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Assistant Secretary
U.S. Department of Education
Office of Elementary and Secondary Education
400 Maryland Avenue, S.W.
Washington, DC 20202-4300

Dear Ms. Delisle:

This final audit report, “U.S. Department of Education’s Implementation and Oversight of Approved Elementary and Secondary Education Act Flexibility Requests,” presents the results of our audit. The purpose of the audit was to (1) assess the U.S. Department of Education’s (Department) monitoring efforts of State educational agencies’ (SEA) compliance with approved Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (ESEA) flexibility requests, and (2) determine how the Department assessed the sufficiency and accuracy of information received from SEAs to validate implementation of the approved ESEA flexibility requests.¹ Our review covered the Department’s ESEA flexibility monitoring process from September 5, 2012, through April 14, 2014.

We performed our review at the Department’s Office of Student Achievement and School Accountability (SASA) within the Office of Elementary and Secondary Education (OESE). We also reviewed policies and procedures for ensuring the accuracy of ESEA flexibility data submitted to the Department for monitoring at nine SEAs—Arizona Department of Education, Georgia Department of Education, Kansas State Department of Education, Louisiana Department of Education, Minnesota Department of Education, Oregon Department of Education, South Carolina State Department of Education, South Dakota Department of Education, and Washington Office of the Superintendent of Public Instruction.

The Department established and implemented an extensive and effective process for assessing SEAs’ compliance with approved flexibility requests based on the information the SEAs submitted during monitoring. However, we found that the Department could improve its oversight of SEAs by taking steps to ensure the accuracy of the data submitted.

¹ “Approved ESEA flexibility requests” are also referred to as ESEA waivers.

BACKGROUND

Pursuant to Section 9401 of the ESEA, the Secretary may waive, with certain exceptions, any statutory or regulatory requirement of the ESEA for an SEA, Indian Tribe, local educational agency (LEA), or school through an LEA that received funds under an authorized ESEA program and requests a waiver. On September 23, 2011, using the authority granted in Section 9401, Secretary of Education Arne Duncan invited Chief State School Officers to request flexibility regarding specific requirements of the ESEA on behalf of their State, LEA, and schools. Secretary Duncan explained that flexibility would be offered because the ESEA inadvertently encouraged some States to set low academic standards, failed to recognize or reward growth in student learning, and did little to elevate the teaching profession or recognize the most effective teachers. Attachment 1 lists the ESEA requirements subject to flexibility.

To exercise flexibility, an SEA submitted an ESEA flexibility request to the Department identifying specific requirements to be waived in exchange for a rigorous and comprehensive State-developed plan for improving educational outcomes for all students, closing achievement gaps, increasing equity, and improving the quality of instruction. The request also included the SEA's plan for adhering to the approved request and a list of documents the SEA would provide as evidence to demonstrate that it adhered to its plan and followed the four required ESEA flexibility principles by the approved deadlines. The four required principles are (1) college and career-ready expectations for all students; (2) State-developed differentiated recognition, accountability, and support systems² for all LEAs in the State and for all Title I schools in the LEAs; (3) supporting effective instruction and leadership; and (4) reducing duplicative, unnecessary, and burdensome reporting requirements.

SEAs submitted ESEA flexibility requests to the Department in December 2011, March 2012, and October 2012. External peer and SASA office reviewers evaluated the requests and provided comments to OESE officials. OESE management considered the comments when providing recommendations to the Secretary, who was ultimately responsible for approving the requests. If the Department did not grant a request for flexibility, the SASA office and OESE provided feedback to the SEA about the components that needed additional development for approval.

As of May 2014, 45 SEAs (43 States, the District of Columbia, and Puerto Rico) had submitted flexibility requests and received approval. In addition, three SEAs (Iowa, Wyoming, and the Bureau of Indian Education) had applications under review but had not been granted waivers. Five SEAs either did not apply or withdrew their requests—California,³ Montana, and Nebraska did not apply; North Dakota and Vermont withdrew their requests.

² Differentiated recognition is a system each SEA developed to identify its focus schools, priority schools, and other Title I schools. Focus schools are Title I schools with the largest within-school gaps between the highest-achieving subgroup and the lowest-achieving subgroup; the largest within-school gaps in graduation rates; a subgroup with low achievement; or low graduation rates. Priority schools must be among the lowest 5 percent of Title I schools in the State based on both achievement and lack of progress; a participating Title I or eligible high school with a graduation rate less than 60 percent; or a school that currently receives School Improvement Grants.

³ California did not apply for ESEA flexibility. However, according to the Department's response to the draft report, eight LEAs in the California Office to Reform Education consortium of school districts that submitted bundled requests were granted waivers under a separate process that included concepts parallel to ESEA flexibility. The SEA reviewed the requests prior to the Department's approval.

To monitor SEAs with approved ESEA flexibility requests, the Department developed a monitoring process designed to identify areas in which SEAs need assistance and support to meet their goals and address the Department’s responsibilities for continued fiscal and programmatic oversight. Table 1 describes the Department’s monitoring process, which was divided into three components.

