
Federal Student Aid's Award and Administration of the Title IV Additional Servicers Contracts

FINAL AUDIT REPORT



ED-OIG/A02L0006
August 2013

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U.S. Department of Education
Office of Inspector General
New York, NY

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

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

August 20, 2013

Memorandum

TO: James W. Runcie
Chief Operating Officer
Federal Student Aid

FROM: Patrick J. Howard /s/
Assistant Inspector General for Audit

SUBJECT: Final Audit Report
Federal Student Aid's Award and Administration of the Title IV Additional
Servicers Contracts
Control Number ED-OIG/A02L0006

Attached is the subject final audit report that covers the results of our review of the Federal Student Aid's Award and Administration of the Title IV Additional Servicers Contracts during the period from January 1, 2009, through September 30, 2011. An electronic copy has been provided to your audit liaison officer. We received your comments on the findings and recommendations in our draft report.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System. Department policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items, and targeted completion dates, necessary to implement final corrective actions on the findings and recommendations contained in this final audit report.

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We appreciate the cooperation given us during this review. If you have any questions, please call Daniel P. Schultz at (646) 428-3888.

Enclosure

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Abbreviations, Acronyms, Short Forms Used in This Report

34 C.F.R.	Title 34 of the Code of Federal Regulations
ACS	ACS Education Solutions, LLC
CDR	Cohort Default Rate
CO	Contracting Officer
COR	Contracting Officer's Representative
Department	U.S. Department of Education
Contract Monitoring Directive	U.S. Department of Education Directive OCFO [Office of the Chief Financial Officer]:2-108, Contract Monitoring for Program Officials
Direct Loan	William D. Ford Federal Direct Loan
DMCS	Debt Management Collection System
FAR	Federal Acquisition Regulation
FFEL	Federal Family Education Loan
FSA	Federal Student Aid
Great Lakes	Great Lakes Educational Loan Services, Inc.
Nelnet	Nelnet Servicing, LLC
NSLDS	National Student Loan Data System
OIG	Office of Inspector General
PHEAA	Pennsylvania Higher Education Assistance Agency
Sallie Mae	SLM Corporation
SF 30	Standard Form 30, "Amendment of Solicitation/Modification of Contract"
Title IV	Title IV of the Higher Education Act of 1965, as amended
TIVAS	Title IV Additional Servicers

EXECUTIVE SUMMARY

The objectives of our audit were to determine whether (1) Federal Student Aid (FSA) selected Title IV Additional Servicers (TIVAS) servicing prices that are the most efficient and cost-effective for the Government and (2) FSA adequately monitored the TIVAS to determine their compliance with the contract requirements. Our audit period covered January 1, 2009, through September 30, 2011. However, we reviewed contract deliverables due to FSA January 1, 2012, through March 15, 2012 and expenditures for cohort default rate challenge activities from June 17, 2009, through December 31, 2012.

The TIVAS contracts are significant because the TIVAS serviced about 15 million student loan borrowers on behalf of the U.S. Department of Education (Department) as of September 2011. To accomplish the objectives of this audit, we reviewed FSA's contracts with the TIVAS and its related contract modifications, contract pricing documentation, and FSA's monitoring plans and procedures. We judgmentally selected 9 invoices totaling \$29,524,349 out of 112 invoices totaling \$337,363,472 and 5 of 993 contract deliverables. We also reviewed all 21 changes to the contracts that resulted in a cost to FSA, totaling \$2,968,143. As described below, we determined that (1) FSA appears to have negotiated the most efficient and cost-effective servicing rates, but we could not determine whether FSA selected the most efficient and cost-effective prices for changes to the contracts; and (2) FSA did not adequately monitor TIVAS compliance with the contract requirements.

Based on the evidence we reviewed, we determined FSA appears to have negotiated the most efficient and cost-effective servicing rates with the TIVAS because the final awarded contracts included negotiated rates that were generally lower than the lowest proposed bid. However, we could not determine whether FSA selected the most efficient and cost-effective prices for changes made to the contracts for several reasons. First, FSA modified the TIVAS contracts to include a requirement for cohort default rate challenges that should have been included in the base contracts. This modification resulted in a separate cost of \$600,866 from June 17, 2009, the start of the contracts, through December 31, 2012, that was possibly more than it would have been if the requirement was included initially. Second, FSA officials did not properly document their decisions for 18 of 21 changes to the prices or terms of the TIVAS contracts that totaled \$1,271,949 out of \$2,968,143. FSA officials also did not properly execute the 18 changes by obtaining the signatures of TIVAS officials.

We determined that FSA did not adequately monitor TIVAS compliance with the contract requirements because the contracting officer's representatives did not sufficiently validate TIVAS invoices and confirm the timeliness and adequacy of deliverables. Additionally, we found that FSA used inadequate criteria in its monitoring of the TIVAS contracts.

We recommend that the Chief Operating Officer for FSA—

- develop and implement comprehensive and detailed guidance and procedures on how to adequately validate borrower volumes and related costs in invoices, and apply those steps to the invoices during our audit period to ensure accurate billing and payment occurred;
- ensure that FSA officials who receive and review deliverables required by the TIVAS contracts communicate with the TIVAS contracting officer's representatives about the timeliness and quality of the work products;
- in future base contracts for Title IV servicing, include the requirement that servicers research and resolve postsecondary institutions' challenges to their draft cohort default rates so that this activity is performed within the scope of the initial contract;
- require the director of Acquisitions Group to complete Standard Form 30, "Amendment of Solicitation/Modification of Contract," signed by the contracting officer and TIVAS officials for future changes to the TIVAS contracts, and to document the rationale of the determinations made by FSA officials regarding changes to the contract terms and prices; and
- ensure the use of proper monitoring criteria when reviewing TIVAS performance and compliance with the contracts.

We provided a draft of this report to FSA. In FSA's comments to the draft report, FSA agreed with all findings except for the potential impact regarding the inclusion of the cohort default rate challenges in the TIVAS contracts, and the proper execution of changes to the TIVAS contracts. FSA agreed that the cohort default rate challenges should have been included in the base contracts, but disagreed that the inclusion of cohort default rate challenges would have resulted in a decreased cost to the Government. FSA acknowledged it did not document all changes made to the TIVAS contracts in strict compliance with the documentation requirements concerning contract modifications, but stated that the changes were nevertheless properly executed and fully enforceable by law. FSA agreed with all recommendations except for partially agreeing with the recommendation pertaining to the proper execution of changes to the TIVAS contracts. Based on FSA's comments, we made clarifying changes to the finding and the recommendation. FSA agreed, as an alternative approach, to establish a procedure for issuing a summary Standard Form 30 that links the changes to the Standard Form 30 that provides funding for the changes.

We have summarized FSA's comments and our response after each finding. A copy of FSA's comments, dated June 20, 2013, is included as Enclosure 2, and a copy of FSA's updated comments, dated July 3, 2013, is included as Enclosure 3.

BACKGROUND

The Federal Family Education Loan (FFEL) Program provided federally insured loans to students and their families from commercial and nonprofit lenders. The SAFRA Act (Public Law 111-152, March 30, 2010) ended the origination of new FFEL Program loans after June 30, 2010. Beginning July 1, 2010, all Stafford subsidized and unsubsidized loans, PLUS, and consolidation loans originate through the William D. Ford Federal Direct Loan (Direct Loan) Program. In addition, starting in September 2008, the Department began purchasing FFEL Program loans, as authorized under the Ensuring Continued Access to Student Loans Act of 2008 (Public Law 110-227, May 7, 2008).

On June 17, 2009, to service the anticipated increase in Direct Loans, as well as the FFEL Program loans purchased by the Department, FSA contracted with four servicers in indefinite-delivery, indefinite-quantity performance-based contracts:¹ Great Lakes Educational Loan Services, Inc. (Great Lakes); Nelnet Servicing, LLC (Nelnet); Pennsylvania Higher Education Assistance Agency (PHEAA); and SLM Corporation (Sallie Mae). These four servicers are commonly referred to as Title IV Additional Servicers (TIVAS). The contracts expire on June 16, 2014, but can be extended by FSA for 5 years to June 16, 2019. Before June 2009, one servicer, ACS Education Solutions, LLC (ACS) serviced the entire Direct Loan portfolio. ACS still services some of these loans; however, FSA is not assigning any newly originated loans to ACS and is planning to transfer the bulk of loans held by ACS to other servicers. The ACS contract is scheduled to expire on December 31, 2013.

FSA pays the TIVAS for servicing Direct Loans and FFEL Program loans, implementing various changes to the contracts (for example, enhancing a system), and other activities. Other activities that FSA paid the TIVAS for during our audit period included a one-time transfer of loans past 360 days delinquent to the Department's Debt Management Collection System (DMCS),² discharging loans for borrowers who become disabled, and responding to a school's challenges of its draft cohort default rate (CDR). For the servicing of Direct Loans and FFEL Program loans, FSA negotiated a common pricing schedule with the TIVAS before awarding the contracts based on borrower volume and borrower status (see Table 1 for common pricing schedule).

¹ With an indefinite-delivery, indefinite-quantity contract, FSA orders services as needed from the TIVAS throughout the life of the contract rather than specifying exact amounts at the time of contract award (for example, the servicing of a certain number of borrowers). With a performance-based contract, the TIVAS compete against each other for a share of FSA's allocation of new borrowers to service. Greater performance by a TIVAS results in a larger allocation of new borrowers.

² On October 6, 2011, ACS and FSA implemented a new system referred to as DMCS2. On December 13, 2012, the Office of Inspector General issued an alert memorandum, "Debt Management Collection System 2" (ED-OIG/L02M0008), regarding issues with DMCS2.

