



**U.S. Department of Education
Office of Inspector General**



American Recovery and Reinvestment Act of 2009

**Alabama:
Use of Funds and Data Quality for Selected
American Recovery and Reinvestment Act Programs**

Final Audit Report



Alabama State Capitol Building

ED-OIG/A04K0007

February 2012



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
Atlanta, Region IV

February 15, 2012

Dr. Thomas R. Bice
State Superintendent of Education
Alabama State Department of Education
50 North Ripley St.
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Dear Dr. Bice:

This **final audit report**, Control Number ED-OIG/A04K0007, presents the results of our audit titled "Alabama: Use of Funds and Data Quality for Selected American Recovery and Reinvestment Act Programs." This report incorporates the comments you provided in response to the draft report.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following U.S. Department of Education officials, who will consider them before taking final Departmental action on this audit.

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It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within **30 days** would be appreciated.

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

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/s/

Denise M. Wempe
Regional Inspector General for Audit

Enclosure

Abbreviations, Acronyms, and Short Forms Used in this Report

ALSDE	Alabama State Department of Education
Department	U.S. Department of Education
Director	ALSDE Federal Programs Director
FTE	Full-Time Equivalent
FY	Fiscal Year
IDEA	Individuals with Disabilities Education Act, Part B, Grants to States
LEA	Local Educational Agency
Mobile	Mobile County Public Schools
Montgomery	Montgomery Public Schools
OMB	Office of Management and Budget
Recovery Act	American Recovery and Reinvestment Act of 2009
Results Document	2010 SIG Review Results Document
SEA	State Educational Agency
SFSF	State Fiscal Stabilization Fund
SIG	School Improvement Grants to States
Title I	Title I, Part A of the Elementary and Secondary Education Act of 1965

**Alabama:
Use of Funds and Data Quality for Selected
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Control Number ED-OIG/A04K0007**

PURPOSE

The American Recovery and Reinvestment Act of 2009 (Recovery Act) places a heavy emphasis on accountability and transparency and, in doing so, increases the responsibilities of the agencies that are impacted by the Recovery Act. Overall, the U.S. Department of Education (Department) is responsible for ensuring that education-related Recovery Act funds reach intended recipients and achieve intended results. This includes effectively implementing and controlling funds at the Federal level; ensuring that recipients understand requirements and have proper controls in place over the administration and reporting of Recovery Act funds; and promptly identifying and mitigating instances of fraud, waste, and abuse of the funds.

The purpose of our audit was to determine whether the State of Alabama (1) used Recovery Act funds in accordance with applicable laws, regulations, and guidance; and (2) reported accurate, reliable, and complete data in compliance with Recovery Act reporting requirements. This report provides the results of our audit of the Alabama State Department of Education (ALSDE); the Governor's Office; the Department of Corrections, which is a State agency; and Mobile County Public Schools (Mobile) and Montgomery Public Schools (Montgomery), which are local educational agencies (LEA).

We focused our audit on the use of funds and data quality for Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I); School Improvement Grants to States (SIG); the Individuals with Disabilities Education Act, Part B, Grants to States (IDEA); and the State Fiscal Stabilization Fund (SFSF), which consists of Education Stabilization Funds and Government Services Funds, received through the Recovery Act. Our review of the Title I, IDEA, and SFSF Recovery Act funding covered the period February 17, 2009, through June 30, 2010. Our review of SIG Recovery Act funding covered the period July 1, 2010, through December 31, 2010.

RESULTS

We found that Recovery Act funds were generally used in accordance with applicable laws, regulations, and guidance at the entities reviewed—ALSDE, the Governor's Office, the Department of Corrections, Mobile, and Montgomery. In addition, we found that in general, the Governor's Office and the Department of Corrections reported accurate data related to its Recovery Act SFSF funds.

Although Recovery Act funds were generally used in accordance with applicable laws, regulations, and guidance, we identified internal control weaknesses related to (1) the award of Recovery Act funds to LEAs, (2) cash management, and (3) reporting requirements. Specifically, we found the following.

- (1) ALSDE did not have sufficient controls to ensure that the SIG award selection process was fair and equitable. Specifically, we identified an apparent conflict of interest related to the Fiscal Year (FY) 2010 award of Recovery Act SIG funds to LEAs. In addition, we found

scoring discrepancies in the documentation supporting the selection process, and we noted that some scoring information was missing. As a result, ALSDE may have awarded SIG funds to LEAs that would not have been otherwise selected to receive the funds.

- (2) ALSDE's drawdown and transfer of funds to Mobile were not in compliance with applicable cash management regulations and created an improper payment. ALSDE made a duplicate drawdown of IDEA funds from the Department and subsequently transferred those excess funds to Mobile. As a result, Mobile was not able to minimize the time between the transfer of funds and their disbursement and ultimately maintained excess cash for more than 60 days.
- (3) ALSDE did not report accurate expenditure, vendor payment, and job data to the Federal government in accordance with the reporting requirements of Recovery Act Section 1512.

In addition, we found that ALSDE's participation in both providing SIG services and awarding SIG funds to LEAs increases the risk of an appearance of a conflict of interest. We discuss this issue in the "Other Matters" section of this report.

In its comments to the draft audit report, ALSDE stated that it did not agree with the report findings; however, it acknowledged the existence of the conditions cited in the findings. Specifically, in response to

Finding 1—ALSDE acknowledged the apparent conflict of interest and the scoring discrepancies reported in the finding, but maintained that the LEA selections would not have changed even without the discrepancies.

Finding 2—ALSDE stated that it recognized that Federal funds should not have been drawn down and disbursed in advance of LEAs' immediate cash needs.

Finding 3—ALSDE acknowledged misstatements in its expenditure data reported to the Federal government.

ALSDE's response indicated that it was in the process of addressing the recommendations included in Finding 1 and had already addressed the recommendations in Findings 2 and 3.

Although ALSDE disagreed that there was a potential appearance of a conflict of interest in ALSDE's participation in both providing SIG services and awarding SIG funds, ALSDE decided to stop providing SIG services to LEAs to alleviate the concerns identified in the Other Matters section of the report. ALSDE's comments are summarized after each finding and the Other Matters section in the report, and the entire comments are included as an Attachment.

BACKGROUND

The Recovery Act was signed into law on February 17, 2009, in an unprecedented effort to jumpstart the American economy. The Recovery Act has three immediate goals: (1) create new jobs and save existing ones, (2) spur economic activity and invest in long-term growth, and (3) foster accountability and transparency in government spending. To ensure transparency and accountability of spending, recipients are required under Section 1512 of the Recovery Act to submit quarterly reports on Recovery Act awards, spending, and job impact. According to the Office of Management and Budget (OMB), the reports are required to contain specific detailed information on the projects

and activities funded by the Recovery Act in order to provide the public with transparency for how these funds are spent. The reports are also expected to facilitate timely, prudent, and effective spending of the Recovery Act funds.

Recovery Act Funding

As prime recipient of the Recovery Act program funds that the Department awarded to Alabama, ALSDE established source fund accounting codes to enable LEAs to account for Recovery Act program funds separately. As the prime recipient of SFSF funds, the Governor’s Office established the Alabama Recovery Office as oversight for Recovery Act funding and reporting.

As shown in Table 1, the Governor’s Office was awarded approximately \$729 million in SFSF funds through the Recovery Act and allocated approximately \$119 million to the Department of Corrections and \$359 million¹ to ALSDE.² Also as shown, ALSDE was awarded approximately \$753 million in Title I, IDEA, SFSF, and SIG funds through the Recovery Act. ALSDE allocated IDEA and SFSF funds to the State’s 132 LEAs. In addition, ALSDE allocated Title I funds to 129 LEAs and SIG funds to 7 LEAs. The two LEAs reviewed—Mobile and Montgomery—were allocated approximately \$75 million and \$46 million, respectively.

Table 1: Recovery Act Funding (Dollars in Millions)					
Program	Total Governor’s Office	Allocated to Department of Corrections	Total ALSDE	Allocated to Mobile	Allocated to Montgomery
Title I	-	-	\$163	\$24	\$11
IDEA	-	-	\$182	\$16	\$8
SFSF	\$729	\$119	\$359	\$30	\$15
SIG	-	-	\$49	\$5	\$12
Total	\$729	\$119	\$753	\$75	\$46

FINDINGS

FINDING NO. 1 – Insufficient Controls Over the Award Process for Recovery Act SIG Funds

ALSDE did not have sufficient controls in place to ensure that the selection process used to award FY 2010 SIG funds to LEAs was fair and equitable. Specifically, we found that the participation of ALSDE’s Federal Programs Director³ (Director) in the award process resulted in an apparent conflict of interest. In addition, we found scoring discrepancies in the documentation supporting the LEA selection process, and we noted that some scoring information was missing. As a result, ALSDE may have awarded SIG funds to LEAs that would not have been otherwise selected to receive the funds.

¹ Of the remaining balance of SFSF funds (\$251 million), the Governor’s Office awarded \$244 million to its 2-year and 4-year institutions of higher education and to seven other State agencies. At the time of our audit, it had not allocated the remaining \$7 million.

² ALSDE suballocated the SFSF funds to its LEAs.

³ The ALSDE Federal Programs Director resigned from her position during the course of our audit.

The Department awarded SIG funds to State educational agencies (SEA) to enable the SEAs to provide subgrants to LEAs for the purpose of providing assistance for school improvement. According to Section 1003(g) of the Elementary and Secondary Education Act of 1965, in awarding such subgrants, an SEA must give priority to the LEAs with the lowest-achieving schools that demonstrate—

(A) the greatest need for such funds; and (B) the strongest commitment to ensuring that such funds are used to provide adequate resources to enable the lowest-achieving schools to meet the goals under school and local educational improvement, corrective action, and restructuring plans under section 1116.

ALSDE used a three-phase process to select LEAs to receive the FY 2010 SIG funds. An ALSDE team of employees and contractors (1) reviewed all SIG applications, (2) interviewed LEA officials, and (3) analyzed selected LEA budgets. Each phase of the selection process was scored. The LEAs that obtained the highest scores on the first two phases of the process proceeded to the budget analysis phase.

Out of 16 LEAs that applied for FY 2010 SIG awards, 8 proceeded to the budget analysis phase of the selection process, and 7—Montgomery, Mobile, Lowndes, Coosa, Marengo, Tuscaloosa City, and Marshall—were ultimately selected to receive awards. Three of the seven selected LEAs listed as a vendor the company for which the Director's husband was Vice President of Business Development.

