementation of the
State Legalization Impact Assistance Grants
Under the Immigration Reform and Control Act of 1986 -
State of Texas**

The Family Support Administration's comments are divided into three sections: Comments on background information and other narrative material that does not relate directly to the draft report's findings, comments on the findings, and responses to the draft report's recommendations.

Narrative:

Page 1 (Background) -- The draft report says, "This new population will increase the demand for State public assistance and public health assistance services significantly." The draft report isn't clear whose conclusion this is or upon what data and analysis the conclusion is based. The final report should clarify these points.

In the course of implementing SLIAG, we have discovered that neither State and local public health programs nor, with few exceptions, public assistance programs, inquire about legal status. This suggests that at least some aliens were using these services before legalization and that newly legalized aliens do not represent a "new population" for public assistance and public health assistance services. Preliminary cost data from States suggests that newly legalized aliens are accessing public assistance services at rates far lower than the general population. There are indications that a backlog of public health needs existed and was identified during the medical examinations required of all applicants for legalizations. However, there is no data to suggest that, other than this temporary bulge in demand for public health services, newly legalized aliens will generate a significant increase in demand for public health assistance or public assistance services.

Page 2 (Background) -- The draft report says, "States must develop a method acceptable to FSA for determining administrative costs." We note that several methods for determining the share of administrative costs in ongoing programs that are allocable to SLIAG and which are acceptable a priori are specified in the regulation at 45 CFR 402.22(b). The process of determining SLIAG administrative costs (those costs incurred in administering the SLIAG grant itself), like all costs associated with administering HHS grants, is governed by 45 CFR Parts 74 and 92 and relevant OMB circulars.

Page 12 (Education -- Documentation of Eligible Legalized Alien Status) -- The draft report says that the State survey of eligible legalized aliens in elementary and secondary schools showed 38,000 eligible legalized aliens; "FSA then reduced that number to 32,000 and then to 13,000. The reason for this reduction was that not all eligible legalized aliens in elementary and secondary schools will need the services funded by SLIAG."

That statement is incorrect in several respects. Not all school districts or all eligible legalized alien children within a school district are eligible for funding. Therefore, Texas' initial estimates were unrealistically high because they failed to consider the statutory and regulatory limitations on the use of SLIAG funds for this purpose. Because it applies the definitions and provisions of the Emergency Immigrant Education Act (EIEA) to use of SLIAG funds for educational services, IRCA stipulates that SLIAG funds may be expended for educational services only on behalf of eligible legalized alien students who have attended U.S. schools for fewer than three complete academic years. Additionally, to receive any SLIAG funding for elementary and secondary education, a school district must have 500 eligible legalized alien students with fewer than three complete academic years in U.S. schools, or such students must make up 3 percent of students in the school district.

In evaluating the State's estimated number of eligible legalized alien students, the only factor we considered was the likelihood that the estimated number was a reasonably accurate reflection of the number of students that could be expected to meet the above requirements. We used this criterion because, under the SLIAG allocation formula, a State's estimates of its costs directly affect the amount of money that it and every other State receives. (Half of funds are allocated on the basis of costs.) Thus, we had a responsibility to ensure that estimates were reasonable, and to apply the same criteria to all States. The criteria employed in our review are specified in the SLIAG regulation at 45 CFR 402.44.

The State education agency's approved FY 1988 application estimated that there would be 14,808 "countable" eligible legalized alien children in Texas elementary and secondary school. This number represented one-third of 44,425, the total number of eligible legalized alien children 6-17 in the State of Texas. (Subsequent information from the Texas Education Agency indicates that this estimate, in fact, was much too high.)

Page 13 -- The draft report says that the lateness of issuing final regulations (which were published March 10, 1988) "has reduced the period of retroactivity during which providers would claim SLIAG funds."