Table 1: Department’s Monitoring of SEAs With Approved ESEA Flexibility Requests

Monitoring Component	Purpose of Monitoring Component	Method of Monitoring	Planned Dates for Monitoring
Part A	To gain a deeper understanding of each SEA’s goals and approach to implementing ESEA flexibility and ensure that the SEA had the critical elements of ESEA flexibility in place to begin implementation of its plan in the 2012–2013 school year	Desk Monitoring	Summer/Fall 2012
Part B	To take a deeper look at the SEA’s early implementation of ESEA flexibility and other Title I requirements that were not waived, as well as follow up on any outstanding issues or concerns from Part A	Desk Monitoring and On-Site Monitoring	Winter 2013
Part C	To look at each SEA’s ongoing implementation of its approved ESEA flexibility request and other Title I requirements that were not waived	Desk Monitoring, On-Site Monitoring, and Progress Checks	Fall/Winter 2014

As of May 2014, the Department had performed Part A monitoring on 35 SEAs with approved ESEA flexibility requests and Part B monitoring on 34 SEAs. In its response to the draft report, the Department stated that it no longer planned to perform Part C monitoring due to office and program restructuring, but planned to continue comprehensive monitoring as part of its overall performance management plan.

AUDIT RESULTS

The Department established and implemented an extensive and effective process for assessing SEAs’ compliance with approved flexibility requests based on the information the SEAs submitted during monitoring. Specifically, the Department followed established protocols, assessed sufficiency of information, and followed up on problem areas. Through desk reviews and on-site monitoring, the Department identified compliance issues with all nine SEAs we reviewed. The Department also provided technical support to the SEAs and provided input to the Office of Management and Budget (OMB) to update the OMB Circular A-133 Compliance Supplement for 2013 to include guidance to external auditors for ensuring compliance with approved ESEA flexibility requests. The Department’s monitoring process provides reasonable assurance that the Department has sufficient information to properly assess SEA compliance with waiver provisions.

However, we found that the Department could improve its oversight of SEAs by taking steps to ensure the accuracy of the data submitted. Specifically, the Department relied on SEAs to ensure the accuracy of the information but did not verify that the SEAs had policies and procedures to ensure accuracy. In addition, the Department did not require SEAs to provide an assurance statement covering the accuracy of the data submitted and did not have procedures requiring SEAs to disclose any limitations of the information, data, or validation process. Although the Department lacked procedures for verifying accuracy, all nine SEAs we reviewed followed their respective State policies and procedures for ensuring the accuracy of the data submitted to the Department. Since we did not review all SEAs, there is a risk that the remaining SEAs may not be taking steps to ensure data accuracy.

In its response to the draft audit report, the Department stated that it appreciated our recommendations and would integrate them into its continuous improvement process. The Department concurred with Finding No.1 and proposed corrective action to address Recommendation 1.1. Although the Department did not state whether it concurred with Finding No. 2, it proposed corrective action to address Recommendation 2.1 and both concurred with and proposed corrective action to address Recommendation 2.2. The Department's comments are summarized at the end of each finding. The Department also provided technical comments that we considered and addressed, as appropriate, in the body of the report. The full text of the Department's comments on the draft report is included as Attachment 3 to the report.

FINDING No. 1 – The Department Established and Implemented an Extensive and Effective Monitoring Process

We found that the Department established and implemented an extensive and effective monitoring process for assessing SEAs' compliance with approved ESEA flexibility requests. Specifically, the Department conducted desk and on-site reviews, provided technical support to the SEAs, and provided input to OMB to update the OMB Circular A-133 Compliance Supplement for 2013 to include guidance to external auditors for ensuring compliance with approved ESEA flexibility requests.

Desk and On-site Monitoring Reviews

The Department's monitoring reviews obtain sufficient information to reasonably assess SEA compliance with waiver provisions. Specifically, the Department (1) developed monitoring protocols sufficient to determine whether the SEAs complied with their approved flexibility requests; (2) followed the protocols, which required the SEAs to provide documentation to support their responses to the protocol questions; (3) assessed the sufficiency of SEA documentation to validate compliance; (4) documented the results of the reviews and identified compliance issues through Next Steps;⁴ (5) followed up on the compliance issues; and (6) performed an adequate number of reviews.

We found that the Department's monitoring protocols included questions that reflected the established purpose of Part A and Part B monitoring. In addition, we found that the protocols contained sufficient steps for the Department to determine whether the SEAs had adequately complied with approved ESEA flexibility requests and associated plans. Specifically, the questions addressed the SEA's progress in

⁴ The Department included "Next Steps" in both Part A and Part B monitoring reports to identify SEAs' ESEA flexibility compliance issues. In its Part B monitoring efforts, the Department followed up on the Next Steps identified in the Part A monitoring reports to ensure that the SEAs implemented the components of ESEA flexibility consistent with the principles and timelines in the ESEA flexibility guidance and the SEAs' approved requests.

implementing the first three principles of ESEA flexibility. For example, one principle of ESEA flexibility is supporting effective instruction and leadership. In the Part B protocol, we found questions asking the status of the SEAs' efforts in developing, adopting, piloting, and implementing teacher evaluation and support systems.