Apparent Conflict of Interest with the Director's Participation in Awarding SIG Funds

The Director participated in two phases of the FY 2010 LEA SIG selection process and was involved in decisions pertaining to the development of the process. Her husband's employer was listed in three LEA applications as a provider of SIG services, and all three LEAs were awarded SIG funds. In their applications, two of the three LEAs that listed the Director's husband's employer as a provider of SIG services included a price quote from the company, which together totaled more than \$10 million. The Director's participation in awarding SIG funds to LEAs created an apparent conflict of interest because her husband's employer had a financial interest in the selected LEAs.

Despite the apparent conflict of interest, the Director participated in two phases of the selection process—the LEA interviews and budget analysis. In addition, she was involved in decisions pertaining to the development of the process for selecting the LEAs for the SIG awards. She added the budget analysis phase of the selection process, which was not included in the State's approved SIG application. She also participated in developing the funding scenarios for awarding the SIG funds to the LEAs.

An initial review of the Director's involvement in the selection process by the ALSDE Office of General Counsel concluded that there was no conflict of interest. However, a second review initiated after the start of our audit concluded that the Director's conduct may have violated ethical standards. She resigned before the second ALSDE review concluded.

Although ALSDE did not have its own policies regarding conflicts of interest, as a State agency, its employees must comply with the Alabama Ethics Law (Code of Ala. § 36-25), which defines conflict of interest as

A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

According to the ALSDE General Counsel, the Director’s conflict of interest in the SIG selection process was an “isolated incident.” He added that

ALSDE is in the process of drafting conflict of interest policies and procedures. Specifically, the revised policies and procedures will address employee and contractor independence prior to and during their participation in LEA selection processes for competitive grants, and recusal when a conflict of interest is discovered. ALSDE will also train the appropriate staff on these policies and procedures.

Discrepancies in Calculating Scores

We found that the calculation of scores in all three phases of the LEA selection process for SIG awards and the final LEA score ranking either contained discrepancies or could not be verified. We reviewed all available score sheets for the three phases of the selection process.⁴ We were not provided all interview score sheets because some of the score sheets had been removed or were missing. In addition, although we were provided with all budget analysis score sheets, we could not verify how the scores were used to rank the LEAs for selection. As shown in Table 2, we found scoring discrepancies in both the application review and interview phases of the selection process.

Table 2: Discrepancies in Application Review and Interview Scoring			
Review Phase	Description	Total Reviewed	Discrepancies Found
<u>Phase I</u> Application Reviews	Application Score Sheets	152	13 contained incorrect total points earned
	Summary Score Sheets	6	5 contained incorrect application scores
	Maximum Possible Score	51	8 LEAs/schools were assigned an incorrect maximum possible score
	Percentage of Points Earned	51	15 LEAs/schools were assigned an incorrect percentage of points earned
	Average Application Scores	16	10 LEAs were assigned an incorrect average application score
<u>Phase II</u> Interviews	Interview Score Sheets	71	3 contained incorrect total points earned

As discussed previously, despite an apparent conflict of interest, the ALSDE Director participated in the selection process. Her participation may have contributed to scoring discrepancies and her subsequent actions prevented confirmation of LEA scores. According to the ALSDE General

⁴ The application phase had two sets of score sheets—an application score sheet and a summary score sheet. For more information about the various scores and score sheets we reviewed, please see the section “Scope and Methodology.”

Counsel, the Director removed 14 interview score sheets from the official file; however, ALSDE could not identify which score sheets she had removed. We found that two of nine scorers we reviewed⁵ completed interview score sheets that were not included in those provided by ALSDE for our review. We could not determine the scores of the two scorers' missing interview score sheets, nor could we confirm whether they were among the 14 score sheets that ALSDE discovered missing. Because we were not provided with all the interview score sheets that were used in the selection process, we could not validate whether the LEAs received an accurate interview score. In addition, ALSDE could not explain how the interview score sheets were completed and used in the selection process; therefore, we could not determine exactly how the identified discrepancies affected the LEA rankings.

To rank the LEAs, ALSDE consolidated scoring information in the 2010 SIG Review Results (Results Document). The Results Document contained the application score for each of the 16 LEAs received; a Capacity and Commitment score, which included the combined results of the interview and budget analysis scores; and a total score. The Results Document ranked the LEAs according to their total score, which was the basis for awarding the SIG funds. However, we found the following problems with the Results Document:

- 1) An ALSDE Education Specialist who was responsible for the administration of the SIG program stated that the Director provided him the Capacity and Commitment scores to be included in the Results Document, but he was not able to determine how she calculated the scores. Without supporting documentation for how the Director calculated the Capacity and Commitment scores and given her apparent conflict of interest, we could not consider the scores to be reliable data.
- 2) We could not confirm whether the eight LEAs received an accurate budget analysis score on the Results Document because the budget analysis score was part of the Capacity and Commitment Score, which we considered unreliable.
- 3) ALSDE provided us with two versions of the Results Document. The two versions had major differences in scoring, indicating that information was altered at some point in the process.

Because of the missing score sheets and the discrepancies noted, we could not validate the information in either version of the document, nor could we determine whether we received a correct version. As a result, we could not verify the accuracy of the LEA rankings ALSDE used to award the SIG funds.

According to OMB Circular A-133 Compliance Supplement (March 2009), Part 6—Internal Control,⁶ control activities are the policies and procedures that help ensure that management's directives are carried out. Control activities should include clearly written and communicated operating policies and procedures; management prohibition against intervention or overriding established controls; and adequate segregation of duties provided between performance, review, and

⁵ We interviewed nine interview scorers and had them identify the score sheets that they completed from the score sheets that ALSDE provided.

⁶ The OMB Circular A-133 Compliance Supplement serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit required by the 1996 Amendments to the Single Audit Act of 1984. Part 6 of the Compliance Supplement describes characteristics of internal control related to the compliance requirements. Part 6 is considered to be guidance and is not mandatory.

recordkeeping of a task. The lack of controls at ALSDE in the LEA selection process used to award Recovery Act SIG funds resulted in an apparent conflict of interest and scoring discrepancies.

RECOMMENDATIONS

We recommend that the Assistant Secretary for the Office of Elementary and Secondary Education require ALSDE to—

- 1.1 Establish and implement policies and procedures to ensure the independence of employees and contractors who participate in processes to award competitive grants to LEAs.
- 1.2 Establish an effective recusal process when a conflict of interest is discovered during the selection process and train employees on the current Alabama Ethics Law.
- 1.3 Establish an effective monitoring process to ensure that the processes established for independence and recusal are followed.
- 1.4 Establish and implement internal controls to ensure the accuracy and integrity of scoring processes in awarding competitive grants to LEAs.

Auditee Comments

ALSDE acknowledged the apparent conflict of interest and the scoring discrepancies reported in the finding but stated that the LEA selections would not have changed even without the discrepancies. ALSDE indicated that it was in the process of addressing each of the recommendations.

In response to the draft report, ALSDE stated that the Director's involvement in the scoring process violated ALSDE's ethical standards and created a conflict of interest in the SIG awarding process pertaining to the contracted service provider (her husband's employer) selected by three of the seven LEAs that were awarded SIG funds. ALSDE also acknowledged the scoring discrepancies in both the application review and interview phases of the SIG selection process that could have led to potentially inaccurate LEA rankings. However, ALSDE reviewed the awards using the available records and concluded that although the discrepancies led to inaccurate rankings, there was no change in the LEAs that were awarded SIG funds when using the corrected scores. As such, ALSDE stated that, based on the information available at this time, the awards met the criteria for the SIG program and were reasonable and legitimate in terms of the full value of the services provided.

Although ALSDE considered the conflict of interest to be an isolated event, ALSDE was in the process of adopting newly developed departmental policies and procedures regarding conflicts of interest, including independence attestations, timely disclosures, an effective recusal process, and a monitoring process to ensure that the new policies and procedures are followed. It anticipated that the policies and procedures would be implemented by March 2012. ALSDE added that it had already taken further steps to stop conflicts of interest by expressly including a prohibition of conflicts of interest in the terms and conditions of all issued Requests for Applications, Requests for Proposals, and other ALSDE-issued requests for bids and solicitations. ALSDE also stated that, by early 2012, it would establish and implement internal controls to ensure the accuracy and integrity

of scoring processes in awarding SIG funds and other competitive grants to LEAs and train its employees.

OIG Response

ALSDE acknowledged the conflict of interest and scoring discrepancies we noted in the LEA SIG selection process, recalculated the LEAs' scores, and concluded that there was no change in the selection of the LEAs that were awarded SIG funds when the correct scores were used, thus justifying their award. However, as mentioned in the finding, the Director with the conflict of interest provided an ALSDE Education Specialist the Capacity and Commitment scores to be included in the Results Document used to rank LEAs, but did not provide documentation or other evidence to indicate how the scores were determined. In addition, the Director removed 14 interview score sheets from the official file and ALSDE could not identify which score sheets she had removed. Without the missing score sheets and the information supporting the Capacity and Commitment scores provided by the individual with the conflict of interest, ALSDE has no assurance that it used the correct information to recalculate the scores and rank the LEAs.

We commend ALSDE's initiated and planned actions to improve its internal controls regarding conflicts of interest and processes for awarding competitive grants. We did not revise the finding or recommendations in response to ALSDE's comments.

FINDING NO. 2 – Improper Payment of Recovery Act Funds to an LEA

ALSDE erroneously made a duplicate draw of Recovery Act IDEA funds that was not based on immediate cash needs and subsequently transferred those excess funds to Mobile. As a result, Mobile was not able to minimize the time between the transfer of funds and their disbursement and ultimately maintained excess cash for more than 60 days.⁷ The drawdown and subsequent transfer were not in compliance with applicable cash management regulations and created an improper payment. Premature draws of funding could make those funds more susceptible to misuse or mishandling when held in local accounts for extended periods of time.

Mobile submitted an electronic request to ALSDE to draw down IDEA funds in the amount of \$1.4 million, with a warrant/check date of September 16, 2009. The requested amount was to cover reimbursement of expenses through the end of August 2009 and estimated expenses for the month of September 2009. ALSDE made a duplicate draw of the Recovery Act IDEA funds, receiving \$2.8 million, twice the amount of Mobile's request. ALSDE's LEA Accounting Office informed Mobile that ALSDE could not return the additional \$1.4 million that it had erroneously drawn down. As such, ALSDE requested that Mobile submit a written request for the additional \$1.4 million received so that ALSDE could transfer the balance of the funds drawn down. In response, Mobile submitted the second request to ALSDE, which covered the same expenses as its initial request, and received a total of \$2.8 million—\$1.4 million posted on September 18, 2009, and the additional \$1.4 million on September 21, 2009.