The SLIAG regulation was delayed because we received so many comments on the proposed rule, which was published in August 1988. The comments were far-reaching, and deserved full and careful consideration. This process took time, but we believe the final product was much improved as a result. The range of activities for which SLIAG funds could be used was expanded dramatically in the final rule, as a result of our analysis and consideration of comments we received. The final rule also adopted a more equitable method for allocating funds.

We do not believe that the timing of the final regulation's publication adversely affected States' ability to claim costs. SLIAG funds are available for public assistance and educational services costs incurred from October 1, 1987, for public health assistance costs incurred from May 5, 1987, and for SLIAG administrative costs incurred after November 6, 1986. The methodologies for establishing costs did not change from the proposed to the final rule. We have worked extensively with States to help them establish costs for periods during which they did not have tracking systems in place.

Findings:

Finding: Since 1987, FSA has held national conferences and issued information to States on implementing the SLIAG program.

Comment: Since the OIG's onsite visits in August 1988, we have continued to provide assistance to States. We have conducted several more workshops and meetings to assist states in implementation. In October 1988, we issued a compendium incorporating the extensive formal guidance previously provided to States on methods of cost documentation. We also have provided assistance to individual States in the form of correspondence, telephone consultation, and onsite technical assistance. We are in the process of conducting initial program reviews of the major States, including Texas, which we visited in April 1989. We request that the final report reflect this continuing dialogue with States.

Finding: Texas also took steps to document expenditures and control disbursements.

Comment: On page 6, the draft report lists Family Planning under the Public Assistance category. Family Planning is included in the statutory and regulatory definition of public health assistance, and is included under the public health assistance category in Texas' approved

application. The final report should correct this statement.

Page 8 of the draft report says, "For public health assistance programs considered public assistance, an individual eligible legalized alien determination must be made." That statement is incorrect and should be corrected in the final report.

The regulation allows costs for public assistance programs to be established by (1) establishing costs associated with identified eligible legalized aliens, (2) using a statistically valid sample of the program's caseload, or (3) "any other reliable method of cost calculation, subject to Federal review" (45 CFR 402.21). We are making available to States a Cost Documentation System, initiated by HHS, which will enable them to establish costs based on a blind match of social security numbers of program participants. We have worked with States to develop other alternative methods that do not involve inquiring into the immigration status of any individual. We have distributed information on these alternative methods to States.

Finding: The FSA's definition of public assistance includes some public health activities which creates administrative and service delivery problems for Texas public health agencies.

Comments: The draft report is in error in saying that the definitions of public health and public assistance create service delivery problems for Texas public health agencies. By law and regulation, all programs or activities under both categories must be generally available. In practice, this means that SLIAG funds are available only to reimburse costs in on-going, generally available programs. In most programs, immigration status is not a condition of eligibility. If the alien is eligible for services, he or she would receive those services, regardless of whether the costs were reimbursed under SLIAG. The final report should clarify this point.

The draft report notes that "there is no quarrel with the logic of FSA's definition of public assistance versus public health," but does not explain that logic. The final report should explain that the regulatory definitions of public assistance and public health are based directly on IRCA.

Programs of public assistance are defined as programs that "provide for cash, medical or other assistance...designed to meet the basic subsistence or health needs of individuals" [section 204(j)(2)(A) emphasis added]. Consistent with IRCA's explicit inclusion of medical assistance under the public assistance category, State or locally funded programs that provide medical treatment to needy individuals are public assistance.

IRCA defines programs of public health assistance as programs which "provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services" [section 204(j)(3)(A)]. These statutory definitions and the legislative history indicate that Congress intended to allow certain traditional public health functions under the public health assistance category and medical assistance to the needy under the public assistance category. In implementing SLIAG, we have followed that statutory framework. We have defined public health assistance as, among other things, programs or activities that "are provided for the primary purpose of protecting the health of the general public" [45 CFR 402.2]. The scope of programs included in that regulatory definition of public health assistance goes far beyond the specific activities listed in the Immigration Reform and Control Act of 1986 (IRCA), which created SLIAG.

