



U.S. Department of Education
Office of Inspector General

The U.S. Department of
Education's Processes for
Reviewing and Approving State
Plans Submitted Pursuant to the
Elementary and Secondary
Education Act of 1965, as
Amended

September 28, 2020
ED-OIG/A05S0001

NOTICE

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. The appropriate Department of Education officials will determine what corrective actions should be taken.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services

September 28, 2020

TO: Frank Brogan
Assistant Secretary
Office of Elementary and Secondary Education

FROM: Bryon S. Gordon /s/
Assistant Inspector General for Audit

SUBJECT: Final Audit Report, "The U.S. Department of Education's Processes for Reviewing and Approving State Plans Submitted Pursuant to the Elementary and Secondary Education Act of 1965, as Amended," Control Number ED-OIG/A05S0001

Attached is the subject final report on the results of our audit of the U.S. Department of Education's processes for reviewing and approving State plans submitted pursuant to the Elementary and Secondary Education Act of 1965, as amended. We received your comments disagreeing with the finding and recommendations in our draft audit report and considered them as we prepared this final audit report.

U.S. Department of Education policy requires that you develop a final corrective action plan within 30 days of the issuance of this report. The corrective action plan should set forth the specific action items (with targeted completion dates) necessary to address the finding and recommendations contained in this final audit report. Corrective actions that your office proposes and implements will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after 6 months from the date of issuance.

We appreciate the cooperation that Office of Elementary and Secondary Education officials and employees showed us during this audit. If you have any questions, please contact me at (202) 245-6051 or Bryon.Gordon@ed.gov or Gary D. Whitman, Regional Inspector General for Audit, at (312) 730-1658 or Gary.Whitman@ed.gov.

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Results in Brief

What We Did

According to the Elementary and Secondary Education Act of 1965, as amended (ESEA), a State wanting to receive Federal funds must submit a plan indicating which of nine programs it wants to receive funds for.¹ A State's plan should include the descriptions, information, assurances, and other materials necessary to show how the plan meets ESEA requirements. Section 1111 of the ESEA requires the U.S. Department of Education (Department) to establish multidisciplinary peer review panels to review State plans and provide objective feedback on the technical, educational, and overall quality of the plans.

Our objective was to determine whether the Department designed and implemented State plan review and approval processes that provided reasonable assurance that it (1) identified and resolved potential instances of State plans' noncompliance with ESEA and Title VII, Subpart B of the McKinney-Vento Homeless Assistance Act of 1987, as amended by the Every Student Succeeds Act (McKinney-Vento Act) requirements; (2) acted within its authority as set forth in section 1111(a)(4)(A)(vi) of the ESEA;² and (3) complied with Department policy. We assessed the Department's processes for reviewing and approving the three sections of State plans that the statutes required the Department to peer review—Title I, Part A of the ESEA (Title I); Title III, Part A of the ESEA (Title III); and the McKinney-Vento Act sections of State plans. We assessed the design of the Department's State plan review and approval processes as of April 2017 and the implementation of those processes as applied to a sample of plans submitted by six States (Alaska, California, Maine, Michigan, Mississippi, and Utah) during the spring window (on or before April 3) and the fall window (April 4 or after) of 2017. We did not assess whether any State plans met ESEA requirements. We assessed only the design and implementation of the Department's processes for reviewing and approving State plans.

To achieve our objective, we reviewed the Department's policies and procedures for selecting peer reviewers, guidance that the Department provided to peer reviewers, and

¹ For the purposes of this audit report, "State" means one of the 50 U.S. States, Puerto Rico, or the District of Columbia.

² Section 1111(a)(4)(A)(vi) states that the Department has the authority to disapprove a State plan only if the Secretary determines how a plan fails to meet requirements, immediately provides written notice of such determinations to the State, offers the State an opportunity to revise and resubmit its plan, and provides the State technical assistance, all peer review comments, and the opportunity for a hearing.

records of the Department’s review of six States’ plans. We also compared the Department’s guidance and peer review criteria to the requirements in the ESEA and the McKinney-Vento Act. Further, we compared the Department’s feedback to States to peer reviewer comments and compared initial and approved State plans to the Department’s feedback to the States. Finally, we interviewed Department officials who participated in the processes for selecting peer reviewers or reviewing and approving State plans, or both; State educational agency (SEA) officials who participated in the development and revision of a judgmentally selected sample of six States’ plans;³ and seven peer reviewers who participated in the reviews of State plans.⁴

What We Found

The Department designed its review and approval processes to provide reasonable assurance that it would identify and resolve potential instances of State plans’ noncompliance with the ESEA and McKinney-Vento Act requirements subjected to peer review. The Department also designed the review and approval processes to provide reasonable assurance that it complied with selected ESEA and McKinney-Vento Act requirements and Department policy.

Although the Department implemented its plans for providing guidance to peer reviewers and States and implemented its peer review process in a manner that provided reasonable assurance of State plans’ compliance with ESEA and McKinney-Vento Act requirements, we found that the Department did not implement all aspects of the review and approval processes as designed.

The Department Designed Its State Plan Review and Approval Processes to Identify and Resolve Potential Instances of State Plans’ Noncompliance with Selected ESEA and McKinney-Vento Act Requirements

The Department designed a State plan template to help SEAs ensure that their plans met the requirements that the ESEA and McKinney-Vento Act required to be subjected to peer review. The Department also designed processes to select peer reviewers and conduct peer reviews of the Title I, Title III, and McKinney-Vento Act sections of State plans. Additionally, the Department published “State Plan Peer Review Criteria.” This

³ See “[Sample of State Plans](#)” in the “Scope and Methodology” section of this report for a description of how we judgmentally selected the six States.

⁴ We selected a sample of 23 peer reviewers from a list of 103 peer reviewers who either reviewed State plans or served as alternates (see “[Sample of Peer Reviewers](#)”). We invited 10 of the 23 peer reviewers to discuss their experiences with us. Only seven accepted our requests for interviews.

document described the elements necessary for a State's plan to demonstrate compliance with the Title I, Title III, and McKinney-Vento Act requirements.

The contents of the State plan template, peer review criteria, and training materials that the Department created were consistent with statutory requirements. Also, the peer reviewers with whom we spoke were satisfied with the guidance and training that they received from the Department. These peer reviewers also confirmed that their consolidated comments included all their concerns about the adequacy of the State plans that they reviewed. Additionally, based on our discussions with SEA officials from six States, we did not find any systemic issues that would indicate that the Department's guidance exceeded the authority provided to the Department. Accordingly, we do not have any recommendations for improving the design of the Department's State plan review and approval processes.

The Department Implemented Most but Not All of Its Review and Approval Processes as Designed

The Department implemented its plans for providing guidance to peer reviewers and States. It also implemented its peer review process in a manner that provided reasonable assurance of State plans' compliance with ESEA and McKinney-Vento Act requirements. However, the Department did not (1) always retain records that ensured adequate and proper documentation of its peer reviewer selection decisions or its analysis of peer reviewer comments on the McKinney-Vento Act requirements of State plans, (2) publish all versions of States' plans on its website, or (3) always show that it considered conflict of interest information collected from peer reviewers before assigning them to panels.

We did not identify any evidence that would suggest that the Department acted outside its authority to disapprove a State plan as set forth in section 1111(a)(4)(A)(vi) of the ESEA. However, because of the issues noted above, we could not determine why the Department selected certain peer reviewers. We also could not always determine whether the Department considered the results of the peer review process when providing feedback on the McKinney-Vento Act section of State plans. Finally, we could not ensure that the Department considered conflict of interest information it collected from peer reviewers before assigning them to panels, which could affect the integrity of the peer review processes.

What We Recommend

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

- strengthens its policy for creating and retaining records so those records demonstrate adequate and proper documentation of OESE’s functions, policies, decisions, procedures, and essential transactions relevant to the review and approval of State plans;
- makes publicly available all submissions and resubmissions of States’ plans, including individual and consolidated plans, to promote full transparency; and
- adheres to its policy and considers all conflict of interest information collected from peer reviewers before assigning them State plans to review.

Department Comments

In response to a draft of this report, the Department disagreed that it did not implement its State plan review and approval processes as designed and disagreed with all three of the corresponding recommendations. The Department stated that it designed and implemented a rigorous review and approval process, but the draft report did not acknowledge the broader success of the processes. The Department also stated that it conducted thorough and rigorous peer reviewer selection and conflict of interest review processes, maintained detailed records of peer reviewer selections and the analysis of State plans, and provided transparent information to the public. The Department agreed that the process for documenting the analysis of peer reviewer comments for the McKinney-Vento Act program could be improved.

The full text of the Department’s comments is included at the end of this report.

OIG Response

As we described in the draft of this report, we concluded that the Department designed processes for reviewing and approving State plans that provided reasonable assurance the plans met the ESEA and McKinney-Vento Act requirements subjected to peer review. We also concluded that the Department implemented most of those processes as designed but did not implement all of them as designed. Processes cannot be operating effectively if they are not implemented as designed.

Based on the Department’s comments, we clarified the finding by explaining that the processes that were not implemented as designed were primarily limited to the McKinney-Vento Act requirements of State plans. We also clarified the section of the finding and recommendation regarding conflict of interest information. We acknowledge that the Department collected information about the location of each peer

reviewer's employers; however, records did not show that the Department considered this information before assigning peer reviewers to panels.

Introduction

Background

The ESEA was signed into law in 1965. It authorizes the Department to provide grants to States and local educational agencies to improve the quality of elementary and secondary education. In December 2015, the Every Student Succeeds Act amended and reauthorized the ESEA.

ESEA Programs: Their Purposes and 4-Year Funding Levels

The ESEA requires each SEA to submit a State plan for each of the following nine programs in which its State wants to participate.⁵

- **Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies.** The purpose of Title I, Part A is to provide grants to States to help them provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. For Federal fiscal years 2017 through 2020, the law authorized about \$62.5 billion to be appropriated for the activities allowed under this part.
- **Title I, Part C: Education of Migratory Children.** The purpose of Title I, Part C includes (1) assisting States in supporting educational programs and services that address the educational needs of migratory children, (2) ensuring that migratory children who move among the States are not penalized by disparities among the States' academic standards, and (3) ensuring that migratory children receive full and appropriate opportunities to meet the same academic standards that all children are expected to meet. For Federal fiscal years 2017 through 2020, the law authorized about \$1.5 billion to be appropriated for the activities allowed under this part.
- **Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.** The purpose of Title I, Part D is to help States (1) improve educational services for children and youth in local, tribal, and State institutions for neglected or delinquent children and youth; (2) provide such children and youth with the services needed to make a successful transition from institutionalization to further schooling or employment; and (3) prevent at-risk youth from dropping out of school. For

⁵ To simplify the application requirements across various programs and reduce the burden for each SEA, section 8302 of the ESEA allows an SEA to submit a consolidated plan covering all the programs in which the State wants to participate.

Federal fiscal years 2017 through 2020, the law authorized about \$190 million to be appropriated for the activities allowed under this part.