Table 3 shows the amount of Mobile's cash on hand at the end of the months of August, September, October, and November 2009.

⁷ Mobile did not earn interest on the excess cash held.

Table 3: Mobile's Cash on Hand Schedule (Dollars in Millions)			
Month	Amount of Drawdowns	Total IDEA Expenditures as of End of the Month (Cumulative)	Cash on Hand as of End of the Month
August 2009	\$0	\$1.1	-\$1.0
September 2009	\$2.8	\$1.5	\$1.3
October 2009	\$0	\$1.7	\$1.1
November 2009	\$0	\$2.8	\$0

The Improper Payments Information Act of 2002, Pub. L. 107-300, defines an improper payment as a payment using Federal funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. Improper payments include duplicate payments. In addition, Department regulations at 34 C.F.R. § 80.21 set the following requirements for grant payments and advances.

Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee in accordance with Treasury regulations at 31 CFR part 205.

Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

According to Department of Treasury regulations at 31 C.F.R. § 205.33(a)

A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A-102.

ALSDE does not have a written policy that requires LEAs to return excess cash. The Accounting Manager in ALSDE's LEA Accounting Office explained that LEAs should request funds for only prior expenditures where receipts were insufficient and for cash needs expected for the month in which the cash will be received. She added that superintendents are required to certify that the amount requested is limited to immediate cash needs when requesting advanced funds and that excess cash should be returned to ALSDE.

SEAs should not draw and disburse Recovery Act funds in advance of the LEAs' immediate cash needs. Premature draws of funding could make those funds more susceptible to misuse or mishandling when held in local accounts for extended periods of time.

RECOMMENDATIONS

We recommend that the Assistant Secretary for the Office of Elementary and Secondary Education require ALSDE to—

- 2.1 Establish written policies and procedures pertaining to draws received in error, improper payments, and the handling of excess cash.

Auditee Comments

In its comments, ALSDE acknowledged that it should not draw down and disburse Federal funds in advance of LEAs' immediate cash needs. However, ALSDE stated that in practice it had standards governing potential LEA cash management issues. Specifically, ALSDE stated that it expects LEAs to request funds for expenditures that can be properly documented and will be made in a timely manner subsequent to receipt of the funds. ALSDE added that as an internal control measure, it requires superintendents to certify that the amounts requested by LEAs are limited to their immediate cash needs when requesting advance funds. Although ALSDE did not concur with our recommendation, it issued a memorandum in February 2011 to all county and city superintendents addressing specific requirements that must be followed when requesting cash from the Department regarding draws received in error, improper payments, and the handling of excess cash.

OIG Response

ALSDE's comments acknowledged the excess draw down issue presented in the finding but did not address the improper payment made to Mobile using Recovery Act IDEA funds. Although ALSDE stated that in practice it had standards governing potential LEA cash management issues, it did not provide documentation of those standards. In addition, ALSDE's memorandum issued in February 2011 did not address all Department funding nor did it address all ARRA funding; the memorandum covered only Recovery Act SFSF and Education Jobs funds. As such, we did not revise the recommendation.

FINDING NO. 3 – ALSDE Reported Inaccurate Recovery Act Data

ALSDE did not report accurate, reliable, and complete data for Recovery Act Title I, IDEA, and SFSF expenditures, vendor payments, and jobs created/retained. As a result, ALSDE did not comply with the reporting requirements of Section 1512 of the Recovery Act, and the public did not have completely accurate information for how the funds were spent.

During our review, we found that for the four quarters that ended September 30, 2009; December 31, 2009; March 31, 2010; and June 30, 2010—

- ALSDE reported inaccurate expenditure and vendor payment data for Title I, IDEA, and SFSF funds that its LEAs⁸ received through the Recovery Act;
- Mobile reported inaccurate vendor payment and job data to ALSDE for the Title I and IDEA funds received; and

⁸ We reviewed all expenditure and all vendor payment information for all LEAs that reported data to ALSDE.

- Montgomery reported inaccurate job data to ALSDE for the Title I, IDEA, and SFSF funds received.

LEAs were required to submit Recovery Act expenditure, vendor payment, and job data to the ALSDE LEA Accounting Office at the conclusion of each reporting period. ALSDE compiled the data submitted by the LEAs and reported the data through FederalReporting.gov.

OMB’s Memo M-09-21, “Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009,” dated June 22, 2009, states that prime recipients, as owners of the data submitted, have the principal responsibility for the quality of the information submitted.⁹ The guidance also states that prime recipients should

- implement internal control measures as appropriate to ensure that accurate and complete information is submitted; and
- perform data quality reviews for material omissions and significant reporting errors, make appropriate and timely corrections to its data, and work with the designated subrecipients to address any data quality issues.

According to the OMB guidance, material omissions include instances where missing data could result in significant risk that the public will be misled or confused by the recipient report in question.

ALSDE—Inaccurate Expenditure and Vendor Payment Data

ALSDE reported inaccurate expenditure and vendor payment data for IDEA, Title I, and SFSF funds that the LEAs received through the Recovery Act. As detailed in Table 4, ALSDE underreported LEA IDEA expenditure data in the quarterly report that ended September 30, 2009, and LEA Title I, IDEA, and SFSF expenditure data in the quarterly report that ended December 31, 2009.

Table 4: ALSDE Expenditure Reporting Discrepancies (Dollars in Thousands)				
Recovery Act Program	Reporting Period Ending	Total Expenditures per ALSDE Records	Total Expenditures Reported	Amount Underreported (Differences due to Rounding)
IDEA	September 30, 2009	\$5,820	\$4,801	\$1,018
Title I	December 31, 2009	\$26,149	\$20,750	\$5,398
IDEA	December 31, 2009	\$24,889	\$22,389	\$2,500
SFSF	December 31, 2009	\$37,472	\$31,726	\$5,746

ALSDE obtained the LEA expenditure data by running a query on the LEAs’ most recent financial statements around the fifth day of the month after the end of the previous quarter. The Coordinator for LEA Financial Assistance at ALSDE stated that the expenditure discrepancies for the quarter that ended September 30, 2009, resulted from LEAs not submitting their monthly financial statements to ALSDE in a timely manner. In addition, subsequent revisions made to an LEA’s financial statement, even when submitted timely, were not reflected in the federal reporting because

⁹ ALSDE is the prime recipient of all the Recovery Act funds that we reviewed, with the exception of SFSF funds.

ALSDE did not update the information originally reported. Expenditure discrepancies for the quarter that ended December 31, 2009, resulted from the Coordinator reporting the total amount of funds received instead of the total amount of expenditures.

As detailed in Table 5, ALSDE reported inaccurate vendor payment data for Title I, IDEA, and SFSF funds that the LEAs received through the Recovery Act for the four quarters that ended September 30, 2009; December 31, 2009; March 31, 2010; and June 30, 2010. We reviewed all ALSDE vendor payment data, for payments greater than \$25,000 and payments less than \$25,000, reported for all four quarters.¹⁰ Specifically, ALSDE vendor payment data did not include all vendor payments for some of the LEAs and included some vendor payments that were not supported by the documentation provided by the LEAs.

Table 5: ALSDE Reporting Discrepancies for Vendor Payments (Dollars in Thousands)						
Reporting Period Ending	Recovery Act Program	Reported Number of Vendor Payments	Number Not Reported	Amount Not Reported	Number Reported But Not Supported	Amount Reported But Not Supported
September 30, 2009	Title I	176	3	\$115	0	\$0
	IDEA	178	52	\$236	0	\$0
December 31, 2009	Title I	1162	308	\$1,663	62	\$1,024
	IDEA	958	81	\$526	7	\$81
	SFSF	265	161	\$406	5	\$12
March 31, 2010	Title I	1916	285	\$2,917	36	\$2,118
	IDEA	1557	109	\$549	8	\$23
	SFSF	30	4	\$702	0	\$0
June 30, 2010	Title I	2112	1,028	\$6,111	84	\$502
	IDEA	2075	527	\$3,455	44	\$339
	SFSF	24	15	\$2,617	1	\$48

The Coordinator for LEA Financial Assistance at ALSDE explained that faulty system program queries made to LEA vendor payment data created a majority of the vendor payment discrepancies reported. He added that other vendor payment discrepancies were the result of oversights and errors made while compiling the LEA data.

Mobile—Inaccurate Vendor Payment Data and Job Data

Mobile reported to ALSDE inaccurate vendor payment data for all four quarters reviewed and inaccurate job data for three of the four quarters.

¹⁰ Section 1512 requires reporting of vendor payments in two categories—those greater than \$25,000 and those less than \$25,000.

Vendor Payment Discrepancies

Mobile reported inaccurate data for both vendor payments greater than \$25,000 and those less than \$25,000. In addition, Mobile did not report data cumulatively across quarters. As detailed in Table 6, for both Title I and IDEA, Mobile underreported vendor payments greater than \$25,000 in each of the four quarters.

Table 6: Mobile's Vendor Payment Discrepancies for Payments Greater Than \$25,000 (Dollars in Thousands)				
Reporting Period Ending	Recovery Act Program	Total Amount of Mobile's Vendor Payments (Cumulative Across Quarters) ^a	Total Vendor Payments Reported to ALSDE	Amount Underreported
September 30, 2009	Title I	\$2,207	\$1,876	\$332
	IDEA	\$1,414	\$338	\$1,075
December 31, 2009	Title I	\$4,056	\$2,100	\$1,957
	IDEA	\$2,485	\$1,106	\$1,380
March 31, 2010	Title I	\$6,868	\$3,618	\$3,250
	IDEA	\$3,214	\$840	\$2,374
June 30, 2010	Title I	\$7,644	\$1,006	\$6,639
	IDEA	\$3,878	\$146	\$3,731
^a OMB requires vendor payments to be reported cumulatively, not just for one particular quarter. This column represents what Mobile should have reported as vendor payments greater than \$25,000.				

Even if Mobile had reported cumulatively, it would not have reported the correct numbers. Specifically, in some cases, Mobile reported purchase order data instead of vendor payment data. In other cases, the payments Mobile reported included funds other than Recovery Act funding. Thus, the information Mobile reported was both inaccurate and not reported cumulatively.

As detailed in Table 7, for vendor payments less than \$25,000, Mobile underreported IDEA payments in three quarters, underreported Title I payments in three quarters, and overreported Title I payments in one quarter.

