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

STATE OF NEW YORK



OFFICE OF INSPECTOR GENERAL
OFFICE OF ANALYSIS AND INSPECTIONS

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**Richard P. Kusserow
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EXECUTIVE SUMMARY

PURPOSE

The purpose of this inspection was to determine how effectively New York 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 New York and reports on its implementation of the SLIAG program as of August 1988.

Both FSA and New York 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.

FINDING: New York evaluated its ability to identify eligible legalized aliens, documented costs for services, and took steps to ensure compliance with SLIAG requirements.

- The State Department of Social Services instructed local social service districts to identify and maintain a manual list of information on individuals who are determined to be eligible for SLIAG-reimbursable assistance and services. The information would be maintained in the client’s record where it would be available for entering into the automated State/Federal Charge Indicators for Service System, when the system is operational.
- In the New York City area, major educational service providers were already part of a centralized data system known as “Allies.” Plans were to modify this system to document costs for services to identified eligible legalized alien students.

FINDING: New York will use a wide network of educational service providers, assess the educational status of eligible legalized aliens, and refer them to appropriate programs.

- The State Department of Education will use a wide variety of current educational service providers, through contracts, to conduct SLIAG-related educational programs. These providers have proven their effectiveness in delivering instruction in English for speakers of other languages, citizenship, adult basic education, and high school equivalency for out-of-school youths and adults.
- To meet the particular needs of eligible legalized aliens, educational agencies receiving SLIAG funds are expected to conduct a pre-enrollment appraisal not only to acquire SLIAG-related eligibility information, but also to assess

English-speaking ability and knowledge of the history and government of the United States. Based on the appraisal, individuals will be referred to appropriate programs and program levels.

Nevertheless, there are some funds control vulnerabilities.

FINDING: The State had not developed formal procedures for periodic reviews of cash balances.

- The Department of Social Services, the grantee agency, had not formalized a process to monitor cash balances that may occur as a result of interdepartmental transfers of SLIAG funds.

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

FINDING: The FSA application review process created a number of significant problems for New York. 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 New York in understanding SLIAG application requirements.
- The time frames were too short for submitting the initial SLIAG application, review and comment, and revisions of the application.
- Implementing SLIAG-funded programs was delayed because of a significant delay in notifying New York of the grant award.

FINDING: The State did not have methodologies in place to identify eligible legalized aliens to record costs for public assistance and public health assistance.

FINDING: State interdepartmental Memorandums of Understanding outlining each department's liability for SLIAG funding purposes had not been finalized.

As mentioned earlier, FSA and New York 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 New York.

RECOMMENDATION: The Department of Social Services should develop and implement formal procedures to ensure that the department is aware of cash balances that may exist as a result of interdepartmental transfers of SLIAG funds.

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 New York 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 New York's initial application, FSA's review and formal comment, New York's consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval; and
- revise the grant award process for approved applications so that the notice of grant award reaches New York prior to the beginning of the fiscal year.

RECOMMENDATION: The Departments of Social Services and Health should develop and implement a process to effectively identify individual eligible legalized aliens.

RECOMMENDATION: The State should take the necessary action to finalize all Memorandums of Understanding so that interagency responsibilities can be clearly set forth and acted upon as necessary.

COMMENTS

The FSA and the State of New York both commented on the draft report. They generally agreed with our findings and recommendations. Both indicated indicated steps had been taken to further implement the SLIAG program. Their comments are included verbatim in 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 good practices which all States could share. This report presents the results of the inspection pertaining to the State of New York.

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 New York's 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. In conducting this review, interviews were held with officials from the Department of Social Services, the State Department of Health's Division of Epidemiology, and the State Education Department's Bureau of Adult and Continuing Education Program Development. Additional telephone discussions were also held.

The visits were coordinated by staff from the Department of Social Services, Office of Audit and Quality Control. Prior to the on-site visit, materials furnished by the Department of Social Services' Bureau of Policies, Plans and Programs were reviewed, as well as the application approved by FSA. Materials supplied by respondents were also reviewed.

NEW YORK'S ORGANIZATIONAL STRUCTURE

The Department of Social Services is responsible for the State's public assistance activities, and has been designated as the single point of contact and the grantee agency for the SLIAG program. Day-to-day administration of the program is in the Office of Family and Children Services, and the State's Refugee Coordinator has been negotiating the application.