- **Title II, Part A: Supporting Effective Instruction.** The purpose of Title II, Part A is to provide grants to SEAs who in turn provide subgrants to local educational agencies to (1) increase student achievement; (2) improve the quality and effectiveness of teachers, principals, and other school leaders; (3) increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement; and (4) provide low-income and minority students greater access to effective teachers, principals, and other school leaders. For Federal fiscal years 2017 through 2020, the law authorized about \$9.2 billion to be appropriated for the activities allowed under this part.
- **Title III: English Language Acquisition, Language Enhancement, and Academic Achievement.** The purpose of Title III is to provide grants to States to help them (1) ensure that English learners attain English proficiency and develop high levels of academic achievement; (2) assist all English learners to achieve at high levels in academic subjects so they can meet the same academic standards that all children are expected to meet; (3) assist teachers and others in establishing, implementing, and sustaining effective language instruction programs; (4) assist teachers and others to develop and enhance their capacity to provide effective instructional programs; and (5) promote parental, family, and community participation in English language instruction. For Federal fiscal years 2017 through 2020, the law authorized about \$3.2 billion to be appropriated for the activities allowed under this part.
- **Title IV, Part A: Student Support and Academic Enrichment Grants.** The purpose of Title IV, Part A is to provide funds to improve students' academic achievement by increasing the capacity of States, local educational agencies, schools, and local communities to (1) provide all students with access to a well-rounded education, (2) improve school conditions, and (3) improve the use of technology to improve the academic achievement and digital literacy. For Federal fiscal years 2017 through 2020, the law authorized about \$6.5 billion to be appropriated for the activities allowed under this part.
- **Title IV, Part B: 21st Century Community Learning Centers.** The purpose of Title IV, Part B is to provide opportunities for communities to establish or expand activities in community learning centers that (1) provide opportunities for academic enrichment; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities, nutrition and health education, drug and violence prevention programs, arts, and physical fitness programs; and (3) offer families of students served by community

learning centers opportunities for active engagement in their children’s education. For Federal fiscal years 2017 through 2020, the law authorized about \$4.3 billion to be appropriated for the activities allowed under this part.

- **Title V, Part B, Subpart 2: Rural and Low-Income School Program.** The purpose of Title V, Part B, Subpart 2 is to address the unique needs of rural school districts that frequently lack the personnel and resources needed to compete effectively for Federal competitive grants and receive formula grant allocations in amounts too small to be effective in meeting their intended purposes. For Federal fiscal years 2017 through 2020, the law authorized about \$340 million to be appropriated for the activities allowed under this subpart.
- **Title VII, Subtitle B of the McKinney-Vento Act: Education for Homeless Children and Youth Program.** The purpose of the Education for Homeless Children and Youth Program is to ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths. For Federal fiscal years 2017 through 2020, the law authorized about \$340 million to be appropriated for the activities allowed under this subtitle.

Purpose of a State Plan

According to the ESEA, a State plan should include the descriptions, information, assurances, and other materials necessary to show how the State intends to

- improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery;
- provide greater flexibility to State and local authorities; and
- enhance the integration of ESEA programs with State and local programs.

The ESEA and the McKinney-Vento Act specify that the Department must subject to peer review the Title I, Title III, and McKinney-Vento Act sections of each State’s plan.

Department Offices Responsible for Overseeing the ESEA Programs and Reviews of State Plans

Within the Department, OESE is responsible for administering all programs authorized by the ESEA and the McKinney-Vento Act. The mission of OESE is to empower States, districts, and other organizations to meet the diverse needs of every student by providing leadership, technical assistance, and financial support.

When we started our audit in March 2018, OESE consisted of eight offices, each responsible for certain programs and activities.⁶ The Office of State Support (OSS) was responsible for managing the reviews of the Title I and Title III sections of State plans. The Office of Safe and Healthy Students was responsible for managing the reviews of the McKinney-Vento Act section of State plans.

State Plan Preparation and Submission Processes

On November 29, 2016, the Department amended the Title I regulations to implement changes required by the Every Student Succeeds Act. The Department also updated the regulations to include the requirements for the submission of State plans, including optional consolidated State plans, under the ESEA (81 Federal Register 86076).

On February 10, 2017, the Department informed chief State school officers that they should expect a consolidated State plan template. The template would require only descriptions, information, assurances, and other materials that were necessary for consideration of such a consolidated State plan, consistent with section 8302(b)(3) of the ESEA.

In March 2017, the Department published on its website the “State Plan Peer Review Criteria,” which described the process it would use to conduct peer reviews of the Title I, Title III, and McKinney-Vento Act sections of State plans. The Department designed “State Plan Peer Review Criteria” to help States develop the three sections of their plans that would be subjected to peer review and to guide peer reviewers when they evaluated these three sections. The Department developed the document based on statutory requirements and included questions to help peer reviewers assess whether each State plan fully addressed those requirements. The Department gave each SEA the option to submit its State’s plan during a spring window (on or before April 3, 2017) or a fall window (April 4 through September 18, 2017). Seventeen States submitted plans during the spring window, and 35 States submitted plans during the fall window.⁷

After receiving a State plan, OESE checked whether it was complete by ensuring that it included information on every ESEA and McKinney-Vento Act requirement. According to section 1111(a)(4)(A)(v) of the ESEA, the Department had 120 days from the date that the SEA submitted the State’s complete plan to review the plan and provide feedback to the SEA. If a plan did not fully address the statutory requirements and could not be approved, the Department offered the SEA an opportunity to revise and resubmit the

⁶ Effective January 6, 2019, OESE consists of five offices.

⁷ All 50 U.S. States, the District of Columbia, and Puerto Rico submitted consolidated plans.

plan and to have a hearing (section 8451(b) of the ESEA). According to section 1111(a)(4)(A)(vi) of the ESEA, the Department could disapprove a State plan only if it (1) determined how the State plan failed to meet the requirements; (2) immediately notified the State in writing of such a determination; (3) offered the State an opportunity to revise and resubmit its plan; (4) provided the State technical assistance and, in writing, all peer review comments, suggestions, recommendations, or concerns; and (5) gave the State an opportunity for a hearing relevant to the State's plan.

Finding. The Department Designed State Plan Review and Approval Processes That Were Sound but Did Not Implement All the Processes as Designed

The Department designed review and approval processes that provided reasonable assurance that it identified and resolved potential instances of State plans' noncompliance with the ESEA and McKinney-Vento Act requirements subjected to peer review. The Department also designed processes to provide reasonable assurance that it complied with the peer review, Secretary approval, and public review requirements in sections 1111(a)(4) and 1111(a)(5) of the ESEA. Further, the Department designed its processes to comply with Department policy. As designed, the State plan review and approval processes should have provided reasonable assurance of State plans' compliance with the Title I, Title III, and McKinney-Vento Act requirements subjected to peer review.

We concluded that the Department implemented the processes it designed for providing guidance to peer reviewers and States as designed. Additionally, the Department implemented the designed peer review process in a manner that provided reasonable assurance of State plans' compliance with selected ESEA and McKinney-Vento Act requirements. However, the Department did not implement all aspects of its State plan review and approval processes as designed. Specifically, the Department did not always retain records demonstrating adequate and proper documentation of peer reviewer selection decisions or its analysis of peer reviewer comments on the McKinney-Vento Act section of State plans. It also did not publish all versions of States' plans on its website or follow its policy for considering conflict of interest information collected from peer reviewers before assigning them to panels.

As a result, we could not determine why the Department selected certain peer reviewers. We also could not always determine whether the Department considered the results of its peer review process when providing States feedback on the McKinney-Vento Act section of their plans. Finally, we could not ensure that the Department considered the conflict of interest information it collected from peer reviewers before assigning them to panels, which could have affected the integrity of the peer review processes.

The Department Designed Its Review and Approval Processes to Provide Reasonable Assurance That It Identified and Resolved Potential Instances of State Plans' Noncompliance with Selected ESEA and McKinney-Vento Act Requirements

Sections 1111 and 3113 of the ESEA require the Department to subject the Title I and Title III sections of State plans to peer review. According to section 1111, the peer review should support State- and local-led innovation and lead to objective feedback on the technical, educational, and overall quality of States' plans. Section 1111 requires the Department to establish multidisciplinary peer review panels to review State plans. Peer review panel members should represent parents, teachers, principals, school leaders, specialized instructional support personnel, SEA officials, local educational agency officials, and community members (including the business community). Peer review panel members should also represent researchers familiar with the implementation of (1) academic standards, assessments, or accountability systems; (2) methods to meet the needs of disadvantaged students, children with disabilities, and English learners; (3) methods to meet the needs of low-performing schools; and (4) methods to meet other educational needs of students.

Section 1111 (a)(4)(A) of the ESEA also requires peer review panels to include, to the extent practicable, majority representation of people who, in the most recent 2 years, had practical experience in the classroom, school administration, or State or local government, such as employees of a school, SEA, or local educational agency. The panels should also represent a regionally diverse cross section of States. Peer reviewers are required to apply their professional judgment and experiences and conduct an objective review of State plans in their totality and out of respect for State and local judgments.

Section 3113(c) of the ESEA allows the Department to approve a State's plan under this section only after using a peer review process. Although the peer review requirements in section 1111 of the ESEA did not specifically apply to section 3113, the Department used the same processes and peer reviewers for the peer review of the Title I and Title III sections of State plans.

Section 724(a) of the McKinney-Vento Act requires the Department to subject the McKinney-Vento Act section of State plans to peer review. The purpose of the review is to evaluate whether the State laws, policies, and practices described in the plan adequately address the problems of homeless children and youths.

Processes to Identify and Resolve Potential Instances of Noncompliance

The Department designed two different processes for conducting the peer reviews of State plans. One covered the Title I and Title III sections, and one covered the McKinney-Vento Act section of the plans. The Department's design called for the use of different panels of peer reviewers for each process. The Department planned to produce two sets of comments for each State's plan—one covering the peer review of the combined Title I and Title III sections and one covering the peer review of the McKinney-Vento Act section.

Once the peer reviewers completed their part of the process, the Department planned to combine the peer review results of the Title I and Title III sections with the peer review results of the McKinney-Vento Act section into interim feedback letters to be sent to the States. The Department designed these interim feedback letters to (1) notify States if the Department rejected their initial plans, (2) explain why the Department was rejecting the initial plans, and (3) tell States what changes they needed to make before the Department could approve the plans. In the interim feedback letters, the Department included only requirements it determined the plans did not meet. However, the Department planned to post the final peer review comments on its website.

Title I and Title III Sections

The Department designed the peer review process for the Title I and Title III sections to cover the portions of a State's plan relevant to sections 1111(a)(4), 3113(c), and 8451(d) of the ESEA. The Department planned to assign a panel of four peer reviewers to review each State plan's Title I and Title III sections. Each member of the peer review panel was required to independently review the State plan and record her or his responses to the "State Plan Peer Review Criteria" questions. Each peer reviewer was supposed to note where changes might be necessary for the plan to fully address statutory requirements. Peer reviewers could also provide suggestions for improving the State plan or highlight best practices.

After independently reviewing it, the peer review panel members were to discuss the State plan to strengthen their understanding of the plan's content before finalizing their evaluations and consolidating their comments. The peer reviewers were required to generate only one set of comments, which were to reflect their collective evaluation of the State plan. However, the peer reviewers did not have to reach consensus about whether a plan met a requirement. If a panel member disagreed with the majority of panel members, the consolidated peer review comments provided to the Department included her or his individual conclusions.

