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**Department of Education
Records Management Program**

Records Management Inspection Report

National Archives and Records Administration
March 6, 2020

**DEPARTMENT OF EDUCATION
RECORDS MANAGEMENT PROGRAM
INSPECTION REPORT**

INTRODUCTION

The National Archives and Records Administration (NARA) is responsible for assessing the proper management of records, in all media, within Federal agencies to protect the rights of citizens, assure government accountability, and preserve and make available records of enduring value. In this capacity, and based on authority granted by 44 United States Code (U.S.C.) 2904(c)(7) and 2906, NARA conducted an inspection of the Department of Education (ED) departmental records management (RM) program in April 2019.

The purpose of this inspection was to examine ED's compliance with RM laws, regulations, and policies, with attention to email and electronic records, records scheduling and implementation, and RM training.

This inspection assessed ED's RM standards, policies, procedures, and practices at the Department level, and the impact on Principal Offices (POs). It also examined the controls the Department has implemented to mitigate risks associated with non-compliant handling of records and information to ensure that departmental policies and procedures are effectively performed throughout the Department. The POs RM programs were not the focus of this inspection; they are included in this report only to the extent that they intersect with, and to some degree, rely upon the departmental program for RM.

In several key areas described below, NARA found that ED is non-compliant with various elements of 36 Code of Federal Regulations (CFR) Chapter XII, Subchapter B and Federal Records Act (44 USC Chapter 21-35).

Failure to manage agency records in a compliant manner increases the risk of records not being readily accessible for normal business operations, program development, and accountability to Congress and the public. It also increases the risk of loss of Federal information and records, which raises the possibility that permanent records may not be retained for eventual transfer to the National Archives, as required by 44 U.S.C. 3101. To help mitigate the risks associated with non-compliance, this report makes 15 findings and 23 recommendations. Follow-up actions required for ED and NARA are included in Appendix C.

OVERVIEW OF ED RECORDS MANAGEMENT PROGRAM

On January 6, 2019, ED went through an internal reorganization as part of an Administration-wide commitment to making government more efficient, effective, and accountable. This reorganization moved the Federal Records Management Program (FRMP) into the Office of the Chief Information Officer (OCIO), where the Agency Records Officer (ARO) now serves as the Information Management Branch Chief. The ARO supervises and directs the FRMP.

The FRMP ensures policies, technology and customer service are in place for the establishment, maintenance, and promotion of effective Department-wide information management practices, as required by Federal law and regulation, and directly oversees the RM program for the POs throughout the Department. The FRMP is staffed by both Federal (3) and contractor (2) employees who collaborate with each PO's Executive Officer (EXO) to ensure the implementation of the Department's RM strategic goals.

FINDINGS AND RECOMMENDATIONS

RM Roles and Responsibilities

Finding 1: RM staff do not have RM duties written into their position descriptions.

36 CFR 1220.34 (d) requires agencies to assign records management responsibilities in each program (mission) and administrative area to ensure incorporation of recordkeeping requirements, disposition practices, and agency RM policies and/or procedures are properly implemented. ED complies with this regulation; however, ED ARO stated that not all ED RM staff, within FRMP and the ED RM network, have RM duties written into their position descriptions. Therefore these individuals are often given records management responsibilities in an ad hoc manner, taking on RM responsibilities under "other duties as assigned" clauses in their job descriptions. This means that their records management tasks are not typically evaluated as part of performance reviews. As such, records management duties often are not given priority and as a result are relegated to the bottom of to-do lists.

While not specifically indicated by the regulation, putting records management duties into position descriptions such duties are elevated in importance and can only enhance staff ability to implement the RM program policies and objectives. This will in turn improve ED's ability to create and maintain records, provide access to information to whomever needs it in a timely manner, and to ensure proper disposition of records overall.

Recommendation 1: ED should ensure that RM duties are written into the position description of those employees who serve as Records Liaison Officers (RLO), FRMP staff, and anyone required to support ED's RM program.