The State Department of Health, which is responsible for State public health services, is divided into two sections: the Office of Health Systems Management and Public Health. The SLIAG health programs are administered by the Division of Epidemiology, which is in the Public Health section. Each county has its own public health organization usually headed by a regional health department official. State-level staff deal directly with individual county officials. The ultimate responsibility rests with the State.

The administration and supervision of SLIAG-related education services rests with the State Department of Education and its Bureau of Adult and Continuing Education Program Development. The entire program will be administered at the State level.

FINDINGS AND RECOMMENDATIONS

Both FSA and New York 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.

FINDING: New York evaluated its ability to identify eligible legalized aliens, documented costs for services, and took steps to ensure compliance with SLIAG requirements.

- The State Department of Social Services instructed local social service districts to identify and maintain a manual list of information on individuals who are determined by the State to be eligible for SLIAG-reimbursable assistance and services. The information would be maintained in the client’s record where it would be available for entering into the automated State/Federal Charge Indicators for Service System, when the system is working.
- In the New York City area, major educational service providers were already part of a centralized data system known as “Allies.” While plans were to modify this system, the State has found it more expeditious for agencies to develop its own SLIAG data base for reporting and documenting costs.

FINDING: New York will use a wide network of educational service providers, assess the educational status of eligible legalized aliens, and refer them to appropriate programs.

- The State Department of Education will use a wide variety of current educational service providers, through contracts, to conduct SLIAG-related educational programs. These providers have proven their effectiveness in delivering instruction in English for speakers of other languages, citizenship, adult basic education, and high school equivalency for out-of-school youths and adults. The providers include local educational agencies, postsecondary institutions, qualified designated entities, community-based organizations, and

other public and private not-for-profit agencies, such as school districts, Boards of Cooperative Educational Services, libraries, and volunteer groups.

- In order to meet the particular needs of eligible legalized aliens, educational agencies receiving SLIAG funds are expected to conduct a pre-enrollment appraisal not only to acquire SLIAG-related eligibility information, but also to assess English-speaking ability and knowledge of the history and government of the United States. Based on the appraisal, individuals will be referred to appropriate programs and program levels.

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

PUBLIC ASSISTANCE

Assistance or Services Activities

The Department of Social Services is responsible for State public assistance activities. These activities include:

- Emergency Assistance to Adults;
- Supplemental Security Income (SSI);
- Home Relief, Foster Care, food stamps (administration);
- Methadone Maintenance;
- Residential Drug Free and Ambulatory Drug Free;
- Outpatient -Tertiary, Inpatient, Residential;
- Office of Mental Retardation and Developmental Disabilities; and
- Alcohol Treatment and Rehabilitation programs.

No new SLIAG-related programs were established in public assistance. The State is responsible for such services. However, vendors and contractors may be used.

Documentation of Eligible Legalized Alien Status

Prior to the availability of the State/Federal Charge Indicators for Services System, local social service districts were instructed to identify and maintain a manual list of individuals. These persons are determined to be eligible for SLIAG-reimbursable assistance and services as a result of an adjustment of their alien status under IRCA. This information will be maintained in the client's record. For those eligible legalized aliens who are eligible for Medicaid, a separate code will be assigned, and it will be added to the current system.

Program Costs

The Department of Social Services' Office of Budget Management used the most recent expenditure data and client population estimates available to project programmatic costs. The SLIAG application represents the department's best estimate of expenditures required for program implementation. The State anticipates no major changes in the accounting system. The budget office will treat SLIAG as if it were a separate grant by giving the SLIAG program its own cost center code. Claims will be made against this code.

Distribution of funds between State agencies will be based upon projection of costs and available Federal funds. Priority in allocations will be given to programs meeting the subsistence needs of the eligible legalized alien population and programs providing language and citizenship instructions necessary to adjust to immigration status.

After Federal transfer of SLIAG funds to the Department's Federal Assistance Financing System, the Department of Social Services will effect a drawdown and initiate a certification of funds for the Division of the Budget. On a monthly basis, the Department of Social Services will provide a concurrent payment to the other State agencies based upon a standard claim form. An ongoing concurrent payment/reconciliation process will be performed by the Department of Social Services.

Actual expenditures will be reconciled, compiled, and adjusted annually. Financial liability for inappropriate expenditures or nonuse of SLIAG funds, and consequently for any audit exception, will reside with each State agency receiving and expending funds. Acknowledging and accepting this responsibility is a condition of receiving funds.