The peer review comments served as a record of the peer review panel's assessment of how well a State's plan addressed the statutory requirements and the peer review

panel's suggestions for how the SEA could improve the Title I and Title III sections the State's plan. The peer review comments also served as a resource for the Department when deciding what, if any, additional information to request from the SEA.

Department employees were to concurrently conduct their own review of each State's plan. Employees from OESE were to review the portion of each State plan relevant to their program area. This review was intended to ensure that the State plan met ESEA requirements, and it provided OSS with input on what requirements States needed to address before the Department could approve the plan.

McKinney-Vento Act Section

The Department designed a peer review process specifically to cover section 724(a) of the McKinney-Vento Act. It planned to assign a panel of three peer reviewers to review each State plan's McKinney-Vento Act section. As a significant part of the peer review process, the Department contracted with the National Center for Homeless Education.⁸ The National Center for Homeless Education selected peer reviewers, contacted all peer reviewers, and provided all peer reviewers with the relevant States' plans. According to the coordinator for the McKinney-Vento Act program, the National Center for Homeless Education recruited and selected former or current State homeless education coordinators and employees as peer reviewers.⁹

Peer reviewers were to independently review the McKinney-Vento Act section of their assigned State plans. Each peer reviewer was to fill out a template to capture her or his conclusions. Through the National Center for Homeless Education, each peer reviewer provided her or his comments to OESE's Office of Safe and Healthy Students. The peer reviewers then discussed their individual results during a meeting with Office of Safe and Healthy Students employees and created one set of final peer review comments. The peer reviewers then had an opportunity to review and comment on the combined comments.

Department employees were to concurrently review the McKinney-Vento Act section of States' plans. In interim feedback letters to the State, the Department included only those requirements it determined the plan did not meet. However, the Department planned to post the final peer review comments on its website.

⁸ Since 1998, the National Center for Homeless Education has had a contract with the Department to provide technical assistance for the Education for Homeless Children and Youth program, which is authorized under the McKinney-Vento Act.

⁹ The ESEA did not specify what qualifications McKinney-Vento Act program peer reviewers had to meet.

Conclusion on the Design of the State Plan Review and Approval Processes and Compliance with Requirements

We concluded that the Department designed its review and approval processes to provide reasonable assurance that it would identify and resolve potential instances of State plans' noncompliance with Title I, Title III, and McKinney-Vento Act requirements. We also concluded that the Department designed the processes to provide reasonable assurance that it complied with the peer review and Secretary approval requirements of section 1111(a)(4) of the ESEA, section 724(a) of the McKinney-Vento Act, and Department policy. We do not have any recommendations for improving the design of the Department's State plan review and approval processes.

The Department Implemented Most of Its Review and Approval Processes as Designed

We found that the Department implemented its plans for providing guidance to peer reviewers and States as designed. Additionally, we found that the Department implemented its peer review process in a manner that provided reasonable assurance of State plans' compliance with selected ESEA and McKinney-Vento Act requirements.

Guidance to Peer Reviewers and States

We reviewed "Revised State Template for the Consolidated State Plan," "State Plan Peer Review Criteria," and training materials that the Department provided to peer reviewers and States. The "Revised State Template for the Consolidated State Plan" provided States with a template for developing their plans and included the ESEA and McKinney-Vento Act requirements that had to be met before the Department would approve a plan. The "State Plan Peer Review Criteria" served as a guide for peer reviewers when evaluating the State plans. The contents of the State plan template, peer review criteria, and training materials that the Department created all adhered to statutory requirements. The guidance and training materials included only those areas necessary to help States develop their plans and help peer reviewers assess whether each plan met selected requirements of the ESEA and McKinney-Vento Act.

To ensure that the Department did not require States to include anything more than required by statute, we compared all 57 requirements included in the "State Plan Peer Review Criteria" to the ESEA and McKinney-Vento Act. We determined that the items in the "State Plan Peer Review Criteria" were all based on the ESEA and McKinney-Vento Act, and the Department did not require States' plans to include information beyond what was required by statute. We did not identify any instances where the Department's guidance to States or peer reviewers exceeded the authority granted to the Department.

We discussed the State plan review and approval processes with SEA officials from six States and asked them whether they had any significant concerns with the Department’s guidance and processes. SEA officials did not raise any significant concerns. However, officials from two SEAs said that the guidance could have been clearer by explaining how flexible the Department would be in interpreting the law and providing waivers. Officials from two other SEAs stated that early content-specific guidance and continuous training would have been helpful.

We also discussed the peer review process with a sample of peer reviewers. The peer reviewers with whom we spoke were satisfied with the guidance and training that they received from the Department. They also confirmed that the consolidated review comments included their individual concerns about the adequacy of the State plans that they reviewed. None of our discussions with SEA officials or peer reviewers revealed any systemic issues that would indicate that the Department’s guidance exceeded the requirements set forth in statute.

Peer Review Process and Feedback from the Department Before Plan Approval

Peer reviewers reviewed each State plan and provided consolidated comments about the plans to the Department. In the comments, the peer reviewers stated whether the plan met requirements from the “State Plan Peer Review Criteria” and explained their decisions. Department employees also reviewed the State plans. OESE employees reviewed the sections of the State plans within their purview and provided feedback to OSS on whether the plans met selected requirements of the ESEA and McKinney-Vento Act. OSS compiled the peer reviewers’ and Department employees’ comments on the State plans before providing feedback to States on their plans.

The Department then provided interim feedback letters to the States. The interim feedback letters informed the States about which Title I, Title III, and McKinney-Vento Act requirements were not adequately addressed and would need to be revised before the Department would approve the State’s plan. For each of the six State plans in our judgmentally selected sample, we compared the areas that the Department required States to address with the approved plans for those six States. We found that all requirements identified in the interim feedback letters as being unmet were resolved before the Department approved each of the six States’ plans.

The Department Did Not Implement All Aspects of Its Review and Approval Processes as Designed

Although the Department, without acting outside its statutory authority, implemented its plans for providing guidance to peer reviewers and States as designed and implemented its peer review process in a manner that provided reasonable assurance of

State plans' compliance with Title I, Title III, and McKinney-Vento Act requirements, we found that the Department did not

- always retain records demonstrating adequate and proper documentation of peer reviewer selection decisions (United States Government Accountability Office's "Standards for Internal Control in the Federal Government") or its consideration of peer reviewer comments on the McKinney-Vento Act sections of State plans (the Department's "State Plan Peer Review Criteria");
- publish all versions of States' plans on its website (section 1111 (a)(5)(A) of the ESEA); or
- always follow its policy for considering conflict of interest information collected from peer reviewers before assigning them to panels (Department's decision memorandum regarding the slate of peer reviewers for State plans).

Inadequate Documentation of Peer Reviewer Selection Decisions

The Department designed the peer review selection process to provide reasonable assurance that it invited the most qualified applicants to serve as peer reviewers and established peer review panels in a way that complied with ESEA requirements. However, we found that the Department did not retain records demonstrating that it implemented the peer reviewer selection process as it was designed.

The Department received 2,205 applications from people interested in being peer reviewers. Career OSS employees reviewed all the applications for completeness. Career OSS employees also reviewed all the applications to identify the applicants who had expertise and significant experience and knowledge of one or more categories relevant to the review of State plans. OSS identified 468 applicants who had experience and knowledge of one or more categories relevant to the review of State plans. Next, a panel of three senior career employees (one each from OESE; the Office of Special Education and Rehabilitative Services; and the Office of Planning, Evaluation, and Policy Development) reviewed the qualifications of these 468 applicants and assigned each a numerical rating of 1 through 5. OSS then created a draft decision memorandum and sent it through the Acting Assistant Secretary for Elementary and Secondary Education to a Department steering committee for consideration.

The draft decision memorandum specified that the panel of three senior career employees rated each applicant on a scale of 1 through 5, with 5 being the most qualified applicant and 1 being an applicant whom the panel did not consider qualified to serve as a peer reviewer. The draft decision memorandum recommended that only the 86 applicants who were rated as 4.5 or 5 be invited to serve as peer reviewers. After a Department steering committee reviewed the list of 86 applicants, the Deputy Chief of

Staff for Policy and Programs (a member of the steering committee) sent an email on March 21, 2017, to the OSS policy team leader and the Acting Assistant Secretary for Elementary and Secondary Education. The email stated that the steering committee approved only 77 of the 86 applicants whom the panel rated at 4.5 or 5. The email also stated: “We’d recommend the team give a second look to the following individuals as potential replacements to round out the slate.” The email included the names of 13 other applicants.

One of these 13 applicants did not receive a numerical rating from the panel of 3 senior career employees because OSS employees incorrectly classified the applicant as having little or no expertise relevant to the review of State plans; however the application showed experience relevant to the review of State plans. The other 12 applicants received a numerical rating from 2.5 to 4 from the panel of 3 senior career employees.

The final decision memorandum did not include 12 applicants whom the panel rated 4.5 or 5 and recommended for selection as peer reviewers through the draft decision memorandum: the 9 who were not approved by the steering committee according to the email from the Deputy Chief of Staff for Policy and Programs, and 3 who were omitted without explanation. Instead, the final decision memorandum included all 13 applicants recommended for a “second look” in the email from the Deputy Chief of Staff for Policy and Programs. The codirectors of OSS told us that the steering committee made the final selection decision.

We contacted the following Department officials to determine the reason for the final decision on which applicants to invite to be peer reviewers:

- the Deputy Chief of Staff for Policy and Programs,
- a former Special Assistant to the Secretary,
- OESE policy advisors,
- the OSS policy team leader, and
- the Director of the Office of Special Education Programs.

None of these officials could tell us why the 12 applicants rated 4.5 or 5 were not included in the final decision memorandum, and none of these officials could tell us why the 1 unrated applicant and 12 applicants rated 4 or less were included in the final decision memorandum. Additionally, none of these officials could explain what the steering committee meant when recommending that OSS consider “potential replacements to round out the slate.”

According to the United States Government Accountability Office’s “Standards for Internal Control in the Federal Government,” Principle 10–Design Control Activities:

Management designs appropriate types of control activities for the entity's internal control system. Control activities help management fulfill responsibilities and address identified risk responses in the internal control system... Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.

Neither the draft decision memorandum that was addressed to the steering committee nor any other records that we were provided described the role of the steering committee in the peer reviewer selection process. Other than being addressed to the steering committee, the draft decision memorandum made no mention of a steering committee being part of the process for selecting peer reviewers. As a result, we could not determine whether the steering committee's selection of lower-rated applicants helped the Department ensure compliance with the ESEA requirements regarding the composition of peer review panels.

Records of the Consideration of Peer Reviewer Comments Not Always Retained

The Department's "State Plan Peer Review Criteria" stated that the Department should take into consideration peer reviewers' recommendations regarding areas of the plans that need improvement when providing feedback to the States. To determine whether the Department retained records demonstrating that it considered peer reviewer comments when providing feedback to States, we judgmentally selected 6 (Alaska, California, Maine, Michigan, Mississippi, and Utah) of the 52 plans that States submitted. For each of the six State plans, we compared the consolidated peer reviewers' comments to the Department's interim feedback letters.