Table 1: Common Pricing Schedule

Borrower Status	Monthly Unit Price
Borrowers in School	\$1.05
Borrowers in Grace or Current Repayment (0 to 3 million borrowers)	\$2.11
Borrowers in Grace or Current Repayment (more than 3 million borrowers)	\$1.90
Borrowers in Deferment or Forbearance (0 to 1.6 million borrowers)	\$2.07
Borrowers in Deferment or Forbearance (more than 1.6 million borrowers)	\$1.73
Borrowers 31–90 Days Delinquent	\$1.62
Borrowers 91–150 Days Delinquent	\$1.50
Borrowers 151–270 Days Delinquent	\$1.37
Borrowers 270+ Days Delinquent	\$0.50

In addition, FSA negotiated prices with each TIVAS individually, as changes were initiated to the contracts. These changes did not alter the common pricing schedule. Table 2 illustrates the amount FSA paid to each TIVAS for servicing and changes to the contracts, from the start of the contracts to the end of our audit period, from June 17, 2009, through September 30, 2011.

Table 2: TIVAS Payments as of September 30, 2011

TIVAS	Servicing	Contract Changes	Total
Great Lakes	\$86,444,706	\$418,324	\$86,863,030
Nelnet	\$66,989,379	\$1,655,242	\$68,644,621
PHEAA	\$81,837,282	\$366,333	\$82,203,615
Sallie Mae	\$99,123,962	\$528,244	\$99,652,206
Total	\$334,395,329	\$2,968,143	\$337,363,472

Note: Funds rounded to the nearest dollar.

Various people in FSA oversee the TIVAS contracts. Contract administration staff includes the contracting officer (CO) and contract specialist within the Acquisitions Group, and the contracting officer’s representative (COR) within the Program Management Services Group. The CO has overall responsibility for contract administration. However, contract monitoring is a team effort between the CO, contract specialist, COR, and staff in other FSA offices, including the Operations Services Group, Finance Group, Internal Control Division, and Financial Institution Oversight Service Group. Contract monitoring is based on the terms and conditions in the TIVAS contracts, the Federal Acquisition Regulation (FAR), and policies and procedures established by FSA and the Department.

The TIVAS submit monthly invoices that list the number of borrowers serviced as of the last day of that month, categorized by borrower status. They invoice FSA based on the contracts’ common pricing schedule, which stipulates the price for each borrower status. Each borrower is counted only once for the purpose of billing. For a borrower with multiple loans that are in different statuses (for example, one loan in repayment and another in delinquency), the contracts require the TIVAS to bill FSA at the least expensive status.

FSA also manages new contract requirements and changes to existing requirements through its change management process. All changes must begin with a change request, which is a formal submission of a new or modified requirement. According to the CO, in the change management process, a cross-functional team composed of individuals from various FSA offices determines whether a proposed change to the TIVAS contracts is within the scope of the contracts or

whether to recommend the change be performed at additional cost to the Government. The CO makes the final determination in the change management process.

In December 2011, the Office of Inspector General (OIG) released an Ernst & Young consulting report, "Title IV Additional Servicemen Capacity Assessment," (ED-OIG/S15L0001) on the TIVAS contracts. The report had several findings, of which two were relevant to our audit. First, finding number four indicated that contract requirements were documented at a very high level and FSA did not define detailed requirements until after the contract award in June 2009. Second, finding number five stated that FSA neither tracked contract modifications in one central location nor tracked delivery of each contract requirement.

AUDIT RESULTS

We determined from the evidence reviewed that FSA appears to have negotiated the most efficient and cost-effective servicing rates with the TIVAS because the final awarded contracts included negotiated rates that were generally lower than the lowest proposed bid. However, we could not determine whether FSA selected the most efficient and cost-effective prices for changes made to the contracts because FSA made changes to contract pricing and terms that may have resulted in additional cost to FSA, and FSA did not properly document its decisions of changes to the prices and terms of the TIVAS contracts. FSA modified the TIVAS contracts to include a requirement that should have been included in the base contracts, which resulted in a separate cost of \$600,866 from June 17, 2009, the start of the contract, through December 31, 2012. FSA officials did not properly execute and document its decisions for 18 of 21 changes to prices and terms of the TIVAS contracts that totaled \$1,271,949. We also determined that FSA did not adequately monitor TIVAS compliance with the contract requirements because the COR did not sufficiently validate TIVAS invoices and confirm the timeliness and adequacy of deliverables. Additionally, we found that FSA used inadequate criteria in its monitoring of the TIVAS contracts.

FINDING NO. 1 – FSA Inadequately Monitored TIVAS Invoices and Deliverables

FSA did not adequately monitor TIVAS compliance with the contract requirements because the CORs did not sufficiently validate TIVAS invoices and confirm the timeliness and adequacy of deliverables, as required by the FSA TIVAS Contract Monitoring Plan, Version 4.3; the Department's Contract Monitoring Directive;³ and the COR appointment memorandum. We judgmentally sampled 9 invoices totaling \$29,524,349 from a universe of 112 invoices totaling \$337,363,472 and found that the CORs did not perform sufficient procedures to ensure invoices were accurate. The CORs did not ensure borrower volumes and the associated costs were correct, all required invoice elements were included, and that math verifications of subtotals and totals were documented. Also, the CORs did not adequately monitor whether deliverables of sufficient quality were timely provided before recommending payment.

Invoices Insufficiently Validated

For all nine sampled invoices, the CORs did not reconcile the invoiced borrower volumes to source data in the TIVAS systems to ensure the accuracy of the invoices. Instead, the CORs compared invoiced borrower volumes to those listed in three unreliable sources. For three of the nine invoices, the CORs used borrower volumes in the previous month's invoice to determine whether the borrower volumes in the current invoice seemed reasonable. Because neither the CORs nor the CO had ever confirmed the accuracy of the borrower volume in an invoice to its source data, prior month invoices were not a reliable source. If borrower volume had been periodically confirmed, prior invoices could have served as a benchmark for measuring trends

³ U.S. Department of Education Directive OCFO [Office of the Chief Financial Officer]:2-108, Contract Monitoring for Program Officials, August 6, 2009 (Contract Monitoring Directive).

and determining the reasonableness of volumes in future invoices. For four sampled invoices, FSA compared invoiced borrower volumes to National Student Loan Data System (NSLDS) information. None of the volumes in the invoices reconciled to the NSLDS information because the NSLDS records did not cover the same time period that the invoices covered. In addition, the CORs compared the borrower volumes in the nine invoices to projections of borrower volumes that the Department prepared for budget purposes. Projections were unreliable for determining the actual borrower volumes because they were only estimates based on trends in borrower volumes and economic data. These procedures used unreliable sources that did not allow the CORs to adequately validate the accuracy of borrower volumes and related costs.

The CORs did not perform validation procedures to ensure the TIVAS complied with the contract requirement that borrowers in multiple statuses were billed under the least expensive status. Three examples are provided below:

1. From September 1, 2009, through October 31, 2010, Great Lakes used incorrect billing rates for borrowers with loans in multiple statuses that resulted in a \$459,078 overpayment by FSA. In November 2010, Great Lakes identified the error and provided FSA with a credit in the amount overpaid. As of July 2012, FSA had not accessed Great Lakes' servicing system to verify that the credited amount was accurate or that Great Lakes had begun to bill at the correct rate after October 2010. We tested Great Lakes' new calculations for 2 of the 14 months and confirmed that the procedures were adequate and the correct billing rates were used for those 2 months.
2. One of the sampled invoices, submitted by Nelnet, listed borrower volumes that did not match those on the supporting documentation. The invoice contained a mistake of 37,368 borrowers that resulted in an overall underpayment of \$8,310 by FSA. Nelnet later corrected the mistake and billed FSA for the underpaid amount.
3. Another sampled invoice submitted by Nelnet contained an incorrect rate for 127 borrowers that resulted in an underpayment of \$53.70 by FSA.

FSA was unaware of both of Nelnet's underpayment errors and Great Lakes' overpayment error because the CORs did not sufficiently validate invoices.

For all nine sampled invoices, the CORs did not perform validation procedures to ensure that the required invoice elements were included in order for them to be considered proper for payment, as required by the contracts. For example, the invoices either partially or fully lacked supporting documentation that provided detail for the borrower volumes listed in the invoices. In those invoices with partial support, the TIVAS restated only subtotals and did not provide borrower details that made up the subtotals. It is necessary for FSA to have sufficient supporting detail to verify invoices, especially when all other available sources are unreliable for validating invoices.

For six of the nine sampled invoices, we found no evidence that the CORs verified the math for amounts in the invoices (for example, borrower counts multiplied by common pricing rates). We requested documentation for the nine invoices to ensure that the CORs verified that subtotals listed on invoices were accurate and equaled the totals. The CORs could not provide documentation of this validation step for six of the invoices, but they stated that they used a calculator to verify the math in the invoices.

Deliverables Inadequately Confirmed

We found the CORs did not confirm the timeliness and adequacy of contract deliverables that were in addition to routine loan servicing. In addition to providing loan servicing, each TIVAS must provide other deliverables, such as accounting reports, collection activity reports, improper payment reports, and monthly reconciliations. These deliverables are, in effect, evidence that the TIVAS are servicing the loans and meeting the other contract requirements. The CORs did not determine whether the contract deliverables were submitted timely and with sufficient quality before recommending an invoice for payment to the CO. FSA management assigned the responsibility of receiving and validating these deliverables to various offices within FSA based on each office's use of the deliverable and relevant technical knowledge. However, these offices and the CORs did not communicate with each other as to whether the TIVAS provided timely and adequate deliverables. Ernst & Young also identified this problem in its December 2011 consulting report. To follow up on Ernst & Young's recommendation for FSA to track delivery of each contract deliverable, we judgmentally sampled 5 of 993 contract deliverables required of the TIVAS from the start of our audit period through November 18, 2011. The work products of the 5 deliverables were due to FSA for the period from January 1, 2012, through March 15, 2012. We found that the FSA offices received and validated four of the five deliverables but did not communicate to the CORs whether deliverables were received timely and with sufficient quality. FSA did not validate the fifth deliverable because it was assigned to two offices within FSA and no official in either of these offices claimed responsibility for the deliverable. In an effort to centralize monitoring activities under one component, FSA established the Servicer Monitoring Group in October 2012. According to FSA, the purpose of the Servicer Monitoring Group is to achieve a comprehensive view of FSA's servicer monitoring activities and analyze servicer performance.