Administrative Costs

At the time of the on-site review, the department's indirect cost rate was 35.59 percent. Personnel time is prorated and the costs spread across the programs. Cost estimates in the application reflected State and local costs. These estimated costs are not duplicated between programs and fees, and third-party revenues have been eliminated from these estimates.

Details of expenditures encompassed in the quarterly expenditure reports submitted on this and other programs are received in the Department of Social Services for the comptroller's preparation of reports for components receiving SLIAG funds. There was no indication as to when the State will be audited under the single audit program.

Drawdown of Funds and Cash Balances

The details of the Memorandums of Understanding have not been finalized, but it is expected that the drawdown of Federal funds will be no different than the current procedure. Under this procedure, the Department of Social Services/budget office would receive a grant award from the U.S. Department of Health and Human Services (HHS) and reflect the funds on a budget

certificate. The fiscal staff would then draw funds on an “as needed” basis upon approval of the budget certificate.

The procedure for interagency (interdepartmental) transfer of funds again is the same as for other Federal programs. There are basically two ways that the transfers could be processed:

- The Department of Social Services could suballocate funds by certificate and have a Memorandum of Understanding in place with the affected State agencies, or
- The Department of Social Services could transfer monies by means of a journal voucher or special charge voucher. This method of transfer is generally covered through a Memorandum of Understanding.

FINDING: The State had not developed formal procedures for periodic reviews of cash balances.

As the grantee agency, the Department of Social Services is responsible for the interdepartmental transfer of SLIAG funds to carry out the purposes of the legislation. The process of monitoring any cash balances that may be created as a result of these transfers is through accessing the New York State comptroller’s terminal. However, the State did not have formal procedures in place to conduct periodic reviews of cash balances.

RECOMMENDATION: The Department of Social Services should develop and implement formal procedures to ensure that the department is aware of cash balances that may exist as a result of interdepartmental transfers of SLIAG funds.

PUBLIC HEALTH ASSISTANCE

Assistance or Service Activities

The State Department of Health will provide services and treatments related to sexually transmitted diseases, immunizations, prenatal care, family planning, tuberculosis, HIV testing, substance abuse, outpatient—primary and secondary, and alcoholism prevention.

No new programs were established because of the SLIAG funding. Most of the programs are administered directly by the State or through agreements with the individual counties. The counties may then have agreements with individual providers such as family planning, prenatal care, and community health centers.

The application process will be no different for eligible legalized aliens than it is for other recipients of services. Currently, the State is unable to document and identify the individual eligible legalized aliens that will utilize the services provided. The current protocol is to serve

anyone who requests service regardless of alien status. Proof of alien status is not requested. Because of this protocol, the State will continue to utilize the ratio method and will exclude from SLIAG funds dollars received from other Federal programs.

Program Costs

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

The SLIAG program requires that certain tertiary level public health programs be considered as public assistance. This requirement has substantial impact for the State because it is now imperative to identify the individual eligible legalized aliens so that costs can be documented for them. This requires extensively modifying procedures and may negatively affect aliens seeking medical services. State officials were concerned that the FSA was not aware of the problems this could create for the State.

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

Administrative Costs

According to staff, the department's current indirect cost rate has not been approved. Although the Memorandum of Understanding has not been finalized, the State believes that it will not be necessary to modify the accounting system. Expenditures will be documented by departments as they are received from the contractors. The Department of Social Services deals directly with the State Department of Health's Office of Health Systems Management to discuss the bad debt and charity pool cases. The department will use a formula approach whereby public health costs will be reimbursed with State and local dollars, and State reimbursement claimed from SLIAG funds.

Drawdown of Funds and Cash Balances

The Department of Social Services provides funds to the Department of Health through quarterly certificates of transfer.

EDUCATION

Assistance or Service Activities

In New York, SLIAG funding for educational services will be reserved for adult programs, specifically language and citizenship preparation. Because of the small number of children who would be eligible to enroll in the SLIAG program, no services will be provided to children.

Educational services will be provided to adults through local education agencies, postsecondary institutions, qualified designated entities, community-based organizations, and other public and private not-for-profit agencies that have shown their effectiveness in delivering instruction in English for speakers of other languages and citizenship education. Annually, the State Department of Education operates a program of adult basic education in English for speakers of other languages, and high school equivalency instruction for approximately 115,000 out-of-school youth and adults. Programs are operated by school districts, Boards of Cooperative Educational Services, postsecondary institutions, libraries, community-based organizations, and volunteer groups.