Panels of four peer reviewers evaluated the combined Title I and Title III sections of each plan. Panels of three peer reviewers reviewed the McKinney-Vento Act section of each plan. If half or more of the peer reviewers agreed that a requirement was not met, we considered the requirement as not being met. When we identified differences between the consolidated peer reviewers' comments and the Department's interim feedback letters, we reviewed the Department's deliberative memoranda. For one State, the deliberative memorandum did not include the information showing whether the Department considered peer reviewer comments. Therefore, we also reviewed the Department's written analysis of that State's resubmitted plan (resubmission analysis).

The Department created one deliberative memorandum for the peer review of the Title I and Title III sections and one deliberative memorandum for the peer review of the McKinney-Vento Act section of each State plan. Deliberative memoranda were intended to document the Department's consideration of the consolidated peer reviewers' comments and the Department's rationale for including or not including requirements in its interim feedback letters.¹⁰ They explained the Department's decisions to include Title I, Title III, or McKinney-Vento Act requirements in interim feedback letters when peer reviewers concluded the requirements were met. However, the deliberative memoranda that we reviewed did not always explain the Department's decisions not to include Title I, Title III, or McKinney-Vento Act requirements in interim feedback letters when peer reviewers concluded the requirements were not met.

The Department's "State Plan Peer Review Criteria" required State plans to address 57 Title I, Title III, and McKinney-Vento Act requirements. We compared the peer reviewers' comments on these 57 requirements for each of the 6 States' plans (a total of 342 requirements) in our sample to the interim feedback letters sent to the States. We looked for instances in which the peer reviewers and the Department disagreed on whether a requirement was met. We concluded that the peer reviewers and the Department disagreed if (1) the peer reviewers concluded that a requirement was not met but the Department did not include the requirement in the interim feedback letter or (2) the peer reviewers concluded that a requirement was met but the Department still included that requirement in the interim feedback letter.

We found that half or more of the peer reviewers concluded that 72 of the 342 requirements were not met; however, the Department's interim feedback letters did not include those 72 requirements. We also found that more than half of the peer reviewers concluded that 22 requirements were met; however, in its interim feedback letters, the Department stated that the 22 requirements had not been met. Even though the peer reviewers concluded that these 22 requirements were met, the Department asked States to revise their plans before the Department would approve them.

We reviewed the Department's deliberative memoranda for the six States in our sample and its resubmission analysis for one State to determine whether the Department could demonstrate that it considered all peer reviewer comments and explained its decisions for including or not including the 94 requirements in interim feedback letters. The deliberative memoranda and resubmission analysis provided enough evidence of the

¹⁰ The Department did not retain a deliberative memorandum for the peer review of the McKinney-Vento Act section of Maine's plan. Instead, the Department provided us with an OESE assessment showing that it reviewed the McKinney-Vento program section of Maine's plan.

Department’s deliberations for 84 (89 percent) of the 94 requirements, including all 22 requirements that more than half of the peer reviewers concluded were met but were included in interim feedback letters. However, the deliberative memoranda and resubmission analysis did not explain why the interim feedback letters to 5 States did not to include the peer reviewer comments on 10 (11 percent) of the 94 requirements— 9 McKinney-Vento Act requirements (5 States) and 1 Title I requirement (1 State).

After we brought these discrepancies to their attention, OESE officials provided us with an email from a former Deputy Assistant Secretary. The email stated that the Department sometimes communicated and resolved State plan deficiencies over the phone rather than recording the deficiencies in interim feedback letters.

Because it did not always record its decisions to exclude certain peer reviewer comments, we could not determine why the Department omitted peer reviewers’ concerns from the interim feedback letters. We also could not determine whether the Department always considered the results of its peer review process, as required by the policy it designed, when providing feedback on State plans.

Not All Versions of State Plans Included on the Department’s Website

SEAs submitted State plans to the Department through MAX.gov (managed by the U.S. Office of Management and Budget). The Department posted each State’s initial submission and final approved State plan on its website. However, the Department did not publish all versions of the plans that the six States in our sample submitted through MAX.gov. Also, for two of the six States, the Department did not include versions of the plans that States submitted to the Department without using MAX.gov. The following 35 versions of States’ plans were not included on the Department’s website.¹¹

- **Alaska.** February 28, 2018, and April 12, 2018.
- **California.** One submission the week of April 16, 2018. Also, 12 additional submissions without using MAX.gov from February 26 through June 22, 2018.
- **Maine.** April 11, 2017; April 28, 2017; August 17, 2017; August 24, 2017; and August 25, 2017.

¹¹ Unless otherwise noted, State plan versions were submitted through MAX.gov.

- **Michigan.** One submission on November 15, 2017. Also five additional submissions without using MAX.gov on May 3, 2017; May 23, 2017; August 11, 2017; August 17, 2017; and November 1, 2017.
- **Mississippi.** February 1, 2018; March 12, 2018; March 19, 2018; and March 26, 2018.
- **Utah.** February 14, 2018; May 4, 2018; June 14, 2018; June 28, 2018; and July 5, 2018.

Section 1111 (a)(5)(A) of the ESEA states that all written communications, feedback, and notifications “shall be conducted in a manner that is transparent and immediately made available to the public on the Department’s website, including — (A) plans submitted or resubmitted by a State.”

The Department’s Office of the General Counsel (OGC) advised OESE that the public posting requirements in section 1111(a)(5)(A) of the ESEA applied only if a State submitted an individual Title I plan and did not apply if a State submitted a consolidated State plan under section 8302 of the ESEA. No State submitted an individual Title I plan; all 52 States submitted consolidated plans. Therefore, according to OGC’s interpretation of the requirement, the Department was not required to post any version of States’ consolidated plans on its website.

Although we do not have a legal basis to question OGC’s interpretation of the public posting requirements in section 1111(a)(5)(A), not posting all plans renders the transparency requirement in the public review provision less meaningful. Department officials recognized that public posting would be a good practice given their decision to post the initial and Department-approved versions of each State’s consolidated plan on its website. Not publicly posting all versions of State plans, regardless of whether they are individual or consolidated, on its website could be interpreted as the Department not always conducting its business in a transparent manner. It also denied the public an opportunity to see the full extent to which State plans changed as a result of the Department’s review and approval processes.

Conflict of Interest Information Not Always Considered in Accordance with Policy

The Department collected conflict of interest information from Title I and Title III peer reviewers’ resumes and applications. According to the April 3, 2017, decision memorandum regarding the slate of peer reviewers, the conflict of interest information that the Department collected consisted of (1) the State in which the applicant resided; (2) any State for which the applicant was offered the opportunity to serve as an employee, advisor, contractor, or consultant; (3) any State for which the applicant

agreed to or helped prepare the State’s plan; (4) information about whether the applicant had a financial interest in the outcome of a State plan submitted for review; and (5) the State in which the applicant’s employer was located.

To determine whether the Department followed its conflict of interest policy, we selected a sample of 23 of the 103 peer reviewers.¹² We found that the Department adhered to its conflict of interest policy by collecting the information on the 5 conflict of interest factors for all 23 peer reviewers in our sample. However, the Department did not have records showing that it considered information about the State in which an employer was located before assigning peer reviewers to panels. All other conflict of interest information was logged in a peer reviewer tracking document to facilitate the Department’s consideration of the five factors.

The Department stated that it requested information on the State in which an employer was located only if the peer reviewer worked for an SEA. According to an OESE Deputy Assistant Secretary, this was done to ensure that the Department did not assign peer reviewers to review plans submitted by their employers. Assigning a peer reviewer to review the State plan of an employer would have created at least the appearance of a conflict of interest.

According to the April 3, 2017, decision memorandum regarding the slate of peer reviewers, the Department would not assign a peer reviewer to read plans for the State in which his or her employer was located. This decision was based on advice from OGC’s Ethics Division. According to the decision memorandum, a peer reviewer would have the appearance of a conflict of interest if any employer for whom the peer reviewer served within the last 12 months would benefit financially in any way from a State plan being favorably reviewed.

When we brought this matter to the attention of Department officials, the Department’s Deputy General Counsel for Program Service informed us that it was highly unlikely for a peer reviewer to have a direct conflict of interest. State plans cover formula grant programs, and States do not have to compete with other States to get funding for formula grants. Therefore, the peer review has no competitive aspect, and peer reviewers have little chance of a conflict of interest.

Although formula grants are not competitively awarded, the Department established a policy for its peer review process to address even the appearance of a conflict of interest. Such an action recognized that it would be problematic if it appeared that peer

¹² See the “[Sampling Methodology](#)” section of this report for a description of how we selected the 23 peer reviewers.

reviewers, or those with whom they had a relationship, might have a stake in the outcome of the peer review process. Because the Department did not consider all conflict of interest information described in its policy, it might have created the appearance of a conflict of interest when it assigned State plans to peer reviewers for review.

Recommendations

We recommend that the Assistant Secretary for Elementary and Secondary Education ensure that OESE

- 1.1 strengthens its policy for creating and retaining records so those records demonstrate adequate and proper documentation of OESE’s functions, policies, decisions, procedures, and essential transactions relevant to the review and approval of the McKinney-Vento Act section of State plans.¹³
- 1.2 makes publicly available all submissions and resubmissions of States’ plans, including individual and consolidated plans, to promote full transparency.
- 1.3 adheres to its policy and considers all conflict of interest information collected from peer reviewers before assigning them State plans to review.

Department Comments

In response to a draft of this report, the Department disagreed that it did not implement its State Plan review and approval processes as designed. It stated that the draft report focused on a few items that could be improved and did not include enough information on the many things that the Department did well. According to the Department: “Evaluating the feedback, and discussion, and the improvements to the quality of the plans, we concluded that the review process for consolidated State plans with some relatively minor improvements, should serve as a model for other similar endeavors in the future.”

The Department stated that, prior to sending information to States, each interim feedback letter was reviewed by the OSS director and policy leads, OGC, and the Immediate Office of the Assistant Secretary and then signed by the Assistant Secretary for Elementary and Secondary Education.

¹³ We found the lack of records for the consideration of peer reviewer comments on one Title I requirement to be insignificant. Because of the lack of significance, and because the Department stated that it reverted to the original process for the fall 2017 peer review, we are not including Title I and Title III under this recommendation.

The Department further stated that the selection of peer reviewers consisted of a robust review of peer reviewer applications to ensure the Department selected highly qualified peer reviewers with diverse expertise that met the requirements of the ESEA. Additionally, it voluntarily chose to conduct a detailed conflict of interest review to identify the appearance of any conflicts, even though it was not required.

The Department commented on each of the three recommendations included in the draft of this report.

Recommendation 1.1

The Department disagreed that it did not create and retain adequate records of its decisions to select peer reviewers and exclude certain peer reviewer comments from interim feedback letters. Regarding the selection of peer reviewers, the Department stated that it retained records demonstrating that it implemented the peer reviewer selection process as it was designed. It also stated that the statement indicating that three peer reviewers were removed from the list of recommended peer reviewers without explanation is inaccurate. A March 22, 2017, email from the Deputy Assistant Secretary indicated that all recommended peer reviewers who were employees of the Department after the passage of ESSA but no longer employed by the agency should be removed from the slate of recommended peer reviewers to ensure that there was no bias in the review of consolidated State plans. The Department further stated that it was within the purview of the Secretary to use reasonable discretion to balance the pool of peer reviewers as deemed necessary.