- For the nine SEAs we reviewed, we found that the Department required and obtained a response to every applicable question in the Part A and Part B protocols or issued a Next Step when SEAs did not provide the required documentation.⁵ For example, one protocol question required SEAs to provide evidence of their progress in issuing State report cards. However, one of the SEAs we reviewed for Part B monitoring did not provide the required documentation and the Department issued a Next Step.
- For the Part A and Part B protocol questions we reviewed, we determined that Next Steps were included in the monitoring reports in cases where the Department determined that there was not sufficient documentation. The Department provided examples of documentation SEAs could submit that would be sufficient to demonstrate implementation of ESEA flexibility requirements consistent with approved requests. For example, in the Part A monitoring protocol, the Department suggested that the SEAs provide the final list of reward, priority, and focus schools to support that the SEAs had identified these schools in accordance with the ESEA flexibility request. In the Part B monitoring protocol, the Department suggested that the SEAs provide documentation such as training activities, guidance to LEAs and schools, a consortia letter or memorandum of understanding, copies of legislation, or State Board of Education minutes to support the SEAs' explanation of the progress made in adopting English language proficiency standards. If the SEA did not receive a Next Step for any question reviewed, we confirmed that it provided the Department information consistent with the suggested documentation.

In addition, we found that the Department used the information the SEAs submitted for ESEA flexibility monitoring to validate compliance with approved ESEA flexibility requests. Through team discussions, the Department examined the information to determine whether the SEAs met the requirements outlined in the approved ESEA flexibility requests. In addition, the Department held debriefings every Thursday during which the program monitors explained to other Department staff the rationale for determining whether the SEAs were meeting expectations for each ESEA flexibility requirement.

- For the nine SEAs we reviewed, we found that the Department documented the results of the reviews. In addition, the Department identified compliance issues (through Next Steps) for all nine of the SEAs. Specifically, the Department's Part A and Part B⁶ monitoring reports included its validation decisions for all ESEA flexibility requirements and its rationale for the identified compliance issues. For example, for one SEA, the Department's monitoring team was not confident that the interventions in the SEA's focus schools were aligned with the reason why the school was identified as a focus school. The Department included a Next Step in the monitoring

⁵ For 9 of 16 questions in the Part A protocol, we tested the Department's assessment of the sufficiency of documentation. We performed the same test for 31 to 53 of 108 questions in the Part B protocol. The number of questions verified on the Part B protocol varied depending on whether the Department selected the SEA to receive desk or on-site monitoring. On-site monitoring included additional questions for the SEAs. See the "Objectives, Scope, and Methodology" section for more details.

⁶ For Part B monitoring, the Department created after action reports, which were internal documents that contained the monitoring teams' validation decisions and rationale that were subsequently included in the Part B monitoring reports.

report requiring the SEA to create and submit a plan to align its interventions with the requirements of its ESEA flexibility request.

- For the four SEAs we reviewed for Part B monitoring, we found that the Department followed up to ensure that the SEAs addressed the issues identified in Part A monitoring, holding them accountable for not being in compliance with the approved ESEA flexibility requests. For example, for one of the SEAs we reviewed, the Department determined that the SEA's priority schools would not implement interventions aligned with required turnaround principles in the appropriate time frame. The SEA's Part A monitoring report included a Next Step for it to submit a plan within 60 days that detailed how it would comply with the requirement. During Part B monitoring, the Department followed up on this issue and determined that the SEA had aligned its interventions as required.
- We found that the Department performed an adequate number of ESEA flexibility monitoring reviews. Out of the 43 SEAs with approved ESEA flexibility requests as of May 2014, the Department performed Part A monitoring on 35 SEAs and Part B monitoring on 34 SEAs.

Technical Support to SEAs

The Department also provided technical support to SEAs with approved ESEA flexibility requests. Specifically, the Department hosted a forum in 2011 that provided SEAs with an overview of ESEA flexibility and an opportunity to learn from other SEAs and national experts about approaches to key policy areas addressed in ESEA flexibility. Also, from 2011 through 2014, the Department provided numerous general technical assistance webinars pertaining to various aspects of ESEA flexibility. For example, in November 2011, the Department held a webinar discussion on how reward, priority, and focus schools could be incorporated into SEA systems of differentiated recognition, accountability, and support.

In addition to providing general technical assistance, the Department provided technical assistance to individual SEAs. For example, in 2013, the Department held a workshop to provide guidance and technical assistance to selected SEAs to help them design and implement comprehensive systems of evaluation and support. The Department also provided technical assistance to individual SEAs during Part B monitoring.

The Department's monitoring process was enhanced by its collaborative efforts with other offices within the Department and the training it provided to program monitors. For example, in developing the ESEA flexibility monitoring process, the Department involved staff from OESE; the Office of Planning, Evaluation, and Policy Development; the Risk Management Service; and the Council of Chief State School Officers. In addition, SASA officials provided program monitors with continuous direction and support in carrying out their monitoring responsibilities, including at least one mandatory training class, several other training classes on performing monitoring, and a step-by-step monitoring guide.