Table 7: Mobile's Vendor Payment Discrepancies for Payments Less Than \$25,000 (Dollars in Thousands)				
Reporting Period Ending	Recovery Act Program	Total Amount of Mobile's Vendor Payments (Cumulative Across Quarters) ^a	Total Vendor Payments Reported to ALSDE	Difference
September 30, 2009	Title I	\$39	\$30	\$9
	IDEA	\$36	\$36	\$0
December 31, 2009	Title I	\$178	\$236	(\$58)
	IDEA	\$148	\$125	\$23
March 31, 2010	Title I	\$1,584	\$556	\$1,028
	IDEA	\$441	\$149	\$291
June 30, 2010	Title I	\$2,424	\$489	\$1,936
	IDEA	\$715	\$182	\$533
^a OMB requires vendor payments to be reported cumulatively, not just for one particular quarter. This column represents what Mobile should have reported as vendor payments less than \$25,000.				

Again, in addition to not reporting cumulative data, Mobile reported inaccurate data. In some cases Mobile reported purchase order data instead of vendor payment data; in other cases, it reported payments that included funds other than Recovery Act funding.

According to the Mobile Comptroller, Mobile at times reported purchase order data to ALSDE instead of actual vendor payment data. However, not all of the purchase orders had been paid at the time of reporting. As such, the purchase order data should not have been reported as vendor payments. In addition, the Comptroller stated that she did not know that vendor payment data had to be reported cumulatively across quarters.

OMB Memo M-09-21, "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009," dated June 22, 2009, states

...the Recovery Act requires that prime recipients and delegated sub-recipients submit quarterly reports on their use of the funds... and will be cumulative since enactment...

The guidance also states that subrecipients are to (1) initiate appropriate data collection and reporting procedures to ensure that they meet Section 1512 reporting requirements in a timely and effective manner; and (2) implement internal control measures as appropriate to ensure they collect and report accurate and complete information.

Job Data Discrepancies

Mobile reported to ALSDE inaccurate data about jobs created or retained for both Title I and IDEA. For the quarter that ended December 31, 2009, Mobile counted each employee who received at least one payment from Title I and IDEA grants as one full-time equivalent (FTE) and did not take into consideration the hours actually worked by the employee. As a result, Mobile counted part-time employees and employees receiving supplemental payments from a Recovery Act grant as an FTE

instead of a partial FTE. Although a part-time position could be counted as a portion of an FTE funded with Recovery Act funding, a part-time position cannot be counted as an FTE. However, we did not have sufficient information to equate part-time employment to an equivalent FTE number. Table 8 details Mobile's job reporting discrepancies for the quarter that ended December 31, 2009.

Table 8: Mobile's Job Reporting Discrepancies for the Quarter that Ended December 31, 2009		
Recovery Act Program	Total Jobs Reported to ALSDE	Number of Employees Who Should Have Been Counted as a Partial FTE Instead of an FTE^a
Title I	379	369
IDEA	66	59
^a This number includes less than full-time employees and full-time employees who had only a portion of their monthly pay funded by the Recovery Act. A portion of each of these FTEs would have been appropriately reported. However, we could not determine the actual job reporting discrepancy because we were not able to compute the FTE equivalent.		

For the quarters that ended March 31, 2010, and June 30, 2010, Mobile counted each full-time employee who received at least one payment from Title I and IDEA grants as an FTE. Mobile did not take into consideration the number of hours actually worked by the employees and whether each of the full-time employees actually had their monthly salary charged to the grant for each of the three months in the quarters. Table 9 details Mobile's job reporting discrepancies for the quarters that ended March 31, 2010, and June 30, 2010.

Table 9: Mobile's Job Reporting Discrepancies for Quarters that Ended in March and June 2010			
Reporting Period Ending	Recovery Act Program	Total Jobs Reported to ALSDE	Number of Full-Time Employees^a Who Should Not Have Been Counted as an FTE
March 31, 2010	Title I	20	6
	IDEA	19	-
June 30, 2010	Title I	23	4
	IDEA	22	4
^a This number includes the full-time employees whose monthly pay was not charged to Recovery Act funds for at least one of the three months in the quarter. This number also includes the number of employee names that were not provided in support of the FTEs reported. For example, for the quarter that ended June 30, 2010, Mobile reported 22 FTEs for IDEA. However, it provided only 19 employee names. Also, one of the FTEs was an employee whose salary was not charged to the Recovery Act funds for at least one of the three months in the quarter. Therefore, for that quarter, we determined that one employee should have been counted as a partial FTE instead of an FTE and three other employees should not have been counted at all.			

In addition, we noted the following discrepancies.

- Mobile reported job data to ALSDE for the month of December instead of the entire quarter that ended December 31, 2009.
- Mobile reported Title I and IDEA job data to ALSDE (as shown in the table above); however, ALSDE did not report the data to FederalReporting.gov for the quarter that ended March 31, 2010.
- Mobile did not consider in its job calculation less than full-time employees, substitutes, and employees who received supplemental payments from Recovery Act funds for the quarters

that ended March 31, 2010, and June 30, 2010. For the quarter that ended March 31, 2010, there were 867 in these categories of employees from Title I and 121 from IDEA. For the quarter that ended June 30, 2010, there were 717 employees from Title I and 213 from IDEA.

According to a Mobile Accounting Supervisor, Mobile did not receive adequate guidance from ALSDE for calculating and reporting jobs. However, the form that the LEAs used to report job data to ALSDE contained the proper instructions. ALSDE's instructions stated that the number of jobs created or retained should be expressed as "full-time equivalent" and calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule. According to OMB guidance,¹¹ ALSDE is responsible for the quality of the information reported.

Montgomery—Inaccurate Job Data

Montgomery reported to ALSDE inaccurate data for jobs created or retained for Title I, IDEA, and SFSF for the quarters that ended December 31, 2009; March 31, 2010; and June 30, 2010.¹² In calculating FTEs for Recovery Act Section 1512 reporting of job data, Montgomery considered only full-time employees, classified/support employees who worked at least 20 hours a week on a regular basis, and part-time certified employees who were paid from the three programs reviewed. Montgomery did not consider employees working fewer than 20 hours a week, hourly employees, substitute employees, and other employees receiving supplemental payments. Table 10 details Montgomery's job reporting discrepancies for the three quarters.

Table 10: Montgomery's Job Reporting Discrepancies		
Reporting Period Ending	Recovery Act Program	Less than Full-Time Employees Excluded from the Jobs Reported^a
December 31, 2009	Title I	49
	IDEA	2
	SFSF	13
March 31, 2010	Title I	175
	IDEA	2
	SFSF	14
June 30, 2010	Title I	136
	IDEA	14
	SFSF	11
^a Because these were less than full-time employees, we do not know how many FTEs these employees represented.		

A financial analyst at Montgomery stated that he did not receive adequate guidance from ALSDE for calculating and reporting jobs. However, as stated under the previous section, the form that the LEAs used to report job data to ALSDE contained the proper instructions. As indicated in the previous section, ALSDE is responsible for the quality of the information reported per OMB guidance.

¹¹ OMB Memo M-09-21, "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009," dated June 22, 2009.

¹² Montgomery did not report job data for the quarter ending September 30, 2009, because it did not start drawing down Recovery Act funds until October 2009.

OMB Memo M-10-08, "Updated Guidance on the American Recovery and Reinvestment Act Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates," issued on December 18, 2009, specifies a formula that recipients and subrecipients must use in calculating the number of jobs. The formula is based on the number of actual hours worked in jobs paid with Recovery Act funds in relation to the number of hours representing a full work schedule for the type of job. However, OMB Memo M-10-34, "Updated Guidance on the American Recovery and Reinvestment Act," issued September 24, 2010, does not allow changes to prior reports for the number of jobs. Therefore, no corrections are required to the reported job data.

RECOMMENDATIONS

We recommend that the Assistant Secretary for the Office of Elementary and Secondary Education, in conjunction with the Assistant Secretary for the Office of Special Education and Rehabilitative Services and the Director of the Implementation and Support Unit, require ALSDE to—

- 3.1 Determine whether the errors in reporting expenditure and vendor payments are material misstatements in prior reporting periods; if so, submit revised data to FederalReporting.gov.
- 3.2 Develop and implement policies and procedures to ensure the accuracy of current and future reporting, including expenditures, vendor payments, and job data.

Auditee Comments

ALSDE stated that it conducted a review to determine whether the errors in reporting expenditures and vendor payments were material misstatements in prior reporting periods. Based on its review, ALSDE concluded that there were misstatements of 4 percent or more (which ALSDE used as its threshold for materiality) in the expenditures data reported. As a result, ALSDE submitted a request to correct the expenditure amounts in FederalReporting.gov and was waiting for approval to submit the revised data.

ALSDE also stated that to strengthen its reporting and address the issues identified in this report, it was in the process of implementing practices to ensure the accuracy of current and future reporting of expenditures, vendor payments, and job data. ALSDE anticipated the policies to be finalized by early 2012.

OIG Response

ALSDE's actions to correct data submissions and ensure the accuracy of current and future reporting should address the report recommendations when ALSDE provides evidence that (1) the data is corrected for both expenditures and, if material, vendor payments, and (2) policies are finalized and implemented.

OTHER MATTERS

Risk of Conflicts of Interest in ALSDE Award of SIG Funds

ALSDE was listed as a provider of SIG services in all 16 LEA SIG applications. ALSDE offered to provide up to 18 school improvement services to LEAs receiving SIG funds. Sixteen of the offered services would be “sold” to LEAs and would result in ALSDE obtaining additional SIG funds from LEAs to support its provision of these services. Based on the information in the LEA applications, ALSDE could receive \$2.1 to \$10.6 million¹³ for providing vendor services to the seven LEAs awarded SIG funds.

Despite being listed as a provider of SIG services, ALSDE officials developed, actively participated in, and led the selection process for the LEAs awarded Recovery Act SIG funds. Out of the 23 ALSDE employees who participated in at least one of the three phases of the LEA selection process, 9 were listed as contacts for 9 of the 16 fee-based services that ALSDE offered. According to an Education Specialist responsible for the administration of the SIG program at ALSDE, some of the contacts would be providing the services themselves, while other contacts would be responsible for contracting the services to a third party. ALSDE’s participation in both providing SIG services and awarding SIG funds to LEAs increases the risk of an appearance of a conflict of interest.