Regarding the consideration of peer reviewer comments on Title I and Title III requirements, the Department stated that it revised its initial processes during the fall 2017 peer review. The revised process involved the Department hosting a call with the State and walking through the questions or clarifications that were needed in the State plan based on peer reviewer and Department feedback. The Department stated that a State was still required to address all requirements that were discussed during the call, even if the interim feedback letter did not include the requirement. The Department recorded how each State met all requirements in its resubmission analysis for each State. According to the Department, it reverted to the original process for the fall 2017 peer review. That process called for including in the interim feedback letters all items that the Department and peer reviewers agreed needed to be addressed prior to approval. Therefore, the Department has already addressed this recommendation.

Regarding the consideration of peer reviewer comments on McKinney-Vento Act requirements, the Department stated that it generally agreed with the description of the peer review process. It acknowledged that internal review memoranda did not necessarily include a complete analysis of the Department's review compared to peer reviewer recommendations. However, Department employees verbally discussed the

peer reviewers' feedback during internal deliberations. The Department stated that the process for this program can be improved.

Recommendation 1.2

The Department disagreed with this recommendation, stating that it continues to post the most recent version of each State's plan on its website. The Department stated that since the approval of all 52 State plans, it has approved more than 40 requests for amendments, resulting in updated plans being posted to the website. Along with the updated plans, the Department posts detailed amendment approval letters outlining the changes each State made to the initially approved plan. The Department further stated that posting multiple versions of each State's plan is not legally required. Posting the most recently approved plan is sufficient to ensure that the public has relevant information regarding each State's approach to meeting ESEA requirements.

Recommendation 1.3

The Department disagreed that it did not adhere to its policy when collecting conflict of interest information from peer reviewers and assigning them State plans to review. The conflict of interest information was collected, and Department and contract employees completed detailed reviews of the information for those applicants who had agreed to serve as peer reviewers.

The Department further stated that the resumes for each of the 23 peer reviewers selected by the OIG included the location of the employer. For all selected reviewers, this information was captured in the list of identified conflicts of interest included in peer reviewer tracking documents. Peer reviewers that were approved to serve but were unavailable or not selected to serve on a panel were not subject to the conflict of interest review process. Several of the peer reviewer applicants that the OIG selected for its review were not asked to serve on a panel and, therefore, were not subject to further conflict of interest review.

OIG Response

As we described in the draft of this report, we concluded that the Department designed processes for reviewing and approving State plans that provided reasonable assurance the plans met the ESEA and McKinney-Vento Act requirements subjected to peer review. We also concluded that the Department implemented most of those processes as designed, but it did not implement all of them as designed. Processes cannot be operating effectively if they are not implemented as designed. Therefore, we make

recommendations for actions the Department can take to improve its implementation of three aspects of its designed processes.

Recommendation 1.1

We did not make any changes to the part of the finding about peer reviewer selection because the Department did not provide records that sufficiently explained its final peer reviewer selection decisions. Without records explaining the reasons for the final selection of peer reviewers, we could not conclude that the steering committee's selection of lower-rated applicants increased the quality or completeness of the peer reviewer pool.

The March 22, 2017, email from the Deputy Assistant Secretary stated that all recommended peer reviewers who worked for the Department between December 10 and January 19 should be removed from the slate of recommended reviewers. However, the Department did not provide us with any additional context or information. It did not provide the names of the potential peer reviewers who were removed based on this email, records showing that removing these potential peer reviewers would eliminate potential bias, or records showing that removing the potential peer reviewers was relevant to the passage of ESSA. We could not identify any correlation between the December 2015 passage of ESSA; the March 22, 2017, email; and the dates of December 10 and January 19. Therefore, we do not consider this email to be a sufficient explanation of why three potential peer reviewers were removed. Also, in response to the draft report, the Department did not address the removal of the other nine peer reviewers.

Regarding the Department's consideration of peer reviewer comments, the draft report stated that the Department did not provide a deliberative memorandum showing that peer reviewer comments regarding 10 Title I requirements for 1 State were considered. Based on the Department's comments, we reviewed a resubmission analysis for that one State. This resubmission analysis did not describe the feedback that the Department provided the State during telephone conversations. However, we found that the Department required the State to address peer reviewer comments on 9 of the 10 Title I requirements before it approved the plan. Therefore, we revised this part of the finding to show that we only identified one Title I requirement for which peer reviewer comments might not have been considered. We also revised the recommendation to state that the consideration of peer reviewer comments on McKinney-Vento Act requirements could still be improved.

Recommendation 1.2

We agree that the posting of every version of a State's plan is not a legal requirement. We also acknowledge that the Department, since the approval of all 52 State plans, has

approved requests for amendments and posted amendment approval letters outlining the changes that States made to the initially approved plan.

Although we agree posting updated plans and amendment approval letters is a good way to promote transparency, the finding and Recommendation 1.2 concern the initial review and approval of State plans, not amendments to previously approved plans. Posting every version of a State's plan provides the public with insights into the development of the plan and allows the public to make its own decisions about the quality of the approved plan. We did not make any changes to this part of the finding or this recommendation.

Recommendation 1.3

The location of the peer reviewers' employers was included in resumes collected by the Department. OGC's Ethics Division considered this to be information that could lead to at least the appearance of a conflict of interest, and OESE included this factor in its peer reviewer selection memorandum. However, the Department did not provide us with any evidence showing that it considered this factor when assigning peer reviewers to panels. The peer reviewer tracking document included other conflict of interest information. However, contrary to the Department's statement in its response to the draft report, the tracking document did not include the location of each peer reviewer's employer.

We clarified the finding and recommendation to show that the Department collected information about the locations of the peer reviewers' employers but did not consider the information before assigning them State plans to review.

Appendix A. Scope and Methodology

We assessed the design and implementation of the Department's processes for reviewing and approving State plans and the Department's compliance with selected ESEA and McKinney-Vento Act requirements and Department policy. Our audit covered the design of the State plan review and approval processes that the Department established as of April 2017. It also covered the implementation of the processes as applied to a sample of State plans submitted during the spring window (on or before April 3, 2017) and the fall window (April 4, 2017, through September 18, 2017). We did not determine whether any State plans met all ESEA requirements. We assessed only the design and implementation of the Department's processes for reviewing and approving State plans.

As part of our assessment, we evaluated the Department's compliance with the following sections of the ESEA:

- 1111(a)(4)(A)(ii),
- 1111(a)(4)(A)(iv),
- 1111(a)(4)(A)(vi),
- 1111(a)(4)(B)(iii),
- 1111(a)(4)(D),
- 1111(a)(5),
- 3113(c), and
- 8302.

To complete our assessment, we reviewed the following Department documents and records:

- "State Plan Peer Review Criteria" (March 2017);
- draft decision memorandum regarding the slate of peer reviewers for spring 2017 (March 9, 2017);
- interim decision memorandum regarding the slate of peer reviewers for spring 2017 (March 23, 2017);
- final decision memorandum regarding the slate of peer reviewers for the spring 2017 window (April 3, 2017);
- final decision memorandum regarding the slate of all peer reviewers for the fall 2017 window (September 6, 2017);

- “OSS State Plan Interim Feedback Letter Calls: Instructions;”
- instructions for reviewing extension requests for State plan resubmissions;
- Department agreement for peer reviewers of State plans;
- State plan review protocol for McKinney-Vento program; and
- Department guidelines for assessing peer reviewer qualifications.

We also reviewed Federal Records Act (44 U.S.C. section 3101) requirements for creating and preserving records.

To assess whether the Department (1) designed the review and approval processes to identify and resolve potential instances of State plans’ noncompliance with Title I, Title III, and McKinney-Vento Act requirements; (2) retained records of its consideration of peer reviewers’ comments when providing feedback to SEAs; and (3) ensured that States addressed the deficiencies included in interim feedback letters, we interviewed Department officials involved with the review and approval of State plans, SEA officials responsible for developing and revising 6 States’ plans, and 7 of the 103 peer reviewers invited to participate in the combined Title I and Title III peer review.¹⁴ We also reviewed the

- initial versions of the plans submitted by six States;
- consolidated peer reviewers’ comments covering the reviews of the six States’ plans included in our sample;
- interim feedback letters that the Department provided to the six States included in our sample;
- deliberative memoranda and a resubmission analysis that the Department used to document its decisions about whether the six State plans included in our sample met Title I, Title III, and McKinney-Vento Act requirements; and
- plans that the Department approved for the six States included in our sample.

We concluded that the State plan review and approval process was sufficient if it was designed and implemented to identify and resolve potential instances of State plans’ noncompliance with Title I, Title III, and McKinney-Vento Act requirements and the

¹⁴ The Department approved 87 applicants to serve as peer reviewers for State plans submitted during the spring 2017 window. It approved an additional 16 applicants to serve as peer reviewers for State plans submitted during the fall 2017 window.

deficiencies identified in interim feedback letters were addressed before the Department approved each of the six States' plans.

To assess whether the Department complied with selected ESEA requirements and Department policy, we gained an understanding of the process that the Department used for selecting applicants to peer review the Title I and Title III sections of State plans.¹⁵ We also interviewed Department officials involved with the selection of peer reviewers, reviewed the Department's documents and records from the peer reviewer selection process, and reviewed the guidance that OESE provided to peer reviewers and States.

We concluded that the Department complied with the selected ESEA requirements and Department policy if it provided records showing that the composition of the pool of peer reviewers met the standards set forth in the ESEA and it collected all information necessary, per advice of counsel, to determine whether a peer reviewer had a conflict of interest. We concluded that guidance provided by the Department adhered to the law if it did not exceed the authority provided to the Department by the ESEA or the McKinney-Vento Act.

Internal Control: Design of the Department's Processes for Reviewing and Approving State Plans

We first obtained an understanding of all five areas of internal control (control environment, risk assessment, control activities, information and communication, and monitoring) relevant to the Department's review and approval of State plans. We concluded that the areas of internal control significant to our audit objectives were control environment and control activities.

Control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. We identified and assessed the adequacy of only those aspects of the Department's control environment relevant to selecting peer reviewers and overseeing the peer review process. We did not identify any deficiencies in the design of these two aspects of control environment.

Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system. We identified and assessed the adequacy of the Department's policies and procedures, applicable to (1) selecting peer reviewers and assigning them to peer review panels;

¹⁵ The ESEA includes selection criteria only for peer reviewers of the Title I and Title III sections of State plans. The ESEA does not include selection criteria peer reviewers of the McKinney-Vento Act section of State plans.

(2) overseeing peer reviewers to ensure that they evaluated whether State plans met Title I, Title III, and McKinney-Vento Act requirements;¹⁶ (3) considering peer reviewer comments when developing feedback for States; and (4) ensuring that States resolved all deficiencies identified in the Department’s interim feedback letters. We did not identify any deficiencies in the design of these policies and procedures. The Department designed them to provide reasonable assurance that its State plan review and approval processes identified potential instances of State plans’ noncompliance with Title I, Title III, and McKinney-Vento Act requirements.

Sampling Methodology

To achieve our audit objectives, we selected a sample of 23 peer reviewers whom the Department selected to participate in the peer review of State plans. We also selected a sample of six State plans. Because we used nonstatistical samples, our results cannot be projected to the universes.