Update of OMB Circular A-133

The Department provided input to OMB to update Part 4 of the OMB Circular A-133 Compliance Supplement for 2013 to include areas pertaining to ESEA flexibility. The update covers areas that include the awarding of School Improvement Grants funds to priority schools; transferring Title II, Part A funds;

earmarking school improvement funds;⁷ and determining Title I, Part A eligibility for schools. The Compliance Supplement includes suggested audit procedures the auditor can choose to perform and apply ESEA flexibility requirements instead of the regular program requirements. The Compliance Supplement was not available before the Department performed Part A and Part B monitoring. During our review, the Department was in the process of planning for future ESEA flexibility monitoring but had not finalized its plans. For its future monitoring efforts, A-133 audit reports should be available for the Department to use to identify and follow up on ESEA flexibility issues.

Recommendation

We recommend that the Assistant Secretary for OESE encourage the SASA office to—

- 1.1 Review SEAs' A-133 audit reports to identify any ESEA flexibility issues to follow up on during future ESEA flexibility monitoring efforts.

Department Comments

The Department concurred with the finding and the recommendation and stated that, in the next ESEA flexibility monitoring cycle, it will include a requirement for the assigned program officer to review the SEA's most recent A-133 audit to identify any issues potentially related to the implementation of the SEA's flexibility request.

OIG Response

The Department's proposed corrective action sufficiently addresses the finding and recommendation.

FINDING No. 2- The Department Can Improve Oversight to Ensure the Accuracy of the SEA Information Submitted

Although the Department obtained sufficient documentation to assess SEA compliance with approved flexibility requests, it did not assess the accuracy of the information.⁸ The Department relied on the SEAs to ensure the accuracy of the information submitted but did not obtain information on what the SEAs did to validate data reliability. In addition, it did not require the SEAs to provide assurance that the information submitted was accurate, reliable, and complete. Further, the Department did not require the SEAs to disclose any limitations of the information, data, or validation process.

Although SEAs were not required to provide the Department an assurance of accuracy for submitted information, the majority of the SEA information provided for Part A and Part B monitoring was actual documentation that demonstrated the State's progress. For example, States were required to submit progress in transitioning to high-quality assessments as evidence that they planned to develop and administer high-quality assessments. At the time of the first two monitoring efforts, SEAs were either developing policies to implement provisions in approved flexibility requests or were in the first stages of initiating procedures. As a result, much of the information reported back for monitoring was evidence of

⁷ Earmarking refers to an SEA's flexibility to allocate school improvement funds to an LEA to serve priority schools or focus schools.

⁸ We did not assess whether the SEA documentation was sufficient; we assessed only whether the Department followed its policies and procedures for determining that the documentation was sufficient.

the SEA's approach and early implementation. However, future monitoring efforts will rely to a greater extent on submitted data to assess the SEA's progress and accomplishments. Consequently, data accuracy will likely have more impact on the Department's future assessments of SEA progress.

For data submitted for Parts A or B monitoring, all nine SEAs we reviewed followed their respective State-established policies and procedures to ensure data accuracy. In our review of documents supporting selected protocol questions, we found that the nine SEAs followed the established policies and procedures. For each protocol question selected, the SEA officials explained the SEA's policies, procedures, and process for ensuring the accuracy of the data used to create the documents and the sources of the data. Also, each SEA provided documentation to support compliance with its established policies and procedures over data reliability. For example, in support of a document on allocations provided to the Department for Part B monitoring, an SEA team leader explained that the SEA used State assessments, enrollment data, and graduation data to grade each school. The SEA gave each school a grade from A to F. The schools that received a grade D or F became the "Other Title I Schools" for ESEA flexibility purposes. To allocate funds to D or F schools, the SEA used poverty per-pupil expenditure data.⁹ The SEA team leader provided the poverty per-pupil expenditure data used to support the SEA's allocation of Title I funds, as well as the supporting documentation used to validate the accuracy of the State assessments, enrollment data, and graduation data used to grade each school.

Although we did not identify issues in the nine SEAs we reviewed, we did not review the remaining 36 SEAs and 8 LEAs with approved ESEA flexibility requests. Because the Department relies on the SEAs to provide reliable data and does not determine whether SEAs have and follow policies and procedures, it cannot be sure whether or not SEAs are providing accurate information.

The Government Performance and Results Act of 1993 (GPRA), as amended by the GPRA Modernization Act of 2010, requires agencies to clarify their missions, set strategic and annual performance goals, and measure and report on performance towards achieving those goals in their Annual Performance Report. The Department uses the ESEA data from monitoring reports in its Annual Performance Report to discuss the Department's established ESEA GPRA indicators. In its Annual Performance Plan for fiscal year 2015, the Department included GPRA indicators related to ESEA flexibility implementation, with ESEA flexibility monitoring listed as a source for reporting the related performance data. In addition, when the SEAs first applied for ESEA funds under the current authorization, Section 9304(a)(6)(A) required assurance that they would submit reports to the Secretary as necessary to enable him to perform his duties under such program.

According to OMB Circular No. A-11, "Agencies should have in place verification and validation techniques that will ensure the completeness and reliability of all performance measurement data contained in their Annual Performance Plans..." The circular also directs agencies to have a data validation plan for performance reporting and to include an assessment of the reliability and completeness of the performance data included in the plan. Further, the circular requires the agency to describe how it ensures the accuracy and reliability of the data it uses to measure progress in meeting performance goals.

