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# Review of Department Identified Contracts and Grants for Public Relations Services

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## FINAL INSPECTION REPORT



ED-OIG/I13-F0012  
SEPTEMBER 2005

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Our mission is to promote the efficiency,  
effectiveness, and integrity of the  
Department's programs and operations.



U.S. Department of Education  
Office of Inspector General  
Washington, D.C.

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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

THE INSPECTOR GENERAL

**MEMORANDUM**

**TO:** Margaret Spellings  
Secretary of Education

**FROM:** John P. Higgins, Jr.

**SUBJECT:** Final Report  
Review of Department Contracts and Grants for Public Relations Services for  
FY 2002-2004  
Control Number I13-F0012

Attached is the final report that covers the results of our review of the Department of Education's (Department) contracts and grants for public relations services for Fiscal Year 2002-2004. The Department provided its comments to the report, dated August 18, 2005. A copy of these comments in their entirety is attached.

Based upon the information provided by the Department we have made three modifications to the report. We have removed Recommendation 5 with regard to further follow up on the Westat contract and modified Recommendation 4 to include a review of deliverables to ensure that they comply with 48 CFR § 3452.227-70, as appropriate. In addition, we have revised our statement in the "Other Matters" section of how the Office of General Counsel's (OGC) advice was conveyed to a grantee. The Department's response is included in the "Department Comments" section of this report.

Having been provided with the language of 48 CFR § 3452.227-70 in the Department's response, we again reviewed the deliverables from the ten contracts that we had determined to contain "no covert propaganda" in the draft version of this report. No further changes were made as a result of this review, other than the modification of Recommendation 4.

We have made one factual change to the report. The Department's comments stated that the Office of General Counsel (OGC) was not present at the meeting with the grantee mentioned on page 18 of our report. The report has been changed to reflect this information.

Corrective actions proposed (resolution phase) and implemented (closure phase) will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). 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 report.

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 reports that remain unresolved after six months from the date of issuance.

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 me at 202-245-6900.

Enclosure

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## EXECUTIVE SUMMARY

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The objective of this inspection was to review the materials produced under 20 contracts and 15 grants issued by the Department of Education (Department) to determine whether any of the contracts and grants resulted in covert propaganda. We have concluded that none of the grants resulted in covert propaganda under the existing guidance of the Office of Legal Counsel of the U.S. Department of Justice (OLC) and the Government Accountability Office (GAO). While three of the grants resulted in op-ed opinion pieces that did not include the disclaimer language required by the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. § 75.620, we did not find evidence to conclude that the Department awarded these grants with an intent to influence public opinion through the undisclosed use of third party grantees. With respect to the contracts, based on the materials that were available for us to review, we could not conclude that any of the contracts resulted in covert propaganda; however, we found one contract that requires follow-up by the Department before a final determination can be made.

The disclaimer language required by EDGAR applies to any publication produced with grant funds. In the absence of the disclaimer language, the funds used to produce a publication may be an improper expenditure, requiring the Department to initiate appropriate recovery action. The three op-ed pieces appear to be such expenditures.

Six of the other grants we reviewed produced informational material about parental rights and options under the No Child Left Behind Act (NCLB), which also did not disclose the role of the Department. The materials developed under these grants included brochures, print and radio ads, and billboards. One other grant produced similar materials that inconsistently included the required disclaimer. To the extent that the Department determines that the materials produced under these grants also should have included the EDGAR disclaimer, it should, if appropriate, initiate recovery action.

While we were unable to conclude, based upon the materials available for our review, that any of the contracts resulted in covert propaganda, one contract requires follow-up by the Department. For this contract, the Department has been unable to provide us with the complete set of deliverables. The Department needs to obtain and review all deliverables associated with this contract. If, based upon its review, the Department determines that these contracts violated the prohibition against covert propaganda, it must make the required reports to the President, Congress, and the Comptroller General for violations of the Antideficiency Act.

We found another contract that resulted in publication of a newspaper article on statistics available on the NCES website that did not disclose the role of the Department. We have reviewed the materials and concluded that they are informational and are not covert propaganda.

For all of the remaining grants and contracts, we found that: 1) the materials produced adequately disclosed the role of the Department, 2) the intended materials were not, or have not yet been, produced, 3) the materials produced were not available for review, or 4) the grant or contract did not call for dissemination of materials to the public.

For two competitive grant programs (Parental Information and Resource Centers Program and Voluntary Public School Choice Program) that we attempted to review, the Department was unable to produce files in time for inclusion in this report. We will be returning these files to the Department for further review.

In general, we relied upon the Department to provide us with deliverables and products. For some of the contracts, as specified in our report, we are unable to reach a conclusion with respect to covert propaganda because of the missing materials. Although we reviewed pre-award documentation and interviewed the Department officials responsible for approving and monitoring unsolicited grants under the Fund for the Improvement of Education (FIE) program, which is within the Office of Innovation and Improvement (OII), we did not review the formation of the remaining grants, or obtain all pre- or post-award correspondence and documents exchanged between the Department and awardees.

In addition to the recommendations referenced above, we recommend that the Department ensure that contract and grant personnel understand the prohibition on the use of appropriated funds for publicity or propaganda and ensure that this information is communicated to grantees. We also recommend that the Department ensure that contract and grant personnel understand when the use of language disclosing the role of the Department is required and ensure that the language is included in contracts as appropriate, and that the EDGAR requirements are clearly communicated to grantees. Additionally, we recommend that the Department monitor contracts and grants and ensure that files are complete and appropriately documented.

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## BACKGROUND AND OBJECTIVE

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By letter dated January 7, 2005, Congressman George Miller, Ranking Member of the Committee on Education and the Workforce of the U.S. House of Representatives, requested that this office investigate the legality and appropriateness of the contract between the Department and Ketchum, Inc., under which the Graham Williams Group is a subcontractor (ED-03-PO-1725). The former Secretary of Education subsequently made a related request. In addition, the Congressman requested that we investigate whether current or former similar contracts of the Department “resulted in covert propaganda.” This report addresses the latter request. Our inspection report (ED-OIG/A19-F0007) on ED-03-PO-1725 was issued separately.

By letter dated January 12, 2005, Senators Arlen Specter and Tom Harkin, the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education and Related Agencies of the Committee on Appropriations of the U.S. Senate, requested that the Department provide them with a list of “any other grant, contract or funding arrangement involving FY’02, FY’03, or FY’04 appropriated funds being used for public relations or anything similar to the purpose of the Ketchum contract.” In response, on January 28, 2005, the Department identified 36 such grants and contracts,<sup>1</sup> one of which was ED-03-PO-1725. This draft inspection report provides the results of our review of the contracts and grants identified by the Department to Senators Specter and Harkin, excluding ED-03-PO-1725.

The objective of our inspection was to determine whether any of the remaining 35 contracts and grants (20 contracts/15 grants) identified by the Department resulted in covert propaganda.

On April 25, 2005, we shared an earlier draft of this report with the Department. As a result of comments received, we conducted extensive additional interviews of Department employees to further assess the Department’s role, if any, in the development of op-ed opinion pieces that did not include appropriate disclaimer language. Our interviews focused on the issue of whether or not the Department awarded these grants with the intent to influence public opinion through the undisclosed use of third party grantees. The additional information that we gathered was included in the draft that we provided to the Department on July 29, 2005, as was a revised legal analysis on the applicability of appropriations provisions and the Antideficiency Act to grantees.

Due to restrictions contained in annual appropriations acts, federal agencies may not use appropriated funds for “publicity or propaganda purposes,” absent specific authorization from Congress.<sup>2</sup> In a series of decisions, GAO has found that the prohibition restricts the use of funds for materials or activities that are self-aggrandizing, purely for partisan purposes, or covert

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<sup>1</sup> On April 21, 2005, the Department identified a supplemental list of additional contracts that will be addressed in a subsequent report.

<sup>2</sup> “No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofor[e] authorized by the Congress.” Consolidated Appropriations Act, 2005, Pub.L. No. 108-447, Div.G, Title II, Sec. 624, 118 Stat. 2809, 3278 (Dec. 8, 2004). Identical or similarly worded restrictions have appeared in annual appropriations acts since 1951. Comp. Gen. Op. B-302504 at 6-8 (March 10, 2004).



propaganda. Comp. Gen. Op. B-302504, *Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Use of appropriated funds for flyer and print and television advertisements*, at 6-8 (March 10, 2004)(reviewing history of publicity and propaganda restrictions and related GAO decisions). Covert propaganda includes materials that are “misleading as to their origin.” Newspaper articles or op-ed pieces prepared at the direction of the government but published as the work of supposedly independent persons qualify as prohibited covert propaganda. 66 Comp.Gen. 707 (1987)(GAO Contra Aid Opinion) (as part of activities designed to influence the public and Congress to support the Administration’s Central American policy, the State Department contracted with outside writers for articles and op-eds).

In May 2004, GAO applied its decisions on covert propaganda to the use of video news releases or VNRs. A VNR “may contain a prepackaged news story, referred to as a story package, accompanied by a suggested script, video clips known as B-roll film, and various other promotional materials.” Comp. Gen. Op. B-302710, *Department of Health and Human Services, Centers for Medicare & Medicaid Services—Video News Releases*, at 3 (May 19, 2004)(GAO VNR Opinion). GAO found that prepackaged news stories and lead-in anchor scripts that did not identify the government as the source of the material violated the publicity and propaganda prohibition. *Id.*, at 16. B-rolls, which provided video clips that television stations could incorporate into news stories of their own creation, did not violate the prohibition. *Id.*, at 12.