The State Department of Education planned to contract with current providers to conduct SLIAG-related educational programs. In some cases, the State Department of Education will contract with smaller providers through intermediaries. It is anticipated that additional providers will participate in the program. The department will award SLIAG funding to eligible agencies based upon submission and consideration of requests for proposal bids. Eligible agencies applying for SLIAG funds will receive awards based on factors such as the number of eligible legalized aliens already being served, the number estimated to be served in the program year, demonstrated effectiveness in providing English for speakers of other languages or citizenship instruction, reasonable costs relative to other applicant agencies, outreach referral, and comprehensiveness of planning with other agencies.

In New York City, where an estimated 80 percent of the eligible legalized aliens will participate in programs, \$500 will purchase approximately 111 hours of instruction. Thus, SLIAG funding alone should be sufficient to fund the needed instructional programs to meet permanent resident status.

Documentation of Eligible Legalized Alien Status

It is anticipated that agencies receiving SLIAG funds will conduct a pre-enrollment assessment to determine an eligible legalized alien's ability to speak and understand English, and knowledge of the history and government of the United States.

The pre-enrollment appraisal process will provide information on students' educational history, demographic characteristics, and data supporting their temporary residency status. Based on this appraisal, each eligible legalized alien will be referred to appropriate programs and program levels.

The students will be identified with a centralized data system known as "Allies." It will be modified through the Literary Assistance Center in New York City. The major providers are currently part of this system. Service providers receiving SLIAG funds periodically are expected to report on the recipients, purpose, and extent of such funding.

Program Costs

The individual requests for proposals will address the issues of funding to the particular providers as well as the related SLIAG costs not claimed for other programs. Each individual provider is expected to file a fiscal or program report. Staff from the State Department of Education will perform desk audits, provide technical assistance, and monitor programs on an ongoing basis.

The SLIAG funds are disbursed to the Departments of Social Services and Education, and subsequently distributed to eligible agencies by provider contracts. Advance payments are not given to agencies under contract. The one allowable exception is for funded, not-for-profit agencies, who are able to receive 12.5 percent advance payments.

Agencies receiving funds under this program must collect and report data to document or verify enrollment, attendance, progress, certification, and program expenditures. This allows the department to monitor cash balances. At the time of the review, a Memorandum of Understanding between the two agencies to transfer SLIAG funds from the Department of Social Services to the State Department of Education was nearing completion.

Administrative Costs

The State Department of Education has confidence in the current comptroller's accounting system and feels that adding SLIAG to the system will not present a problem. According to staff interviewed, the State Department of Education is the designated agency for determining an indirect cost rate, which is a component of administrative costs.

The State Department of Education and the Department of Social Services had not finalized a Memorandum of Understanding regarding the Department of Education's liability and how the administrative costs will be dispersed. Plans are to use the current State comptroller's procedures for allocating funds. Administrative costs will be funded from other components within the department. Since this is a short-term program, the department is reluctant to increase the number of staff for SLIAG.

Drawdown of Funds and Cash Balances

The Department of Social Services provides funds to the State Education Department through quarterly certificates of transfer.

CROSSCUTTING ISSUES

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 State's programs or services, estimates of the State's 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.

FINDING: The FSA application review process created a number of significant problems for New York. 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 New York in understanding SLIAG application requirements.
- The time frames were too short for submitting the initial SLIAG application, review and comment, and revisions of the application.
- Implementing SLIAG-funded programs was delayed because of a significant delay in notifying New York of the grant award.

The FSA has the responsibility to review and approve or deny State applications for SLIAG funding for designated programs. The application approval is a key process for the State since it must wait for FSA action to know which programs have been approved for SLIAG funding purposes.

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 New York 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 New York's initial application, FSA's review and formal comment, New York's consideration of FSA comments and negotiation of disputes, and its submission of the revised application for FSA approval; and

- revise the grant award process for approved applications so that the notice of grant award reaches New York prior to the beginning of the fiscal year.

FINDING: The State did not have methodologies in place to identify eligible legalized aliens to record costs for public assistance and public health assistance.

The Department of Social Services anticipates establishing a State/Federal Charge Indicators for Service system to identify and maintain information on eligible legalized alien status. The department had instructed local social service offices to obtain information on applicants' eligible legalized alien status through a manual operation.