The CORs did not sufficiently validate invoices and monitor the timeliness and adequacy of deliverables because they did not fully follow the existing guidance. The Contract Monitoring Directive, Section VII.H, states that the COR must ensure that invoices reflect the agreed-on price for completed and accepted work. To accomplish this, the CORs verify that the invoice subtotals are accurate and equal the total. In addition, the Contract Monitoring Directive, Section VII.L, states that detailed record-keeping is necessary to keep an up-to-date history of the life of a project despite changes in staff. Detailed record-keeping of activities, such as math verifying invoices and accepting deliverables, provides a mechanism for analysis by future reviewers and auditors. In addition, the COR appointment memorandum lists the COR's responsibilities and is signed by the COR, CO, and TIVAS. It states that the COR is required to monitor and ensure that the contractor meets the technical requirements of the contract by inspecting and testing deliverables and evaluating reports.

The TIVAS Contract Monitoring Plan, the Contract Monitoring Directive, and the COR appointment memorandum stated that invoices must be reviewed. However, the three guidance documents did not include instructions on validating the accuracy of borrower volumes; ensuring invoices contain all the required elements, and documenting math verifications. In December 2011, the supervisor for Budget and Services Management developed a written procedure that instructed the CORs to document math verification. To improve its invoice review process, the supervisor for Budget and Services Management stated in February 2013 that FSA uses a new report that shows the borrower volumes serviced by each TIVAS to verify invoiced borrower volumes. According to the director of the Contract Oversight Division, FSA

is in the process of contracting a third party to review the system used by the TIVAS to generate invoices.

In addition to needing to improve existing guidance and the CORs' compliance with it, FSA management did not provide the CORs with comprehensive and detailed procedures on validating invoices and reviewing deliverables. An effective control environment is affected by management's philosophy and attitude toward monitoring and evaluation, according to the Government Accountability Office's "Standards for Internal Control in the Federal Government," November 1999. The director of the Contract Oversight Division, who is responsible for overseeing the CORs, was not aware of the contents of the COR appointment memorandum. This document is signed by each COR and outlines the duties and authority delegated by the CO to the COR. In addition, management emphasized prompt invoice payment over adequate monitoring, according to the director of the Acquisitions Group. FSA policy states that CORs review invoices within 5 business days. The director said that CORs learn in training and from their managers that meeting this deadline is a priority. Therefore, FSA's management contributed to a weak control environment, which can increase the risk of FSA not identifying errors in TIVAS invoices.

Because the CORs did not sufficiently validate the accuracy of invoices that we sampled, there is a heightened risk of improper payments for the \$337,363,472 paid to the TIVAS during our audit period. As detailed earlier, four of the nine sampled invoices contained errors that resulted in improper payments by FSA. In these invoices, either the TIVAS self-identified the errors or we found them. Therefore, FSA has no assurance that invoices from and payments to the TIVAS were accurate. In addition, because the CORs did not confirm the timeliness and adequacy of deliverables, the CORs could not ensure that the TIVAS complied with the contract terms.

RECOMMENDATIONS

We recommend that the Chief Operating Officer for FSA—

- 1.1 Develop and implement comprehensive and detailed guidance and procedures on how to properly validate TIVAS invoices.
- 1.2 Properly validate the invoices totaling \$337,363,472 already paid to the TIVAS during our audit period to ensure accurate billing and payment.
- 1.3 Develop and implement a process to ensure that the FSA officials who receive and review deliverables communicate with the TIVAS CORs about their timeliness and quality.

FSA Comments

FSA agreed with Finding No. 1 and its recommendations. FSA noted that all invoices were reviewed for reasonability prior to payment using the data that was available at that time. FSA stated it diligently monitors the deliverables but agreed that the COR needs to be notified of the communications regarding the deliverables and deficiencies need to be reported to the CO. As part of its corrective actions, FSA stated that it developed and implemented the recommended actions, as well as improved its overall approach to invoice validation. FSA stated that it revised its procedures to include additional validation steps. FSA also planned to procure the services of

an objective third party vendor to perform a review of each of the TIVAS's billing processes. According to FSA, this review would include an accuracy review of a statistically significant sample of invoices submitted during the audit period. FSA also developed policy and delivered mandatory training for CORs and COs on the proper review and processing of invoice payments.

Additionally, FSA stated it is updating its procedures regarding work product reviews.⁴ FSA stated it would identify the users of the work products and instruct them on how and when to notify the CORs when receipt is not timely, the products are inaccurate, or when there may be performance issues.

OIG Response

We considered FSA's comments to be responsive to our recommendations. FSA's planned or taken corrective actions, if properly implemented, are responsive to our finding and recommendations.

FINDING NO. 2 – FSA Omitted a Requirement in the Contracts That Resulted in a Separate Cost

FSA modified the TIVAS contracts to include a requirement that should have been included in the base contracts. Specifically, FSA initially omitted any contract requirement for the TIVAS to research and resolve postsecondary institutions' challenges to their draft CDR. The CDR is the percentage of a school's student loan borrowers who enter repayment within a cohort fiscal year and default within the 2- or 3-year cohort default period. The Department's Operations Performance Division publishes the CDRs annually. FSA modified the contracts nearly 10 months after they were finalized to include this requirement, which resulted in a separate and additional cost of \$600,866 through December 2012. FSA may have paid the TIVAS more to perform CDR challenge activities than it would have paid if it had included the requirement in the base contracts. Based on FAR Section 7.102(b), we conclude that FSA should have planned the acquisition of Title IV servicing including the performance of CDR challenge activities to meet its needs in the most efficient and cost-effective manner. Historically, FSA did not separately pay ACS (the original Direct Loan servicer) to respond to CDR challenges pertaining to Direct Loans, nor did it separately pay guaranty agencies to respond to CDR challenges pertaining to FFEL Program loans. With the TIVAS, FSA negotiated a rate with them related to the number of institutions challenging their draft CDR and a rate related to the number of borrowers in each challenge. The TIVAS billed FSA on a monthly basis. From June 17, 2009, through September 30, 2011, FSA paid the TIVAS \$206,077 to perform these activities. By December 31, 2012, FSA had paid the TIVAS a cumulative total of \$600,866.

In planning the TIVAS contracts, FSA did not consider all the potential activities it would expect a servicer of Direct Loans and federally held FFEL Program loans to perform and then include them in the contract requirements. FSA's November 20, 2003, base contract with ACS Education Solutions, LLC, ED-04-CO-0004, for Direct Loan servicing requires the servicer to support the Default Management Division by receiving, processing, and responding to CDR challenges and appeals by Direct Loan institutions. The requirements of the ACS contract should have been considered by FSA when developing the TIVAS contracts, with the CDR

⁴ The "work products" referred by FSA in its comments relate to the "deliverables" discussed in the finding and Recommendation 1.3.

challenge activities explicitly described in the scope of the TIVAS contracts. The Department's Directive OCFO [Office of the Chief Financial Officer]:2-107, Acquisition Planning, February 11, 2008, requires the development of a written acquisition in accordance with FAR Section 7.105. FAR Section 7.105(a)(4) states that all required performance capabilities be specified as part of the planning process.

A previous CO for the TIVAS contracts stated that it was an oversight by FSA that the CDR challenges were not included in the TIVAS contracts' statement of objectives. Similarly, the Ernst & Young TIVAS report had a finding that the TIVAS base contracts did not include detailed requirements, which provided the TIVAS with a short timeframe to understand and implement the initial set of requirements and develop appropriate system design. Ernst & Young recommended that, for future onboarding of servicers, FSA should timely communicate the details of system and functionality requirements.

We could not determine whether FSA selected the most efficient and cost-effective prices for changes made to the contracts, in part, because FSA made changes to contract pricing and terms that have resulted in a separate and possibly additional cost to FSA. In particular, there was no means for us to determine how the base TIVAS contract cost would have changed had CDR challenge costs been included in the negotiated contract cost. While CDR challenge costs were included in the base ACS contract costs, it was part of the overall negotiated cost for "Common Services for Borrowers" without a breakout for the CDR challenge portion of work. Additionally, CDR challenge costs are based on volume. Because volume is variable, we cannot estimate CDR challenge costs. From June 17, 2009, through December 31, 2012, FSA incurred a separate cost of \$600,866 for activities related to CDR challenges. These costs will grow as the volume of CDR challenges increases over the lives of the contracts, which could extend to June 2019.

RECOMMENDATION

We recommend that the Chief Operating Officer for FSA—

- 2.1 In future base contracts for Title IV servicing, include the requirement that servicers research and resolve postsecondary institutions' challenges to their draft CDRs so that this activity is performed within the scope of the initial contract.

FSA Comments

FSA agreed with Finding No. 2 and agreed with its recommendation. FSA disagreed with the potential impact, but agreed that it is not clear how the inclusion of the CDR challenges in the base requirements of the TIVAS contracts would have affected the base contract price. As part of its corrective actions, FSA stated that it will include the requirement in future base contracts for Title IV servicing as appropriate, contingent on timing, contract vehicle, and budget.

OIG Response

While FSA may have disagreed with the potential impact the CDR challenges could have on the cost of the contract, FSA agreed with the finding and agreed to take corrective actions to address the recommendation. Therefore, FSA's planned corrective actions, if properly implemented, should address our finding and recommendation.