In July 2004, OLC reviewed GAO’s May 2004 VNR decision, and reached a contrary conclusion on whether VNRs that do not disclose the role of the government qualify as covert propaganda.<sup>3</sup> OLC concluded that the content of the material must also qualify as “propaganda” to violate the prohibition. In a detailed review of the appropriations provisions, GAO decisions and prior OLC opinions, OLC noted that the prohibition against covert propaganda refers to “covert attempts to *mold opinion* through the use of undisclosed third parties.” *Id.*, at 9 (quoting *Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty*, 12 Op. O.L.C. 30, 40) (OLC Contra Aid Opinion)(1988)(emphasis added by OLC). Material that does “not advocate a particular policy or position of [the agency], but...provide[s] accurate...information” does not qualify as propaganda. *Id.*, at 13. OLC stated that it has not determined the “threshold of ‘propaganda’ necessary to violate the appropriations riders where agency involvement is undisclosed” and indicated the threshold “might well be lower than where agency involvement is acknowledged.” *Id.*, at fn. 18. In the OLC Contra Aid Opinion, OLC found that it would be improper to covertly communicate support for an issue under public debate through the guise of op-eds or articles by a private group or individual. OLC Contra Aid Opinion, at 39.

In February 2005, the Comptroller General reiterated GAO’s view that “agencies may not use appropriated funds to produce or distribute prepackaged news stories . . . that conceal or do not clearly identify for the television viewing audience that the agency was the source of those materials.” According to GAO, the covert nature of the government involvement is sufficient to qualify material as covert propaganda, even where the contents “may be unobjectionable.”

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<sup>3</sup> Memorandum for Alex M. Azar II, General Counsel, Department of Health and Human Services from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Whether Appropriations May Be Used for Informational Video News Releases*. (July 30, 2004)(OLC VNR Opinion).

In response, the Office of Management and Budget (OMB) notified Federal agencies in March 2005 that the Comptroller General's February 2005 memorandum conflicts with the views of OLC, which provides the controlling interpretations of law for the Executive Branch.<sup>4</sup> According to the attached March 1, 2005 OLC opinion, the prohibition against covert propaganda does not apply "simply because an agency's role in producing and disseminating information is undisclosed or 'covert,' regardless of whether the content of the message is 'propaganda.'"<sup>5</sup> According to OLC, the prohibition does not apply where there is no advocacy of a particular viewpoint and does not apply to the legitimate provision of information on agency programs.

None of the GAO or OLC decisions we reviewed applied the prohibition against covert propaganda in the grant context. GAO has issued decision findings that various specified restrictions on direct expenditures by federal agencies did not apply once the federal funds were in the hands of a grantee. GAO, *Principles of Appropriations Law*, Vol. II (2d ed.), at pp. 10-41 to 10-43 (citing decisions). Although GAO has not decided the issue in a specific case, GAO has stated these decisions "[do] not mean that an agency can circumvent a statutory restriction by making a grant to do something it could not do directly." *Id.*, at 10-41. We agree that it would be improper to award a grant for the purpose of engaging in covert propaganda since a direct expenditure for that purpose is prohibited.<sup>6</sup>

If an officer or an employee of the Department awarded a grant for the express purpose of disseminating covert propaganda or specifically authorized the use of grant funds for covert propaganda, such a use of appropriated funds would violate the publicity and propaganda restriction. A violation of the appropriations restriction would also violate the Antideficiency Act. 31 U.S.C. § 1341(a); GAO VNR Opinion, at 15.<sup>7</sup> Existing decisions from OLC and GAO have not concluded that such activity by a grantee alone would violate the appropriations prohibition.

Statutory restrictions on the use of grant funds by a grantee are generally implemented through grant conditions or regulations imposed by a granting agency. *See* Comp. Gen. B-202975, *Letter to the Honorable Bobbi Fiedler* (Nov. 3, 1981). Neither the government-wide cost rules for non-profit grantees (OMB Circular A-122) nor the Department's grant rules contain a specific prohibition related to use of grant funds for covert propaganda.

The Department's grant regulations at 34 C.F.R. § 75.620 require grantees to include a disclaimer on any publication: "the contents of this (insert type of publication: *e.g.* book, report,

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<sup>4</sup> Memorandum for Heads of Departments and Agencies from Joshua B. Bolton, Director, Office of Management and Budget, M-05-10 (March 11, 2005).

<sup>5</sup> Memorandum for the General Counsels of the Executive Branch from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Whether Appropriations May be Used for Informational Video News Releases* (March 1, 2005).

<sup>6</sup> For one of the grants we reviewed, the Department's program officer communicated to the grantee, based on advice from the Department's Office of General Counsel, that appropriations riders would prohibit the Department from ghostwriting op-ed pieces and therefore the grantee would also be prohibited from doing so.

<sup>7</sup> Obligations or expenditures in violation of the statutory prohibition must be reported to the President, Congress, and the Comptroller General. 31 U.S.C. § 1351; OMB Circular A-11, § 145 (2004). Violations are reported to the Department of Justice when an employee "is suspected of willfully and knowingly violating the Antideficiency Act." OMB Circular A-11, § 145.7.

film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.” If a Department grantee uses grant funds for publications and does not include the required disclaimer language, such activity would violate the condition of the grant and the Department should, if appropriate, recover associated expenditures.

The Department is required by 48 C.F.R. § 3427.470 to include the clause under 48 C.F.R. § 3452.227-70 in all solicitations and contracts other than purchase orders. The language contained in 48 C.F.R. § 3452.227-70 provides that for any publication the contractor must acknowledge the support of the Department and indicate that the content of the publication “does not necessarily reflect the views or policies of the U.S. Department of Education.”

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## INSPECTION RESULTS

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### A. Review of Grants

We reviewed 13 of the 15 grants provided to us by the Department. Appendix A to this report summarizes the results of our grant review.

We did not review any files for two grant programs that the Department labeled “Multiple grantees and/or vendors.” When we initiated our fieldwork, the Department could not specifically identify any particular grantees, vendors, or materials produced with reference to these two items.<sup>8</sup> The Department did not provide complete information on these grant programs prior to the completion of our fieldwork.

The purpose of one grant we reviewed did not include production of materials for dissemination to the public and, therefore, could not result in covert propaganda.

The 12 remaining grants were awarded under FIE. The Department awarded these grants without competition under the procedures in 34 C.F.R. § 75.222 for consideration of unsolicited proposals. Grants awarded under these procedures are referred to as unsolicited grants.

We have classified the 13 grants under the following categories: grants resulting in op-eds that did not include EDGAR disclaimer, but did not result in covert propaganda; grants resulting in informational materials that did not include EDGAR disclaimer; grant resulting in materials that included EDGAR disclaimer; grant materials not yet created; and grant materials not disseminated to the public.

#### **1. Grants Resulting in Op-eds that Did Not Include EDGAR Disclaimer, but Did Not Result in Covert Propaganda**

Three unsolicited grants resulted in the production of op-eds that were published in newspapers around the country. All of these op-eds advocated particular points of view and none of them disclosed the role of the Department in their production. The OLC has determined that a government agency cannot use appropriated funds to pay for op-eds, written by some other entity to communicate support for an issue under public debate. See OLC Contra Aid Opinion, at 30-31, 39-40. GAO has taken the position that an agency cannot “circumvent a statutory restriction by making a grant to do something it could not do directly,” (GAO, *Principles of Appropriations Law*, at pp. 10-41). Accordingly, if an employee of the Department awarded a grant for the express purpose of disseminating covert propaganda or specifically authorized the use of grant funds for covert propaganda, such a use of appropriated funds would violate the publicity and propaganda restriction.

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<sup>8</sup> Late in the fieldwork process, we received multiple abstracts associated with these two grant programs. They are not addressed in this report.

Based upon our review of pre-award documentation in the official grant files and interviews with the Department officials responsible for approving and monitoring each of these grants, we did not find evidence to conclude that any Department employee awarded these grants for the purpose of having these op-eds published on an unattributed basis. Consistent with the requirements in EDGAR (34 C.F.R. § 75.222(b)), FIE staff stated that they review all unsolicited grant proposals to ensure they are not eligible for an existing competitive grant program and to determine if the proposals are of national significance. After formal applications for the three grants were received, each was subject to an independent peer review. The results of that review, which included an assessment of national significance, were included in the grant files.

We did find that the Oquirrh Institute and the National Council on Teacher Quality (NCTQ) initially submitted independent proposals to the Department. A senior official in OII contacted NCTQ and suggested that it work with the Oquirrh Institute because both focused on teacher quality issues. NCTQ confirmed that this conversation occurred and stated that the OII official did not help with the content of the proposal. NCTQ subsequently decided to submit a joint proposal with the Oquirrh Institute.

In each instance the grantee was provided with a copy of the EDGAR regulations. The failure of these grantees to include the required disclaimer appears to have resulted in an improper expenditure of grant funds that should now be recovered. It did not, however, result in the production of “covert propaganda,” as interpreted by current legal authority.