The Department of Health is responsible for administering all public health programs, including those programs classified as public assistance for SLIAG funding purposes. The department had not developed a process or methodology to identify individual eligible legalized aliens so costs applicable to them can be identified.

RECOMMENDATION: The Departments of Social Services and Health should develop and implement a process to effectively identify individual eligible legalized aliens.

FINDING: State interdepartmental Memorandums of Understanding outlining each department's liability for SLIAG funding purposes had not been finalized.

The three entities involved in administering the SLIAG program are the Department of Social Services, the State Department of Health, and the State Department of Education. Individual Memorandums of Understanding were being prepared to outline each department's liability.

RECOMMENDATION: The State should take the necessary action to finalize all Memorandums of Understanding so that interagency responsibilities can be clearly set forth and acted upon as necessary.

OIG RESPONSE TO COMMENTS

The FSA and the State of New York 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 implementation of the SLIAG program including clarifying program policies and procedures. In the report the State had several concerns about how FSA administered the program. We have modified certain aspects of the report based on the comments received from FSA.

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 the 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 New York public health agencies. The OIG recommended that FSA reconsider this position.

The FSA replied that they see this primarily as an issue of cost identification 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 and, in many cases, 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 use of those services by the eligible legalized alien population 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 New York

The State has generally agreed with the OIG report findings and recommendations. Their comments are included verbatim in Appendix C. Two of the three departments (Social Services and Education) indicated specific steps they have taken to further implement the SLIAG program since the time of the on-site review.

However, based on the comments received from the Department of Health, there is no indication that they have established a process to identify individual eligible legalized aliens. This process is necessary when certain public health assistance programs are considered as public assistance for SLIAG funding. Claims for reimbursement of such costs would be improper where costs cannot be traced to individual eligible legalized aliens.

APPENDIX A

GOOD PRACTICES

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

1. In New York City, which has the bulk of the State's adult education programs, the State will use a system known as "Allies" to identify eligible legalized aliens and document costs for the adult education program. The eligible legalized aliens seeking educational services have generally been identified, since this system was in place prior to implementing the SLIAG program.
2. The State Department of Education will use a wide variety of current educational service providers, through contracts, to conduct SLIAG-related educational programs. These providers have proved their effectiveness in delivering instruction in English for speakers of other languages, citizenship, adult basic education, and high school equivalency for out-of-school youths and adults. The providers include local education agencies, postsecondary institutions, qualified designated entities, community-based organizations, and other public and private not-for-profit agencies such as school districts, Boards of Cooperative Educational Services, libraries, and volunteer groups, most of which are affiliates of the Literacy Volunteers of New York State.
3. In order to meet the particular needs of eligible legalized aliens, educational agencies receiving SLIAG funds are expected to conduct a pre-enrollment appraisal process. This process will provide information on an individual's ability to speak and understand English, knowledge of the history and government of the United States, educational history, demographic characteristics, and residency status. Based on the appraisal, individuals will be referred to appropriate programs and program levels.
4. Prior to the availability of an automated State/Federal Charge Indicators for Service System, the State Department of Social Services instructed local social service districts to identify and maintain a manual list of individuals determined to be eligible for SLIAG-reimbursable assistance and services. The list would include an individual's State identity number, alien registration number, legalization status, the date legal status was granted under IRCA, and the type of benefits provided. The information would be maintained in the client's record where it would be available for entry into the automated system.

APPENDIX B

FSA'S COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Family Support Administration
Office of Refugee Resettlement

Memorandum

Refer to:

July 14, 1989

Date:

From: Acting Assistant Secretary
for Family SupportSubject: OIG Draft Report: Implementation of the State Legalization
Impact Assistance Grants Under the Immigration Reform and
Control Act of 1986 - New York OPI-07-88-00448

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:
NEW YORK

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 legalization. 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." The final report should 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 5 (Public Assistance) -- The draft report states, "No new SLIAG-related programs were established in public assistance." It is important to note that all programs of public assistance must meet three criteria. First they must be generally available to the population of the State. Secondly, they must be means-tested. Lastly, they must provide for the subsistence or health

of the individual. As noted above, the requirement that the programs be generally available would preclude the State from developing any programs for "eligible legalized aliens." The final report should make that point clear.

Page 8 (Administrative Costs) -- The draft report says, "The Department of Social Services deals directly with the State Department of Health's Office of Health Systems Management to discuss the bad debt and charity pool cases." It should be noted that SLIAG funds do not pay for bad debt.