FINDING NO. 3 – FSA Did Not Properly Execute Changes to the TIVAS Contracts and Insufficiently Documented Decisions

Out of the 21 changes made to the contracts during our audit period that resulted in \$2,968,143 in additional costs to the Government, FSA did not properly execute and document 18 as required by the FAR. The 18 changes totaled \$1,271,949. (See Enclosure 1 for details.) Specifically, we found that:

- FSA did not properly execute (that is, obtain signatures from the CO and TIVAS officials) 18 changes to the prices and terms of the contracts that were agreed-on in advance of implementing the changes by the TIVAS and the CO.
- FSA officials did not document their decisions on whether the prices and activities proposed by the TIVAS for the 18 changes were within or outside the scope of the contracts and did not document why there was an additional cost to the Government.

FSA negotiated a price for each change with each TIVAS individually. However, for 10 of the 18 changes reviewed, some of the TIVAS proposed to implement the change at no cost to the Government. In addition, for 8 of the 18 changes, some of the TIVAS were already meeting the expectation set forth in the contract change and FSA did not require them to take any action. This variance in dealing with the changes by FSA is because of differences in TIVAS' servicing systems. Although some changes were made at no cost to the Government, FSA did not properly execute and document all 18 changes to the TIVAS contracts as required by the FAR.

Improper Execution of Changes

For the 18 changes made to the contracts' prices and terms, FSA did not complete a Standard Form 30, "Amendment of Solicitation/Modification of Contract" (SF 30), which requires the signatures of the TIVAS and CO. For the 18 changes, the CO received proposals from the TIVAS describing the work to be performed and the proposed price. The prices proposed by the TIVAS were based on their estimate of the number of hours to perform the work and the technical expertise of the employees required to complete the work. After receiving the proposal, the CO determined whether the proposed prices were fair and reasonable and documented it in an internal document called a price negotiation memorandum. The COR, on behalf of the CO, then emailed the TIVAS with the order to begin work. The CO did not use the SF 30 to document these changes, as required by the FAR. For example, the CO approved a proposal by Nelnet to implement a technical solution for the transfer of loans in an estimated 1,020 hours for a fixed price of \$127,500. Nelnet later billed only \$100,000 after it performed the work. We found that it actually took Nelnet more than 1,800 hours to perform this activity. If Nelnet had not honored the informally documented agreement, FSA could have been subjected to an equitable adjustment request to be paid for all of the hours actually worked, more than \$225,000. In this example and others, because FSA did not follow FAR requirements and use the SF 30 to document contract changes, FSA is at risk of disputes for additional costs that the TIVAS incurred.

According to FAR Sections 43.103(a)(1), 43.204(a), and 43.301(a)(1)(ii) and (v), the CO should use an SF 30 for change orders that are bilateral agreements, which are equitable adjustments to the contract price or terms that are negotiated in advance between the contractor and the CO. In

addition, the FAR Sections 43.201(a) and 43.204(a) state that the CO should also use the SF 30 for change orders that are unilateral agreements, which are changes to the contract that are not agreed to in advance by both parties. The CO did not consider the 18 changes to be change orders, as defined by the FAR, because FSA and the TIVAS bilaterally negotiated the terms in advance. However, the CO incorrectly defined change orders as only unilateral changes in which no input or negotiations occur before the contractor commences work. Multiple sections of the FAR state that change orders can be unilateral or bilateral agreements, and if a change order results in the change of a contract's price or terms, it should be documented with the SF 30. The CO and acting director of the Mission Procurement Division stated that the 18 changes were "change requests" and the director of the Acquisitions Group stated that FSA was in compliance with the FAR since the FAR does not address the use of "change requests." The term "change request" is not defined or used in the FAR.

Insufficient Documentation of Changes

We could not determine whether the CO's decisions to process the 18 contract changes were appropriate because the CO insufficiently documented his determinations in the contract files. The CO did not document whether the prices and activities proposed by the TIVAS were already covered within the existing contractual requirements. In addition, the CO did not document why changes that resulted in adjustments to the contract price were funded outside the common pricing of the TIVAS contracts. The price negotiation memorandum did not contain the CO's determinations on these two decisions, nor were they documented anywhere else in the contract files. If the CO had completed the SF 30, it would have included an explanation of the reason for and the impact of the modification on the overall contract price.

The 18 changes were not sufficiently documented because FSA did not fully follow the FAR requirements and the Department's policies and procedures. FAR Section 16.505(b)(5) states that the CO should document the rationale for placement and price of each order in the contract file. This includes the CO's basis for awarding the order and the rationale for any tradeoffs among cost and noncost considerations in making the award decision. The Contract Monitoring Directive, Section VII.L(1), states that detailed record-keeping is necessary to keep an up-to-date history of the life of a project despite changes in staff. It also provides a mechanism for analysis by future reviewers and auditors. In addition to the CO, the decisions made by the cross-functional team in the Change Management Division were communicated orally and not properly documented. FSA officials began documenting the cross-functional team meetings with meeting minutes in January 2012. However, the meeting minutes provided to us by FSA for January and February 2013 did not contain enough detail explaining the rationale behind the team's decisions. In addition, one of the internal control standards contained in the Government Accountability Office's "Standards for Internal Control in the Federal Government," November 1999, is control activities. Control activities help ensure that staff execute management's directives. Such activities include properly executing and documenting transactions of significant events, such as those that determine use of funds. The CO relied on the decisions made by the cross-functional team to make these determinations for the 18 changes. FSA's change management plan states that a business analyst in the Change Management Division is responsible for recording the team's meetings in writing. This cross-functional team is a component of FSA's process for handling contract changes; however, the FAR authorizes the CO as the person acting on behalf of the Government and responsible for the decisions and actions for all contract changes and for maintaining contract documentation.

Because of the improper execution of changes to the TIVAS contracts, FSA is not complying with the FAR and is vulnerable to contract challenges. Although FSA has a record of the TIVAS price proposal for each change and acceptance by the CO, the failure to follow through with a completed SF 30 creates a risk of future disputes or requests for equitable adjustment. The lack of sufficient documentation can lead to future problems as key FSA contracting personnel and TIVAS personnel involved in the change negotiations change or leave their positions.

Because of the lack of sufficient documentation, we could not determine the reasonableness of the CO's and the cross-functional team's decisions. Specifically, we could not determine the reasonableness of decisions on whether prices and activities proposed by the TIVAS were within or outside the scope of the contracts and whether the changes should have been an additional cost to the Government. As a result, we could not determine whether FSA selected the most efficient and cost-effective prices for the 18 changes to the contracts.

RECOMMENDATIONS

We recommend that the Chief Operating Officer for FSA require the director of the Acquisitions Group to—

- 3.1 Complete an SF 30, including signatures from both parties, for any future changes to the TIVAS contracts that result in additional cost to the Government or increased time to perform the work under the contract and adequately document all previous changes.
- 3.2 Ensure all staff comply with requirements in FAR, Part 43, "Contract Modifications," for execution of changes to all contracts administered by FSA.
- 3.3 Document the rationale of its determinations on whether the prices and activities proposed by the TIVAS for previous and future changes to the contracts are within or outside the scope of the contracts and should be additional costs to the Government.
- 3.4 Ensure that all decisions made by the cross-functional team regarding future changes to the terms or conditions of the TIVAS contracts are adequately documented in writing.

FSA Comments

FSA did not take the same position as OIG regarding Finding No. 3, but agreed with all of its recommendations. FSA acknowledged it did not document all changes that were made by mutual agreement of the parties during the change management process in strict compliance with the documentation requirements of the FAR concerning contract modifications. However, FSA believes that these changes were properly executed and are fully enforceable by law. FSA views the absence of individually signed and executed SF 30 forms to address each change to be a ministerial error and believes that all necessary documentation was obtained to effectuate the 18 changes and bind both parties. FSA noted that each change was tied back to an SF 30 that provided funding for the contract.

FSA believes all changes performed by the TIVAS contractors were within the general scope of the TIVAS contracts. In addition, FSA believes that its explanation for these changes and their effect on the TIVAS contracts' overall contract price were sufficiently documented through

FSA's change management process. FSA does not believe that additional SF 30s were required in each instance to document this rationale.

For Recommendation 3.1, FSA provided an updated response, dated July 3, 2013. (See Enclosure 3 for details.) FSA stated that for previous changes to the TIVAS contracts, it will consolidate all change requests and locatable supporting documentation with the SF 30 that provided funding for the changes. For future changes to the TIVAS contracts, FSA will issue an SF 30 when the CO determines one is required, consistent with FAR requirements. FSA will also establish a procedure for issuing a summary SF 30 that links the changes to the SF 30 that provides funding for the changes.

As part of its corrective actions for Recommendations 3.2 through 3.4, FSA stated that the head of the contracting activity⁵ will issue a memorandum reminding COs of responsibilities associated with the requirements of the FAR and other regulation, policy, and guidance. FSA also agreed to adequately document required decisions during contract award and administration and the cross-functional team's decisions concerning future TIVAS contract changes.

OIG Response

We made changes to the finding and Recommendation 3.1 based on FSA's comments. For the finding, we clarified that the CO did not document whether the prices and activities proposed by the TIVAS were already covered within the existing contractual requirements. For Recommendation 3.1, we clarified that FSA will complete an SF 30 for any future changes to the TIVAS contracts and adequately document all previous changes.

The FAR Part 43 requires the CO to execute an SF 30 for changes to a contract. We disagree with FSA that its change management process negates the need for the CO to execute a SF 30 for a change. In addition, we disagree that the execution of an SF 30 to increase the funding of a TIVAS contract has the effect of incorporating such changes. The SF 30s which add funding to the TIVAS contracts specify the amount of funding added to the contract and the "not-to-exceed limit" of the contract. These SF 30s also state, "All other terms and conditions remain unchanged." However, FSA often did not incorporate into these SF 30s documentation created by its change management process. Furthermore, FSA's comments state that the Department's Office of the General Counsel agreed that the TIVAS change request process was not in strict compliance with FAR Part 43.

We disagree with FSA that it had adequate documentation to support the 18 changes. As stated in the finding, because of the lack of sufficient documentation of the CO's and the cross-functional team's decisions, we could not determine the reasonableness of decisions on whether prices and activities proposed by the TIVAS were already covered by existing contractual requirements and pricing and whether the changes should have been an additional cost to the Government.