The Department needs accurate information from SEAs to assess compliance with approved flexibility requests that allow the SEAs to waive strict requirements of ESEA. The approved requests provide SEAs flexibility in achieving the overall goals of ESEA, and each SEA must demonstrate progress in implementing its plan to achieve those goals in order to receive continued waivers for those requirements.

⁹ Poverty per-pupil expenditure data is determined by the number of students receiving free or reduced lunch.

The Department relies on SEAs to ensure accuracy; however, it has neither assessed the SEAs' processes for doing so nor required SEAs to certify the accuracy of submitted information. If the Department does not oversee the accuracy, reliability, and completeness of the SEAs' reported data, it risks using inaccurate, unreliable, or incomplete information to meet its program obligations and to report on ESEA GPRA performance in its Annual Performance Report.

Recommendations

We recommend that the Assistant Secretary for OESE require the SASA office to—

- 2.1 Include in its monitoring reviews a step to determine how SEAs with approved ESEA flexibility requests ensure the accuracy of the information they submit to the Department for monitoring so the Department can determine the adequacy of their policies and procedures and whether the SEAs are following them.
- 2.2 Require all SEAs to provide certifications that the information they submit is accurate, reliable, and complete and disclose any limitations of the information, data, or validation process, especially for information used for GPRA reporting.

Department Comments

The Department did not state whether it concurred with Finding No. 2 and Recommendation 2.1. According to the Department's response, it expects SEAs to submit accurate data to support all monitoring activities and added that our report noted that all nine States reviewed followed State policies and procedures for ensuring the accuracy of the data submitted. However, the Department stated that it will include a step in its monitoring reviews to determine how an SEA ensures the accuracy of the data submitted.

The Department concurred with Recommendation 2.2 and stated that in each SEA request to renew ESEA flexibility, due to the Department by the end of March 2015, the SEA will be required to assure that it will provide to the Department, in a timely manner, all required reports, data, and evidence of the SEA's progress in implementing the plans detailed in the approved flexibility request.¹⁰ The Department will also require the SEA to ensure that all such reports, data, and evidence are accurate, reliable, and complete and to disclose any issues related to the accuracy, reliability, or completeness of its reports, data, or evidence.¹¹

OIG Response

The Department's proposed corrective actions sufficiently address the finding and recommendations.

¹⁰ In November 2014, the Department invited each SEA with an approved request that will expire at the end of the 2014–2015 school year to request a 3-year or, in some cases, 4-year renewal of ESEA flexibility.

¹¹ In response to a related audit regarding the Department and SEAs' internal controls over assessment results, the Department stated that it is also requiring SEAs to respond to all flagged comments in the data collections related to academic assessments and accountability, and that it is revising the Consolidated State Performance Report (CSPR) to include an annual State certification that the State has a system of internal controls for reviewing assessment data. The CSPR is a required annual report that each State, the District of Columbia, and Puerto Rico has to submit to the Department. The CSPR collects information related to State activities and outcomes of specific ESEA programs, which the Department uses to monitor States' progress in implementing ESEA and to identify technical assistance needs and program management and policy needs.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to (1) assess the Department's monitoring efforts of SEAs' compliance with approved ESEA flexibility requests and (2) determine how the Department assessed the sufficiency and accuracy of information received from SEAs to validate implementation of the approved ESEA flexibility requests. Our review covered the Department's ESEA flexibility monitoring process from September 5, 2012, through April 14, 2014.¹²

We performed our on-site review at the Department's SASA office in Washington, D.C., from September 23, 2013, through September 27, 2013. In addition, between February 28, 2014, and May 8, 2014, we reviewed policies and procedures for ensuring the accuracy of ESEA flexibility data submitted to the Department for monitoring at nine SEAs—Arizona Department of Education, Georgia Department of Education, Kansas State Department of Education, Louisiana Department of Education, Minnesota Department of Education, Oregon Department of Education, South Carolina State Department of Education, South Dakota Department of Education, and Washington Office of the Superintendent of Public Instruction. We held our exit conference with the Department's SASA office on June 27, 2014.

To gain an understanding of ESEA flexibility, we reviewed background information related to ESEA flexibility requirements, flexibility requests, and applicable laws and guidance. We also reviewed information on ESEA programs affected by ESEA flexibility and funding information for those programs. We obtained background information on the Department's SASA office, which oversees ESEA flexibility, and reviewed ESEA flexibility monitoring reports the SASA office issued to SEAs with approved ESEA flexibility requests.

We interviewed key officials and program specialists in the Department's SASA office and the Office of Planning, Evaluation, and Policy Development, and reviewed related documentation to gain an understanding of the following:

- policies and procedures over the Department's ESEA flexibility monitoring,
- assessments of the accuracy and sufficiency of SEA submitted information,
- training to the individuals conducting the monitoring, and
- technical support provided to SEAs with approved ESEA flexibility requests.

In addition to reviewing SEA policies and procedures in the nine States in our review, we interviewed key officials from those SEAs to determine how they ensured the accuracy of the information submitted to the Department for monitoring. In addition, we obtained the supporting information to assess whether or not SEAs followed their policies and procedures.

¹²The Department conducted the first Part A monitoring on September 5, 2012, for the nine SEAs we reviewed.