Regarding the draft report's concern that aliens "often enter the country with highly contagious diseases and need treatment immediately," the final report should note that the treatment of dangerous contagious diseases, including tuberculosis and sexually transmitted diseases, is included in the statutory and regulatory definition of public health assistance.

The public assistance/public health assistance categorization issue is primarily one of cost documentation requirements, not the allowability of costs associated with any particular health program. Texas would like to use the population ratio method to establish costs for all programs run by the Department of Health. Implicit in this method is the assumption that eligible legalized aliens will access programs in the same frequency and at the same cost as the general population. We do not believe this assumption to be appropriate for medical assistance programs that provide treatment to needy individuals. To the contrary, the information that we have to date

indicates that allowing use of the population ratio method for these programs generally would overstate costs, dramatically in some cases. However, we would be willing to allow use of the population ratio method for any program for which there is an empirical basis to indicate that doing so would not overstate costs.

The regulation also permits establishing costs using "any other reliable method of cost calculation, subject to Federal review." We have continually offered to work with States, including Texas, to devise acceptable alternative methods.

FSA realizes that many public assistance and public health programs don't routinely collect information on immigration status, but, we have found that many do collect social security numbers. That is why we funded and devoted substantial staff resources to developing a system that will match the social security numbers of program participants with those of newly legalized aliens. This system will give States information on the number of newly legalized aliens participating in a program and the cost of services to them. It is now available and allows States to establish costs for FY 1988 as well as current and future years. Recently, we sent State SLIAG Single Points of Contact suggestions for other possible methods for establishing costs. None of these alternative methods would require setting up new administrative mechanisms or checking status of all program participants.

We have worked closely with Texas to develop methodologies to document costs for all programs in the State's approved application.

Finding: The FSA application process created a number of significant problems for Texas. Also, the FSA's application review process interfered with the State's ability to plan for services.

Comment: The draft report says that the time period for submission, review, revision and approval of the initial application was too short. We agree that it would have been preferable to have had a longer period of time between the publication of the final regulation and the deadline for submission and approval of FY 1988 and FY 1989 applications. However, the final report should note that, because of the way IRCA set up the allocation formula, one major reason for the compressed timeframe was that we could not award funds to any State until all States' applications had been approved. In order for us to run the allocation formula, which

IRCA requires to include estimates of costs, we must have approved estimates for all States before we can calculate States' allocations.

The draft report says that "numerous policy misinterpretations and disagreements resulted because FSA did not provide definitive written instructions to assist Texas in understanding SLIAG application requirements." Had there been more time, we would have communicated more extensively in writing. However, the final report also should note that some of Texas' misunderstandings resulted from the State's failure to provide us initially with complete information about the programs and activities included in its application. The lack of adequate information required extensive dialogue and subsequent revision of the State's application.

The report says no formal appeals process exists if programs or costs are denied. The Grant Appeals Board has jurisdiction over issues related to the withholding and repayment of funds. For other matters, the State may follow normal procedures for disagreeing with an agency finding.

Recommendations:

Three of the draft report's recommendations propose action on the part of FSA:

Recommendation: The FSA should reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position.

Response: As discussed above, the primary issue relating to the definitions of public assistance and public health assistance is one of cost documentation. Texas wants to use the population ratio method for all programs run by its Health Department. The final report should clarify whether the OIG is recommending that we allow use of the population ratio in programs where, as discussed above, its use would likely overstate actual costs.

We believe that using the population ratio method for all health department programs would be inconsistent with our responsibility to exercise fiscal responsibility in administering SLIAG funds. However, we recognize that some States may encounter difficulties in

establishing actual costs, especially where ELAs are a small percentage of a State's population or for programs that few ELAs access. We will continue to work with States to ensure that a method is available to allow them to establish actual costs for each program in their approved applications, consistent with our responsibilities as stewards of public funds.

Recommendation: The FSA grant process should be made more orderly.

Response: The draft report's recommendation refers to the FSA grant process, but the specifics indicate that it is referring to the SLIAG application and grant award process. The language of the recommendation should be more specific.