Although the SIG program allows an SEA to “sell”¹⁴ services to recipient LEAs, the risk of conflicts of interests, bias, and partiality, whether individual or organizational, should be mitigated as appropriate to maintain public trust regardless of whether explicitly required by established ethics rules. We encourage ALSDE to establish and implement policies and procedures on organizational bias, including an appropriate recusal process or alternative processes that could be used for awarding competitive grants when also participating as a provider.

Auditee Comments

ALSDE recognized the importance of maintaining public trust in its implementation of Federal grant programs and ensuring the independence of officials that participate in the selection process for competitive grants. ALSDE stated that to alleviate OIG’s concern for independence in the award process, it will no longer provide SIG services to LEAs and would no longer withhold a portion of an LEA’s allocation for this purpose. ALSDE noted, however, that it disagreed with the necessity of this action, and denied that there was even a potential appearance of a conflict of interest in its participation in the SIG grant award process while also providing SIG services.

OIG Response

OIG did not suggest that it was necessary for ALSDE to discontinue providing SIG services to LEAs and to stop reserving LEA funds for this purpose as a means of addressing the concern we raised. As stated in the Other Matters section of this report, ALSDE should consider establishing and implementing policies and procedures on organizational bias, including an appropriate recusal

¹³ The variation in payments to ALSDE was based on the fee-based services each LEA could select to receive.

¹⁴ This term is used in the “Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965”

process or alternative processes that can be used for awarding competitive grants when also participating as a provider of services.

SCOPE AND METHODOLOGY

The purpose of our audit was to determine whether the State of Alabama (1) used Recovery Act funds in accordance with applicable laws, regulations, and guidance; and (2) reported accurate, reliable, and complete data in compliance with Recovery Act reporting requirements. We performed this audit at ALSDE, the Governor's Office, the Department of Corrections, Mobile, and Montgomery from July 2010 through February 2011.

We focused our audit on the use of funds and data quality for Title I, IDEA, SFSF, and SIG funds received through the Recovery Act. Our review of the Title I, IDEA, and SFSF funding covered the period February 17, 2009, through June 30, 2010. Our review of the SIG funding covered the period July 1, 2010, through December 31, 2010.

In selecting entities (other than the two prime recipients, ALSDE and the Governor's Office) to perform our work, we considered such factors as the total amount of Recovery Act funds allocated to State agencies, colleges and universities, and LEAs; LEAs that received funds from each of the four Recovery Act programs included in our review; any risk designations by the Department; and complaints received. Based on these factors, we selected the Department of Corrections, Mobile, and Montgomery.

To gain an understanding of the Recovery Act requirements applicable to the grants and the areas of use of funds and data reporting, we obtained background information about the grants and organizations being audited and reviewed Federal laws, regulations, OMB Circulars, and specific Recovery Act guidance issued by OMB and the Department. To gain an understanding of ALSDE, we examined prior reviews conducted by the Alabama Examiners Office, including the Single Audit Reports of ALSDE for FYs 2008 and 2009, and the LEAs for FY 2009; and audit reports of ALSDE for FYs 2007 and 2008, the Governor's Office for FYs 2006 and 2007, and Alabama's Department of Postsecondary Education for FY 2008. In addition, we reviewed a Department monitoring report on ALSDE's administration of Title I programs; obtained and reviewed policies and procedures pertaining to ALSDE's administration of the Recovery Act program; interviewed key officials responsible for the program's administration, accounting, payroll, procurement, personnel, and Section 1512 reporting at ALSDE, the Governor's Office, the Department of Corrections, and the two LEAs reviewed; and interviewed officials at other State agencies, including the Alabama Examiners Office and the Alabama State Comptroller's Office.

To achieve our audit objectives, we

- reviewed Recovery Act grant applications from ALSDE, the Governor's Office, and two LEAs (Mobile and Montgomery) for the programs reviewed;
- reviewed the ALSDE and the Governor's Office application process in awarding, approving, and monitoring Recovery Act funds disbursed to LEAs and other subrecipients for each of the programs reviewed;
- reviewed supporting documentation for Recovery Act expenditures and for selected Alabama data in Recovery Act Section 1512 quarterly reports including funds received,

vendor payments, job data, and expenditures to ensure compliance with Recovery Act grant reporting requirements;

- tested the processes and controls for requesting, receiving, managing, expending, disbursing, and accounting for Recovery Act funds;
- obtained from the Department's payment system Recovery Act Title I, IDEA, SIG, and SFSF drawdowns the State of Alabama received and traced the receipt of the funds to the accounting records of the entities reviewed;
- tested procedures for collecting and reporting data required by Section 1512 of the Recovery Act to Recovery.gov;
- verified score sheets with selected individuals who participated in the application, interview, and budget analysis scoring phases of ALSDE's SIG LEA selection process; and
- recalculated the totals, averages, and sum scores for score sheets used to select the LEAs to award SIG funding.

At the Department of Corrections and each LEA, we reviewed selected payroll and nonpayroll transactions and traced them to supporting documentation. We did not use statistical sampling techniques to select transactions. Instead, we randomly selected transactions to gain an understanding of the processes and to provide sufficient evidence to support the conclusions that Recovery Act funds were generally used in accordance with applicable laws, regulations, and guidance at the entities reviewed. Table 11 shows the number of payroll and nonpayroll transactions we reviewed at the Department of Corrections, Mobile, and Montgomery from the total transactions occurring between October 1, 2009, and June 30, 2010, for all but the SIG funds. Our review of SIG funds included transactions between July 1, 2010, and December 31, 2010.

Table 11: Payroll and Nonpayroll Transactions Reviewed					
Entity Reviewed	Recovery Act Program	Number of Employees Reviewed	Total Number of Employees ^a	Number of Nonpayroll Transactions Reviewed	Total Number of Nonpayroll Transactions
Department of Corrections	SFSF	50	4,161	4	4
Mobile	Title I	27	2,693	30	6,044
	IDEA	30	615	30	549
	SFSF	-	-	30	709
	SIG	10	32	10	17
Montgomery	Title I	15	148	30	992
	IDEA	10	15	30	755
	SFSF	20	252	-	-
	SIG	10	44	20	92
^a For payroll testing in Montgomery and DOC, because employees were paid from Recovery Act funds in different months, we determined the month that had the most employees paid from each Recovery Act program, and then selected employee names from that month.					

In addition, we reviewed all available score sheets for each phase of the scoring process and other scoring data used in the SIG LEA selection process. Specifically, we reviewed 152 application score sheets,¹⁵ each containing an application score for each of the 51 LEAs and schools that applied for SIG funds; 6 summary score sheets (one summary score sheet for each of the six application readers);¹⁶ and a document containing a maximum possible score for each of the 51 applicants for SIG funds (16 LEAs and 35 schools), the percentage of points earned for each of the applicants, and an average application score for each LEA that applied. We also reviewed 71 interview score sheets¹⁷ with an interview score for each LEA reviewed. Although we reviewed all interview score sheets provided to us, as discussed in Finding No.1, we were not provided with all interview score sheets that were used in the LEA selection process. At ALSDE, we reviewed selected individuals that participated in the application, interview, and budget analysis phases of the SIG LEA selection process to verify their score sheets.

At ALSDE and the Governor's Office, we tested Recovery Act Section 1512 reporting data elements to include the total Federal amount of Recovery Act funds received, the total Federal amount of Recovery Act expenditures, jobs created and retained, vendor payments less than \$25,000, and vendor payments greater than \$25,000. We tested these data elements reported to FederalReporting.gov for three Recovery Act programs (Title I, IDEA, and SFSF) and four quarterly reports (the quarters that ended September 30, 2009; December 31, 2009; March 31, 2010; and June 30, 2010). We traced the reported data from the quarterly reports to source documentation at ALSDE and the Governor's Office. To determine whether the Recovery Act Section 1512 data that the LEAs reported to ALSDE were accurate, reliable, complete, and in compliance with Recovery Act reporting requirements, we compared supporting documents provided by the two sampled LEAs (Mobile and Montgomery) to ALSDE data, and then to data reported in FederalReporting.gov.

We relied on computer-processed data contained in the accounting systems of the Department of Corrections, Mobile, and Montgomery for the purposes of testing expenditures for payroll and nonpayroll transactions. Based on our testing as described, we determined that the computer-processed data were sufficiently reliable for the purposes of this audit.

We conducted our work at ALSDE, the Governor's Office, the Department of Corrections, and the two LEAs (Mobile and Montgomery) from July 2010 through February 2011. On August 4, 2011, we discussed the results of our review and recommendations with officials of all the entities reviewed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁵ Applications were reviewed and scored by multiple readers; therefore, the number of application score sheets did not equal the total number of LEAs and schools that applied for the funds.

¹⁶ Summary score sheets contained an application score for each of the LEAs and schools assigned to a reader.

¹⁷ There were more interview score sheets than LEAs applying for the funds because each LEA interview was scored by multiple individuals.

Attachment: ALSDE's Comments on Draft Audit Report

**Alabama State Department of Education
Response to Draft Audit Report: ED-OIG/A04K0007**

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This is the response of the Alabama State Department of Education (“ALSDE”) to the U.S. Department of Education’s Office of Inspector General (“OIG”) Draft Audit Report ED-OIG/A04K0007 (“Draft Audit Report”), issued October 2011, entitled *Alabama: Use of Funds and Data Quality for Selected American Recovery and Reinvestment Act Programs*. OIG reviewed select American Recovery and Reinvestment Act of 2009 (“Recovery Act”) programs to determine whether the State of Alabama (1) used Recovery Act funds in accordance with applicable laws, regulations, and guidance; and (2) reported accurate, reliable, and complete data in compliance with Recovery Act reporting requirements. This audit examined the ALSDE, the Governor’s Office; the Department of Corrections; Mobile County Public Schools (Mobile) and Montgomery Public Schools (Montgomery). This audit focused on the use of funds and data quality for Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I); School Improvement Grants to States (SIG); the Individuals with Disabilities Education Act, Part B, Grants to States (IDEA); and the State Fiscal Stabilization Fund (SFSF), which consists of Education Stabilization Funds and Government Services Funds received through the Recovery Act. OIG’s review of Title I, IDEA, and SFSF Recovery Act funding covered the period of February 17, 2009 through June 30, 2010. OIG’s review of SIG Recovery Act funding covered the period of July 1, 2010 through December 31, 2010. Although OIG found that ALSDE generally used Recovery Act funds in accordance with applicable laws, regulations, and guidance, OIG concluded that ALSDE had internal control weaknesses related to (1) the award of Recovery Act funds to LEAs, (2) cash management, and (3) reporting requirements.