We did find, however, that the level of involvement by the Office of the Secretary in the initial approval of these unsolicited proposals and the oversight of these grants raised some concerns. These issues are addressed further in “Other Matters” on pages 17 and 18 of this report.

- *Grant U215U030007-04, Oquirrh Institute and National Council on Teacher Quality (NCTQ) (Appendix A, Item 1)*

The Oquirrh Institute and NCTQ submitted a joint proposal with three clearly stated goals: 1) increase the American public’s exposure and understanding of the research and full spectrum of ideas on teacher quality; 2) advance the research on teacher preparation and licensure processes, broadening the nation’s experience of and perspective on these issues; and 3) help state policymakers make the necessary reforms to their licensure systems. According to the proposal, the grantee’s strategy for accomplishing the first goal included “widely publish[ing] op-eds on teacher quality issues” with an ultimate objective of having “at least 100 published works, reaching every state” (p. 21). Further, the proposal narrative, on page 14, specifically states:

[W]e will tailor our writing to the issues that a particular state or community is currently debating ... Our preference will be to persuade newspapers to publish our writing as op-eds but, if not, we will also submit letters to the editor.

In the monthly progress reports provided to the Department, we found that the only grantee activities associated with the first goal involved the production of, and attempts to publish, op-eds.<sup>9</sup>

According to the grantees' monthly progress reports, they were able to publish op-eds in at least 11 newspapers. We have been able to obtain copies of only three. Kate Walsh, the president of NCTQ, authored the three op-eds published in the *Mobile Register* (Alabama) on 11/21/04, in the *Grand Island Independent* (Nebraska) on 12/02/04, and in the *Sacramento Bee* (California) on 02/06/05. Each focused on proposed changes in teacher reform and NCLB.

The op-eds can be construed as advocating a particular point of view. In the op-ed published in the *Mobile Register*, Walsh states that the NCLB requirement that all teachers be rated "highly qualified" in the subjects they teach "is not overly demanding or unfair." She later states "[t]he inability to reach consensus over these minimal requirements signals a resistance, however unintended, to putting the needs of children first."

Similarly, in the other two op-eds, Walsh advocated policy positions. In the op-ed published in the *Grand Island Independent*, she advocated changes in teacher qualification requirements in Nebraska. In the op-ed published in the *Sacramento Bee*, Walsh states: "[p]utting merit pay decisions in the hands of states or even school districts [sic] officials still will lead to excessively complicated formulas that suppress the potential benefits that merit pay could achieve."

None of the op-eds we reviewed disclosed the role of the Department. Prior to the initial publication of the op-eds, a Department grants specialist reviewed a draft op-ed and reminded the grantee that the Department's regulations at 34 C.F.R. § 75.620 require a disclaimer on all grant publications. The grant specialist did not know why the published op-eds did not contain the disclaimer.

As these op-eds were published without the EDGAR disclaimer, the funds used to produce them may have resulted in an improper expenditure of grant funds. If all of the produced op-eds are similarly silent on the role of the Department, then all of the expenditures associated with goal one of the grant may have been improper.

- *Grants U215U030031 and U215U040023, Hispanic Council for Reform and Educational Options (CREO) (Appendix A, Items 2 & 3)*

CREO received unsolicited grants for two consecutive years (FY 2003 and 2004) to promote school choice and tutoring options for Hispanic students. The FY 2003 grant proposal to the Department did not indicate that op-eds were to be produced as part of the FY 2003 grant; however, the production of op-eds was included in progress reports under the FY 2003 grant and in a list of previous grant activities in the FY 2004 proposal.

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<sup>9</sup> The proposed tasks for goal three suggested activities that implicate the restrictions against lobbying contained in annual appropriations acts and similar restrictions in 18 U.S.C. § 1913. Determining compliance with the anti-lobbying restrictions was beyond the scope of our review. We note, however, that the grant specialist advised the grantee to comply with the lobbying restrictions contained in OMB Circular A-122.

The Department provided multiple products for our review, only three of which were op-eds. Two op-eds were published in the *Dallas Morning News* (Texas) in August and October 2004. Both advocate a particular point of view for Hispanic parents and about the Dallas Independent School District's actions regarding students' right to transfer schools. The third op-ed was published in two Spanish-language publications, *Al Día* (Texas) in January 2004 and *En USA* (Florida) in April 2004.

Marcela Garcini, the Director of Parent Outreach for CREO, wrote the op-eds published in August and October 2004. CREO's September 2004 progress report to the Department states that Garcini "had the opportunity to become a regular guest writer for the *Dallas Morning News*." The September report also states "Project CREO is looking forward to becoming the voice of NCLB every time that press media wants to know about parents and their position under NCLB."

In the August 2004 op-ed, Garcini calls upon school districts to "find better ways to improve their communication between parents and schools." Further, she states "the schools – and, indeed, entire districts – need to rethink the messages they send, particularly to those parents from other cultures."

In the October 2004 op-ed, Garcini accuses the Dallas Independent School District of engaging in a "conscious effort to prevent eligible students from exercising their right to transfer to a better school," and "blaming parents for their children's underachievement." She also states "I am tired of hearing excuses about the lack of funding for schools, particularly under No Child Left Behind... Don't get caught up in the hype about funding, laws and politics. This is about our children."

Garcini also wrote the op-ed published in the *Al Día* in January 2004 and *En USA* in April 2004. The op-ed encourages parents to be educated on school choice and supplemental service options under NCLB and to take charge of their children's future. The op-ed also asserted that local officials were unresponsive to her concerns.

In addition, CREO's April 2004 progress report to the Department stated that it "published an Editorial in The Dallas Morning News about the benefits of NCLB in our communities," but neither CREO nor the Department could provide us with a copy.

The Department contact, a Senior Policy Advisor responsible for this grant, stated that the Department did not consult with CREO prior to the publication of any articles in newspapers. CREO was provided with a copy of EDGAR at the time the grant was awarded. As these op-eds were published without the EDGAR disclaimer, the funds used to produce them may have resulted in an improper expenditure of grant funds. If the April 2004 editorial is similarly silent on the role of the Department, then all of the expenditures associated with its production may have been improper.

The other products developed with grant funds included printed materials and at least one informational video, all designed to educate parents about school choice and tutoring options. None of these materials included the EDGAR disclaimer. Consistent with the discussion below, the Department should review these materials, determine if they should be considered

publications for purposes of EDGAR, and, if appropriate, take action to recover the funds used to produce them.

## **2. Grants Resulting in Informational Materials that Did Not Include EDGAR Disclaimer**

Six grants produced informational materials, including brochures, print and radio ads, and billboards, that did not disclose the role of the Department. One other grant produced similar materials that inconsistently included the disclaimer. Although the materials favorably refer to NCLB options, they do not advocate issues under public debate. Under the OLC's March 1, 2005 OLC opinion, the prohibition against covert propaganda does not apply "simply because an agency's role in producing and disseminating information is undisclosed or 'covert,' regardless of whether the content of the message is 'propaganda.'"<sup>10</sup> Production of these materials, however, may have resulted in the improper expenditure of grant funds. To the extent that the Department determines that the materials produced should have included the EDGAR disclaimer, it should, if appropriate, initiate recovery action.

- *Grants R215U020007, U215U30029, and U215U040022, Black Alliance for Educational Options (BAEO) (Appendix A, Items 4-6)*

BAEO received unsolicited grants for three consecutive years (FY 2002-2004). The grant proposals to the Department stated that BAEO's mission was "to actively support parental choice to empower families and increase educational options for black children." To accomplish this mission they proposed a "multi-layered media campaign" that would "utilize direct mail, radio, newspaper, the Internet and direct engagement techniques." Further, they hoped to contact eligible parents and community leaders "a minimum of three times (e.g., direct mailings, follow-up phone calls, direct engagement)" about the benefits of NCLB. In addition, the initial proposal narrative, on pages three and four, states:

Through this campaign, BAEO also hopes to continue to change the conversation about parental choice by positively influencing individuals who are resisting parental choice options and getting them to reconsider their outlook.

The products the Department provided for our review included print and radio ads, brochures, and postcards. All of the products, which were designed to reach families in Dallas, Detroit, Milwaukee and Philadelphia, provided information to eligible parents regarding their rights to: 1) know if their child's school has been designated "in need of improvement"; 2) transfer their child to another school; and 3) get supplemental education services for their child, such as free tutoring. All of the materials were informational; none of them contained the required disclaimer.

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<sup>10</sup> Memorandum for the General Counsels of the Executive Branch from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Whether Appropriations May be Used for Informational Video News Releases* (March 1, 2005).



- *Grants U215U030021/U215U030021A and U215U040009, Greater Educational Opportunities Foundation (GEO) (Appendix A, Items 7 & 8)*

GEO received unsolicited grants for two consecutive years (FY 2003 and 2004); the grantee received a two-month no-cost extension under the FY 2003 grant. GEO sought these grants from the Department to fund parent outreach programs in Colorado and Indiana centered on implementation of NCLB, school choice, and supplemental services. The director of the Colorado program is a former congressman from Colorado. The initial proposal to the Department stated that GEO's goal was "to increase the number of parents knowledgeable of and using their rights and opportunities provided in NCLB, and to increase the number of supplemental service providers." Further, the abstract and the initial proposal narrative (p. 1) state:

We expect this campaign to contribute to the national debate and be used as a national model showing what should be done in communities nationwide to fully implement NCLB at the local level ... From our vantage point, state and local authorities are doing everything they can to complicate parental access to NCLB's rights and opportunities. They are doing the minimum, not the maximum, to implement this new policy.