While FSA believes that the 18 changes were enforceable, our finding is that FSA's use of alternative and informal documentation increased the risk to the Department. FSA's documentation for all 18 changes was provided to OIG in electronic format but was not a part of the official contract file for any of the TIVAS. The CO stated that the documentation is

⁵ The head of the contracting activity for FSA is the director of the Acquisitions Group.

maintained through a combination of hardcopy and electronic files; however, such documentation could be separated from the files based on the activity occurring related to the changes. Upon review of the electronic documentation, we noted several instances of missing documents. In one instance, the documentation was not readily available to the CO, who instead had to ask one of the TIVAS for copies of relevant information. Also, during our audit period, the CO and the CORs for the TIVAS contracts have changed since the award of the contracts in June 2009. Therefore, the information and documentation available to one CO or COR might not be available to the subsequent CO or COR, especially if the documentation is not stored in a central location accessible to subsequent CO or CORs, for example a shared network drive for electronic files or the official contract file for hardcopy documents.

Although FSA did not fully agree with OIG's position regarding the finding, FSA agreed to make improvements to its documentation of changes for the TIVAS contracts.

FINDING NO. 4 – FSA Used Improper Criteria in Its Monitoring of the TIVAS

The FSA Business Operations group reviewed each TIVAS using its 2010 Operations Services monitoring procedures plan. The plan referenced improper criteria to measure the performance and adequacy of TIVAS collection activities; loan conversions; and servicing procedures, scripts, and training materials. The improper criteria included the Direct Loan Business Rules (which were outdated, inappropriate for monitoring the TIVAS, and not readily accessible), an unspecified OIG audit guide (which is not designed for such use),⁶ and the Common Manual (which was created by a nongovernmental entity and had no authority).

The Direct Loan Business Rules are improper criteria for monitoring the TIVAS because (1) FSA developed the rules as a guide in 1997 for ACS, (2) the rules do not incorporate the differences between the TIVAS contracts and ACS contract, and (3) the rules were not accessible to the FSA staff performing the monitoring. The purpose of the Direct Loan Business Rules was to serve as the baseline business rules for the ACS Direct Loan Servicing System and ensure equitable treatment and consistent processes for all borrowers that ACS serviced. The ACS contract with FSA was not a performance-based contract, as are the TIVAS contracts. An FSA official responsible for compiling a new set of business rules stated that the TIVAS contracts are less prescriptive in their servicing requirements than the ACS contract. The official also told us that only some of the Direct Loan Business Rules are applicable to the TIVAS servicing activities. In addition, FSA has not updated the Direct Loan Business Rules to reflect changes to Direct Loan requirements that were implemented after the Direct Loan Business Rules were created. This criteria does not assist FSA in monitoring the TIVAS contracts to ensure that the TIVAS are performing the work as delegated in the contracts.

The FSA officials responsible for using the monitoring procedures plan were not able to locate the Direct Loan Business Rules. The Government Accountability Office's "Standards for Internal Control in the Federal Government," November 1999, states that documentation of internal control activities should be properly managed and maintained. In addition, the Contract

⁶ For example, the OIG audit guide, "Compliance Audits (Attestation Engagements) for Lenders and Lender Servicers Participating in the Federal Family Education Loan Program," is designed for use by all lenders or servicers that participate in or administer any aspect of the FFEL Program and are required to have an annual compliance audit performed by a non-Federal auditor.

Monitoring Directive, Section VII.F.4, states that the Government must clearly define its expectations in a performance-based environment. FSA indicated that it is incorporating relevant sections of the Direct Loan Business Rules into a database that will serve as a new set of business rules applicable to the TIVAS. However, in March 2013, an FSA official stated that the database project is on hold due to competing priorities.

The 2010 FSA Operations Services monitoring procedures plan lists an unspecified OIG audit guide as criteria, although these are not designed for monitoring Direct Loan servicers. The plan also lists the following as criteria, without referring to any specific sections: the entirety of the Higher Education Act of 1965, as amended; 34 C.F.R. Parts 682 (FFEL Program loans) and 685 (Direct Loans); U.S. Department of the Treasury guidelines; and the FSA Financial Institution Oversight Service's program review guide.

FSA's 2010 and 2011 monitoring procedures plans also referred to the Common Manual as supplemental criteria for monitoring the TIVAS. The Common Manual was developed by representatives from the nation's guarantors that participate in the FFEL program. The Common Manual was not issued or approved by the Department, and thus is not an authoritative source for program requirements. It was developed by non-Federal entities and is directed at lenders and/or guarantors administering FFEL Program loans, and not the TIVAS.

Because referenced criteria in the FSA Operations Services monitoring procedures plan were improper, not effectively communicated within FSA, and not accessible to FSA monitoring staff, there is heightened risk that FSA's monitoring may not uncover TIVAS performance and compliance issues.

RECOMMENDATIONS

We recommend that the Chief Operating Officer for FSA—

- 4.1 Ensure that FSA applies proper monitoring criteria (for example, contract terms, regulations, and applicable sections of its revised Direct Loan Business Rules) when reviewing TIVAS performance and compliance with the contracts.
- 4.2 Communicate the revised Direct Loan Business Rules to the TIVAS when they are completed.

FSA Comments

FSA agreed with Finding No. 4 and Recommendation 4.1. In regards to Recommendation 4.2, FSA agreed that servicing requirements need to be clearly conveyed to the TIVAS. FSA stated that this is accomplished through the TIVAS requirement documents. Further, FSA stated that the Direct Loan Business Rules, which were retired in 2011, has never applied to the TIVAS. As part of its corrective actions, FSA stated that it will revise the Operating Services monitoring procedures plan by removing references to the Common Manual and Direct Loan Business Rules and making other revisions as appropriate.

OIG Response

FSA's planned corrective actions, if properly implemented, should address our finding and recommendations.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objectives were to determine whether (1) FSA selected TIVAS servicing prices that are the most efficient and cost-effective for the Government and (2) FSA adequately monitored the TIVAS to determine their compliance with the contract requirements. Our audit period covered January 1, 2009, through September 30, 2011. However, we reviewed contract deliverables due to FSA January 1, 2012, through March 15, 2012, and expenditures for CDR challenge activities from the start of the contracts to December 31, 2012.

To obtain applicable information about the TIVAS contracts, we performed the following procedures:

- obtained and reviewed the TIVAS contracts, contract modifications, and COR appointment memorandum for Great Lakes, Nelnet, PHEAA, and Sallie Mae;
- reviewed select provisions of the FAR, C.F.R., Contract Monitoring Directive, FSA policies and procedures, Government Accountability Office “Standards for Internal Control in the Federal Government,” and FSA contract monitoring plan for the TIVAS contracts;
- obtained an understanding of the roles and responsibilities of key personnel involved in the TIVAS contracts through interviews with officials from FSA’s Acquisitions Group, Operations Services Group, Program Management Services Group, Financial Institution Oversight Service Group, Change Management Division, and Finance Office;
- identified the amount of Federal funding awarded, allocated, and expended for the TIVAS contracts during the audit period; and
- reviewed relevant reports by the Government Accountability Office, OIG, and Ernst & Young:
 - Government Accountability Office report on Federal student loan programs, “Opportunities Exist to Improve Audit Requirements and Oversight Procedures,” July 2010 (GAO-10-668);
 - OIG report, “Controls Over Contract Monitoring for Federal Student Aid Contracts,” August 2007 (ED-OIG/A19G0006);
 - OIG report, “Audit of the Department’s Oversight of the Direct Loan Program,” November 2009 (ED-OIG/X19I0006);
 - OIG report, “Federal Student Aid’s Efforts to Ensure the Effective Processing of Student Loans Under the Direct Loan Program,” September 2010 (ED-OIG/X19K0008);
 - Ernst & Young consulting report, “Title IV Additional Servicers Capacity Assessment,” December 2011 (ED-OIG/S15L0001); and
- reviewed program reviews of the TIVAS by FSA’s Financial Institution Oversight Service Group.

Federal Student Aid

We addressed both audit objectives through (1) interviews of relevant FSA officials; (2) reviews of documents related to contract pricing and other contract costs; (3) FSA's monitoring plans and procedures; and (4) analysis of FSA documentation related to invoices, changes to the contracts, and contract deliverables.

To achieve our audit objectives, we performed the following:

- obtained an understanding of the selection and award of the TIVAS contracts through review of solicitation documentation;
- obtained an understanding of the contracts' pricing schedule through the examination of the TIVAS Phase II Source Selection Statement and Price Negotiation Memorandum;
- reviewed the ACS bid protest to the Government Accountability Office of the award of the contracts to Great Lakes, Nelnet, PHEAA, and Sallie Mae;
- obtained an understanding of the methodology and controls over allocation of loans to the TIVAS for servicing;
- reviewed FSA's 2010 and 2011 Operations Services monitoring procedures plans;
- reviewed FSA's 2010, 2011, and 2012 Financial Institution Oversight Service methodology and processes for the annual program reviews of the TIVAS;
- obtained an understanding of FSA's Finance officials' oversight of the TIVAS contracts in respect to their reporting of financial data and their Office of Management and Budget Circular A-123 Appendix A reviews of the TIVAS;
- obtained an understanding of FSA's Internal Control Division oversight of the TIVAS contracts in regards to data reconciliations prepared by the TIVAS and the resolution of FSA's Financial Institution Oversight Service program reviews of the TIVAS;
- obtained an understanding of FSA's processes and procedures related to payment of the TIVAS invoices;
- reviewed FSA's change management plan and obtained an understanding of the processes for changes to the TIVAS contracts;
- reviewed all 21 changes to the TIVAS contracts that resulted in additional cost to the Government totaling \$2,968,143 (see Enclosure 1 for details);
 - reviewed supporting documentation for all 21 changes, including contract modifications and price negotiation memorandums for 3 of the 21 changes, and change management business forms, impact analyses, cost proposals, and email communication between FSA and TIVAS officials for 18 of the 21 changes; and
 - obtained an understanding of the changes to the TIVAS contracts by interviewing FSA officials directly associated with each change;
- reviewed 9 judgmentally sampled invoices and related supporting documentation for each invoice from the universe of 112 TIVAS invoices; and
- reviewed 5 judgmentally sampled contract deliverables and related supporting documentation for each deliverable from the universe of 993 contract deliverables and interviewed officials responsible for obtaining and reviewing each deliverable.