ALSDE’s response below, based on each Draft Audit Report finding, addresses the sufficiency of controls over the awarding process for Recovery Act SIG funds, the payment of Recovery Act funds to an LEA, and the accuracy of ALSDE of Recovery Act reported data. This response also addresses the “other matters” section of the Draft Audit Report regarding ALSDE’s participation in providing SIG services. ALSDE disagrees with findings in the report, but recognizes that internal controls can always be reviewed and improved. ALSDE is currently taking action to improve and strengthen its internal controls.

Finding No. 1 – Insufficient Controls Over the Award Process for Recovery Act SIG Funds

OIG found that ALSDE did not have sufficient controls in place to ensure that the selection process used to award fiscal year (FY) 2010 SIG funds to LEAs was fair and equitable. Specifically, OIG found that the participation of ALSDE's former Federal Programs Director (Director) in the SIG award process resulted in an apparent conflict of interest. In addition, OIG found scoring discrepancies in the documentation supporting the local educational agency (LEA) selection process and missing scoring information. As a result, OIG found that ALSDE *may* have awarded SIG funds to LEAs that would not have been otherwise selected to receive SIG funds.

To assure the independence of employees and contractors, and to effectuate recusal where appropriate, the ALSDE takes a dual-prong approach. The first prong is that ALSDE employees are bound by the State of Alabama's ethics laws and all programs administered by the ALSDE are administered subject to those laws. These laws are enforced by the Alabama State Ethics Commission and other State agencies. The ALSDE works closely with these agencies whenever there is a suspected ethics law violation.

Regarding conflicts of interest, Section 36-25-5 of the Code of Alabama provides:

[N]o public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business which the person is associated unless the use and gain are otherwise specifically authorized by law.

This conflict of interest provision is directly applicable to the SIG program because it is administered by ALSDE. As described below, to supplement this section of the Code of Alabama, this provision remains applicable to SIG.

ALSDE has developed additional departmental policies and procedures regarding conflicts of interest and is currently going through its protocol to formally adopt these policies. Once these policies are formally adopted, a copy will be provided to OIG. We anticipate that the policy will be finalized and implemented by March 2012.

The second prong of the ALSDE approach is internal and decentralized at the program level. The program offices have safeguards in place that are customized and applicable to the particular program. ALSDE feels this program level approach is important because the nature of the individual programs allow for differences in the range of potential issues.

While ALSDE continues to believe that some level of customization of a conflict of interest policy is beneficial on an individual grant level, it also recognizes the benefit of a departmentwide policy. Thus, the ALSDE is developing an updated departmentwide policy on conflicts of interest that includes independence, disclosures, and recusal in cases where potential conflicts of interest exist. ALSDE anticipates that this policy will be adopted in the near future. As part of its efforts to strengthen internal controls, the ALSDE has retained outside counsel with extensive experience related to internal controls. In addition, on September 28, 2011 ALSDE provided a workshop to train staff on federal grants management requirements (including conflict of interest requirements) and cost principles under the Education Department General Administrative Regulations (EDGAR) and the applicable Office of Management and Budget (OMB) Circulars.

Apparent Conflict of Interest with the Director's Participation in Awarding SIG Funds

The former Federal Programs Director ("Director") participated in two phases of the FY 2010 LEA SIG selection process and it was subsequently discovered that she was involved in decisions regarding the development of this process. The Director's husband's company was listed in three LEA applications as a SIG service provider, and all three LEAs received SIG funds. OIG stated that the former Director's participation in the SIG award process resulted in an apparent conflict of interest.

As soon as ALSDE received information implying a potential conflict of interest involving the former Director, ALSDE immediately reported it to its Office of General Counsel (OGC). The OGC opened a review and promptly moved to assess the matter, contacted the former Director, and requested relevant documentation. Additionally, ALSDE staff involved in the award process were contacted and interviewed. In July 2010, the OGC initially issued a report which concluded that the conflict of interest allegations were unsubstantiated. This conclusion was based on the former Director's own false representation that she was completely removed from the decision-making process for the 2010 SIG grants. This was corroborated by the key staff members interviewed for this report who validated the integrity of the 2010 SIG award process without hesitation.

OGC reopened its review in light of new information that became available in November 2010. The new information included the former Director admitting that she had in fact scored certain LEA applicants, and that she pulled from the file (reportedly kept in her office) certain original score sheets that remained missing.¹⁸ Additionally, included in the updated OGC report is the following information that OGC uncovered between July and November 2010:

- On September 28, 2010, the former Director informed the OGC that she completed the anonymous *Capacity & Commitment* interview score sheets for certain LEA applicants. She stated that this was done only in an effort to familiarize herself with the scoring system as part of her role as the Director of Federal Programs. She indicated that she did not intend for her scores to be included in the scoring process. Nevertheless, she said she had discovered that her scores were apparently among those computed into the final score of certain LEA applicants. The OGC then confirmed that her score sheets (there appears to be five of them) were used to compute a final score.
- On October 5, 2010, the former Director informed the OGC that she had pulled from the official document file certain *Capacity & Commitment* interview score sheets. When OGC questioned her as to why she had taken this action, she stated that she did not know – other than to indicate that comments and allegations she had heard troubled her. When the OGC questioned her as to which score sheets she removed, the former Director stated she could not remember. When the OGC asked what she had done with the score sheets, she again stated that she could not remember. As of the date of the November 2010 report, the OGC confirmed that fourteen original score sheets were missing.
- On October 5, 2010, the former Director submitted her resignation.

¹⁸ *SIG inquiry Report to Joseph B. Morton, Ph.D., State Superintendent of Education, Alabama State Department of Education from Larry E. Craven, General Counsel, Alabama State Department of Education (November 5, 2010).*

The OGC concluded, based on this new information, that the former Director's conduct violated the ALSDE's ethical standards and that there was a conflict of interest in the SIG awarding process pertaining to the contracted service provider listed in three of the seven LEA awards of SIG funds. ALSDE officials presented their conclusions to the former Director, and she promptly resigned. ALSDE reported the matter to the U.S. Department of Education (ED) OIG, the State of Alabama Department of Examiners of Public Accounts and the State of Alabama Ethics Commission, which has jurisdiction over the Alabama's State ethics laws. The State ethics office also has jurisdiction to report this matter for criminal investigation if deemed appropriate.

Based on the available records, ALSDE closely and carefully reviewed the questioned awards and found that they appear to be appropriate substantively, notwithstanding the procedural irregularity in their selection process. Based upon the information available at this time, the awards meet the criteria for the SIG program, and are reasonable and legitimate in terms of the full value of the services. Although OGC determined that the conflict of interest issue was an isolated event limited to the circumstances outlined in the Draft Audit Report, ALSDE considers even an isolated event to be an indicator that internal controls should be carefully reviewed and if necessary, strengthened to ensure a similar conflict of interest problem does not happen in awarding funds in the future. This is precisely the action taken by ALSDE in response to this issue.

Although ALSDE's initial review found that the terms were for justifiable services that were performed for a fair and reasonable price, ALSDE will review these findings with particular scrutiny to further assure that these three questioned awards are appropriately performed in accordance with the SIG program. Furthermore, ALSDE continues its effort to evaluate internal controls on conflicts of interests and identify areas that can be strengthened and modified to ensure similar conflict of interest issues do not occur in the future.

Since discovering the conflict of interest, the following corrective actions have occurred in Alabama. The State of Alabama passed new ethics laws, which include the following provisions:

- Ethics Commission Granted Subpoena Power: The [Alabama State] legislature authorized the Commission to issue subpoenas to compel witnesses to appear and produce books, documents, papers and other evidence upon the vote of four members of the Commission. With this power, Alabama joins 37 other states with omnibus ethics commissions in having this investigative tool. (Section 36-25-4(g), Code of Alabama).
- Mandatory Training on Ethics Laws: Effective immediately, all legislators, constitutional officers, cabinet members, executive staff as determined by the Governor, municipal mayors, council members and commissioners, county commissioners, local boards of education and lobbyists must be educated on the Ethics Law. In addition, all public employees required to file Statements of Economic Interest forms¹⁹ must receive training. (Section Not Yet Codified).

¹⁹ See Attachment A, *Line-by-Line Instructions for Completing the Online Statement of Economic Interests Form*, (stating "The Legislature feels for matters of the public trust, certain individuals should be required to file Statements of Economic Interests, disclosing potential conflicts of interest. These financial disclosures do not violate the United States Constitution and do not intrude on the employee's financial privacy. . . . In addition, Section 36-25-2(c) states that: 'This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.' There may be sections of this form that do not apply to you personally, but this

- Requires Commission to Determine Whether Probable Cause Exists within 180 Days: The Ethics Commission must determine within 180 days of either receiving or initiating a complaint whether or not probable cause exists regarding that matter. The Commission may for good cause grant the staff an additional 180 days by a majority vote. (Section 36-25-4(h)).
- Attorney General and District Attorneys May Report Planned Actions: After receiving the referral of a matter by the Commission, the Attorney General or the District Attorney may report back to the Commission what action their office plans to take regarding that case as well as the final disposition of the matter. (Section 36-25-4(i)).²⁰

ALSDE has already taken further steps to stop conflicts of interest from occurring, including:

- ALSDE has expressly included a prohibition against conflict of interests in the terms and conditions of all issued Request for Applications (RFAs), Request for Proposals (RFPs), as well as all other ALSDE issued requests for solicitations and bids. The ALSDE's recent January 2011 RFA for External Education Management Providers included the following:

5.02 Conflict of Interest

The applicant attests that no employee, officer, or agent of the applicant shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. A conflict would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial or other interest in the organization selected for an award. The officers, employees, and agents of the applicant, if selected as [an Educational Management Organization (EMO)], shall neither award nor offer gratuities, favors, or anything of monetary value from contractors or subcontractors.

- ALSDE's "SIG Review Process Grant Reviewer Training and Supporting Documents and Grant Reviewer Attestations," which provides the framework and matrix for SIG reviewers to score SIG applications, includes the "FY 2011 SIG Reviewer Attestations." This attestation is to be signed and dated by the SIG application reviewers and states:

I attest that I am neither an employee nor a school board member of any of the School Improvement Grant (SIG) eligible Local Educational Agencies (LEAs) listed on Persistently Lowest-Achieving Schools List[.]

I attest that neither I nor any member of my immediate family are employed by or have financial interest in any of the [ALSDE] approved External Education

form was created to best apply to over 50,000 public officials, public employees, candidates for public office, and members of boards, commissions, committees, authorities, councils, etc."). (emphasis added.)