SEA Selection

In selecting the 9 SEAs included in our review, we created a risk matrix with a universe of the 35 SEAs that had an approved ESEA flexibility request in December 2011 or March 2012 (the first two opportunities to apply) and had received Part A monitoring before September 13, 2013. We considered various factors, such as whether the SEA (1) received Part A monitoring only or had also received Part B monitoring; (2) provided limited documentation for monitoring based on the Department's determination; and (3) was on the Department's high-risk list.

We judgmentally selected about 25 percent of the universe of 35 to review, resulting in 9 SEAs. Those nine SEAs included the five that provided limited documentation for monitoring or were placed on the high-risk list by the Department, and four others from the remaining SEAs with approved flexibility requests. The results from the SEAs included in our review cannot be projected across all SEAs or LEAs.

Department's Monitoring Assessment

We performed an assessment of the Department's on-site and desk monitoring by performing seven tests of its Part A and Part B monitoring efforts for the nine SEAs included in our review. We obtained the following data and information to use in our testing:

- the Department's Part A and Part B monitoring protocols,
- the supporting documentation the nine SEAs submitted to the Department for monitoring,
- the nine SEAs' monitoring reports,
- the four SEAs' Part B after action reports,
- the nine SEAs' approved ESEA flexibility requests, and
- the Department's Part B meeting minutes.

Table 2 describes tests performed, documentation and information reviewed, and the evaluation methodology used to assess the Department's monitoring efforts.

Table 2: Tests Performed on the Department’s Monitoring Efforts

Tests Performed	Documentation and Information Reviewed	Evaluation Methodology
Were Department goals reflected in the monitoring protocol questions?	<ul style="list-style-type: none"> • Department’s Part A and B monitoring protocols 	We reviewed the monitoring protocols to determine whether the questions in the protocols related to the goals of the monitoring.
Were monitoring protocol questions sufficient to help determine SEAs’ compliance with approved ESEA flexibility requests?	<ul style="list-style-type: none"> • Nine SEAs’ ESEA flexibility requests • Department’s Part A and B monitoring protocols 	We reviewed the requirements in the SEAs’ ESEA flexibility requests and determined whether questions in the protocols would provide the Department with enough evidence to determine whether the SEAs were in compliance with approved ESEA flexibility requests.
Did the Department follow the monitoring protocols?	<ul style="list-style-type: none"> • Department’s Part A and B monitoring protocols • Documentation submitted by the nine SEAs 	We reviewed the questions in the monitoring protocols and verified whether the SEAs provided a response for each applicable question.
Did the Department document results from on-site monitoring and desk reviews?	<ul style="list-style-type: none"> • Part A and Part B monitoring reports • Part B after action reports 	We reviewed the reports and verified whether the Department included the results of the reviews.
Did the Department monitor a sufficient number of SEAs across all SEAs with approved requests?	<ul style="list-style-type: none"> • List of SEAs with approved ESEA flexibility requests (December 2011 and March 2012) • Part A and Part B monitoring reports 	We compared the two lists to determine the number of SEAs with approved requests that had received Part A and Part B monitoring.
Did the Department follow its established criteria, policies, and procedures for assessing the sufficiency of the information the SEAs submitted for monitoring?	<ul style="list-style-type: none"> • Department’s Part A and B monitoring protocols • Documentation submitted by the nine SEAs 	We verified whether the SEAs provided evidence that was consistent with the examples listed in the monitoring protocols.
Did the Department follow its established policies and procedures for using the SEA-submitted information to validate the SEAs’ compliance with approved ESEA flexibility requests?	<ul style="list-style-type: none"> • Documentation submitted by the nine SEAs • Department’s Part B meeting minutes • Part B after action reports • Part A and Part B monitoring reports 	We verified whether the SEAs’ monitoring documents supported the validation decisions and rationales included in the SEAs’ monitoring reports, after action reports, and the Department’s ESEA flexibility meeting minutes.

Because of the extensive number of questions in the monitoring protocols, we did not review all the questions and related documentation for the nine SEAs included in our review. Instead, we selected a sample of questions from each of the Part A and Part B monitoring protocols to determine whether the

Department followed its established criteria, policies, and procedures for assessing the sufficiency of the information submitted and for using the information to validate the SEAs' compliance with approved ESEA flexibility requests. In selecting our sample of questions, we focused on the questions pertaining to areas of ESEA flexibility that had related Next Steps in the nine SEAs' Part A and Part B monitoring reports. For Part A monitoring, we selected 9 out of 16 questions¹³ from the Part A monitoring protocol. For Part B, we selected ESEA flexibility elements instead of questions because the SEAs received different questions based on whether they received a desk or on-site review. The Part B monitoring protocol is arranged by ESEA flexibility elements. Desk reviews include foundational and technical assistance questions for each element and an additional comprehensive set of questions for the SEA systems and processes element. On-site reviews include foundational and technical assistance questions for each element, an additional comprehensive set of questions for the SEA systems and processes element, and additional comprehensive questions for three other ESEA flexibility elements in the protocol. The Part B protocol contained a total of 18 elements, which included a total of 108 questions. We selected 7 out of 18 elements, which included 31 to 53 questions, depending on the type of review the SEA received.