Sample of Peer Reviewers

The Department received 2,205 applications from people interested in being peer reviewers of State plans. The Department selected 103 of these applicants to be peer reviewers or serve as alternates. We selected 23 (22 percent) of these 103 applicants—10 randomly from the pool of 90 applicants whom the OSS group rated 4.5 or 5 and all 13 selected after input from the steering committee.

Of the 103 applicants that the Department selected to serve as peer reviewers or alternates, 39 did not review any State plans.¹⁷ However, we included them in our sampling universe because we were evaluating the Department’s processes for selecting peer reviewers, not just its processes for reviewing and approving State plans.

Sample of State Plans

The Department received consolidated plans from all 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. We judgmentally selected 6 of these 52 State plans. When selecting our sample, we considered the following attributes:

¹⁶ See [Appendix B](#) for the parts of the State plans that were required to undergo peer review.

¹⁷ Eight of these 39 were selected to serve as peer reviewers after input from the steering committee.

- number of business days between the dates shown on the initial plans and the dates shown on the approved plans, a general indication of how many resubmissions to the Department each plan required;¹⁸
- number of sections in the initial plans that more than half of the peer reviewers serving on that plan’s peer review panel deemed deficient, regardless of whether the sections were included in the Department’s interim feedback letters;
- number of sections in the initial plans for which the peer reviewers’ comments indicated that the section did not meet Title I, Title III, or McKinney-Vento Act requirements but were not included in the Department’s interim feedback letters, an indication that the Department’s standard might have been lower than the peer reviewers’ standard; and
- number of sections in the initial plans for which the peer reviewers’ comments indicated that the section met Title I, Title III, and McKinney-Vento Act requirements but were included in the Department’s interim feedback letters as deficiencies, an indication that the Department’s standard might have been higher than the peer reviewers’ standard.

The Department gave States the option of submitting a plan for either the spring 2017 window or the fall 2017 window. Because only 17 States submitted plans during the spring 2017 window but 35 submitted plans during the fall 2017 window, we selected 2 plans submitted during the spring 2017 window and 4 plans submitted during the fall 2017 window to ensure an appropriate balance. To ensure our sample considered geographic diversity, we did not select plans from geographically contiguous States.

Based on these attributes, we selected the plans submitted by Alaska, California, Maine, Michigan, Mississippi, and Utah.

For each of these six State plans, we obtained and reviewed consolidated peer reviewers’ comments and interim feedback letters that the Department provided to the States. We then judgmentally selected a sample of 9 of the 57 requirements described in the “State Plan Peer Review Criteria” that half or more of the peer reviewers agreed were not met (see “[Appendix B. State Plan Requirements](#)”). To ensure consistency, we tried to select the same requirements for each State plan. However, because of

¹⁸ The Department posted only the initial and the approved State plan submissions on its public website. It did not make public any revised plans that the State might have submitted after submission of the initial plan but before the Department approved the plan.

differences in the number and type of peer reviewer-identified deficiencies, and because one of the six State plans did not have peer reviewer-identified deficiencies in all three sections (Title I, Title III, and McKinney-Vento), the requirements we reviewed for each plan differed.

Internal Control: Implementation of the Department's Processes for Reviewing and Approving State Plans

To assess whether the Department implemented its processes for identifying and resolving potential instances of noncompliance with selected requirements of the ESEA and the McKinney-Vento Act as designed, we reviewed the Department's interim feedback letters to the six States in our sample and compared them with the consolidated peer reviewers' comments. Additionally, we asked a sample of peer reviewers whether they thought that the Department fairly represented all of the concerns in the consolidated peer review comments. We then reviewed the initial plans for the six States in our sample, the Department's interim feedback letters to the States, and the plans that the Department approved. The purpose of this review was to determine whether the State resolved or at least responded to all deficiencies that the Department described in the interim feedback letters.¹⁹ Additionally, we discussed the State plan review process with SEA officials who participated in the development and revision of these six States' plans. Finally, we reviewed the Department's conflict of interest policy for assigning peer reviewers to read State plans.

Consolidated Peer Reviewers' Comments

We reviewed consolidated peer reviewers' comments to assess whether they (1) addressed all elements that the "State Plan Peer Review Criteria" required, (2) were based on requirements set forth in the ESEA and the McKinney-Vento Act, (3) indicated whether the State plan met each requirement, and (4) explained why the peer reviewers thought that a plan did not meet certain requirements.

Interim Feedback Letters to States

We reviewed the interim feedback letters that the Department provided to each of the six States in our sample. We compared the interim feedback letters to the consolidated peer reviewers' comments and identified the requirements that half or more peer reviewers agreed were not met but the interim feedback letter did not mention those requirements. We also identified requirements in the interim feedback letters that the

¹⁹ We did not review any other versions of the plans that the six States might have submitted while attempting to get their plans approved. Our goal was only to ensure that the approved plans addressed the deficiencies described in interim feedback letters from Department.

Department identified as not met but more than half of the peer reviewers indicated that the plans met the requirements.

After we identified the requirements fitting these attributes, we reviewed records to determine whether they described the Department's consideration of the peer reviewers' consolidated comments. We looked for records explaining the Department's rationale for excluding requirements from the interim feedback letters when half or more of the peer reviewers agreed a requirement was not met. We also looked for records explaining the Department's rationale for identifying requirements in its interim feedback letters as not being met when more than half of the peer reviewers agreed the requirement was met. We noted any differences of opinion and asked OESE officials about the differences.

Consideration of Peer Reviewers' Comments

After selecting our sample of 23 peer reviewers, we identified the 10 peer reviewers who served on peer review panels and reviewed State plans (see "[Sample of Peer Reviewers](#)"). Five of the 10 were from the 90 applicants whom the OSS group rated a 4.5 or 5. The other 5 were from the 13 applicants whom the Department selected after input from the steering committee. Rather than us directly contacting these peer reviewers, Department officials asked that we provide them the names of the selected peer reviewers. Department officials then asked the 10 peer reviewers to contact us. Seven of the 10 peer reviewers contacted us and consented to our requests for interviews—4 of the 5 from the 90 applicants whom the OSS group rated a 4.5 or 5 and 3 of the 5 whom the Department selected after input from the steering committee.

During our interviews with each of the seven peer reviewers, we asked about the following:

- the peer reviewer application process;
- background and qualifications;
- prior experiences, including whether the individual had previously served as a peer reviewer;
- training and guidance provided by the Department;
- how many State plans the person reviewed during the 2017 peer review process;
- the process for providing feedback on State plans;
- whether the peer reviewer thought that the Department interfered with the peer review process;

- whether the peer reviewer thought that her or his panel’s consolidated comments accurately represented the discussion that occurred during the peer review panel meetings; and
- whether the peer reviewer directly interacted with the States whose plans he or she reviewed.

Resolution of Deficiencies

We compared information on the requirements included in a sample of six States’ initial plans to information on the requirements included in those States’ approved plans. We identified any unmet requirements described in interim feedback letters that the State did not address before the Department approved the plan. We then attempted to verify that the Department had records supporting its decision to approve the plans without the States addressing all the unmet requirements described in the interim feedback letters.

We also interviewed officials involved with the development and revision of the six States’ plans to obtain their opinions on the feedback and approval process and the resolution of unmet requirements identified in interim feedback letters. We solicited State officials’ opinions on whether the

- guidance and training provided to them was adequate and helpful,
- flexibility that the Department gave them in meeting ESEA requirements was reasonable,
- feedback and technical assistance received from the Department was timely and useful, and
- State plan review and approval process could be improved.

Department’s Conflict of Interest Policy

We reviewed the Department’s conflict of interest policy relevant to assigning State plans to peer reviewers. The policy stated that the Department would review applicant resumes and responses to application questions relevant to potential conflicts of interest and would identify States for which individuals should not serve as peer reviewers. According to this policy, the Department would not assign individuals to peer review plans for (1) their State of residence; (2) the State in which the individual’s employer was located; (3) any State for which the individual was offered the opportunity to serve as an employee, advisor, contractor, or consultant; (4) any State that the individual agreed to or helped prepare the plan; or (5) any State for which an individual would benefit financially from a State plan being favorably reviewed.

Conclusion on Implementation of Internal Control

We identified deficiencies in the implementation of the Department's policies and procedures for identifying and resolving potential instances of noncompliance with McKinney-Vento Act requirements. The Department did not always (1) retain records of its consideration of peer reviewer comments on State plans, (2) include all versions of States' plans on its website, or (3) always follow its policy for collecting conflict of interest information from peer reviewers (see [Finding](#)).

Analysis Techniques: The Department's Compliance with Selected Requirements of the ESEA, the McKinney-Vento Act, and Its Own Policy

To determine whether the Department complied with selected ESEA and McKinney-Vento Act requirements and its own State plan review and approval policies, we evaluated the Department's implementation of its policy and procedures for selecting applicants to serve as peer reviewers, collecting conflict of interest information from peer reviewers, and providing guidance to States and peer reviewers.²⁰

Selecting Applicants and Assigning State Plans to Peer Reviewers

We compared the requirements for assigning peer reviewers to panels in section 1111(a)(4) of the ESEA with OESE's written policies and procedures. The purpose of this comparison was to identify any ESEA requirements that were not accurately or completely described in OESE's policies and procedures. We looked for policies and procedures covering peer reviewer applicants' qualifications, peer reviewer diversity and conflicts of interest, and political appointees' involvement in the selection of peer reviewers.

We reviewed the following documents and records relevant to the Department's selection of applicants and assigning State plans to peer reviewers.

- March 9, 2017, draft decision memorandum from OSS to the steering committee for the spring 2017 window. The draft decision memorandum described OSS's selection methodology and a list of applicants OSS initially recommended to the steering committee for approval.

²⁰ We did not assess whether the Department approved all plans within 120 days of each State submitting its plan (as required by section 1111(a)(4)(A)(v) of the ESEA).

- March 22, 2017, email from the steering committee to OSS. The email recommended an amendment to the list of selected peer reviewer applicants.
- April 3, 2017, final decision memorandum from OSS to the steering committee for the spring 2017 window. The final decision memorandum described OSS's revised selection methodology and an amended list of applicants that OSS recommended for approval after input from the steering committee.
- September 6, 2017, final memorandum from OSS to the steering committee for the fall 2017 window. The final decision memorandum recommended approving additional peer reviewers to participate in the peer review of State plans submitted during the fall 2017 window.
- A spreadsheet containing information from the 103 peer reviewers' applications and resumes; conflict of interest information about each peer reviewer, if obtained; and the numerical ratings assigned to each peer reviewer by the panel of three senior career employees.
- Email messages to the Department from the peer reviewers included in our sample. The emails disclosed the name of their employers if they worked for an SEA.
- A list of the State plans assigned to each peer reviewer.

Providing Guidance to States and Peer Reviewers

We reviewed the following guidance that OESE provided to States, peer reviewers, or both.

- **“Revised State Template for the Consolidated State Plan.”** Provided States a guide to follow when developing their plans and listed all requirements of the ESEA and the McKinney-Vento Act that a State was required to address before the Department would approve a plan.
- **“State Plan Peer Review Criteria.”** Described the purpose of peer review and the role of peer reviewers. It also outlined the elements necessary for a State to demonstrate that its plan addressed the applicable statutory requirements and provided a guide for peer reviewers to use when evaluating State plans. It included descriptions of 57 requirements—47 for Title I, 3 for Title III, and 7 for the McKinney-Vento Act (see [“Appendix B. State Plan Requirements”](#)).
- **“Department of Education Agreement for Peer Reviewers of State Plans under the ESEA, as amended by the Every Student Succeeds Act.”** Described the Department's expectations for those selected to serve as peer reviewers.