We agree that the application process should be conducted in a more orderly fashion than was the case for the initial submissions. As the draft report indicates, the time frames for the FY 1988 and FY 1989 application processes were necessarily short. In effect, the States and we had to complete two application processes in less than a year. We do not expect similar problems for the FY 1990 and FY 1991 application processes.

To ensure that States have adequate time to prepare their FY 1990 applications based on empirical data, we have extended the deadline from July 15 to October 1. Additionally, we have encouraged States to submit as early as possible any new programs, questions, or issues, and have advised them that they may submit all or portions of their applications at any time.

In order to reduce the possibility of misunderstanding, we have advised States that we will communicate all substantive questions and concerns on their FY 1990 applications in writing, as was done for States' end-of-year reports. We issued extensive written guidance on the FY 1990 application process and the standards we will apply.

The draft report also recommends that we develop an appeals process to use if programs or costs associated with providing services are denied in the initial applications process. We do not believe such a process is necessary. The

Department's Grant Appeals Board has jurisdiction over cases involving the repayment or withholding of funds. Normal channels within the Department are open to States that disagree with decisions made during the course of application review.

Recommendation: The FSA and the Immigration and Naturalization Service (INS) should further clarify what is meant by "public charge" and widely disseminate this information to the alien population who have raised concerns about its resident status.

Response: Under IRCA and the Immigration and Nationality Act, the INS alone is responsible for determining whether individuals are likely to become public charges. FSA cannot establish policy on this issue. Nor can FSA disseminate information directly to the alien population. INS is precluded by IRCA from providing names and addresses of eligible legalized aliens to outside agencies.

However, we agree that it is important that all concerned know INS policy on the public charge issue. INS representatives have made presentations at virtually all of our workshops and conferences. At these meetings, States have been able to ask questions and receive direct information from the INS. We have communicated to States all information provided to us by INS on this and other pertinent issues, and will continue our policy of disseminating any relevant information that we receive.

The Department also has indicated its support for a legislative change to allow States to use a small portion of their SLIAG grants to inform temporary residents of the requirements for adjustment to lawful permanent resident status and of the rights and responsibilities of lawful temporary residents. Such use is not permitted under current law.

APPENDIX C

TEXAS' COMMENTS



TEXAS HEALTH AND HUMAN SERVICES
 COORDINATING COUNCIL
 311-A EAST 14TH ST.
 AUSTIN, TEXAS 78701

July 18, 1989

Mr. Richard P. Kusserow
 Inspector General
 Office of Inspector General
 Department of Health and Human Services
 Washington, D.C. 20201

Dear Mr. Kusserow:

Thank you for the opportunity to review and comment on the report entitled "Implementation of the State Legalization Impact Assistance Grants Under the Immigration Reform and Control Act of 1986 - State of Texas."

The report findings are based on a program inspection by the Office of Inspector General conducted in August, 1988, when the SLIAG program was still in the early development phase. Since then, the state agencies have developed and refined program rules, procedures, provider manuals, and contracts among service providers. Our comments thus include updated information, as well as corrections of facts reported.

The comments correspond to the sections contained in the report.

Executive Summary/Report Findings and Recommendations

- Page ii and page 4. The finding that the Family Support Administration (FSA) held conferences and issued information is true. However, the timing of the conferences and issuance of information limited their usefulness. For example, FSA held a conference in October, 1988, to assist states in establishing costs for the end-of-year reports due December 31, 1988. Two months was not adequate time to establish costs for most programs, particularly since many programs were relying on the anticipated use of the Cost Documentation System, which only became available to states this month. Similarly, FSA did not provide demographic data needed to establish end-of-year costs for public health programs until March, 1989.

Mr. Richard P. Kusserow
July 18, 1989
Page 3

- Page iv and page 9. The state strongly supports the OIG recommendation that FSA reconsider its position to classify certain public health services as public assistance and make appropriate adjustments to this position. The state believes the recommendation to be in line with the original intent of the congressional legislation implementing SLIAG.