To determine whether the nine SEAs included in our review had policies and procedures for ensuring the accuracy of the information submitted to the Department for monitoring, we started with a universe containing all the questions we selected for our sufficiency tests, as described in the paragraph above. However, not all of the questions required responses that could be tested for accuracy given the status of ESEA flexibility implementation at the SEAs. For example, some questions required that the SEA submit evidence of its implementation plans and procedures. In which case, the SEA either submitted its plans and procedures or received a "Next Step" in its monitoring report. We selected all the questions that we could test for accuracy, which resulted in six questions from Part A and five from Part B.¹⁴ For the selected questions, we asked the SEAs to explain their policies, procedures, and process for ensuring the accuracy of the data used to create the documents, and the sources of the data. We also asked the SEAs to submit documentation to support the policies and procedures described in our interviews with them.

Our review of the monitoring protocol was limited to the subsets of judgmentally selected questions we described previously and only for the SEAs included in our review. As such, we did not review all of the monitoring protocol questions or all SEAs with approved ESEA flexibility requests. Therefore, our results from the protocol reviews are applicable only to the questions and the SEAs included in our review.

Use of computer-processed data for the audit was limited to documentation provided by the nine SEAs we reviewed as evidence that they were meeting ESEA flexibility requirements. We used data contained in these reports to assess the Department's monitoring controls. As such, we did not assess the reliability of the computer-processed data.

Our review of internal controls is reflected in our test of the Department's Part A and Part B monitoring and our interviews with the nine SEAs regarding their controls for ensuring the accuracy of documents sent to the Department for monitoring. We concluded that the Department does not have adequate controls in place to ensure the accuracy of the information SEAs submit during ESEA flexibility

¹³ The protocol had 22 questions, but we did not include 6 in our universe because 5 of the questions did not appear in the monitoring reports because they were framing questions, and the purpose of the sixth question was to provide outreach to the SEAs.

¹⁴ For the questions selected for Part B accuracy testing, not all of the questions selected resulted in the SEAs providing documentation that we could test for accuracy.

monitoring. In addition, we concluded that the nine SEAs we reviewed followed State-established policies and procedures to ensure the accuracy of the documentation we selected for review.

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.

ADMINISTRATIVE MATTERS

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. The Department's policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 calendar 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. An electronic copy of this report has been provided to your Audit Liaison Officer.

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

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 Education officials.

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

We appreciate the cooperation given us during this review. If you have any questions, please call Denise Wempe at (404) 974-9416.

Sincerely,

/s/

Patrick J. Howard
Assistant Inspector General for Audit

Attachments

Attachment 1: ESEA Requirements Subject to Flexibility

ESEA Requirements	Approved Flexibility
Determining Adequate Yearly Progress (AYP)	SEAs are provided the flexibility to develop new ambitious but achievable annual measurable objectives in reading/language arts and mathematics.
School Improvement Requirements	LEAs are no longer required to identify for improvement, corrective action, or restructuring their Title I schools that fail, for two consecutive years or more, to make AYP. Currently required improvement actions are required.
LEA Improvement Requirements	SEAs are no longer required to identify for improvement or corrective action an LEA that, for two consecutive years or more, fails to make AYP. Currently required improvement actions are no longer required.
Rural LEAs	LEAs are provided the flexibility to use Small, Rural School Achievement Program funds or Rural and Low-Income School Program funds for any authorized purpose, regardless of the LEA's AYP status.
Schoolwide Programs	LEAs are provided the flexibility to operate a schoolwide program in a Title I school that does not meet the 40 percent poverty threshold, under certain conditions.
Support School Improvement	SEAs are provided the flexibility to allocate 1003(a) funds to an LEA to serve any priority or focus school if the SEA determines such schools are most in need of additional support.
Reward Schools	SEAs are provided the flexibility to use 1117(c)(2)(A) funds to provide financial rewards to any reward school if the SEA determines such schools are most appropriate for financial rewards.
Highly Qualified Teacher Improvement Plans	An LEA that fails to meet Highly Qualified Teacher targets no longer has to develop an improvement plan and has flexibility in how to use Title I and Title II funds.
Transfer of Certain Funds	SEAs and their LEAs have flexibility to transfer up to 100 percent of funds under ESEA section 6123 among those programs and into Title I, Part A.
School Improvement Grants Funds to Support Priority Schools	SEAs have the flexibility to award 1003(g) funds to an LEA to implement one of the School Improvement Grants models in any priority school.
Use of Twenty-First Century Community Learning Centers Program Funds	SEAs have the flexibility to allow community learning centers that receive funds under the Twenty-First Century Community Learning Centers program to use funds to support expanded learning time during the school day and activities during nonschool hours or periods when school is not in session
Making AYP Determinations	SEAs and LEAs are no longer required to comply with 1116(a)(1)(A)-(B) and 1116(c)(1)(A) requirements to make AYP determinations for LEAs and schools. Instead, SEAs and their LEAs must report on their performance against the annual measurable objectives for 1111(b)(2)(C)(v) identified subgroups and use performance against the annual measurable objectives to support continuous improvement in Title I schools.
Within-District Title I Allocations	LEAs have the flexibility to serve a Title I-eligible high school with a graduation rate below 60 percent for identified priority schools even if that school does not rank sufficiently high to be served based on the school's poverty rate.