The products the Department provided for our review were radio, print, and TV ads. All of the materials were informational; none of them contained the required disclaimer.

- *Grants R215U020003 and U215U040017, National Council of Negro Women, Inc. (NCNW)(Appendix A, Items 9 & 10)*

The award period for the first grant (R215U020003) was FY 2002-2004 and the period for the second grant (U215U040017) was FY 2004. The initial grant proposal to the Department states that NCNW was seeking to create The Partnership for Academic Achievement to "ignite a movement in communities across the country to close the achievement gap by utilizing a tremendous outreach network and leveraging new provisions in the No Child Left Behind Act" (p. 2). The proposal states that the partnership would seek to close the gap through a series of activities, including "launching an integrated national media campaign to create persuasive messaging for both electronic and print media" (p. 2). Further, the proposal states that "print, radio and television public service announcements (PSAs) along with syndicated articles, op-eds and press events will be used to encourage the community to take specific action to close the achievement gap for African American children" (p. 5).

The Department's grant specialist initially stated that no public service announcements, radio spots, or other materials of this nature were produced under the first grant due to the grantee's limited budget. The second NCNW grant proposal, however, states that NCNW ran ads on the radio, on buses, and on billboards in February 2004 under the first grant. After the completion of the fieldwork, the grant specialist produced the radio and bus ads. The ads encouraged parents to read to their children, provided statistics on African American reading achievement and contained the 1-800-USA-LEARN phone number. All of the materials were informational; none of them contained the required disclaimer.

The second NCNW grant resulted in materials that included brochures and educational guides to encourage reading. The guides and brochures contained the NCLB logo. All of the materials were informational; some included the required disclaimer.

EDGAR does not specifically define “publication”; however, many, if not all of these materials could be construed as publications. The Department should review these materials, determine if the disclosure should have been included, and, if appropriate, initiate recovery action.

### **3. Grant Resulting in Materials that Included EDGAR Disclaimer**

We determined that all products of one grant were informational and included the appropriate disclaimer.

- *Grant U215U040016, Corporation for Educational Radio and Television (Appendix A, Item 11)*

This grant was awarded to create “tune-in” public announcements referring the audience to a national Public Broadcasting Service documentary titled “Closing the Achievement Gap.” The Department was able to provide us with the advertisements from this grant. The material was informational and every advertisement contained the required disclaimer.

### **4. Grant Materials Not Yet Created**

For one of the grants reviewed, no materials have yet been produced. The grant was:

- *Grant U215U040014, Cuban American National Council (Appendix A, Item 12)*

The purpose of this grant was to establish a resource center to provide public information, training and technical assistance to the Hispanic Community in Florida, New Jersey and Georgia. The grant began in October 2004 and the grant specialist indicated that the grantee has not yet produced any products.

### **5. Grant Materials Not Disseminated to the Public**

The purpose of one grant did not include production of materials for dissemination to the public and therefore, could not result in covert propaganda. This grant was:

- *Grant R902F980001, Education Testing Service, Ogilvy Public Relations (Sub) (Appendix A, Item 13)*

## **B. Review of Contracts**

We reviewed a total of 20 contracts identified by the Department. All of the contracts reviewed can be classified in the following categories: no covert propaganda; materials not fully available for review; and materials not disseminated to the public. Appendix B to this report summarizes the results of our contract review.

## 1. No Covert Propaganda

For eleven contracts, we were able to conclude that the materials produced did not result in a violation of the covert propaganda prohibition. The contracts reviewed are identified as items 1-11 in Appendix B.

- *Contract ED-99-CO-0089, Westat, Inc. (Ogilvy Public Relations (Sub)), (Appendix B, Item 1)*

This contract was awarded to Westat, Inc. using funds from FY 1999-2004. A modification of this contract, which was approved by a Department contracting officer, outlined a sub-contract with Ogilvy Public Relations to assist and perform multiple tasks associated with the dissemination of the NCES release of the Program for International Student Assessment (PISA) results. One of the task orders of this sub-contract was to assemble B-roll footage including students in educational settings and video clips from a PISA press conference. Task order 1.5 of this sub-contract was to “write two different versions of an op-ed and identify two credible, respected authors and work with NCES/Westat to place the item in an appropriate time adjacent to the PISA release.” The task order does not specifically address the need to disclose the role of the Department.

Under the OLC and GAO Contra Aid Opinions, obligation or expenditure of appropriated funds to produce op-eds that do not disclose the role of the Department would violate the prohibition against covert propaganda.

We were able to review the B-roll footage and found that it was not covert propaganda. See GAO VNR Opinion. We were unable to review the op-eds. The Contracting Officer’s Representative (COR) stated that during the course of contract performance the op-ed task was abandoned. While the task order was silent on whether the role of the Department would be disclosed, the contract incorporated by reference the language contained in 48 C.F.R. § 3452.227-70. This language provides that for any publication the contractor must acknowledge the support of the Department and indicate that the content of the publication “does not necessarily reflect the views or policies of the U.S. Department of Education.” Based upon the inclusion of this language in the contract and the absence of evidence that the Department took action or intended to allow Westat to violate this requirement, we have determined that there was no violation of the prohibition against covert propaganda.

- *Purchase Order ED02PO0900, North American Precis (Appendix B, Item 2)*

North American Precis received a \$2,650 purchase order from the Department in FY 2002 “To develop [a] 2-column syndicated newspaper article for national distribution. Services include[d]: article development, production, distribution, clippings & placement tracking.” According to the contractor, the article appeared 500 times in various newspapers. The contractor provided us a copy of the article as it was distributed. We reviewed a copy of the article, whose content was identical, as it appeared in one newspaper. The article consisted of information on statistics available on the NCES website.

The article opened: “Press a few keys on your computer, [www.nces.ed.gov](http://www.nces.ed.gov), and you can open a treasure chest of education statistics.” The article explained that the website provided statistics on crimes in schools, number of students in college, international reading scores, and ways to learn about local schools, colleges, and universities. The article closed with the statement that “Reliable education statistics can help you make good decisions about education.” The article had no by-line indicating authorship, and did not reveal the role of the Department. The purchase order, however, did not specify if the role of Department was to be disclosed. Since the article did not advocate a particular policy position of the Department, but provides information about resources available on a Department website, we conclude that the article was not covert propaganda. OLC VNR Opinion, at 13. We saw no indication that the publication of the article was intended to influence an issue under public debate. See OLC and GAO Contra Aid Opinions (newspaper articles intended to influence issues under public debate qualify as covert propaganda).

For the remaining nine contracts, we concluded that they did not result in covert propaganda because the deliverables adequately disclosed the Department’s role in their production. Eight of these were purchase orders, which are excluded from the disclaimer requirement of 48 C.F.R. § 3452.227-70, but all contained other indications of the Department’s role. The one remaining contract was with George Washington University (ED-03-CO-0036) for the creation of products that would present the “Parents Declaration of Rights,” which was developed by the Department’s Office of English Language Acquisition. We believe that the inclusion of the disclaimer required by 48 CFR § 3452.227-70 would not be appropriate in these circumstances.

## **2. Materials Not Fully Available for Review**

The Department was unable to produce the complete set of deliverables for four contracts, identified as items 12-15 in Appendix B. For three of these contracts, neither the Department nor the contractor could provide any deliverables. We were unable to conclude that these contracts did not result in covert propaganda because no deliverables were available for our review.

The Department could provide only some of the deliverables for contract ED-98-CO-0012 with ZGS Communications (ZGS). The contracting officer was unable to locate the complete contract file, but was able to provide us with 45 contract modifications. Of these modifications, 24 contained adequate descriptions to conclude that they did not result in covert propaganda. The COR could only provide copies of deliverables under four modifications and was unable to tell us how many other deliverables were associated specifically with this contract. At the suggestion of the Department, we also contacted the program director for this contract in the Office of Intergovernmental and Interagency Affairs (OIIA). This individual was able to provide us with deliverables from six additional modifications, but could not provide information on the remaining modifications. At this time, there is insufficient information to reach a conclusion on the deliverables for 11 modifications.

The available deliverables we reviewed from the contract with ZGS adequately disclosed the Department’s role in their production. However, we are unable to conclude that the ZGS contract did not result in any covert propaganda since not all deliverables were available for our review.

### **3. Materials Not Disseminated to the Public**

The deliverables for five of the identified contracts were not intended for nor did they result in materials disseminated to the public. Therefore, these contracts could not result in covert propaganda. These contracts are identified as items 16-20 in Appendix B.

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## OTHER MATTERS

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In conducting this inspection, the deliverables and products required under the contracts and grants were not always readily available. In one instance, the deliverable under a contract may have been removed by a former employee (Appendix B, Item 15); in another instance, the Department did not have audio copies or written scripts for PSA deliverables (Appendix B, Item 12). For one contract (Appendix B, Item 14), OIG obtained a copy of a deliverable directly from the contractor since the Department did not maintain a copy. No materials were initially available from three grantees (Appendix A, Items 4-10), but the Department was able to obtain them after contacting the grantee.<sup>11</sup> As discussed previously, there were four contracts (Appendix B, Items 12-15) for which the Department was unable to provide copies of all deliverables and two grant programs (Appendix A, Items 14 & 15) for which we were unable to review any files because the Department only recently identified any materials produced.