²⁰ See Attachment B, *2010 Amendments to the Alabama Ethics Law*, issued during the first extraordinary session held December 8-16, 2010. The list included in the response is not a complete list of 2010 Amendments to the Alabama Ethics Law. Instead, this response highlights a list of amendments showing corrective actions taken that are relevant to the Draft Audit Report.

Management (EMO) providers listed on the FY 2011 SIG External Education Management Providers letter[.]

I attest that as a trained and authorized reviewer of the LEA-submitted School Improvement Grant applications, I will keep all application information confidential.

This additional internal control ensures those who are reviewing and scoring the applications understand what constitutes a conflict of interest, and that the individual does not have a conflict of interest.

Currently, ALSDE is in the process of developing and implementing new procurement procedures that will cover all federal and state grant awards, including SIG. The ALSDE is developing policies and procedures on conflicts of interest that ensure the independence of employees and contractors who participate in the processes to award competitive grants to LEAs. As part of this policy, ALSDE will establish timely disclosure and effective recusal processes for when a conflict of interest is discovered during the selection process. Additionally, this policy will include an effective monitoring process to ensure that the processes established for independence and recusal are followed. ALSDE hopes to obtain final approval of these policies and procedures in the near future and implement them by early 2012. ALSDE plans to train its employees on the revised policies and procedures and the current Alabama Ethics Law by March 2012.

Discrepancies in Calculating Scores

ALSDE used a three-phase process to select LEAs to receive FY 2010 SIG funds. This process included: (1) a review of all LEA and school SIG award applications; (2) interviews with officials at all LEAs that applied for a SIG award; and (3) a budget analysis for selected LEAs. In the Draft Audit Report, OIG found that the calculation of scores in all three phases of the LEA selection process for SIG awards and the final LEA score ranking either contained discrepancies or could not be verified. The ALSDE recognizes the importance of ensuring that there are no calculation discrepancies when awarding SIG grants and other federal funds. Accordingly, ALSDE is reviewing its internal controls to determine areas that can be strengthened.

Discrepancies in SIG application scoring

The ALSDE is reviewing potential internal control weaknesses to ensure that score sheets and application scores used in the SIG award process accurately reflect the reviewers' intended score. As part of the procedures ALSDE is developing, the ALSDE will require that each contract reader's application score sheets are reviewed by at least one other contract reader. This will ensure the correct number of points is inputted and that the score sheets are accurate.

In addition, the ALSDE's revised policies and procedures will be flexible to allow for appropriate consideration to be given to LEAs and schools when a particular question or questions on the score sheets are not applicable to them. Specifically, the ALSDE's new policy will implement internal controls that will adjust the maximum number of possible points that can be earned by an LEA or school based on the number of questions that are applicable to that particular LEA or school. The ALSDE's policies and procedures will also call for the adjustments to be reviewed for error.

The ALSDE is aware that there were incorrect figures and percentages used in the original SIG scoring process. To prevent this from recurring, ALSDE is:

- Developing internal controls to ensure that the accurate figures on the summary score sheets are used to calculate the percentage of points earned;
- Developing internal controls to ensure that the correct number of points earned is inputted when calculating the percentage of points earned; and
- Developing internal controls to ensure that calculations use the accurate maximum number of points possible, which will be used for the calculation of percentage of points earned.

Discrepancies with SIG interview scoring

The ALSDE is aware that OIG found discrepancies with the SIG interview scoring process. Based on these concerns, ALSDE is creating internal controls, policies, and procedures to make sure that interview score sheets contain the correct total points earned. These internal controls will include measures to ensure the proper number is inputted on the score sheet and that the computations are checked by more than one person.

Discrepancy with SIG LEA ranking

ALSDE understands that OIG is concerned that underlying discrepancies led to potentially inaccurate LEA rankings. However, based on currently available information and records in ALSDE's possession, it is significant to note that even though the scoring discrepancies led to inaccurate LEA ranking, there was no change in the selection of the LEAs that were awarded SIG funds when the correct scores were used to rank the LEAs. These LEAs have effectively administered their SIG programs, thus justifying their award. Therefore, there was no harm to the federal interest because, based on the currently available information, the recalculations of the scores did not change which LEAs were ultimately selected for SIG awards. Nevertheless, ALSDE will not permit a practice containing these types of discrepancies. ALSDE will develop internal controls to ensure accurate applicant scoring and ranking.

In sum, ALSDE recognizes the need to bolster its internal controls to ensure the accuracy and reliability of applicant scoring. As such, ALSDE will establish and implement internal controls to ensure the accuracy and integrity of scoring processes in awarding SIG funds and other competitive grants to LEAs. ALSDE anticipates these internal controls will be developed early next year. Employees will be trained on them by March 2012.

II. Finding No. 2 – Improper Payment of Recovery Act Funds to an LEA

The OIG found that ALSDE made an improper payment to Mobile using Recovery Act IDEA funds, which resulted in Mobile maintaining cash in excess of 60 days. The OIG also determined that ALSDE did not have a written policy that requires LEAs to return excess cash. However, in practice ALSDE does have standards governing potential LEA cash management issues. ALSDE expects LEAs to only request funds for expenditures that can be properly documented and for expenditures that the LEAs are certain will be made in a timely manner from the date the funds are received.

As an internal control, ALSDE requires superintendents to certify that the amount requested is limited to the LEA's immediate cash needs when requesting advanced funds, and that excess cash should be returned to ALSDE.

ALSDE recognizes that it should not drawdown and disburse federal funds in advance of the LEAs' immediate cash needs. As part of ALSDE's effort to update its written policies and procedures, ALSDE established written policies and procedures pertaining to draws received in error, improper payments, and the handling of excess cash in a memorandum dated February 17, 2011, entitled *Requesting Cash from U.S. Department of Education Funds*, from ALSDE's Deputy State Superintendent Warren Craig Pouncey to all County and City Superintendents and County and City Chief School Financial Officers. This memorandum established the following procedures and requirements for requesting federal funds:

- The Request for Federal Funds (ES-2) should be prepared and submitted monthly to ALSDE.
 - o The ES-2 should be submitted no later than five days after the beginning of each calendar month.
 - o The ES-2 must be submitted each month whether cash is needed or not, giving the present status of each fiscal year budget for affected programs.
- Funds may only be requested to meet immediate cash needs as described below:
 - o Disbursements paid during the prior month for which receipts were insufficient.
 - o Estimated disbursements that will be paid during the month in which the cash will be received (estimates of anticipated disbursements should be carefully made in order to avoid excess cash balance).
- Disbursements of the funds should be made within three days of the receipt of the warrant.
- Advanced funds that result in excess cash should be returned to ALSDE.
- Interest earned on advanced funds must be returned to the ALSDE.
- Funds cannot be advanced when excess cash balances are on hand in any fiscal year for any program.
- Funds received should be deposited into a non-interest bearing checking account.

See Attachment C.

Additionally, the Chief School Financial Officers and the Superintendents of the LEAs review and approve the Request for Federal Funds (ES-2) and the immediate cash needs of the LEA prior to submitting the ES-2 to ALSDE. The LEAs must also provide justification for the requested amount

as appropriate and when instructed to do so by ALSDE. For example, the LEA must provide justification for an amount requested that exceeds ten percent of the approved budget amount. ALSDE reviews the Requests for Federal Funds (ES-2) submitted by the LEA to determine that cash requested does not exceed the LEA's immediate cash needs.

The measures described above serve as internal controls against premature draws that can make funds more susceptible to misuse or mishandling.

III. Finding No. 3 – ALSDE Reported Inaccurate Recovery Act Data

The OIG found that ALSDE did not report accurate, reliable and complete data for Recovery Act Title I, IDEA, and SFSF expenditures, vendor payment and job data, resulting in inaccurate reporting of requirements under Section 1512 of the Recovery Act.

Per OIG's recommendation, ALSDE conducted a review to determine whether the errors in reporting expenditures and vendor payments were material misstatements in prior reporting periods. During the initial reporting phase, LEAs were not able to submit all of the system reports within the allotted timeframe. ALSDE's initial 1512 reporting was based on these incomplete system reports. According to the Office of Management and Budget (OMB) guidance, discretion may be used to determine the optimal method for detecting and correcting material or significant reporting errors.²¹ As a general rule, a four percent variance is the materiality threshold according to the Alabama Examiners of Public Accounts Manual. When conducting its review, ALSDE compared the original data reported for each quarter and the revised updated data LEAs were able to submit after the earlier deadline. ALSDE determined that if there was a difference of four percent or more between the original and updated data, then ALSDE would submit the revised data to FederalReporting.gov. The analysis of the expenditures recorded by LEAs and ALSDE indicated that there were misstatements reported. In light of this review, ALSDE submitted a "Request to Change" to correct the expenditure amounts to FederalReporting.gov on December 7, 2011. Once this request is approved, ALSDE will follow the appropriate procedures to submit the revised data to FederalReporting.gov.

As a corrective action to ensure timely and accurate reporting, ALSDE issued a memorandum to County and City Superintendents, and County and City Chief School Financial Officers entitled *ARRA Surveys and Data Submission*. This memorandum, dated September 14, 2011, directed the LEAs to submit ARRA surveys and requested data submissions by October 5, 2011. This deadline informs LEAs of the submission deadline for complete and accurate data, and affords ALSDE enough time to collect and review data to ensure submissions are complete, accurate and reliable. ALSDE will issue a similar memorandum at or around the fifteenth of the month that the quarter period ends.

Further, for previous data submissions, only one member of ALSDE's staff was responsible for reviewing the reported data, which may have contributed to reporting incomplete data. To make sure ALSDE has the capacity to properly review the submitted data, additional staff have been assigned to assist with data collection efforts to ensure that all LEAs have responded to the data request and that data is accurate, reliable, complete and submitted on a timely basis.

²¹ *Memorandum for the Heads of Departments and Agencies: Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (M-09-21)*, at Section 4.3, U.S. Office of Management and Budget (June 22, 2009).

To strengthen its reporting, ALSDE is in the process of implementing practices to ensure the accuracy of current and future reporting, including expenditures, vendor payments and job data. These measures are designed to address the reporting issues found by OIG, including standards regarding:

- Reporting LEA monthly financial statements to ALSDE in a timely manner;
- Revising expenditure data reported through FederalReporting.gov as needed;
- Using correct system program queries for LEA vendor payment data;
- Reviewing LEA data for completeness and accuracy to the best of ALSDE's knowledge and ability; and
- Providing technical assistance to LEAs.