Texas' Organizational Structure

- Page 3, "General." The various categories of SLIAG funds are not administered by single agencies, as indicated in the report. The Department of Health, the Department of Human Services, and the Department of Mental Health and Mental Retardation each administer public health assistance and public assistance programs under SLIAG. The Texas Education Agency administers the educational component of SLIAG. The Texas Health and Human Services Coordinating Council is responsible for the overall state administration and implementation of SLIAG in Texas.
- Page 3, "Public Assistance." The Department of Human Services is not responsible for state administrative functions associated with effectively implementing public assistance programs to be funded by SLIAG. Each of the health-related state agencies participating in SLIAG have programs classified as public health assistance and public assistance. Each agency is responsible for effectively implementing rules, procedures, and provider manuals for their respective programs.

Department of Human Services staff in the Emergency Assistance Programs branch are directly responsible for the implementation of the City/County Pass Through and the ENTERP/SLIAG programs. They are also responsible for coordinating the overall Department of Human Services implementation of other SLIAG public assistance programs, including Medicaid Health Care Services, Early Periodic Screening Diagnosis and Treatment (EPSDT) program, the County Indigent Health Care program, the Vendor Drug program, Medicaid Foster Care Assistance program, and Family Planning Title XIX program. The Department of Human Services does not, through the county structure, grant benefit payments to ELAs for emergency relief. The agency will, however, work with local government agencies to obtain SLIAG reimbursement for their expenses in serving ELAs.

- Page 3, "Public Health Assistance." The Department of Health is not responsible for the direct administration of SLIAG funds for general public health assistance. Each of the health-related state agencies participating in SLIAG have programs classified as public health assistance and public assistance. Each agency is responsible for effectively implementing rules, procedures, and provider manuals for their respective programs.

Public Assistance

- Page 6, "Assistance or Service Activities." The Texas Department of Human Services public assistance services that are eligible for SLIAG reimbursement include Medicaid Health Care Services, Medicaid Foster Care Assistance program, Early Periodic Screening Diagnosis and Treatment (EPSDT) program, Vendor Drug program, Family Planning Title XIX program, the Emergency Nutrition/ Temporary Emergency Relief (ENTERP) program, City/County Welfare Public Assistance Pass Through program, and the County Indigent Health Care program. The Department of Human Services also administers the Family Planning Title XX program as a public health program under SLIAG.
- Page 6, "Program Costs." The Department of Human Services has now established multiple object expenditure codes for audit purposes. The agency has also provided complete and detailed guidance to city and county public assistance agencies on how to identify ELAs, determine allowable program costs, and submit claims for reimbursement.
- Page 7, "Drawdown of Funds and Cash Balances." The state administers the SLIAG program on a reimbursement basis, i.e., funds are only drawn down once documented expenditures have been made. Adult education funds are disbursed on a thirty-day advance basis. There are no cash balances. The Coordinating Council has established reimbursement/payment procedures for state agencies contracting with the Council. The following cost documentation must accompany each request for reimbursement:
 - Drawdown Program Cost Summary
 - Request for Reimbursement/Cash Management Report
 - Self-Monitoring Checklist
 - List of Subcontractors (associated with the drawdown)

Public Health Assistance

- Page 7, "Assistance or Service Activities." Public health assistance and public assistance programs at the Department of Health have not been correctly classified in the report. The following programs are public health assistance programs:

- Health protection
- Health promotion/health education
- Prevention, detection, and referral of diseases and disabilities
- Ambulatory care/emergency medical services
- Short-term institutional care
- Long-term institutional care and alternatives
- Health care costs and health professions
- Statistics bureau
- Maternal and child health

Other public health programs have been designated as public assistance programs for purposes of SLIAG reimbursement. These are:

- Chest hospitals
- Chronically ill and disabled children
- Habilitation and rehabilitation (kidney health care)
- Health care costs and health professions (primary care)
- Public hospitals
- University of Texas System professional services
- Texas Tech Health Science Center professional services
- Women, infants, and children nutrition
- Certain maternal and child health programs

- Page 8, "Assistance or Service Activities." The paragraph should read: No new programs have been added because of SLIAG funding. The state furnishes traditional public health services through its regional public health clinics and contract services are furnished through the various county health departments. The same services offered by the state are generally offered at the county level. Whether a county contracts with the department depends upon services rendered. Some services are also provided through contract with other "local" providers.