Attachment 2: Acronyms, Abbreviations, and Short Forms Used in This Report

AYP	Adequate Yearly Progress
CAP	Corrective Action Plan
CSPR	Consolidated State Performance Report
Department	U.S. Department of Education
ESEA	Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001
GPRA	Government Performance and Results Act of 1993, as amended by the GPRA Modernization Act of 2010
LEA	Local Educational Agency
OESE	Office of Elementary and Secondary Education
OMB	Office of Management and Budget
SASA	Student Achievement and School Accountability
SEA	State Educational Agency
Title I	Title I, Part A of the ESEA

Attachment 3: Department's Comments on the Draft Report

TO: Patrick J. Howard
Assistant Inspector General for Audit

FROM: Deborah S. Delisle
Assistant Secretary for Elementary and Secondary Education

SUBJECT: Draft Audit Report "*U.S. Department of Education's Implementation and Oversight of Approved Elementary and Secondary Education Act Flexibility Requests*" Control Number ED-OIG/A04N0012

The Office of Elementary and Secondary Education (OESE) appreciates the opportunity to provide written comments on the Draft Audit Report, "*U.S. Department of Education's Implementation and Oversight of Approved Elementary and Secondary Education Act Flexibility Requests*," ED-OIG/A04N0012, dated October 9, 2014 (Draft Audit Report).

ESEA flexibility is a relatively new initiative and an evolving process for the U.S. Department of Education (ED). Accordingly, we appreciate the recommendations included in the draft report and will integrate them into our continuous improvement process.

OESE's responses and our proposed Corrective Action Plan are detailed below, organized by finding and recommendation. Any subsequent questions, comments, or concerns should be addressed to:

Deborah S. Delisle
Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW, Suite 3W315
Washington, DC 20202

Please note that ED's Office of the General Counsel has reviewed OESE's response and concurs in it.

FINDING NO.1 - The Department Established and Implemented an Extensive and Effective Monitoring Process

Recommendation 1.1- Review State Educational Agencies" (SEAs) A-133 audit reports to identify any ESEA flexibility issues to follow up on during future ESEA flexibility monitoring efforts.

Comments: OESE agrees with Finding 1 and with Recommendation 1.1.

Proposed Corrective Action: OESE will build into the next monitoring cycle for ESEA flexibility a requirement that the Program Officer assigned to each State review the SEA's most-recent A-133 audit to identify any issues potentially related to the implementation of the SEA's ESEA flexibility request.

FINDING NO.2 - The Department Can Improve Oversight to Ensure the Accuracy of the SEA Information Submitted

Recommendation 2.1- Include in its monitoring reviews a step to determine how SEAs with approved ESEA flexibility requests ensure the accuracy of the information they submit to ED for monitoring so ED can determine the adequacy of their policies and procedures and whether the SEAs are following them.

Comments: As noted in the OIG draft report, much of the information collected for Part A and Part B monitoring was evidence of an SEA's approach and early implementation, rather than data demonstrating progress and accomplishments. The majority of information provided to ED to support implementation of ESEA flexibility was descriptive in nature. OESE presumes that an SEA submits accurate data to support all monitoring activities and, as was noted in the OIG draft report, all nine States reviewed by the OIG followed their respective State policies and procedures for ensuring the accuracy of the data submitted to ED.

Proposed Corrective Action: OESE will include in its monitoring process a step to determine how an SEA ensures the accuracy of the data it submits to ED.

In addition to this corrective action, please be aware that, in response to a related internal audit regarding ED and SEA internal controls over assessment results, OESE will (1) require SEAs to respond to all flagged comments in the Consolidated State Performance Report (CSPR) and *EDFacts* data collections related to academic assessments and accountability and (2) revise the CSPR to include an annual State certification that the State has in place a system of internal controls for reviewing assessment data.

Recommendation 2.2 - Require all SEAs to provide certifications that the information they submit is accurate, reliable, and complete and disclose any limitations of the information, data, or validation process, especially for information used for GPRA reporting.

Comments: OESE agrees with Recommendation 2.2.

Proposed Corrective Action: In each SEA's request to renew ESEA flexibility, due to ED by the end of March 2015, each SEA will be required to assure that the SEA will provide to the Department, in a timely manner, all required reports, data, and evidence regarding its progress in

implementing the plans contained throughout this request, and will ensure that all such reports, data, and evidence are accurate, reliable, and complete or, if it is aware of issues related to the accuracy, reliability, or completeness of its reports, data, or evidence, it will disclose those issues.

Other Matters-

- At the bottom of page two, the draft OIG report indicates that eight LEAs in California submitted ESEA flexibility requests. This is not entirely accurate. The waivers to these eight LEAs were not granted under ESEA flexibility; rather, they were considered under a separate process that included parallel concepts to ESEA flexibility.
- At the top of page three, the draft OIG report indicates the "[four other SEAs either did not apply or withdrew their requests." This should be amended to include California as an SEA that did not apply for ESEA flexibility.
- In Table 1 on page three, the draft OIG report indicates that Part C monitoring will occur in Fall/Winter of 2014. This was true at the time of the review. However, as a result of office and program restructuring, Part C monitoring is no longer planned. OESE will continue to do comprehensive monitoring as a part of its overall performance management plan.