ALSDE anticipates these policies will be finalized by early next year.

IV. Other Matters – Risk of Conflicts of Interest in ALSDE Award of SIG Funds

In the Draft Audit Report, OIG questioned ALSDE's participation in the selection process to award SIG grants to LEAs while also participating as a service provider for these grants. OIG stated that "ALSDE's participation in both providing SIG services and awarding SIG funds to LEAs increases the risk of an appearance of a conflict of interest." Even though the OIG recognized that ALSDE providing SIG services is allowable under the statute, OIG characterized this practice as "selling" SIG services to recipient LEAs. The Draft Audit Report claimed that these actions can lead to the risk of conflicts of interests, bias, and partiality, whether individual or organizational, and that these risks should be mitigated as appropriate to maintain public trust regardless of whether explicitly required by established ethics rules. Even though ALSDE firmly believes there is value in a state agency providing services to LEAs, ALSDE will no longer withhold a portion of an LEA's allocation for this purpose. ALSDE will not provide SIG services in order to alleviate OIG's concerns, although ALSDE disagrees with the necessity of this action.

Despite the decision to no longer provide SIG services, ALSDE fervently denies that there was even a potential appearance of a conflict of interest and assures OIG that ALSDE's SIG selection process was fair and equitable. ALSDE recognizes OIG's previous finding concerning a conflict of interest with the former Federal Programs Director. This was an isolated incident and this employee no longer works for ALSDE. The former Director's behavior merely demonstrates the type of financial self-motivation that can exist with an individual, and not with a state agency. All LEA SIG applications were reviewed fairly regardless of whether the ALSDE was indicated as a service provider in the application.

Significantly, the SIG statute expressly allows an SEA to directly provide school improvement services with the approval of the LEA. Specifically, the statute states:

A State educational agency that receives a grant under [1003(g)] shall allocate at least 95 percent of the grant funds directly to local educational agencies for schools identified for school improvement, corrective action, or restructuring to carry out activities under section 1116(b), or may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision

through other entities such as school support teams or educational services agencies.²² (emphasis added).

In addition, ED's SIG guidance explicitly allows an SEA to provide school improvement services directly or by arranging for their provision through other entities with the approval of the LEA.²³

Due to current Alabama State laws, in many instances it was far easier for the State to identify and contract for specialized non-departmental personnel support and services that are approved to deliver interventions to persistently low performing schools. The LEAs to which the ALSDE provided services all listed ALSDE as a vendor to be paid from SIG funds and explicitly noted that ALSDE would be paid a fee by the LEA. However, it was never ALSDE's intention that fees would be received from the LEAs or that this would be considered "selling" services. Instead, the amount was withheld from the allocations. To be clear, the allocations were reduced before funds were ever disbursed to the LEAs. ALSDE and the eligible LEAs agreed that a certain amount would be withheld sufficient to cover the actual costs of staff and the much needed allowable services contracted by the State on behalf of the participating districts.

No LEA was required to choose ALSDE as a service provider, thus this choice certainly constituted the statutory required LEA approval of ALSDE's involvement. In fact, the OIG recognized that the LEAs approved ALSDE's involvement in the Draft Audit Report. The OIG stated that "ALSDE was listed as a provider in all 16 LEA SIG applications."²⁴ By listing ALSDE in their applications, the LEAs expressly approved of ALSDE directly providing activities and services under the SIG grant. Therefore, ALSDE providing SIG services to LEAs was compliant with federal law.

Additionally, conflict of interest provisions are designed to ensure that individuals in a selection process are not in the position to personally benefit from the awarding of funds. Conflict of interest policies protect against an individual's possible motivation to make decisions for personal gain as opposed to the interest of the organization for which they are making decisions. This is necessary because individuals can have interests that are different from that of the organization. For example, an individual charged with awarding grant funds may wish to direct awards in a manner that will result in enriching oneself or a spouse.

In contrast, in this case, ALSDE, as an awarding state agency, has an interest only in the proper administration of its state-administered programs. There is no potentially conflicting self-interest as there can be with an employee. State agencies do not, and cannot, have the same financially driven self-interest that an individual may have. ALSDE, as the state agency, administers and monitors the SIG grant and the only agency interest, actual or potential, is that the program is properly administered. Providing services to the recipients was an integral part of ALSDE's efforts to run a high quality program, and certainly did not conflict with ALSDE's duty to properly administer and award grants. As further evidence that a conflict of interest did not exist, there were no positions at ALSDE dependent on receiving extra SIG funds from LEAs.

²² Section 1003(g)(7) of the Elementary and Secondary Education Act (ESEA).

²³ See *Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the ESEA*, at I-14, U.S. Department of Education (February 23, 2011).

²⁴ *Alabama: Use of Funds and Data Quality for Selected American Recovery and Reinvestment Act Programs, Draft Audit Report*, ED-OIG/A04K0007, at p. 15, U.S. Department of Education Office of Inspector General (October 2011).

Moreover, other federal education programs allow for a state agency to reserve grant funds for state-level activities. For example, the IDEA allows, but does not mandate, states to reserve up to 10 percent of the total state allocation (adjusted for inflation) for state-level activities, such as providing technical assistance to schools and LEAs, and direct services, including supplemental educational services.²⁵ Also, the IDEA allows the state to reserve 10 percent of the amount reserved for other state-level activities for the high cost fund.²⁶ The high cost fund is expended on certain state-level activities to assist LEAs with addressing the needs of high-need children with disabilities.²⁷ Using the high cost fund, the state may reserve funds to provide direct special education and related services.²⁸ The state has the option to reduce LEA funding for state use, if the state decides that there will be a better use of funds at the state level. Based on SEA-developed criteria, the state agency determines which LEAs and which students are appropriately served by the high cost fund.²⁹ Similar to the instant matter where ALSDE was providing services to LEAs under the SIG grant, the IDEA also allows for the state to provide services to select LEAs and students.

The Improving Teacher Quality State Grants, under Title II, Part A of the Elementary and Secondary Education Act (ESEA) also calls for the SEA to retain funds for state-level activities.³⁰ Under this program, state-level activities include those that support teachers and principals, such as mentoring and intensive professional development, as well as developing and implementing effective means to help LEAs and schools recruit and retain highly qualified teachers, and developing and assisting LEAs to create teacher advancement initiatives.³¹ The SEA has the authority to decide how to spend its state-level funds on allowable activities that will have the greatest impact on student achievement, but should also focus its efforts to ensure that all teachers of core academic subjects are highly qualified.³² This is similar to ALSDE providing SIG services to LEAs, because under the Title II, Part A grant the SEA provides services to LEAs based on its own reasonable considerations.³³

Also, the 21st Century Community Learning Centers program (21st CCLC) authorizes an SEA to use up to 3 percent of its allotment for state-level activities, including training and capacity building for both applicants and grant recipients. As such, the 21st CCLC grant is another example of a program that allows, and encourages, the state to provide services to an LEA or other subgrantee.

Also, there are federal education grant programs where a state can be both a grantee and a recipient of funds. The Enhancing Education Through Technology program (Ed Tech) subgrants funds on both a formula and competitive bases.³⁴ The competitive subgrants can be awarded to “eligible local partnerships,” which may include LEAs, educational service agencies, libraries or *other*

²⁵ 34 CFR § 300.704(b)(4)(xi).

²⁶ 34 CFR § 300.704(c).

²⁷ *Id.*

²⁸ 34 CFR § 300.704(c)(4)(ii).

²⁹ 34 CFR § 300.704(c)(3)(i).

³⁰ Section 2113 of the ESEA; *See also Improving Teacher Quality State Grants, ESEA Title II, Part A, Non-Regulatory Guidance*, at B-9, U.S. Department of Education (October 5, 2006) (stating that up to 1 percent of the State’s Title II, Part A funds can be reserved for SEA and State Agency for Higher Education (SAHE) administration, and of the remaining 99 percent, 2.5 percent is reserved for SEA-administered state activities, another 2.5 percent is reserved for competitive subgrants to eligible partnerships, and the remaining 95 percent is reserved for subgrants to LEAs.).

³¹ *Id.* at C-1.

³² *Id.* at C-1, C-2, and C-4.

³³ *Id.* at C-3.

³⁴ *See* Section 2412(a) of the ESEA.

*educational entities appropriate to provide local programs.*³⁵ The statute does not expressly prohibit state agencies from receiving funds to provide services at the local level. Therefore, an SEA may receive a subgrant as part of a partnership with other entities, as long as that SEA can aid in providing appropriate services at the local level. Similarly, based on statutory language and absent OIG policy guidance prohibiting it, ALSDE as the SEA can provide services to an LEA under the SIG grant.

As with the Ed Tech and SIG programs, the 21st CCLC also allows states to provide services to LEAs. Under this program, formula grants are awarded to SEAs, which in turn manage statewide competitions and award subgrants to LEAs, community-based organizations, other public or private entities, or a consortium of two or more such agencies, organizations or entities.³⁶ According to guidance, states can determine what constitutes an eligible consortium so long as the state's determination is consistent with program requirements.³⁷ In addition, an intermediate unit within a state, such as a Board of Cooperative Educational Services (BOCES) may also apply and receive a 21st CCLC grant.³⁸ States may award funds to such agencies to carry out activities for LEAs, and other participating organizations, or consortia of organizations.³⁹ As with the 21st CCLC grant, assuming the SEA is able to provide appropriate services, the SEA is able to receive subgranted funds under the SIG program.

Significantly, the SIG statute and guidance do not discuss potential conflicts of interest that may arise from the SEA providing services and how to combat them. However, ALSDE recognizes the importance of maintaining public trust in its implementation of federal grant programs and ensuring the independence of officials that participate in the selection process for competitive grants. ALSDE will no longer directly provide SIG services to LEAs, despite the benefit LEAs receive from these services. In order to alleviate OIG's concerns, ALSDE will stop providing SIG services even though ALSDE disagrees with the necessity of this action.

IV. Conclusion

In closing, ALSDE respectfully submits this response to the Draft Audit Report and requests that the findings be reconsidered and revised before the issuance of a final audit report in light of ALSDE corrective actions and plans which address each of OIG's recommendations.

³⁵ Section 2403(2)(B) of the ESEA; *See also Guidance on the Enhancing Education Through Technology* (Ed Tech)

³⁶ Section 4201(b)(3) of the ESEA.

³⁷ *See 21st Century Community Learning Centers Non-Regulatory Guidance*, at F-17, U.S. Department of Education (February 2003).

³⁸ *Id.* at F-21.

³⁹ *Id.*

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