- **Training materials created by the Department.** Consisted of webinars for peer reviewers to watch before onsite panel discussions and live training provided before the panel discussions. The Department expected peer reviewers to rely on this guidance to ensure that each State plan met the Title I and Title III of the ESEA and the McKinney-Vento Act requirements.

To determine whether the Department’s guidance and criteria required States to include anything in their plans that were not required by law, we compared all 57 requirements in the Department-issued “State Plan Peer Review Criteria” with the requirements and limitations set forth in the ESEA and the McKinney-Vento Act.²¹ We compared these requirements only for the purpose of determining whether the requirements in the Department’s “State Plan Peer Review Criteria” exceeded the statutory authority granted to the Department. We did not assess whether the “State Plan Peer Review Criteria” included every statutory requirement.

Compliance with Auditing Standards

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We conducted our audit at the Department’s offices in Washington, D.C., and our offices from March 2018 through August 2019. We discussed the results of our audit with Department officials on March 13, 2020.

²¹ The ESEA included more than 57 requirements for State plans. For a list of the 57 ESEA requirements that the Department included in the “State Plan Peer Review Criteria,” see [“Appendix B. State Plan Requirements.”](#)

Appendix B. State Plan Requirements

The Department included 57 requirements in its “State Plan Peer Review Criteria.” The 57 requirements covered only the three sections of State plans—Title I, Title III, and McKinney-Vento Act—required by statute to be peer reviewed.

Title I

- A.2.iii: Eighth Grade Math Exception, Strategies
- A.3.i: Native Language Assessments, Definition
- A.3.ii: Existing Assessments in Languages other than English
- A.3.iii: Assessments not Available and Needed
- A.3.iv: Efforts to Develop Assessments
- A.4.i.a: Major Racial and Ethnic Subgroups of Students
- A.4.i.b: Additional Subgroups at SEA Discretion
- A.4.i.d: If Applicable, Exception for Recently Arrived English Learners
- A.4.ii.a: Minimum N-Size for Accountability
- A.4.ii.b: Statistical Soundness for Minimum N-Size
- A.4.ii.c: How the SEA Determined Minimum N-Size
- A.4.ii.d: Minimum N-Size and Ensuring Student Privacy
- A.4.ii.e: If Applicable, Minimum N-Size for Reporting
- A.4.iii.a.1: Long Term Goals
- A.4.iii.a.2: Measurements of Interim Progress
- A.4.iii.a.3: Improvement Necessary to Close Statewide Proficiency Gaps
- A.4.iii.b.1: Long-Term Goals for Four-Year. Adjusted Cohort Graduation Rate
- A.4.iii.b.2: If Applicable, Long Term Goals for Extended-Year Adjusted Cohort Graduation Rate
- A.4.iii.b.3: Measurements of Interim Progress
- A.4.iii.b.4: Improvement Necessary to Close Statewide Graduation Rate Gaps
- A.4.iii.c.1: Long-term Goals
- A.4.iii.c.2: Measurements of Interim Progress
- A.4.iv.a: Academic Achievement

- A.4.iv.b: Other Academic Indicator for Elementary and Secondary Schools that are not High Schools
- A.4.iv.c: Graduation Rate
- A.4.iv.d: Progress in Achieving English Language Proficiency Indicator
- A.4.iv.e: School Quality or Student Success Indicator(s)
- A.4.v.a: State's System of Annual Meaningful Differentiation
- A.4.v.b: Weighting of Indicators
- A.4.v.c: If Applicable, Different Methodology for Annual Meaningful Differentiation
- A.4.vi.a: Comprehensive Support and Improvement Schools — Lowest Performing
- A.4.vi.b: Comprehensive Support and Improvement Schools — Low Graduation Rates
- A.4.vi.c: Comprehensive Support and Improvement Schools — Additional Targeted Support Not Exiting Such Status
- A.4.vi.d: Frequency of Identification
- A.4.vi.e: Targeted Support and Improvement Schools — Consistently Underperforming Subgroups
- A.4.vi.f: Targeted Support and Improvement Schools — Additional Targeted Support
- A.4.vi.g: If Applicable, Additional Statewide Categories of Schools
- A.4.vii: Annual Measure of Achievement
- A.4.viii.a: Exit Criteria for Comprehensive Support and Improvement Schools
- A.4.viii.b: Exit Criteria for Schools Receiving Additional Targeted Support
- A.4.viii.c: More Rigorous Interventions
- A.4.viii.d: Resource Allocation Review
- A.4.viii.e: Technical Assistance
- A.4.viii.f: If Applicable, Additional Optional Action
- A.5: Disproportionate Rates of Access to Educators
- A.6: School Conditions
- A.7: School Transitions

Title III

- E.1: Entrance and Exit Procedures
- E.2: SEA Support for English Learner Progress
- E.3: Monitoring and Technical Assistance

McKinney-Vento Act

- I.1: Student Identification
- I.2: Dispute Resolution
- I.3: Support for School Personnel
- I.4: Access to Services
- I.5: Strategies to Address Other Problems
- I.6: Policies to Remove Barriers
- I.7: Assistance from Counselors

Appendix C. Acronyms and Abbreviations

| | |
|--------------------------|--|
| Department | U.S. Department of Education |
| ESEA | Elementary and Secondary Education Act of 1965, as amended |
| McKinney-Vento Act | Title VII, Subpart B of the McKinney-Vento Homeless Assistance Act of 1987, as amended by the Every Student Succeeds Act |
| OESE | Office of Elementary and Secondary Education |
| OGC | Office of the General Counsel |
| OSS | Office of State Support |
| Resubmission Analysis | Department’s written analysis of a State’s resubmitted plan |
| SEA | State educational agency |
| Title I | Title I, Part A of the Elementary and Secondary Education Act, as amended |
| Title III | Title III, Part A of the Elementary and Secondary Education Act, as amended |

Department Comments



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SENT VIA E-MAIL

Gary D. Whitman
Regional Inspector General for Audit
Chicago/Kansas City and Sacramento Audit Regions
U.S. Department of Education
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Dear Mr. Whitman,

We appreciate the opportunity to provide comments on the **OIG Draft Audit Report A05S0001**.

Summary of U.S. Department of Education Response

- The U.S. Department of Education (Department) designed and implemented a rigorous, multi-tiered review and approval process for consolidated State plans required under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA).
- The draft report by the Office of Inspector General (OIG) focuses on relatively less significant documentation concerns and, for the most part, does not acknowledge the broader success of the process.
- Although not required to do so, the Department chose to conduct a thorough and rigorous peer reviewer selection and rigorous conflict of interest review process.
- The Department maintained detailed records of peer reviewer and Department analysis of consolidated State plans and continuously reviewed the effectiveness of its review and approval process and made continuous improvements based on its review and stakeholder feedback.
- The Department focused on providing transparent information on the current State plan that is in effect. To avoid confusing the public, and consistent with the law, the Department made the productive and effective decision to post only the original submission and the final, approved version of the consolidated State plans.
- Evaluating the feedback, and discussion, and the improvements to the quality of the plans, we concluded that the review process for consolidated State plans with some relatively minor improvements, should serve as a model for other similar endeavors in the future.

Introduction

The Office of Elementary and Secondary Education (OESE), with the help of other Department offices, designed and implemented a rigorous, multi-tiered review process to help ensure that each consolidated State plan was in compliance with statutory requirements and to provide

valuable review and technical assistance through a peer review process so that programs could be as effective as possible. The process the Department designed was a robust process that included tiered review and approval processes with quality controls at all stages of the review, from peer selection to final ESEA consolidated State plan approval.

The draft report by the Office of Inspector General recognizes some of the values of the review process. For example, it states that “the Department implemented its plans for providing guidance to peer reviewers and States and implemented its peer review process in a manner that provided reasonable assurance of State plans’ compliance with ESEA and McKinney-Vento Act requirements.” Further, the report states that “the Department also designed the review and approval processes to provide reasonable assurance that it complied with selected ESEA and McKinney-Vento Act requirements and Department policy.”

However, the draft report focuses, for the most part, on a few items that it believes could be improved and spends far too little time and space on the more complete picture of the many things that were done well and which the Department believes should serve as a model that should be replicated. The process used by OESE to review ESEA consolidated State plans was thorough, complete, and rigorous. We believe the process should be replicated for similar endeavors, including when the ESEA is reauthorized and States are required to submit State plans again. Furthermore, the Department received accolades from peer reviewers, State educational agencies, and other external stakeholders, regarding the thoroughness and effectiveness of our process.

Specifically, the review process was rigorous, with various significant controls to help ensure it had checks and balances, and provided helpful information to aid the Department’s review of each State’s plan as well as providing useful and timely information to States. Each application was reviewed by a panel of four expert peer reviewers that included a multi-day, in-person discussion on the merits of each proposed plan. In conjunction with the external peer review, Department staff reviewed each application and drafted detailed memos outlining how that application met or did not meet each individual statutory requirement. This analysis was done in partnership with a cross-program office team of experts including the Office of the General Counsel (OGC); Office of Planning, Evaluation, and Policy Development; and leadership from across OESE. Extensive training was provided to all staff involved in this process prior to the review and multiple sessions were provided to discuss questions or issues with staff involved in the process to help ensure the Department was providing consistent evaluation and feedback to each State. Prior to sending any information to States, each letter was reviewed by the Office of State Support (OSS) policy leads and OSS Director, OGC, and the Immediate Office of the Assistant Secretary before signature by the Assistant Secretary for Elementary and Secondary Education.

In addition, the selection of peer reviewers consisted of a robust review of peer reviewer applications to ensure that the Department selected highly qualified peer reviewers with diverse expertise that met the requirements of ESEA section 1111(a)(4)(A)(ii). The Department reviewed over 2,000 peer reviewer applications through a three-step process that included staff review, career leadership review, and review by political appointees consistent with the requirements of ESEA section 1111(a)(4). It should be remembered that, the Department voluntarily chose to conduct a detailed conflict of interest review to identify the *appearance* of any conflicts, even though, it was not required, and it differed from situations in which the

Department normally has a detailed conflict of interest review of peer reviewers—in discretionary grant competitions, in which the peer reviewers make key recommendations that helps determine which applicant receives funds and which ones do not. With regard to ESSA consolidated funds, to the amount of funds grantees receive is generally determined by a statutorily- defined formula., and the peer reviewers has much less to do with the funding, and more to do with improving the quality of state plans—still an important task..

In the case of the ESSA Consolidated Plan conflict review of peer reviewers included the collection of information in a detailed survey from peer review applicants and if necessary, a series of follow up questions drafted in partnership with the Ethics Division of OGC.

Overall, the OIG spent little time to discuss the vibrant process that resulted in excellent results and instead focused on the following recommendations to OESE in its report:

- (1) Strengthen its policy for creating and retaining records so those records demonstrate adequate and proper documentation of OESE’s functions, policies, decisions, procedures, and essential transactions relevant to the review and approval of State plans;
- (2) Make publicly available all submissions and resubmissions of States’ plans, including individual and consolidated plans, to promote full transparency; and
- (3) Adhere to its policy when collecting conflict of interest information from peer reviewers and assigning them State plans to review.