Without receiving copies of the deliverables or products required and proposed under a contract or grant (or having some other procedure in place), the Department cannot determine whether it has received the goods or services for which it has paid. If materials are not produced, the Department may not have sufficient cost data available to make appropriate adjustments. The Department should review its current policies and procedures for accounting for contract deliverables and grant products to ensure that appropriate controls are in place.

Several deliverables and products contained the NCLB logo or Department seal. The “Guide to Publishing at the U.S. Department of Education” requires that the principal offices or contractor receive permission from the Office of Public Affairs or the Office of the General Counsel (OGC) prior to the use of any Department logo or seal. We found no evidence that any of the grantees sought such approval. We suggest that the Department ensure the NCLB logo and Department seal are used appropriately and with authorization.

Although we did not find evidence to conclude that Department officials awarded grants with the intent of influencing public opinion through the undisclosed use of third party grantees, or directly approved or encouraged the specific activities that resulted in improper expenditures, the level of involvement from the Secretary’s office in the approval of unsolicited proposals and the oversight of unsolicited grants in the FIE program raised some concerns. The Department procedures in place at the time<sup>12</sup> stated:

If the unsolicited application proposes activities that can be funded by the Fund for the Improvement of Education (FIE), the Senior Officer should immediately forward the application to [the] Deputy Under Secretary in the soon-to-be-created Office of Innovation and Improvement (OII). OII will then notify the applicant and process the

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<sup>11</sup> Section 6.4.2 of the Department’s “Handbook for the Discretionary Grant Process” establishes policy for monitoring grants. The policy does not discuss the submission of products for review by the Department, or obtaining all products produced under a grant.

<sup>12</sup> “Memorandum to Senior Officers” from former Secretary Rod Paige on December 5, 2002.

application under the above procedures. FIE supports nationally significant programs to improve the quality of elementary and secondary education.

The “above procedures” referenced in the preceding quote did not indicate that the Office of the Secretary was to be directly involved in the process of screening unsolicited proposals. However, the Secretary and his senior staff appear to have made the significant pre-award decisions on many unsolicited applications received by the FIE program, including determining which initial proposals deserved further consideration. The Secretary, or staff in his office, also determined which unsolicited proposals were to receive funding. Once the grants were awarded, FIE program staff provided the Secretary’s office with monthly progress reports from grantees.

An OIG alert memorandum titled “Improvements to Department Policy on Unsolicited Applications” (ED-OIG/L03-E0026) that was issued on March 8, 2005 suggested that the Department provide additional guidance for the proper handling of unsolicited proposals or applications. Subsequently, Under Secretary Edward R. McPherson issued a memorandum to Principal Officers and Senior Staff on April 12, 2005, titled “Department Policy on Unsolicited Applications for Grants,”<sup>13</sup> which provides additional guidance. The Department should ensure that it is following this policy.

We were also concerned about a lack of guidance within OII for the proper handling of unsolicited applications and a lack of process for working with grantees once a grant is awarded. For example, one senior official in OII stated that he provided technical assistance to an applicant during the pre-award process.<sup>14</sup> However, another senior official in OII stated that providing technical assistance would be inappropriate for unsolicited grant proposals. Also, during the pre-award process for one grant, a trained program officer raised concerns about the appropriateness of proposed op-ed activities. These concerns were never formally resolved before the grant was awarded. While the program officer met with the grantee to convey OGC’s advice concerning the proposed op-ed activities after the grant was awarded, the grantee was still unclear about the requirement to include a disclaimer on the published op-eds.

We suggest that OII seek out best practices for processing grant applications from both other offices within the Department and other Federal agencies. We also suggest that OII work with OGC to create specific internal processing guidelines to be followed by all OII staff in order to clarify the proper handling of unsolicited grant applications and the appropriate process for working with grantees once the grant is awarded. Additional training for grant personnel regarding the complete grant administration process, from application to award, is essential. We also suggest the Department consider revising the “Handbook for the Discretionary Grant Process” and EDGAR to clarify the requirement for disclaimers on op-ed pieces.

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<sup>13</sup> Similar to the 2002 memorandum, this memorandum also does not provide for any direct involvement from the Office of the Secretary in the unsolicited grant application process.

<sup>14</sup> In our interview with this official, he stated the assistance was mainly on the format of the proposal, not the content. The grantee confirmed that this was the scope of the official’s assistance. We did not find any evidence to the contrary.

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## RECOMMENDATIONS

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We recommend that the Department:

1. Ensure that contract and grant personnel understand the prohibition on the use of appropriated funds for publicity or propaganda and ensure that this information is communicated to grantees.
2. Ensure that contract and grant personnel understand when disclosure of the Department's role is required and ensure that the language is included in contracts as appropriate, and that the EDGAR requirements are clearly communicated to grantees.
3. Monitor contracts and grants and ensure that files are complete and appropriately documented. For contracts, files should also include proof of production of the deliverables.
4. Obtain copies of the ZGS contract deliverables unavailable for our review, determine if there were any violations of the covert propaganda prohibition, and report any resulting violations of the Antideficiency Act to the President, Congress, and the Comptroller General in accordance with the instructions of OMB Circular A-11. In the review of these deliverables the Department should also assess compliance with 48 C.F.R. § 3452.227-70, as appropriate.
5. Determine the amount of improper expenditures associated with the publication of op-eds under grants U215U030007-04, U215U030031, and U215U040023 and initiate a recovery action for the unallowable use of funds.
6. Review the materials produced under grants U215U030031, U215U040023, R215U020007, U215U30029, U215U040022, U215U030021/U215U030021A, U215U040009, R215U020003, and U215U040017 to determine if the items without EDGAR disclaimers were publications. If so, determine the amount of improper expenditures and, if appropriate, initiate a recovery action for the unallowable use of funds.



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## DEPARTMENT COMMENTS

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On July 29, 2005, we provided the Department with a copy of our draft report for comment. The Department provided its comments to the report on August 19, 2005. We have summarized the Department's comments and provided our responses below. The Department's response, in its entirety, is attached. Based upon the information provided by the Department we have modified Recommendation 4 and removed Recommendation 5, which was included in the draft report.

**Recommendation 1: Ensure that contract and grant personnel understand the prohibition on the use of appropriated funds for publicity or propaganda and ensure that this information is communicated to grantees.**

**Recommendation 2: Ensure that contract and grant personnel understand when disclosure of the Department's role is required and ensure that the language is included in contracts as appropriate, and that the EDGAR requirements are clearly communicated to grantees.**

**Department Comments:** The Department concurs with these recommendations. The Department is in the process of purchasing additional training for contract monitoring personnel and examining whether to add more specific and clarifying language to the Grant Award Notice (GAN) with regard to the disclaimer language and applicability of specific EDGAR provisions. The Department is also in the process of revising the Discretionary Grants Handbook and plans to include more specific information on this requirement to emphasize its importance.

**OIG Response:** No changes have been made to these recommendations.

**Recommendation 3: Monitor contracts and grants and ensure that files are complete and appropriately documented. For contracts, files should also include proof of production of the deliverables.**

**Department Comments:** The Department concurs with this recommendation and will review the current Department internal guidance to personnel (including directives) on grants and contracts to ensure that the guidance includes appropriate information on the need to maintain complete and appropriately documented files. The Department will also make sure that its employees exercise due diligence in keeping appropriate files, and that the maintenance of these files is properly monitored.

**OIG Response:** No change has been made to this recommendation.

**Recommendation 4: Obtain copies of the ZGS contract deliverables unavailable for our review, determine if there were any violations of the covert propaganda prohibition, and report any resulting violations of the Antideficiency Act to the President, Congress,**

**and the Comptroller General in accordance with the instructions of OMB Circular A-11.**

**Department Comments:** The Department agrees to thoroughly search both its records and the contractor's records to locate the deliverables to the extent feasible and review them to determine if they contain any covert propaganda or do not have appropriate attribution and disclaimers.

**OIG Response:** The Department's comments on Recommendation 5 state that the 48 CFR § 3452.227-70 disclaimer clause set forth in the regulation is required to be in all Department contracts. This language provides that for any publication the contractor must acknowledge the support of the Department and indicate that the content of the publication "does not necessarily reflect the views or policies of the U.S. Department of Education." We have added language to Recommendation 4 that in its review of the missing ZGS deliverables, the Department should also assess compliance with 48 CFR § 3452.227-70, as appropriate.

**Recommendation 5: Determine if the op-eds planned under the Westat, Inc. contract were to be attributed to the Department. If not, determine the amount of the resulting improper obligation for the op-ed task order, and the amount of any expenditure that occurred before the task was abandoned. Any resulting violations of the Antideficiency Act should be reported to the President, Congress, and the Comptroller General in accordance with the instructions of OMB Circular A-11.**

**Department Comments:** The Department does not concur with this recommendation. The Department's comments state that under the terms of the contract, Westat was required to comply with the clause contained in 48 C.F.R. § 3452.227-70 which requires that the contractor acknowledge the support of the Department in the project and further indicate that the content of the publication does not necessarily reflect the views of the Department. The clause is required to be in all Department contracts except purchase orders. The Department also states that there is no evidence that Department officials took action or had intent to allow Westat to violate this clause.