We relied on computer-processed data to obtain the universe of changes made to the TIVAS contracts that resulted in additional cost to the Government and the universe of contract deliverables. FSA provided both in the form of spreadsheets. In addition to providing the universe of changes and deliverables, the spreadsheets supplied us with TIVAS invoice costs,

costs for changes to the contracts, and contract deliverable details. We compared the spreadsheets to additional sources of information to determine whether they were complete and accurate. For the changes to the contracts, we determined the completeness and accuracy of the expenditure spreadsheet that FSA provided by comparing it to the changes listed in the invoices in our sample, contract modifications, price negotiation memorandums, and related change management documentation. For the contract deliverables, we received a spreadsheet from FSA listing the contract deliverables required of the TIVAS. We compared the computer-processed list to the contract deliverables included as an attachment to the TIVAS contracts. Additionally, we interviewed FSA officials to determine the completeness and accuracy of the contract deliverables spreadsheet. We also compared the expenditure data for the sampled invoices to FSA's Financial Management Support System documentation. Based on all the above comparisons, we determined that the data contained in these files were sufficiently reliable for the purpose of answering our audit objectives.

Sampling Methodology

We judgmentally sampled 9 invoices, with charges to FSA totaling \$29,524,349, from a universe of 112 TIVAS invoices totaling \$337,363,472. From September 1, 2009, through September 30, 2011, there were 25 months, or billing periods, in which each TIVAS submitted one invoice. However, from October 1, 2010, through September 30, 2011, Nelnet submitted two invoices for each month: one invoice for loan servicing and the other for discharging loans for borrowers eligible for Total and Permanent Disability status. Therefore, there were 12 additional invoices for Nelnet. As a result, our universe of the TIVAS invoices consisted of 112 invoices. We judgmentally selected a sample consisting of the invoices for 2 of the 25 monthly billing periods for each TIVAS based on various risk factors. Risk factors included invoice errors previously identified by FSA or OIG during our preliminary work and billing periods when there were personnel changes in the COR position. This totaled nine invoices because Nelnet submitted two invoices in one of the selected billing periods.

To follow up on the Ernst & Young consulting report recommendation that FSA track delivery of each contract deliverable, we judgmentally sampled 5 of 993 contract deliverables required of the TIVAS from the start of our audit period through November 18, 2011. We selected the deliverables that specifically indicated a report, a trial balance, or any type of work product that should have been provided to FSA and, where possible, deliverables with due dates. The final Ernst & Young consulting report was issued December 2011. Therefore, to avoid duplicating the efforts of Ernst & Young, the work products of those five deliverables we reviewed were for the period from January 1, 2012, through March 15, 2012.

Because there is no assurance that the two judgmental samples of invoices and deliverables were representative of the entire universe, the results should not be projected over the invoices or deliverables that were not selected for testing.

Title IV Additional Servicers

We judgmentally selected, for site visits, two of the four TIVAS with the greatest variability among the TIVAS based on two criteria: TIVAS loan volume and organizational business model. We selected Great Lakes because this TIVAS had the largest volume of loans and is a nonprofit organization, and Nelnet because it had the smallest volume of loans and is a for-profit organization.

To achieve our audit objectives, we performed the following:

- gained an understanding of Great Lakes' and Nelnet's internal controls, policies, procedures, and practices related to their performance under the TIVAS contracts;
- interviewed key Great Lakes and Nelnet officials and personnel involved in servicing loans, changes to the TIVAS contracts, invoicing process and procedures, and reporting loan information to NSLDS; and
- reviewed supporting documentation for the selected invoices and changes to the TIVAS contracts that resulted in additional cost, such as:
 - costs billed in the invoices, the borrower volumes in each billing category, and the invoice correction spreadsheet for the 14 months of overbilling by Great Lakes; and
 - support for the actual number of hours worked to perform the changes compared to the agreed-on estimates between FSA and the TIVAS.

For the TIVAS component of our audit, our use of computer-processed data was generally limited to the monthly invoice data maintained in the Great Lakes and Nelnet servicing systems. We used this data to assist us in our review of sampled invoices. We performed a limited assessment of the reliability of the computer-processed data that assessed both Great Lakes' and Nelnet's processes to validate the monthly invoice data. This included verifying the logic and methods used when Great Lakes and Nelnet prepared the invoices before submitting them to FSA for payment. As a result, we considered the monthly invoice data maintained in the TIVAS servicing systems to be the best available data for the purpose of our audit. To determine whether the data files were complete and accurate, we used data analysis software to combine and summarize the data for the invoices sampled for Great Lakes and for Nelnet, and we compared the totals and subtotals for each borrower category to the totals and subtotals listed on the invoices. For the two Great Lakes' sampled invoices, they were originally incorrect due to overbilling by the servicer, as described in Finding No. 1. However, in our analysis, we used the data for the corrected invoices. We determined that the totals and subtotals listed on Nelnet's invoices and Great Lakes' corrected invoices agreed with the numbers reported in the files from the monthly invoice data maintained in the TIVAS servicing systems provided by the two servicers. Based on the results mentioned above, we determined that the computer-processed data used were sufficiently reliable for the purposes of our audit objectives.

We conducted fieldwork at FSA in Washington, DC, from September 27, 2011, through June 27, 2012. We also conducted fieldwork at Great Lakes in Madison, Wisconsin, and at Nelnet in Lincoln, Nebraska, from June 4, 2012, through June 8, 2012. We held an exit conference to discuss the results of the audit with FSA officials on September 6, 2012.

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

Enclosure 1: Changes to TIVAS Contracts that Resulted in Additional Cost to FSA, as of September 30, 2011⁷

During our audit period, FSA made 21 changes to the contracts that had costs associated with them for at least one of the TIVAS. For example, one change to the contract was implemented at no cost by three TIVAS, but was implemented at an additional cost by only one of the TIVAS. As discussed in Finding No. 3, FSA improperly executed 18 of these changes.

	Change Name	Amount Spent ⁸
Improperly Executed Changes		
1	Stop Transfer of Defaulted Loans from TIVAS to DMCS	\$1,500
2	Financial Management System File Status Dashboard	\$5,400
3	Financial Management System Refunds to Include Deposit Ticket Number	\$18,330
4	U.S. Department of the Treasury Electronic Check Processing Roster Payment Return File	\$5,780
5	Substitute Statement on Standards for Attestation Engagements No. 16 Audits for Statement on Auditing Standards No. 70 Audits	\$11,469
6	Clean-up Project for Ineligible Loans Sold to the Department	\$11,700
7	Interface with DMCS2	\$295,764
8	FFEL Repurchase Process	\$178,840
9	NSLDS Reporting Update	\$202,438
10	Compliance with Higgins Decision Pertaining to Nondiscretionary Benefits for Borrowers	\$50,890
11	Change to Audit Downloads	\$36,990
12	Acceptance of Civil Legal Assistance Attorney Student Loan Repayment Program Payments	\$35,620
13	Common Servicing Schema Changes to Common Origination and Disbursement System	\$257,902
14	Move Conditional Disability Discharge Tracking System Inactive Accounts to Total and Permanent Disability System	\$20,938
15	Consolidation Reversals Requirements	\$92,439
16	Direct Loan Servicing System Decommission with Total and Permanent Disability System	\$16,500
17	Additional Federal Servicer Codes	\$18,650
18	NSLDS Reporting Frequency for Department Servicers	\$10,800
	TOTAL	\$1,271,950⁹
Properly Executed Changes		
1	Cohort Default Rate Challenge Support	\$600,866
2	Total and Permanent Disability Services	\$1,475,398
3	Processing of Borrowers Greater Than 360 Days Delinquent	\$14,719
	TOTAL	\$2,090,983

⁷ The Cohort Default Rate Challenge Support total is as of December 31, 2012.

⁸ Funds rounded to the nearest dollar.

⁹ This total differs from the total presented throughout the report (\$1,271,949) due to rounding.

Enclosure 2: FSA Comments



UNITED STATES DEPARTMENT OF EDUCATION
Federal Student Aid

June 20, 2013

TO: Daniel P. Schultz
Regional Inspector General for Audit
Office of Inspector General

FROM: James W. Runcie
Chief Operating Officer

A handwritten signature in blue ink that reads "James W. Runcie".

SUBJECT: Draft Audit Report– "Federal Student Aid's Award and Administration of the Title IV Additional Servicers Contracts," Control Number ED-OIG/A02L0006

Thank you for providing Federal Student Aid (FSA) with an opportunity to respond to the Office of Inspector General's (OIG) findings and recommendations in the draft audit report, "Federal Student Aid's Award and Administration of the Title IV Additional Servicers Contracts."

Since this audit began in September 2011, FSA's management has addressed many of OIG's recommendations. FSA assessed observations made by the auditors during the review and instituted several immediate changes to include the development of a new approach to invoice validation that strengthens the integrity of the validation process, and implementation of a new forum in which the Title IV Additional Servicers Contracts (TIVAS) performance issues are analyzed as part of contract oversight and, when necessary, escalated to the Contracting Officer and executive leadership. In assessing OIG's findings and recommendations, FSA also consulted legal counsel (the Office of the General Counsel (OGC)) regarding its rights and obligations related to performance and administration of the TIVAS contracts as a matter of federal procurement law. FSA appreciates this opportunity to respond to OIG's concerns.