Policies and Directives

Finding 2: POs have not developed and disseminated general and specific RM guidance as required by the Department's RM Directive.

ED Departmental Directive OM: 6-103, section VII, part B (2) states, "POs shall develop and disseminate to staff general and specific guidance for creating and maintaining records documenting their organization, functions, and activities... e.g. a description of the records that are required to be created and maintained for a specific activity included in the relevant program handbook or manual."

During the inspection, none of ED POs submitted any such RM guidance, and the POs that were interviewed indicated that they use whatever RM guidance is issued by the FRMP. Since there was no evidence that the POs have developed, or disseminated to their staff, specific RM guidance for creating and maintaining records within the POs, NARA concludes that ED is not compliant with ED's RM Departmental Directive OM: 6-103.

Recommendation 2: ED should develop and disseminate general and specific RM guidance for PO's as required by the Department's RM Directive OM: 6-103.

Finding 3: ED RM policies lack sufficient information regarding reporting on allegations of unauthorized disposition of Federal records.

ED Departmental Directive OM: 6-103, section II, F states that, "Destruction of records is authorized only when conducted in compliance with ED's records disposition schedules... Criminal penalties maybe be imposed for the willful and unlawful destruction, damage, or removal of Federal records as described in 18 U.S.C. Section 2701." The section of ED's Departmental Directive cited above is not sufficient information regarding the unauthorized disposition of Federal records because the directive does not include any information or instructions about investigating, reporting, and mitigating potential unauthorized disposition of agency records.

According to 36 CFR 1230.10 (b), ED must take adequate measures to not only inform all employees and contractors of the provisions of the law relating to unauthorized disposition, but also put in place and make known any procedures that can mitigate the risk of unauthorized disposition of agency records, and how to promptly report any loss of agency records to NARA. To accomplish this ED must develop and disseminate procedures that not only mitigate the risk of unauthorized disposition of agency records, but also ensure the prompt reporting of any loss of agency records to NARA.

Recommendation 3: ED must inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of agency records in full accordance to 36 CFR 1230.10 (b).

Department Guidance, Manuals, and Handbooks

Finding 4: ED RM guidance regarding the disposition of agency records is outdated and not sufficiently disseminated throughout the Department.

During the inspection, the ED ARO indicated that RM guidance was housed and made available to staff via an intranet website, but that this website was no longer available to staff because the information on the website was incomplete and out-of-date.

Hence, ED does not have up-to-date and comprehensive guidance available to all staff that contains records disposition processes, policies and procedures that specifically cover: how to find applicable records schedules, transfer records in accordance with 36 CFR 1232 & 1233, disposal processes and procedures for temporary records (36 CFR 1226.24), transfer of

permanent records, processes for handling unauthorized disposition of records and managing email and other electronic records.

As mentioned above, RM regulations and NARA guidance (36 CFR 1220.32 (c)) requires agencies to disseminate throughout the agencies retention schedules, disposition instructions, and related policies and procedures.

Recommendation 4: ED must develop and disseminate to all staff comprehensive and up-to-date RM guidance that covers all department records disposition processes, policies, and procedures. (36 CFR 1220.32 (c) and NARA Bulletin 2017-002)

Department Schedules and General Records Schedules

Finding 5: ED does not have a comprehensive list of department schedules and some of ED records schedules do not cover records in all formats.

During the inspection ED could not provide NARA with a comprehensive, up-to-date list of all agency schedules. A compliant, effective, and efficient Federal RM program will not only require that all records be covered by NARA-approved records retention and disposition schedules, but will also maintain and distribute throughout the agency a comprehensive and current list of schedules for the Department's records.

Additionally, some ED records are covered by old disposition authorities that are not media neutral. As a result, the current schedules cannot be applied to records that are created and maintained in electronic format. This puts ED at risk of not being able to meet the OMB/NARA Memorandum M-19-21 (M-19-21), Goal 1.1, which states that all permanent electronic records must be managed throughout their lifecycle in electronic format. An outdated retention schedule also puts ED at risk of unauthorized disposition of records or retaining some records longer than necessary.