**OIG Response:** Given this additional information we have determined that the Department has adequately addressed our recommendation. This recommendation has been removed from the report.

**Recommendation 6: Determine the amount of improper expenditures associated with the publication of op-eds under grants U215U030007-04, U215U030031, and U215U040023 and initiate a recovery action for the unallowable use of funds.**

**Department Comments:** The Department concurs in general with this recommendation and will, after ascertaining the amount of improper expenditures, if any, associated with the publication of op-eds for the grants referenced above, seek to disallow and recover costs in those instances where grant funds were used on improper expenditures. The Department will also initiate recovery action dependent on the amount of Federal grant

funds expended on the preparation and publication of those items and a determination of whether any Federal interest was harmed.

**OIG Response:** No change has been made to this recommendation.

**Recommendation 7: Review the materials produced under grants U215U030031, U215U040023, R215U020007, U215U30029, U215U040022, U215U030021/U215U030021A, U215U040009, R215U020003, and U215U040017 to determine if the items without EDGAR disclaimers were publications. If so, determine the amount of improper expenditures and, if appropriate, initiate a recovery action for the unallowable use of funds.**

**Department Comments:** The Department concurs with this recommendation and will initiate recovery action dependent on ascertaining whether items were published without the required EDGAR disclaimer, on the amount of Federal grant funds expended on the preparation and publication of those items, and on a determination of whether any Federal interest was harmed.

**OIG Response:** No change has been made to this recommendation.

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## SCOPE & METHODOLOGY

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The inspection was conducted between February and March 2005, with additional fieldwork conducted in May and June 2005. To complete our work we attempted to review files, deliverables, and products from 20 contracts and 15 grants dating generally from FY 2002-FY 2004 that had been identified by the Department's Office of General Counsel on January 28, 2005. For two identified grant programs (Appendix A, Items 14 & 15) the Department did not provide any specific information until after the completion of our fieldwork. Those grant programs were not included in our review and will be the subject of another report.

In general, we relied upon the Department to provide us with deliverables and products. However, we did contact the contractor for two contracts directly to obtain copies of deliverables. We were able to obtain two out of three deliverables from these contracts. For certain contracts as specified in our report, the Department was unable to provide any deliverables and in one instance, the Department could not identify all deliverables that were to be produced under the contract. As a result we are unable to reach a conclusion with respect to covert propaganda on these specified contracts.

Although we reviewed pre-award documentation and interviewed the Department officials responsible for approving and monitoring unsolicited grants under the FIE program, we did not review the formation of the remaining grants, or obtain all pre- or post-award correspondence and documents exchanged between the Department and awardees. The list of contracts and grants subject to our inspection was prepared by the Department for its January 28, 2005 response to Senators Specter and Harkin.

We reviewed the prohibition on publicity and propaganda contained in the Consolidated Appropriations Act, 2005. We also reviewed the Education Department General Administrative Regulations (EDGAR).

We reviewed the following GAO decisions and memorandums: *B-202975 (November 3, 1981); 66 Comp.Gen. 707 (1987); B-302992 (Sept. 10, 2004); B-302504 (Mar. 10, 2004); B-302710 (May 19, 2004); B-303495 (Jan. 4, 2005); and B-304272 (Feb. 17, 2005).*

We also reviewed the following OLC memorandums: *Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty, (1988); Memorandum for the General Counsels of the Executive Branch from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Whether Appropriations May be Used for Informational Video News Releases, (March 1, 2005); and Memorandum for Alex M. Azar II, General Counsel, Department of Health and Human Services from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Whether Appropriations May Be Used for Informational Video News Releases, (July 30, 2004).*

This inspection was performed in accordance with the President's Council on Integrity and Efficiency (PCIE) Quality Standards for Inspections (2005) subject to the scope limitations that resulted from the unavailability of materials.

**Appendix A: Summary of Grants**

<b>Item No.</b>	<b>Grantee (Grant Number) (FY Funds, Cost<sup>15</sup>)</b>	<b>Description of Products</b>	<b>Grants Resulting in Op-eds that Did Not Include EDGAR Disclaimer, but Did Not Result in Covert Propaganda</b>	<b>Grants Resulting in Informational Materials that Did Not Include EDGAR Disclaimer</b>	<b>Grant Resulting in Materials that Included EDGAR Disclaimer</b>	<b>Grant Materials Not Yet Created</b>	<b>Grant Materials Not Disseminated to the Public</b>
1	Oquirrh Institute and the National Council on Teacher Quality (NCTQ) (U215U030007-04) (FY 03-04, \$677,318)	The purpose of this unsolicited grant was to increase the American public's exposure and understanding of the research and full spectrum of ideas on teacher quality. According to the grantees' monthly progress reports, NCTQ was able to publish op-eds in 11 newspapers; however, we have been able to obtain copies of only three. The three op-eds we reviewed focused on proposed changes in teacher reform and NCLB. Each op-ed advocated a particular viewpoint and did not contain the required disclaimer.	✓				
2	Hispanic Council for Reform & Educational Options (U215U030031) (FY 03, \$500,000)	The purpose of these unsolicited grants was to promote school choice and tutoring options for Hispanic children. The products we reviewed included handbooks, brochures, three op-eds, and an informational video. The handbooks, brochures, and video were informational and did not contain the EDGAR disclaimer. Two op-eds were published in the <i>Dallas Morning News</i> . The third op-ed was published in two Spanish-language publications, <i>Al Dia</i> (Texas) in January 2004 and <i>En USA</i> (Florida) in April 2004. All three advocated a particular viewpoint and did not disclose ED's role in their production.	✓				
3	Hispanic Council for Reform & Educational Options (U215U040023) (FY 04, \$400,000)		✓				
4	Black Alliance for Educational Options (R215U020007) (FY 02, \$600,000)		The purpose of these unsolicited grants was to actively support parental choice and increase educational options for black children through a "multi-layered media campaign." The products we reviewed included brochures, print and radio ads, and post cards providing information to parents regarding their options under NCLB. The products did not contain the EDGAR disclaimer.		✓		
5	Black Alliance for Educational Options (U215U030029) (FY 03, \$500,000)			✓			
6	Black Alliance for Educational Options (U215U040022) (FY 04, \$400,000)			✓			

<sup>15</sup> These figures are our best estimates of the value of these grants based upon the materials the Department supplied to us. We were unable to find quantifications for specific product costs.

Item No.	Grantee (Grant Number) (FY Funds, Cost <sup>15</sup> )	Description of Products	Grants Resulting in Op-eds that Did Not Include EDGAR Disclaimer, but Did Not Result in Covert Propaganda	Grants Resulting in Informational Materials that Did Not Include EDGAR Disclaimer	Grant Resulting in Materials that Included EDGAR Disclaimer	Grant Materials Not Yet Created	Grant Materials Not Disseminated to the Public
7	Greater Educational Opportunities Foundation (U215U030021/U215U030021A) (FY 03, \$370,000)	The purpose of these unsolicited grants was to fund parent outreach programs centered on implementation of NCLB, school choice, and supplemental services. The products we reviewed included TV, radio, and print ads, which provided information to parents regarding their rights under NCLB and did not include the EDGAR disclaimer.		✓			
8	Greater Educational Opportunities Foundation (U215U040009) (FY 04, \$375,000)			✓			
9	National Council of Negro Women, Inc. (R215U020003) (FY 02-04, \$600,000)	The purpose of this unsolicited grant was to ignite a movement in communities across the country to close the achievement gap by utilizing new provisions in NCLB. The proposed products for this grant were radio spots and PSAs. We reviewed radio spots and ads placed on buses, trolleys, and public benches. The ads encouraged parents to read to their children and directed them to call the 1-800-USA-LEARN number, but did not contain the EDGAR disclaimer.		✓			
10	National Council of Negro Women, Inc. (U215U040017) (FY 04, \$264,234)	The purpose of this grant was to promote a national dialogue among African-American leaders to raise importance of early reading. The products we reviewed included brochures and educational guides, and in some instances the products contained the EDGAR disclaimer.		✓			
11	Corporation for Educational Radio and Television (U215U040016) (FY 04, \$20,000)	The purpose of this unsolicited grant was to create a PSA referring the audience to a PBS documentary titled <i>Closing the Achievement Gap</i> . The Department provided us with the advertisements from this grant, all of which contained the disclaimer required by EDGAR.			✓		
12	Cuban American National Council (U215U040014) (FY 04, \$631,775)	The purpose of this unsolicited grant was to establish an "NCLB Resource Center for Hispanic Educational Progress" to provide public information, training, and technical assistance to the Hispanic community. This grant did not begin until October 2004. The grant specialist stated that the grantee has not produced deliverables yet.				✓	

Item No.	Grantee (Grant Number) (FY Funds, Cost <sup>15</sup> )	Description of Products	Grants Resulting in Op-eds that Did Not Include EDGAR Disclaimer, but Did Not Result in Covert Propaganda	Grants Resulting in Informational Materials that Did Not Include EDGAR Disclaimer	Grant Resulting in Materials that Included EDGAR Disclaimer	Grant Materials Not Yet Created	Grant Materials Not Disseminated to the Public
13	Education Testing Service, Ogilvy Public Relations (Sub) (R902F980001) (FY 99-02, \$161,295)	The purpose of this grant was to collect clips of media coverage about the National Assessment of Educational Progress (NAEP) test and film footage of conferences. We reviewed all of the products associated with this grant. These products were not disseminated to the public.					✓
14	Multiple grantees and/or vendors	<i>The description from ED's list suggested that all products were associated with the establishment and operation of Parent Information Resource Centers (PIRC). Late in the fieldwork process, we received multiple abstracts associated with this grant program. We will review them as part of a subsequent report.</i>					
15	Multiple grantees and/or vendors	<i>The description from ED's list suggested that all products were activities associated with the Voluntary Public School Choice (VPSC) Program. Late in the fieldwork process, we received multiple abstracts associated with this grant program. We will review them as part of a subsequent report.</i>					

Note: The grant programs shaded in gray will be reviewed as part of a subsequent inspection.