Page 8 (Education) -- The draft report says, "Annually, the State Department of Education operates a program of adult basic education in English for speakers of other languages, and high school equivalency instruction for approximately 115,000 out-of-school youth and adults. It should be noted that the three-year rule limiting SLIAG reimbursement to students who have been enrolled in school for less than three complete academic years also applies to the "out-of-school youth" group.

Page 10 -- The draft report says, "Advance payments are not given to agencies under contract. The one allowable exception is for private, not-for-profit agencies, who are able to receive 25 percent advance payment." It is not clear if this is an exception allowable only under contract or if the State is generally allowing a 25% advance.

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, and intend to visit selected other States as well. We request that the final report reflect this continuing dialogue with States.

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

Comments: We question how the definitions of public health and public assistance create service delivery problems for New York 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 ongoing, 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 they 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 why the OIG recommends that FSA reverse its logic. The final report should explain that the regulatory definitions of public assistance and public health assistance are based directly on the Immigration Reform and Control Act of 1986 (IRCA) which created SLIAG.

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, FSA considers State or locally funded programs that provide medical treatment to needy individuals to be public assistance programs.

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 IRCA.

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. Under our regulation, States are allowed to use a single ratio of the number of ELAs in the service population to the total service population to establish actual costs for public health assistance programs, as defined for SLIAG. 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.

FSA realizes that many public assistance and public health programs do not routinely collect information on immigration status but has 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 gives 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 requires setting up new administrative mechanisms or checking status of all program participants.

We will continue to work closely with New York to develop methodologies to document costs for all programs in its approved applications.

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

Comments: 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 New York in understanding SLIAG application requirements." Had there been more time, we would have communicated more extensively in writing. Our current practice is to communicate in writing on all substantive issues regarding State applications, amendments, and end-of-year reports.

The report says that 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:

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 timeframes 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 Departments of Social Services and Health should develop and implement a process to effectively identify individual eligible legalized aliens.

Response: HHS has made a variety of options for tracking costs available to States. If it is not possible or cost effective for States to base their SLIAG related costs on an actual count of eligible legalized aliens accessing services, States may opt to use the Cost Documentation System, the population ratio method (for public health assistance), or statistical sampling, or States may suggest alternative methods to HHS.

APPENDIX C

NEW YORK'S COMMENTS

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243 - 0001
CESAR A PERALES
Commissioner



RE: Your DRAFT Report on the Review
of State Legalization Impact
Assistance Grant (SLIAG) Program
(#89-036, Formerly 88-PND-028)

Dear Mr. Kusserow:

This is in response to your June 19, 1989 report on the implementation of the State Legalization Impact Assistance Grant (SLIAG) Program in New York State. We shared the report with the State's Department of Health (DOH) and Education (SED) and are attaching their comments for your consideration.

Here we will address those recommendations addressed to this Department.

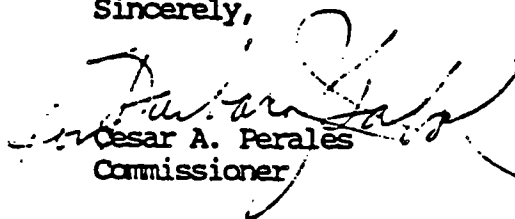
First, we implemented the necessary formal procedures to monitor interdepartmental transfers of SLIAG funds.

Second, in regard to developing and implementing a process to identify eligible legalized aliens in order to record costs for public assistance provided, we already submitted a proposed claiming methodology, based on population ratios, to the Federal Division of State Legalization Assistance (DSLAA) for approval. If that approval is not given soon, we plan to use either the Cost Documentation System or a statistically valid methodology for claiming 1988 costs.

Finally, relative to the recommendation that all interagency Memorandums of Understanding (MOUs) be finalized, we now have in place an MOU with SED and are developing a standardized MOU for all other State agencies involved in SLIAG public assistance claims.

Thank you for sharing the report with us and we trust our comments adequately address your concerns.