Recommendation 5.1: ED must develop and disseminate an accurate, current and comprehensive list of schedules for all department records (36 CFR 1225.10).

Recommendation 5.2: ED must review, and where necessary, update all record schedules that are not media neutral, or do not cover records in all media formats (36 CFR 1225.10).

Evaluation and Oversight

Finding 6: ED POs do not perform annual RM evaluations/audits/inspections and ED's departmental assessment did not include recommendations for correcting or improving RM policies and procedures.

Federal regulations require agencies to conduct formal evaluations to measure the effectiveness of their RM program and practices, and to ensure all records are managed in accordance with 36 CFR Chapter XII, Subchapter B (36 CFR 1220.34(j)). Comprehensive RM evaluations

conducted regularly help AROs identify areas of non-compliance or weakness and enables them to take necessary corrective actions and make improvements (36 CFR 1220.18).

Additionally, ED's Departmental Directive OM: 6-103, section II (C), states that "PO shall conduct an annual internal evaluation (records management self-assessment) of their records management programs to certify that their programs are operating in compliance with NARA and ED policies and procedures."

During the inspection, ED POs did not provide any documentation indicating that each PO had conducted annual RM evaluations as required by ED's Departmental Directive OM: 6-103. ED only provided the FY 2017 Departmental Assessment. The Departmental assessment is done every three years and did not include any plans of corrective action for POs that had low or moderate risks to RM.

Recommendation 6: ED must establish formal RM evaluations/audits/inspections that include plans of corrective action throughout the entire Department in accordance with 36 CFR 1220.18.

RM Training

Finding 7: ED RM basic training is not fully compliant with NARA Bulletin 2017-01.

NARA Bulletin 2017-01 provides the minimum requirements for agency RM training programs and describes promising practices for the development and administration of RM training. This Bulletin also supplements the general RM training requirements outlined in 36 CFR 1220.34.

After reviewing ED's Annual RM Training slides, NARA concludes that ED Annual RM training is only 40% compliant with NARA Bulletin 2017-01. The training does not describe:

- How records are maintained and filed in the agency, including:
 - What is a records schedule?
 - The record schedule's legal authority.
 - Where to find their agency's schedules.
- The General Records Schedules (GRS) and how to apply them.
- Why it is important to follow records schedules or file plans.
- How records schedules or file plans are implemented and updated.
- How legal holds (sometimes called records freezes) and the discovery phase of litigation affect records handling, retention and disposition.
- How and where to store agency Federal records.
- How agency information technology (IT) systems are used for records management (if applicable, how to use agency records management technologies).
- What to do with record and non-record materials when an employee leaves the agency.
- What to do when records are removed, lost, or destroyed without proper authorization.
- Where to get more information about records management (e.g., websites, manuals, agency's records schedule, file plans, and agency Records Officer contact information).
- How to retire records to storage, transfer permanent records or destroy them.

Finally, the training does not require trainees to practice what they are learning by using relevant RM scenarios or information testing.

Recommendation 7: ED must revise its Annual RM Training to ensure that it meets all requirements outlined in NARA Bulletin 2017-01.

Finding 8: ED ARO cannot validate that every ED contractor receives RM training.

ED ARO indicated that ED encourages its Contracting Office Technical Representatives (COTR) to distribute the Department's Annual RM Training to contractors, but there is no standard process in place to ensure that all contractors receive RM training as mandated by 36 CFR 1220.34 (f).

Recommendation 8: ED must develop and implement processes and procedures to ensure that all contractors receive ED Annual RM Training, and that the completion of training is tracked (36 CFR 1220.34(f), OMB A-130 section 5.h.8, NARA Bulletin 2017-01).

Performance Measures, Risks, and Controls

Finding 9: ED has limited controls in place to ensure agency records are described, indexed and available for use in accordance with certain RM regulations.