**Appendix B: Summary of Contracts**

<b>Item No.</b>	<b>Contractor (Contract Number) (FY Funds, Cost<sup>16</sup>)</b>	<b>Description of Deliverables</b>	<b>No Covert Propaganda</b>	<b>Materials Not Fully Available for Review<sup>17</sup></b>	<b>Materials Not Disseminated to the Public</b>
1	Westat, Inc., & Ogilvy Public Relations (Sub) (ED-99-CO-0089) (FY 99-04, \$170,000 – Value of Subcontract)	This contract called for a B-roll video designed to explain the facts about the Program for International Student Assessment (PISA) study conducted by NCES and two op-eds to be placed in newspapers coinciding with the release of PISA statistics. We reviewed the B-roll and found that it did not contain covert propaganda. The op-eds were never produced, according to the COR.	✓		
2	North American Precis (ED-02-PO-0900) (FY 02, \$2,650)	Contracts called for a newspaper article explaining content on ED's website. We reviewed the article as it was provided to newspapers, which refers readers to <a href="http://www.ed.gov">www.ed.gov</a> . The article as provided to newspapers did not disclose the role of the Department.	✓		
3	ABC Radio Networks (ED-02-PO-1812) (FY 02, \$30,000)	The contract called for the development and placement of PSAs referring listeners to <a href="http://www.studentaid.ed.gov">www.studentaid.ed.gov</a> and ABC Websites containing links to the ED site. We reviewed all deliverables associated with this contract. Each deliverable adequately disclosed ED's role in its production.	✓		
4	Flare Inc. of Metropolitan Washington (ED-02-PO-1440) (FY 02, \$3,000)	The contract called for an ad featured on Washington Metro-area trolleys. We reviewed a copy of the ad, which featured the NCLB logo, referred audience to <a href="http://www.nochildleftbehind.gov">www.nochildleftbehind.gov</a> and 1-800-USA LEARN (an ED phone number). This deliverable adequately disclosed ED's role in its production.	✓		
5	Corporate Sports Marketing Group (ED-02-PO-3080) (FY 02, \$46,000)	The contract called for an ad placed in 2002 World Series program. We reviewed a copy of the ad, which featured the NCLB logo, referred readers to <a href="http://www.nochildleftbehind.gov">www.nochildleftbehind.gov</a> and 1-800-USA LEARN. This deliverable adequately disclosed ED's role in its production.	✓		
6	ABC Radio Networks (ED-04-PO-1136) (FY 04, \$10,000)	The contract called for a PSA informing listeners of the 50 <sup>th</sup> anniversary of Brown vs. Board of Education. We listened to the PSA, which refers listeners to contact ED at 1-800-USA LEARN. This deliverable adequately disclosed ED's role in its production.	✓		
7	ZGS Communications (ED-03-PO-2081) (FY 03-05, \$318,728)	Contract called for a video to highlight successful local educational practices. We reviewed the video, which clearly identifies ED as the source. This deliverable adequately disclosed ED's role in its production.	✓		
8	RedGizmo Creative Studio (ED-04-PO-1586) (FY 04, \$950)	The contract called for a CD-ROM to be distributed by OELA at an NCLB conference. We reviewed the CD-ROM, which features NCLB logo and refers users to <a href="http://www.ed.gov/rights">www.ed.gov/rights</a> . This deliverable adequately disclosed ED's role in its production.	✓		
9	Blanc, Daniel J. (ED-04-PO-0903) (FY 04, \$11,430)	The contract called for a video to commemorate the 50 <sup>th</sup> Anniversary of Brown vs. Board of Education. We reviewed the video through ED's website, which featured an ED logo at the end of the video. This deliverable adequately disclosed ED's role in its production.	✓		

<sup>16</sup> These figures are our best estimates of the value of these contracts based upon the materials the Department supplied to us. We were unable to find quantifications for specific deliverable costs.

<sup>17</sup> This is a scope limitation on the study.

Item No.	Contractor (Contract Number) (FY Funds, Cost <sup>16</sup> )	Description of Deliverables	No Covert Propaganda	Materials Not Fully Available for Review <sup>17</sup>	Materials Not Disseminated to the Public
10	Yeh, Joseph (ED-04-PO-2339) (FY 04, \$10,500)	Contract called for a PowerPoint presentation to help the Asian Pacific Outreach program communicate information about NCLB. We reviewed the presentations, which featured an ED logo, referred the audience to <a href="http://www.ed.gov">www.ed.gov</a> , and provided ED contacts from OELA. This deliverable adequately disclosed ED's role in its production.	✓		
11	George Washington University (ED-03-CO-0036) (FY 03, \$1,928,058)	The contract called for billboards, radio ads, a CD, a website, and a TV PSA informing parents of their rights under NCLB. We reviewed all deliverables, which displayed either an NCLB or ED logo. These deliverables adequately disclosed ED's role in their production.	✓		
12	Radio One, Inc. (ED-03-PO-2184) (FY 03, \$10,000)	The contract called for two live readings of a PSA to be broadcast in selected cities. The ED contact did not have audio copies or a written script of the PSAs. We were unable to review any deliverables produced under this contract to determine if they resulted in covert propaganda.		✓	
13	ZGS Communications (ED-98-CO-0012) (FY 98-02, \$1,685,512)	ED was unable to provide us with all statements of work associated with this contract. Additionally, ED could not identify every deliverable produced under this contract. ED was able to provide deliverables for our review, including booklets, informational videos and a CD-ROM that clearly stated that ED was the source. Since we were unable to review all deliverables produced under this contract, we could not determine if they resulted in covert propaganda.		✓	
14	Bauhaus Media Group, Inc. (ED-02-PO-1363) (FY 02, \$14,003)	ED's file for this contract was incomplete. ED contact did not have the deliverables available for our review. OIG obtained from the contractor a copy of a video for an NCLB event that featured the NCLB logo and footage of Rod Paige and President Bush. Since ED's file is incomplete we could not be sure if this is a deliverable under this contract.		✓	
15	Bauhaus Media Group, Inc. (ED-02-PO-2815) (FY 02, \$13,011)	The contract called for a video highlighting Secretary Paige, NCLB, and the partnership between ED and the National Council of Negro Women (NCNW). Neither ED nor the contractor had the video deliverable available for our review. Since we were unable to review the deliverable produced under this contract, we could not determine if they resulted in covert propaganda.		✓	
16	Ketchum, Inc. (ED-02-PO-2337) (FY 02, \$8,500)	The contract called for an analysis designed to help ED evaluate the success of the NCLB communications campaign. We reviewed all deliverables associated with the analysis. All deliverables were for ED use only.			✓
17	Hager Sharp, Inc. (ED-02-PO-2738) (FY 02-04, \$1,832,269)	Contract called for clips of media coverage about the National Assessment of Educational Progress (NAEP) test, footage of conferences, and a video designed to encourage students to take the test seriously. We reviewed all deliverables associated with the contract. Deliverables were not disseminated to the public.			✓
18	Research Triangle Institute, SA (ED-01-CO00520014) (FY 04, \$894,534)	Contract called for deliverables that were related to educational research and statistical analysis for ED and were not disseminated to the public.			✓
19	Campbell-AIR Joint Venture (ED-02-CO-0022) (FY 02-Present, \$2,000,000)	Contract called for deliverables that were related to educational research and statistical analysis for ED and were not disseminated to the public.			✓

<b>Item No.</b>	<b>Contractor (Contract Number) (FY Funds, Cost<sup>16</sup>)</b>	<b>Description of Deliverables</b>	<b>No Covert Propaganda</b>	<b>Materials Not Fully Available for Review<sup>17</sup></b>	<b>Materials Not Disseminated to the Public</b>
20	American Institutes for Research (RN-95-12-7001) (FY 95-Present, \$287,189)	Contract called for contractor to provide technical support to ED's National Center for Education Statistics in statistical research and analysis, data development, and project management. All contracts files we reviewed indicated that there were no materials that were disseminated to the public.			✓

August 18, 2005

Honorable John P. Higgins, Jr.  
Inspector General  
Department of Education  
Washington, D.C. 20202

Dear Mr. Higgins:

The purpose of this letter is to respond to the revised Draft Inspection Report (Draft Report) entitled *Review of Department Identified Contracts and Grants for Public Relations Services*, ED-OIG/I13-F0012 (July 2005) that was recently completed. I would like to thank you and your staff for your hard work in compiling this report.