Sincerely,



Cesar A. Perales
Commissioner

Mr. Richard P. Kusserow
Inspector General
Dept. of Health and Human Services
Office of Inspector General
Room 5250
200 Independence Avenue S.W.
Washington, D.C. 20201

Attachment



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12217

July 20, 1989

Joseph P. Ferrone
Director
Bureau of Policies, Plans and Programs
Office of Audit and Quality Control
NYS Department of Social Services
40 N. Pearl Street
Albany, New York 12243-0001

Dear Mr. Ferrone:

Department of Health staff have reviewed the audit on implementation of the State Legalization Impact Assistance Grant. Overall, the report reflects accurately the comments and concerns raised during the meeting with OIG officials by Department of Health representatives. The report acknowledges the problems inherent in the Family Support Administration's (FSA) management of the program. The lack of coherent rules, the dearth of guidance and the poor communication between DHHS and the states has made a complicated program infinitely more difficult to manage. The specific recommendations which apply to the Department of Health, warrant several comments.

Recommendation:

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

Comment:

The Department of Health agrees with the recommendation. Programs classified as public assistance now require a tracking system to identify individual eligible legalized aliens (ELA) using the service. Programs approved as public health assistance can be reimbursed using the ratio method. Individual identification of ELAs is impossible because legal status is not routinely asked when public health services are provided. Inclusion of this question could act as a disincentive for program enrollment of those individuals most in need of a service.

The Department of Health would like to see the concept of "public health" expanded by the FSA to include all programs designated as public health by the State. The FSA staff determining which programs are eligible under the public health category have no training in public health. Public health programs provided by the Department and available to New York residents (whether ELAs or not) should all be eligible for reimbursement under the heading of public health assistance.

Recommendation:

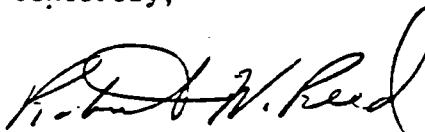
The Departments of Social Services and Health should develop and implement a process to effectively identify individual eligible legalized aliens.

Comment:

This focuses on the same issue discussed above. Identification of ELAs is incompatible with the Department's position of providing service to all individuals regardless of their legal status. Even if a method could be devised, it would not be cost-effective. The difficulties associated with designing and implementing a tracking system are formidable. It would be simpler and less costly to use the ratio method of determining reimbursable costs. If the FSA redefines some programs as public health assistance rather than public assistance, the issue of identifying individual ELAs will be moot.

Thank you for sharing the audit report with us.

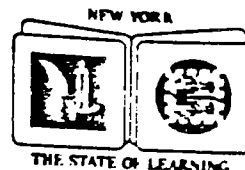
Sincerely,



Robert W. Reed
Director
Fiscal Management Group

dlp

cc: Mr. Leavy
Mr. VanDeCarr
Dr. Novick
Ms. Buckley
Ms. Klein
Ms. Carlton



THE STATE EDUCATION DEPARTMENT - THE UNIVERSITY OF THE STATE OF NEW YORK ALBANY, NY 12234

EXECUTIVE DEPUTY COMMISSIONER OF EDUCATION
THE NEW YORK STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

July 13, 1989

Joseph P. Ferrone
Director
Bureau of Policies, Plans
And Programs
Office of Audit and Quality Control
New York State Department
of Social Services
40 North Pearl Street
Albany, NY 12243-0001

Dear Mr. Ferrone:

In response to your June 29, 1989 letter, we have reviewed the June 1989 draft copy of the U.S. Office of Inspector General's (OIG) audit report on New York State's implementation of State Legalization Impact Assistance Grant (SLIAG) funding. The State Education Department's (SED) reactions are as follows:

1. On pages 4, 9, and 13 of the draft report, while OIG is correct in saying that plans were being discussed to modify the central "ALLIES" data base, since then each of the four major education agencies has found it more expeditious to develop its own SLIAG data base for program reporting and documenting costs.
2. On page 10, the "cash advance" provided is 12 1/2%, not 25%, and this was made available to all funded not-for-profit agencies.
3. With regard to expediting the Memorandum of Understanding (MOU) for FY 90 funding, SED and State Department of Social Services (SDSS) have already begun discussions to assure that the MOU will be completed early enough to enable all contracts and subcontracts to be in place by October 1, 1989. This includes issuance of a continuation application which is to be returned by July 28, identification of rollover funding, and interagency discussions on the FY 90 funding level for SED.

4. We are pleased that SED is extensively cited in the "Good Practices" section of the reports. This is particularly welcome in light of the difficult implementation problems posed by the SLIAG program.

I hope these comments are responsive to your request.

Sincerely,



Thomas E. Sheldon

vmc

cc: James A. Kadamus
Russell J. Kratz
Robert Purga

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