FSA's response to each of the recommendations follows:

Finding 1: FSA Inadequately Monitored TIVAS Invoices and Deliverables

Response to Finding 1:

FSA agrees the TIVAS invoices validation process needed improvement. However, it is important to note that all invoices were reviewed for reasonability prior to payment using the data that was available at that time.

FSA diligently monitors the deliverables. For example, when the TIVAS contractors submit a financial reconciliation report that the Chief Financial Officer group determines to be insufficient, the TIVAS contractors are, in fact, informed and the insufficiency is generally addressed. However, FSA agrees that the Contracting Officer's Representative (COR) needs to be notified of these communications, and deficiencies reported to the Contracting Officer. Upon proper notification, the Contracting Officer could then determine whether the withholding of further invoice payments or other actions authorized by the contract were proper in order to ensure all contract terms were met.

Recommendation 1.1: Develop and implement comprehensive and detailed guidance and procedures on how to properly validate the TIVAS invoices.

Response to Recommendation 1.1:

FSA developed and implemented the recommended actions, as well as improved an overall approach to invoice validation. Procedures have been revised to include additional validation steps (See steps 2 and 3 below). In summary, the steps are as follows:

- 1) Review invoice supporting documentation (reports). Calculate the total counts of borrowers within specific borrower repayment categories from the supporting documentation reports and compare the total with the counts provided for the same category on the invoice.
- 2) Perform a frequency of distribution reasonability check in which the percentages of reporting in the specific borrower categories on the invoice is compared to the historical percentages of borrowers in those categories.
- 3) Perform a final check on the invoices by generating a report from the Aid Data Mart (ADM) capturing both accounts and account statuses at the time the invoices were generated. During the audit period, NSLDS was the only tool available for this reasonability check. Due to the timing of servicer-to-NSLDS reporting, and the fact that NSLDS is a production database, FSA determined the ADM could be modified to produce a report using the same date parameters of the invoice and produce very similar results. The report specifications are continuously evaluated and FSA continues to identify opportunities to modify specifications with the intent to achieve 100 percent reconciliation. Until then, the report is an improved reasonability check. It is important to note this check is performed after the invoice is paid. If the ADM report leads to the detection of an under/over payment, the contractor will be instructed to net the difference in the subsequent invoice. In turn, FSA will report the payment as an improper payment to FSA's Finance office in order to meet Improper Payments Elimination and Recovery Act (PL 111-204) and Improper Payment Information Act (PL 107-300) requirements. FSA continues to work towards refining the ADM report so that it can be used prior to payment.

In each of the three steps above, FSA is using TIVAS-reported data to validate the invoices. FSA is strengthening the integrity of the invoice validation by procuring the services of an objective, third party vendor to perform an attestation of each of the TIVAS's billing processes. The attestation contractor shall ensure that the TIVAS methods, practices, and logic used to generate the invoices are accurate, complete, timely submitted and contain sufficient internal controls to provide reasonable assurance of the accuracy of the reported data. This task order is scheduled to begin in June 2013; with attestations expected in Fiscal Year (FY) 2013 and FY 2014, and then every three years, contingent upon the availability of funds and continued TIVAS participation. The attestation Performance Work Statement (PWS) for this task order can be reviewed at the following link:

https://www.fbo.gov/index?s=opportunity&mode=form&id=c5457177cd981df95a995e802697aadf&tab=core&_cview=0

In addition, FSA developed policy and delivered training for CORs and Contracting Officers on the proper review and processing of invoice and finance payments. This training is mandatory for all CORs and Contracting Officers, and specifically addresses the responsibility to verify invoice information, to include the accuracy of the unit prices and all computations.

Recommendation 1.2: Properly validate the invoices totaling \$337,363,472 already paid to the TIVAS during our audit period to ensure accurate billing and payment.

Response to Recommendation 1.2:

FSA concurs with this recommendation. The attestation task order discussed above will include an accuracy review of a statistically significant sample of invoices submitted during the audit period, and provide for the review of an additional quantity of invoices if inaccuracies are found in the first review (See the attestation PWS at the link provided above in Response to Recommendation 1.1). In addition, we are examining whether ADM reports can be generated with the necessary accuracy for a reasonability comparison to be performed on all invoices submitted during the audit period. Reasonability comparisons for invoices submitted from December 2012 through March 2013 show an average variance of less than 0.6 percent; based on these results, FSA does not anticipate that the accuracy review will identify significant variances. Any over- or underpayments identified will be corrected through adjustments to future invoices.

Recommendation 1.3: Develop and implement a process to ensure that the FSA officials who receive and review deliverables communicate with the TIVAS and CORs about their timeliness and quality.

Response to Recommendation 1.3:

FSA is updating its procedures regarding work product reviews. FSA will identify the users of the work products and instruct them on how/when to notify the CORs when

receipt is not timely, the products are inaccurate, or when there may be performance issues. Some of OIG's concerns have already been addressed through the establishment of the Servicing Monitoring Group in July 2012, where issues are escalated to the COR and Contracting Officer in a more formal process than previously performed.

Finding 2: FSA Omitted a Requirement in the Contracts that Resulted in a Separate Cost

Response to Finding 2:

FSA agrees that cohort default rate (CDR) challenges should have been included in the base requirements of the TIVAS contracts. While this omission did lead to the cost of these activities being broken out separately from the base unit pricing, we do not agree that inclusion of the CDR challenge performance in the base TIVAS requirements would have resulted in decreased cost to the government. It is not clear how the inclusion of this requirement would have affected the initial base price, so there is no basis to conclude that overall costs increased as a result of its omission.

Recommendation 2.1: In future base contracts for Title IV servicing, include the requirement for servicers to research and resolve postsecondary institutions' challenges to their draft CDRs so that this activity is performed within the scope of the initial contract.

Response to Recommendation 2.1:

FSA agrees with this recommendation and will include this requirement as appropriate, contingent upon timing, contract vehicle, budget, etc.

Finding 3: FSA Did Not Properly Execute Changes to the TIVAS Contracts and Insufficiently Documented Decisions

Response to Finding 3:

While FSA does not take the same position as OIG does regarding this finding, FSA agrees improvements to documentation can be made. At the same time, FSA believes a process is in place that works, which accomplishes the mission, is legally enforceable, and while not identified in the FAR, is one that can be used. As stated in part in FAR 1.102(d), "In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interest of the Government and is not addressed in the FAR nor prohibited by law (statute or case law) Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority." FSA intends to ensure that the rationale for all future changes is memorialized using thorough documentation and executed using applicable forms when required.

FSA acknowledges it did not document all changes that were made by mutual agreement of the parties during the Change Management process in strict compliance with the documentation requirements of the FAR concerning contract modifications. However, FSA believes that in all cases, these changes (and resultant modifications) were properly executed and are fully enforceable by law. In other words, FSA does not believe this finding has a legal consequence as the actions of the parties are binding on the parties. FSA views the absence of individually signed and executed SF-30 forms to address each Change Request to be a ministerial error and believes that in all 18 cases, all necessary documentation was obtained to effectuate these changes and bind both parties. While OGC agrees that the TIVAS Change Request process was not previously in strict compliance with FAR Part 43, OGC believes that these changes were fully executed and binding modifications to the TIVAS contracts, and that they are likely otherwise enforceable.

With regard to the OIG's finding concerning alleged improper execution of changes, FSA's Change Management process for the TIVAS contracts, and how these changes operate in relation to the requirements of the FAR, follows.

The TIVAS contracts include contract changes language at FAR 52.212-4(c) consistent with the language found in 52.243-1 (Changes – Fixed Price). This language allows the Contracting Officer to issue a unilateral written order, at any time, to make changes within the general scope of the contract without the prior agreement of the contractor. This type of modification is frequently referred to as a directive change. In the event that such change causes an increase in the cost of, or the time required for, performance of the contract, the Contracting Officer is to make an equitable adjustment to the contract price. (See FAR 52.243-1(b).) FAR Part 43 governs contract modifications. Pursuant to FAR 43.103(b) and FAR 43.201(a), Contracting Officers are permitted to make unilateral changes (by way of unilateral modifications) within the general scope of the contract. However, pursuant to FAR 43.103(a), a bilateral modification (i.e., signed by both parties) is required in cases where a change order results in an equitable adjustment in contract price or delivery terms. A bilateral modification is also used when the contracting parties agree to the terms of the modification prior to its issuance (a unilateral change order is not first issued). This type of modification is referred to as a supplemental agreement issued by mutual agreement of the parties. (See FAR 43.204(a), requiring both a change order and the documentation reflecting the equitable adjustment in administering the change) and FAR 43.103(a)(3).) In both cases, the typical change order is executed via the Standard Form 30 (SF-30). (See FAR 43.201(a).)

The 18 changes that are referenced in the OIG's draft report concern additional "enhancements" of requirements for the TIVAS contracts that were derived from FSA's Change Management process. FSA utilizes this Change Management process as a planning tool to contemplate potential future changes in system behavior. In order to compensate TIVAS contractors for increases in performance due to these enhancements (where applicable), and in recognition of the fact that enhancements are frequently time sensitive, often requiring implementation within 24 hours, FSA obligated

funds on the TIVAS contracts for future enhancements using an SF-30, and then employed external written communications that were approved by the Contracting Officer and the contractor to identify, price and initiate enhancements, enabling a timely accomplishment of mission-essential functionality. Each of the enhancements was tied back to the SF-30 that provided funding for the enhancement in a distinct Contract Line Item Number (CLIN). The prices and terms of the enhancements were agreed to in advance. Although the changes clause was available to the Contracting Officer to direct changes, a directive change was not employed to initiate the 18 changes in the OIG's draft report. Although not formally included in the contract, parties to the TIVAS contracts have seen and adhere to the Change Management process that was employed.