We agree with most of the findings in this revised version of the Draft Report and know that they will be very helpful to the Department in our continuing efforts to improve our processes in awarding and monitoring grants and contracts. We are also heartened that your office, in the report, concluded that none of the grants or contracts that your staff reviewed resulted in covert propaganda, and that none of the grants were awarded with the intent to influence public opinion through the undisclosed use of third party grantees. As you are aware, the Department already has taken a number of actions to strengthen the grant-making and contracting processes. These actions are consistent with several of the recommendations.

The attached memorandum sets forth the Department's response to the Draft Report, including specific responses to the recommendations in the revised Draft Report. The memorandum explains the Department's responses and proposed actions to address each recommendation.

Thank you again for the opportunity to review the revised Draft Report. I appreciate the care you have taken in preparing this draft. I would be pleased to discuss the revised Draft Report further with you and your staff.

Sincerely,

/s/

Margaret Spellings

Attachment

## **Department of Education Response to the Office of the Inspector General (OIG) Recommendations in the Revised Draft Inspection Report ED-OIG/I13-F0012**

The revised Draft Report includes several recommendations, and we are providing the following responses<sup>18</sup>:

### Recommendation 1

**“Ensure that contract and grant personnel understand the prohibition on the use of appropriated funds for publicity or propaganda and ensure that this information is communicated to grantees.”**

### Recommendation 2

**“Ensure that contract and grant personnel understand when disclosure of the Department’s role is required and ensure that the language is included in contracts as appropriate, and that the EDGAR requirements are clearly communicated to grantees. ”**

We concur with draft recommendations 1 and 2; they describe steps we are already taking and they are consistent with the Department’s current practice. We have required key personnel in the Department who work on contracts to read various training materials on key provisions and to sign an assurance that they have read and understand the materials. Specifically, these officials were required to read ACS Directive OCFO: 2-108, “Contract Monitoring for Program Officials,” September 16, 2004, which describes and assigns responsibilities for reviewing and accepting contract deliverables. We are currently in the process of purchasing additional training for these officials. See also *footnote 2*.

With regard to grants, the Department’s regulations, at 34 C.F.R. § 75.620(b), clearly require that grantees, when publishing materials supported with grant funds, include the disclaimer language provided in that section. The Grant Award Notice (GAN) that each grantee receives states that the grantee agrees to comply with all applicable regulations, including EDGAR, and we are in the process of examining whether to add more specific and clarifying language to the GAN with regard to the disclaimer language and applicability of specific EDGAR provisions.

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<sup>18</sup> We are not in agreement with all of the findings and the “facts” that, in OIG’s view, support them. For example, we do not agree with all of the characterizations of the background information in the findings on page 10 of the revised Draft Report about the work of Ms. Garcini. Additionally, in the third full paragraph, on page 18, the revised Draft Report states “OGC met with the grantee to discuss the proposed op-ed activities after the grant was awarded.” In fact, the Office of the General Counsel (OGC) did not meet with the grantee. OGC, however, did advise the program officer in the Office of Innovation and Improvement, in both a telephone conversation and an electronic mail message, on these issues. The program officer, in turn, conveyed the substance of the advice provided by OGC to the grantee in a telephone conversation and an electronic mail message. In any event, these factual disagreements do not significantly change the recommendations; however, we are noting them for the record.

Also, Department program officers specifically advise grantees, as questions arise, on how they may comply with the requirements of the regulation. However, in order to ensure that 34 C.F.R. § 75.620(b) is more clearly understood and given further emphasis, the Department is in the process of revising the Discretionary Grants Handbook and plans to include more specific information on this requirement to emphasize its importance.

### **Recommendation 3**

**“Monitor contracts and grants and ensure that files are complete and appropriately documented. For contracts, files should also include proof of production of the deliverables.”**

We concur with the draft recommendation. It is important that contract and grant files be complete and include appropriate documentation. We will review the current Department internal guidance to personnel (including directives) on grants and contracts to ensure that the guidance includes appropriate information on the need to maintain complete and appropriately documented files. The Department takes contracting and grant-making responsibilities seriously, and will make sure that our employees exercise due diligence in keeping appropriate files, and that the maintenance of these files is properly monitored.

### **Recommendation 4**

**“Obtain copies of the ZGS contract deliverables unavailable for our review, determine if there were any violations of the covert propaganda prohibition, and report any resulting violations of the Antideficiency Act to the President, Congress, and the Comptroller General in accordance with the instructions of OMB Circular A-11.”**

The Department’s Office of Communications and Outreach, the successor to the Office of Intergovernmental and Interagency Affairs, will thoroughly search both its records and the contractor’s records to locate the deliverables to the extent feasible. Those deliverables that are located will be reviewed with the cooperation of the Office of the General Counsel to determine if they contain any covert propaganda or do not have appropriate attribution and disclaimers. In addition, the Department will take steps to ensure that all deliverables under contracts are delivered and retained properly in accordance with Recommendation 3 above.

Once these deliverables are reviewed, if there are violations of law, the Department will take appropriate remedial action. Additionally, any violations of the Antideficiency Act will be reported in accordance with the provisions of OMB Circular A-11.

### **Recommendation 5**

**“Determine if the op-eds planned under the Westat, Inc. contract were to be attributed to the Department. If not, determine the amount of the resulting**

**improper obligation for the op-ed task order, and the amount of any expenditure that occurred before the task was abandoned. Any resulting violations of the Antideficiency Act should be reported to the President, Congress, and the Comptroller General in accordance with the instructions of OMB Circular A-11.**

In the revised version of the Draft Report, OIG states that the task was to “write two different versions of an op-ed and identify two credible, respected authors and work with NCES/Westat to place the item in an appropriate time adjacent to the PISA release.” The Draft Report also notes that the task order did not specify the need to disclose the role of the Department. The report also states that “[a] separate task order had as its purpose the preparation of draft comments by Department officials.” Revised Draft Report at 14.

We base our comments on discussions with the Contracting Officer’s Representative (COR), and an April 28, 2005 electronic mail statement from the COR indicating that: (1) no opinion editorials (op-eds) were produced; and (2) the task was originally contemplated as a legitimate service for the initial preparation of draft comments for consideration by Department officials on the results of the Trends in International Mathematics and Science Study (TIMMS) and the Program for International Student Assessment (PISA) results.

Because no op-eds were ever produced, published or otherwise disseminated to the public, there were no improper expenditures on the op-ed task order. Moreover, under the terms of the contract, Westat was required to comply with the clause contained in 48 C.F.R. § 3452.227-70 which requires that the contractor acknowledge the support of the Department in the project and further indicate that the content of the publication does not necessarily reflect the views of the Department. The clause is required to be in all Department contracts except purchase orders. 48 CFR § 3427.470. There is no evidence that Department officials took action or had intent to allow Westat to violate this clause. Accordingly, the Department considers the Westat contract issue closed and does not concur with this recommendation, and we suggest that OIG consider revising the finding and recommendation accordingly.<sup>19</sup>

#### Recommendation 6

**“Determine the amount of improper expenditures associated with the publication of op-eds under grants U215U030007-04, U215U030031, and U215U040023 and initiate a recovery action for the unallowable use of funds.”**

We concur in general with this recommendation and will, after ascertaining the amount of improper expenditures, if any, associated with the publication of op-eds for the grants referenced above, seek to disallow and recover costs, in accordance with the requirements

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<sup>19</sup> The Department currently has in place a review process for all Statements of Work that contain tasks relating to information dissemination to the public. As part of that review, the Office of the General Counsel advises CORs and Contracting Officers on issues relating to publicity and propaganda. Moreover, program staff are required to carefully review and monitor contract deliverables to ensure that applicable appropriations’ amendments and other laws are not violated.

of Part D of the General Education Provisions Act, in those instances where grant funds were used on improper expenditures. Whether a recovery action is ultimately initiated will, of course, depend on the amount of Federal grant funds expended on the preparation and publication of those items, and, as required by 20 USC § 1234b, a determination of whether any Federal interest was harmed. That assessment requires an analysis of the value of the program services actually obtained with the expenditures at issue. 20 U.S.C. § 1234a.

Recommendation 7

**“Review the materials produced under grants U125U030031, U215U040023, R215U020007, U215U30029, U215U040022, U215U030021/U215U030021A, U215U040009, R215U020003, and U215U040017 to determine if the items without EDGAR disclaimers were publications. If so, determine the amount of improper expenditures and, if appropriate, initiate a recovery action for the unallowable use of funds.**

We concur with this recommendation. We also agree that the Department should seek to disallow and recover costs in accordance with the requirements of Part D of the General Education Provisions Act, in those instances where grant funds were used to support the publication of materials that did not contain the disclaimer language required by 34 C.F.R. § 75.620. As noted above, whether a particular recovery action is ultimately initiated will, of course, depend on ascertaining whether items were published without the required EDGAR disclaimer, on the amount of Federal grant funds expended on the preparation and publication of those items, and, as required by 20 USC § 1234b, on a determination of whether any Federal interest was harmed. That assessment requires an analysis of the value of the program services actually obtained with the expenditures at issue. 20 U.S.C. § 1234a.