We discuss each of the recommendations below.

Recommendation 1: Strengthen its policy for creating and retaining records so those records demonstrate adequate and proper documentation of OESE’s functions, policies, decisions, procedures, and essential transactions relevant to the review and approval of State plans.

Response:

In the report, the OIG cited two instances where it believed that the Department did not create and retain records to demonstrate adequate and proper documentation of OESE’s functions, policies, decisions, procedures, and essential transactions relevant to the review and approval of State plans. The OIG discussed the Department’s decisions to exclude certain peer reviewer comments from the interim feedback letters that were sent to States and the Department’s recordkeeping with regard to the selection of peer reviewers. The Department disagrees with both conclusions, as described fully below.

First, the OIG states that, “[b]ecause it did not always record its decisions to exclude certain peer reviewer comments, we could not determine why the Department omitted peer reviewers’ concerns from the interim feedback letters. We also could not determine whether the Department always considered the results of its peer review process, as required, when providing feedback on State plans.” With respect to Title I, Part A, this statement is specifically addressing the omission of ten Title I, Part A requirements from the Department’s interim feedback letters. As discussed with OIG during the course of its review, in spring 2017, while in the midst of providing interim feedback to the States that submitted during the first submission window, the Department changed and learned from its early process to improve the process for providing feedback to States to make it more interactive and more effective in getting improved results.

The process typically involved the Department hosting a call with the State and walking through the questions or clarifications that were needed in the State plan based on peer reviewer and

Department feedback. After the call, the Department would send the interim feedback letter to the State that included the list of items that needed clarification or revision to meet statutory requirements.

After the release of the first three interim feedback letters, the Department revised its process regarding what was included in the interim feedback letter. That is, the Department held a call with each State to talk through all questions or clarifications that were needed in the State plan for all requirements based on peer reviewer and Department feedback. During the call, the State was given the opportunity to describe how it planned to address the requirement or provide necessary clarification regarding how it did meet the requirement. For any item that the State indicated needed a simple change or clarification, the Department removed the requirement from the interim feedback letter. All other items from the discussion with the State were included in the interim feedback letter sent to the State and posted on www.ed.gov.

While not included in the interim feedback letter, the State was still required to address all requirements that were identified on the call with the State, including those items discussed on the call that were not included in the interim feedback letter. The Department clearly documented how each State met all requirements in its resubmission analysis which accompanied the approval materials for each State. This documentation was provided to the OIG on March, 1, 2019, and is evidence that the Department incorporated the peer reviewer feedback for all States for Title I, Part A and Title III, Part A, including for the ten items that were identified by the OIG in this report. For example, in Maine, the requirement related to “Major Racial and Ethnic Subgroups of Students” was not included in the State’s interim feedback letter but was included in the Department’s internal deliberative memo recommending the approval of the Maine consolidated State plan, illustrating that the original issue identified by the peer reviewers and Department staff was addressed and that the Department determined the resubmission met the statutory requirements.

For the fall 2017 peer review, the Department once again learned from its process and once again revised its process to revert back to the original process of including all items in the interim feedback letter that the Department and peer reviewers agreed needed to be addressed prior to approval of the consolidated State plan. Therefore, this recommendation was already addressed during the State plan process as part of OESE’s continuous improvement efforts to design a model process. This is evident in that the OIG only identified this issue in one State in the spring 2017 review. As a result, the Department does not believe that any change is needed to its review process; all peer recommendations and comments were fully reviewed and evaluated, and that evaluation was thoroughly documented in the Department’s internal documents. We strongly and respectfully conclude that no further action is necessary.

With the respect to the finding regarding the McKinney-Vento peer review process, the Department generally agrees with the description of the McKinney-Vento peer review process. On page 3 of the draft report, the OIG states that “we could not always determine whether the Department considered the results of the peer review process when providing States feedback to strengthen the technical and overall quality of their plans.” While the Department recognizes that internal staff review memos did not necessarily include a complete analysis of the Department’s staff review compared to the peer reviewer recommendations, the Department did verbally discuss the peers’ feedback in our internal deliberations consistent with the Title I and Title III

process described above, and the process retained its high quality. At the same time, the process for this program can be improved in the future and we will improve it from our experiences.

However, the Department disagrees with the OIG's second point that the Department did not retain records that ensured adequate and proper documentation that the Department selected peer reviewers in accordance with Department policy or to ensure compliance with relevant requirements. The Department established a rigorous and multi-step review process for selecting peer reviewers of ESEA State plans and retained records demonstrating that it implemented the peer reviewer selection process as it was designed.

Under the peer review requirements in section 1111(a)(4)(A)(ii) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), which are made applicable to the Title I portion of a consolidated State plan under ESEA section 8451(d), the Secretary must "establish multi-disciplinary peer-review teams and appoint members of such teams." ESEA section 1111(a)(4)(D) prohibits the Secretary or political appointees from "participat[ing] in, or influenc[ing], the peer review process." In February of 2017, OGC provided legal advice that, in light of the requirement that the Secretary appoint peers in ESEA section 1111(a)(4)(A)(ii), allowing political appointees to participate in the selection of peer reviewers did not violate section 1111(a)(4)(D). Considering the prohibition, and based on OGC advice, political appointees, however, did not participate in the training of peers, assignment of peers to panels, review by peers of State plans, onsite meetings of peer review panels, or the composition, review and finalization of peer notes.

As documented in the Peer Reviewer Slate memo provided to OIG in August 2018, staff presented a list of recommended peers to a Steering Committee for review and approval prior to final approval by the Deputy Assistant Secretary. This review, which resulted in the addition and removal of some peer reviewers, was documented in the peer reviewer selection process in the Peer Reviewer slate memo provided to OIG and is permissible under ESEA section 1111(a)(4)(A)(ii). The Department's Discretionary Grants Handbook simply indicates that "program officials may use a prospective reviewer's resume or curriculum vitae or a standard form to determine the reviewer's qualifications." The process outlined in the Peer Reviewer Slate memo provided to OIG far exceeds this standard and is well-documented.

Further, when assigning peer reviewers to review panels, staff ensured that the final pool of reviewers met the requirements of ESEA section 1111(a)(4)(A)(ii). This is evidenced in the Peer Reviewer application spreadsheet which documents the expertise of every peer reviewer in the statutorily required categories.

Finally, OIG indicated that three peer reviewers were removed from the list of recommended peer reviewers with no explanation. This is inaccurate. On November 29, 2018, the Department provided OIG with an email from the Deputy Assistant Secretary that indicated all recommended peer reviewers who were employees of the Department after the passage of ESSA but were no longer employed by the agency should be removed from the slate of recommended reviewers to ensure there was no bias in the review of consolidated State plans. This decision resulted in the removal of the three peers referenced by OIG. It is our belief that it was certainly within the purview of the Secretary to use reasonable discretion to include, exclude or otherwise balance the pools as deemed necessary for the quality and completeness of the work. We also believe that the quality of this pool of reviewers was extremely high and the changes that were made to the

full list of peer reviewers did not diminish the quality of the review process or its desired outcomes.

Recommendation 2: Make publicly available all submissions and resubmissions of States' plans, including individual and consolidated plans, to promote full transparency

Response:

The Department disagrees with this recommendation. In April of 2017, OGC provided legal advice that the public posting requirements in section 1111(a)(5)(A) of the ESEA apply only if a State submits an individual Title I plan under ESEA section 1111(a). No State submitted an individual Title I plan. The public posting requirements in section 1111(a)(5)(A) do not apply if a State submits a consolidated State plan under section 8302 of the ESEA. Sections 8302, 8304, 8451 and 8540 specifically detail the procedures the Department must follow for consolidated State plans. Although not legally required, in the spirit of transparency, the Department made each State's initial submission available on its website in addition to the final, approved plan.

The Department disagrees with OIG's recommendation to post all version of consolidated State plans that were submitted as part of the original State plan approval process. The Department continues to post the most recent version of each State's consolidated State plan. Since the approval of all States plans, the Department has approved over 40 requests for amendments from States resulting in updated plans. Along with the updated plans, the Department posts detailed amendment approval letters that outline the specific changes each State made as part of the amended plan. Posting the most recently approved State plan ensures the public has relevant information regarding each State's approach to meeting the requirements in the ESEA. Posting multiple versions of each State's plan would likely cause greater confusion to the field without adding significant value and could have been a disincentive for States agree to make all of the changes that they did make in the interest of improvement.

Recommendation 3: Adhere to its policy when collecting conflict of interest information from peer reviewers and assigning them State plans to review.

Response:

The Department disagrees with the OIG's assertion that it did not adhere to its policy when collecting conflict of interest information from peer reviewers and assigning them State plans to review.

In general, as reflected in the April 3, 2017, decision memo regarding the slate of peer reviewers for ESEA state plans (provided on August 14, 2018), OGC's Ethics Division advised that, for formula grant programs, it is highly unlikely for a peer reviewer to encounter a direct conflict of interest during the review that would negatively impact the outcome of the review because here is no competitive aspect to the review.

Nevertheless, to reduce any appearance of a conflict of interest, the Department with the help of OGC collected and reviewed information about potential relationships, including employment relationships. While conflict of interest information was collected through the initial application for all applicants, staff only completed detailed reviews of the appearance of potential conflicts of interest for reviewers recommended to be selected as peer reviewers and who had agreed to serve as reviewers. Department and contract staff reviewed conflict of interest information that

peer reviewer applicants provided in their applications. The Department required an applicant to specify any State educational agency (SEA) or local educational agency (LEA) in which the applicant was employed; the application also required a potential reviewer to identify his/her employer, if not employed by an SEA or an LEA. In addition to the information from the applications, Department staff and contractors used applicant resumes to identify possible appearances of bias, including based on the location of the employer. Where there were any questions about any of the information provided to avoid an appearance of a conflict of interest, including any doubt about the location of the employer, staff contacted reviewers individually by email to clarify, and continued to consult with OGC as necessary. Ultimately, Department staff made panel assignments to avoid asking any reviewer to read a State plan for a State with which s/he might have the appearance of a conflict of interest.

In its draft report, OIG indicates that it was unable to determine the location of the employer for 19 of 23 selected peer reviewers. The resumes for each of the 23 peer reviewers selected by OIG included the location of the employer. For all selected reviewers, this information was accurately captured in the list of identified conflicts of interest included in the Peer Reviewer tracking documents, provided to OIG during the review. As noted above, staff only completed detailed reviews of the appearance of potential conflicts of interest for peer reviewers that were selected to serve on a panel of peer reviewers. Peer reviewers that were approved to serve but were unavailable or were not selected to serve on a panel were not subject to the conflict of interest review process; several of the peer reviewer applicants that OIG selected for its review were not asked to serve on a panel and, therefore, the Department did not conduct any further conflict of interest review.

Please let us know if you have any questions about any of our comments. Once again, we appreciate the work of the OIG and the opportunity to provide comments.

Sincerely,

**Mark
Washington**

Digitally signed by Mark
Washington
Date: 2020.07.24
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Mark Washington
Deputy Assistant Secretary
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cc: Bryon Gordon, Assistant Inspector General for Audit (Bryon.Gordon@ed.gov)
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