- Page 9, "Program Costs." The paragraph should read: For public health assistance, the ratio method will be used to

determine costs. For public assistance programs within the Department of Health, actual costs will be determined. To arrive at actual costs for the public hospital (public is defined as ownership by a county or city or hospital district), the State intends to use the following methods:

For Inpatients - The state will use cost and expense information from these hospitals to obtain a daily expense rate. This rate will then be used to determine the cost of services for an eligible legalized alien.

For Outpatients - The Department reimburses the billed amount for an outpatient visit multiplied by each hospital's Medicaid outpatient interim rate, often called a hospital's "Ratio of Cost to Charges" (RCC). (The State does not use actual charges to reimburse outpatient hospital services, as indicated in the report.)

The Department of Health has established and distributed guidelines to counties for determining costs.

- Page 10, "Drawdown of Funds and Cash Balances." The state administers the SLIAG program on a reimbursement basis, i.e., funds are only drawn down once documented expenditures have been made. Adult education funds are disbursed on a thirty-day advance basis. There are no cash balances. The Coordinating Council has established reimbursement/payment procedures for state agencies contracting with the Council. The following cost documentation must accompany each request for reimbursement:

- Drawdown Program Cost Summary
- Request for Reimbursement/Cash Management Report
- Self-Monitoring Checklist
- List of Subcontractors (associated with the drawdown)

Mental Health

- Page 10, "Assistance or Service Activities." Public health assistance and public assistance programs at the Department of Mental Health and Mental Retardation are not accurately classified. The following are public health assistance programs:

- Hepatitis-B screening and vaccination
- Genetics screening
- Mental health program administration
- Central administration

Other public health programs have been designated as public assistance programs for purposes of SLIAG reimbursement. These are:

- Campus-based residential treatment and habilitation
- Community-based services
- Facility management and support
- Community MHMR centers residential services
- Community MHMR centers management and support
- Case management services
- Client and family support services
- Autism services

The agency will use the population ratio method to claim costs for public health assistance activities. The agency will claim costs for public assistance programs using the FSA Cost Documentation System when the system becomes fully operational and available to the state.

- Page 10, "Assistance or Service Activities." The agency did apply for approval of all programs listed above, including the programs classified as public assistance, in the FFY 1988 and FFY 1989 state applications. The public assistance activities were approved by HHS and listed as "placeholder" programs until such time as the agency could account for the costs of services to eligible legalized aliens. The agency intends to use the FSA Cost Documentation System to establish costs for these programs when the system becomes fully operational and available to the state.

- Page 11, "Documentation of Eligible Legalized Alien Status." The Department of Mental Health and Mental Retardation plans to use the population ratio method to claim costs for public health activities. The use of this method does not require that the agency distinguish between individuals who applied under Section 245A and Section 210. Both categories of amnesty applicants are considered eligible legalized aliens once they have received temporary resident status.

The agency will claim costs for public assistance programs using the FSA Cost Documentation System when the system becomes fully operational and available to the state.

- Page 11, "Program Costs." At the time of the interviews, the Department of Mental Health and Mental Retardation was uncertain about how to identify and document SLIAG-related costs for mental health programs in the public assistance category. The description of program costs in the report

applies to the usual procedure for disbursement of state funds to community MHMR centers, and not to SLIAG reimbursement procedures.

The agency intends to claim costs for public assistance programs using the FSA Cost Documentation System when the system becomes fully operational and available to the state.