The Change Management process includes negotiation of contemplated enhancements with individual TIVAS contractors. Through these negotiations, FSA determines whether the proposed changes will result in an increase in costs and/or time of performance, and, if so, would finalize written documentation with the servicer implementing the modification and reflecting the price and/or delivery terms. The total value of the contract was not increased in any of the 18 cases referenced in the OIG's draft report as the funds for these changes were already obligated on the contract. According to FAR Part 43.103(a)(3), these changes, having been agreed to in advance, reflect other agreements of the parties modifying the terms of the contract, and require the agreement of both parties. The agreement of the parties is witnessed through written communications and actions of the parties in the 18 changes.

Since FSA previously completed an SF-30 form to add a CLIN for funds to address any impending Change Request, funds were immediately available to respond to and acquire essential functionality if the Change Request bore a cost to the government. This CLIN was available for use as long as the Contracting Officer and servicer coordinated and agreed to the terms of the changes in writing. These agreements are witnessed in supplemental/supporting documentation between the servicers and the Contracting Officer which tie back the change to the CLIN that provided the funding. In the event that the initial funding was expended, FSA established new CLINs using another SF-30 for additional Change Requests. Thus, FSA believes that notwithstanding the absence of SF-30's signed by both parties for each of the 18 Change Requests, such contract modifications were adequately documented and binding on both parties. FSA does not believe the absence of individual SF-30 forms for each change makes these changes non-binding or otherwise creates a risk of future disputes or requests for equitable adjustment.

FSA also respectfully disagrees with OIG's finding that FSA did not adequately document its decisions regarding whether the pricing and activities proposed by TIVAS contractors for these 18 Change Requests were within the original scope of the TIVAS contract.

FSA believes all enhancements performed by the TIVAS contractors were within the general scope of the TIVAS contracts. Courts and GAO have set forth the test for

determining whether a modification to a contract is beyond the original scope of that contract: i.e., where there is a material difference between the modified contract and the contract originally awarded. (See *Engineering & Prof'l Servs.*, B-289331, Jan. 28, 2001, 2002 CPD ¶ 24 at 4; see also *AT&T Commc'ns, Inc. v. Wiltel, Inc.*, 1 F.3d 1201, 1205 (Fed. Cir. 1993)). Evidence of a material difference is found by examining the changes in type of work, costs, and performance period between the contract as awarded and as modified. (See *Overseas Lease Group, Inc.*, B-402111, Jan. 19, 2010, 2010 CPD ¶ 34 at 3.) In this case, the changes in scope of work to the TIVAS contracts are all clearly related to the original scope of work contained within each contract as awarded. Additionally, since there is no express FAR provision requiring a single form of documentation to support a Contracting Officer's decision that a contemplated change is within the scope of the contract, FSA believes that the Change Management process itself satisfies any scope determination.

In addition, FSA believes that its explanation for these changes and the reason for and impact of the modifications to TIVAS contracts on the overall contract price were also sufficiently documented. FSA does not believe that additional SF-30's were required in each instance to document this rationale. The Change Requests were not part of the common pricing of the TIVAS contracts, and the enhancements were reviewed on a servicer-by-servicer basis. On a similar subject, OIG's draft report's makes reference to the FAR's requirement for an agency's documentation of its decisions regarding placement and pricing of task orders under multiple-award contracts (See FAR 16.505(b)(5)). FSA does not consider this pertinent as the Change Requests and modifications were required of each servicer and did not constitute separate task orders.

Recommendation 3.1: Complete an SF-30, including signatures from both parties for all previous and any future changes to the TIVAS contracts that result in additional cost to the Government or increased time to perform the work under the contract.

Response to Recommendation 3.1:

FSA understands OIG's rationale for Recommendation 3.1 and agrees that proper documentation for executed contract modifications is crucial. However, as discussed above, FSA believes that the OIG's issues surrounding its Change Management process have been satisfactorily addressed and that the concern for future TIVAS contractor claims is unlikely at this time. Additionally, FSA believes the completion of retroactive SF-30s for all previous changes to (and modifications of) the TIVAS contracts will result in a significant administrative burden on the Agency and will do little, if anything, to protect the government's interests. FSA understands the importance of outside parties being able to locate all documentation associated with a modification. FSA anticipates consolidating all written communications with the SF-30s that provide funding for the Change Requests for all prior and future enhancements. In addition, FSA anticipates issuing bilateral summary SF-30s in the future that physically tie change requests, by number, back to the SF-30 that provides funding.

Recommendation 3.2: Ensure all staff complies with the requirements in FAR Part 43, "Contract Modifications" for execution of changes to all contracts administered by FSA.

Response to Recommendation 3.2:

FSA concurs with this recommendation and will issue a memorandum from the Head of Contract Activity (HCA) reminding Contracting Officers of responsibilities associated with the requirements of the FAR and other regulation, policy, and guidance.

Recommendation 3.3: Document the rationale of its determinations on whether the prices and activities proposed by the TIVAS for previous and future changes to the contracts are within or outside the scope of the contracts and should be additional costs to the Government.

Response to Recommendation 3.3:

FSA agrees that the rationale for contract actions should be properly documented, and will continue to adequately document required decisions during contract award and administration.

Recommendation 3.4: Ensure that all decisions made by the cross-functional team regarding future changes to the terms or conditions of the TIVAS contracts are adequately documented in writing.

Response to Recommendation 3.4:

FSA agrees that proper documentation surrounding the cross-functional team's deliberations for recommending future TIVAS contract changes is necessary. In fact, as the OIG's draft report points out, the cross-functional team began documenting its meetings in January 2012.

Finding 4: FSA Used Improper Criteria in Its Monitoring of the TIVAS

Response to Finding 4:

FSA concurs with this finding in that improper references to the 2009 Common Manual were included in the Operations Servicers Monitoring Procedures.

Recommendation 4.1: Ensure that FSA applies proper monitoring criteria (for example, contract terms, regulations, and applicable sections of its revised Direct Loan Business Rules) when reviewing TIVAS performance and compliance with the contracts.

Response to Recommendation 4.1:

FSA concurs with this recommendation. FSA will revise Operating Servicers Monitoring Procedures by removing references to the Common Manual and Direct Loan Business Rules, neither of which are used to monitor the TIVAS, and making other revisions as appropriate. FSA has implemented a formal forum, the Servicing Monitoring Group (SMG) for the purpose of analyzing TIVAS performance in a complete, cohesive manner among all business units engaged in TIVAS oversight. This forum uses monitoring criteria as expressed in the revised TIVAS Contract Monitoring Plan, contract terms, and regulation.

Recommendation 4.2: Communicate the revised Direct Loan Business Rules to the TIVAS when they are completed.

Response to Recommendation 4.2:

FSA agrees that servicing requirements need to be clearly conveyed to the TIVAS; this is accomplished through the TIVAS requirement documents, which are routinely updated as appropriate to reflect statutory, regulatory, and business process changes. The Direct Loan Business Rules document was written specifically for the DLSS system, which was retired in 2011. This document has never applied to the TIVAS and is not the appropriate vehicle for conveying servicing requirements.

Thank you again for the opportunity to comment on your draft audit report.

Attachments

cc: W. Christian Vierling, Director, Student Financial Assistance Advisory Team
Jeffrey Morhardt, Office of the General Counsel
Brian Stanford, Office of the General Counsel

Enclosure 3: FSA Updated Comments to Recommendation 3.1¹⁰

For all previous TIVAS change requests:

- Consolidate all change requests and locatable supporting documentation (directions to the servicers, Contracting Officer authorization, correspondence, price reasonableness determinations, etc.) with the SF-30 that provided the funding for the change requests. For instance, if modification 100 provides funding for change requests 50-65, each change request and supporting documentation will be added sequentially behind the SF-30 that provided the funding for the change requests, such that all related documentation is grouped together in the contract file and available for review.

For future TIVAS change requests:

- Changes that are the result of technical direction by the Contracting Officer's Representative do not require SF-30s. FSA will issue SF-30s when the Contracting Officer determines one is required, consistent with FAR requirements. Such FAR requirements include directive changes (unilateral), and the resulting request for equitable adjustment (bilateral); and other changes that result in additional cost to the government or increased time to perform work under the contract (bilateral) that will be issued as summary modifications.
- In addition, FSA will establish a contract term that memorializes a procedure for issuing a summary modification of change requests that links the change requests to the modification that provides funding for the change request.
 - This bilateral modification will include terms similar to the following:
 1. "This contract includes a line item or multiple line items that provide funding for change requests. The parties to this contract agree that, in addition to any modifications that add line items to fund change requests, additional summary modifications will be issued to identify all change requests that link back, by change request number, to the modification that provided funds for those change requests. These modifications confer no additional rights to the contractor other than those identified in change request supplemental documentation between the Contracting Officer and servicer."
 - As an example, if modification 0025 provided funding for change requests, and change requests 16-30 used those funds, another modification will be issued, with language similar to the following:

"The purpose of this summary modification is to make the following changes:

- a. Incorporate into the contract the following Change Requests (CR) that were funded by modification 0025, as follows:

CR#	Date	Brief Description	Amount

- b. The total value of the contract remains unchanged.
- c. All other terms and conditions remain unchanged."

¹⁰ The updated comments were provided by FSA's director of the Strategic Initiatives Division on July 3, 2013.

- On June 22, 2012 the Head of the Contracting Activity issued a Memorandum reminding Acquisition Team Members of their responsibilities associated with ordering directive changes. This Memorandum specifically addresses the issuance of an SF-30 to direct changes and another SF-30 when a firm price and terms are established. FSA plans to further update this Memorandum to address the information contained in the preceding bullet that deals with supplemental agreements, with FSA-wide applicability.

Language similar to the foregoing language addresses the following concerns:

- * The ability to rapidly respond to change requests is available
- * The administrative burden of issuing an SF-30 for each change request is minimized in a summary SF-30
- * The contract term, issued bilaterally, identify the administrative nature of the additional SF-30s
- * The contract term provides for no additional rights as a result of the summary modification