The statement that modifications will not be made to the accounting system is incorrect. The state agencies participating in the SLIAG program account for SLIAG-related reimbursements under distinct internal cost centers or program activity codes.

- Page 11, "Administrative Costs." The statement regarding administrative costs is correct as it applies to program administrative costs under public health activities. At this time the agency does not identify SLIAG administrative costs. The agency may claim administrative costs related to use of the FSA Cost Documentation System.

Education

- Page 12, "Documentation of Eligible Legalized Alien Status." The normal enrollment process will be used to identify eligible legalized aliens entering elementary and secondary schools. In SLIAG adult education classes, the adult education directors will request documentation of resident status and will accept students with I-688A or I-688 cards. Adult education directors will only request SLIAG reimbursement for costs incurred by students who have temporary resident status, i.e., students with I-688 cards.

The Texas Education Agency reduced the estimated numbers of eligible legalized aliens in elementary and secondary schools for purposes of estimating costs in the FFY 1988 state application at the request of the FSA. The reason for the reduction was not because the services were not needed by eligible legalized alien students in elementary and secondary schools. Rather, most school districts could not meet the FSA requirement that school districts identify 500 students or 3 percent of the student population as eligible legalized aliens and the requirement that no eligible legalized alien student who had received more than three years of educational instruction in U.S. schools be counted toward the 500 student/3 percent threshold requirements. Four school districts qualify for SLIAG reimbursement for FFY 1988 and FFY 1989.

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Texas has enrolled approximately 111,000 eligible legalized alien students in adult education classes as of March, 1989.

Page 12, "Program Costs." The description of program costs for elementary and secondary school students is basically correct. Since the average cost per year of education for eligible legalized aliens at the elementary and secondary levels exceeds the \$500 average limit, school districts will request \$500 per eligible student.

The average cost of education for adults varies by region of the state and depends on local costs for teacher salaries, materials and supplies, and other related costs of service.

- Page 13, "Drawdown of Funds and Cash Balances." The procedures outlined for drawdown of funds accurately describe the Texas Education Agency policy for reimbursement under the Adult Basic Education program. This procedure for disbursement of SLIAG funds was under consideration at the time of the August interviews, but was not the established funds distribution policy of the Council. In December, 1988, the FSA sanctioned the advance of funds equal to thirty-days anticipated disbursements for the cost of education services. The Texas Education Agency adjusts each adult education cooperative's request for thirty-days advance funds based on the previous month's actual cost documentation. There are no cash balances.

Cross-Cutting Issues

- Page 13. The state concurs with the finding that the lateness in issuing the final regulations has caused problems for the state in implementing SLIAG. The FSA issued a policy change in September, 1988, to permit service contracted providers to claim costs of services for the period before the issuance of federal regulations provided that costs are fully documented and reasonable, allowable, and allocable to SLIAG. However, providers continue to have difficulty identifying and documenting costs for the period before the issuance of the federal regulations.
- Page 14. The state strongly supports the recommendation that the FSA grant process be made more orderly, including the development of an appeals process to use if program or costs associated with providing services are denied in the initial application process.

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- Page 15. The state endorses the recommendation for the FSA and the INS to clarify what is meant by "public charge" and widely disseminate this information to the alien population who have raised concerns about resident status.

Two of the stated purposes of the inspection were to identify potential problems early in the process and to identify good practices which could be shared with all states. The state agrees with the intent of these purposes and wishes that the results of the inspection could have been accomplished much earlier. Problems continue to be identified by the state and by FSA, leading to delays in claiming FY 1988 costs. Also, "good practices" from other states have yet to be shared in any kind of useful format.

Again, we appreciate the opportunity to provide comments. If you need further clarification or information, please contact me or Marguerite Rivera directly at (512) 463-2195.

Sincerely,



Patrice Thomas
Executive Director

cc: Governor William P. Clements
Lieutenant Governor William P. Hobby
Speaker Gib Lewis
Representative Debra Danburg
Polly Sowell
Gloria Rodriguez