ED has not comprehensively instituted controls to ensure that all records, regardless of format, are properly organized, classified or indexed, described, and made available for use by all appropriate agency staff, this includes records created and maintained by ED contractors. All ED POs are at risk of destroying records prematurely, and maintaining records longer than necessary, because of inaccurately written and incomplete file plans.

During the inspection ED submitted current agency file plans. A comprehensive review of these file plans revealed that most of the file plans had outdated/superseded GRS citations that included inaccurate retention periods. Several of the file plans did not contain mission related files, did not provide accurate locations of files, and at times, did not indicate whether or not files were permanent or temporary records.

Additionally, the ED ARO could not confirm whether or not permanent and temporary records are physically segregated from each other, or for electronic records, are segregable. All agency records must be filed or otherwise identified and preserved, records must be readily found when needed, and permanent and temporary records must be physically segregated from each other or, for electronic records, segregable to ensure proper management of agency records.

Finally, during inspection interviews with some POs, NARA identified that some POs are at risk of not capturing and preserving records of agency activities because: (1) there are ineffective and inconsistent documentation processes being practiced, (2) file plans do not identify all PO records as some file plans do not align with the organizational structure of POs, and (3) file plans do not include unscheduled records.

NARA's review of agency file plans also revealed that several PO file plans did not identify mission related files, and during interviews with PO staff, NARA was made aware that some offices had unscheduled records, but no unscheduled records were identified on agency file plans.

Recommendation 9.1: ED must institute controls that ensure all records, scheduled and unscheduled, regardless of format, are properly organized, classified or indexed, described, and made available for use by all appropriate agency staff, including all records created and maintained by ED contractors (36 CFR 1220.34 (i)).

Recommendation 9.2: The FRMP must work with each PO to successfully identify all records and non-records, scheduled and unscheduled records, created and maintained within each PO, for all functions and activities performed as outlined by the PO's organizational structure (36 CFR 1225.12 (2)), including all records created and maintained by ED contractors.

Recommendation 9.3: FRMP must determine:

- a) Whether or not all PO records exist, volume of records, where the records are kept, and who manages the records;*
- b) Whether or not PO records have not been captured and/or have been prematurely destroyed; and*
- c) Promptly report to NARA all PO records that have not been captured and/or destroyed in accordance with 36 CFR 1230.14.*

Recommendation 9.4: ED should suspend the use of all file plans throughout the Department until the ARO reviews and verifies accuracy of all ED file plans.

Recommendation 9.5: The FRMP must review and revise all ED file plans to accurately and comprehensively capture all scheduled and unscheduled records throughout the Department (36 CFR 1225.10).

Recommendation 9.6: ED must develop a process to ensure that permanent and temporary records are physically segregated from each other or, for electronic records, are segregable and identify permanent and temporary records on agency file plans (36 CFR 1224.34).

Finding 10: ED ARO is not always made aware of when the Federal Student Aid (FSA) PO's incoming or departing employees are briefed on RM policies and procedures.

The FRMP conducts and documents all briefings for on-boarding and departing ED employees, except for employees of the FSA PO, but the FSA PO does execute its own process that is similar to the Department's process. However, the ARO is not always made aware of when the FSA's incoming or departing employees are briefed. It is imperative that the ARO is made aware of incoming and outgoing employees to maintain proper controls of records within the Department.

Recommendation 10: FSA must regularly report to FRMP all on-boarding and departing employee briefings to ensure program accountability and proper control of records. (36 CFR 1222.24 (6)).

Records Disposition

Finding 11: The FSA and the OCIO were unable to provide requested records.

During the course of the inspection, NARA requested to see certain records from FSA and OCIO POs, but both POs were unable to provide all of the requested records.

NARA gave ED notice ahead of the inspection site visit that the inspection team needed to physically inspect certain OCIO records, specifically:

1. Program Management Files: “implementation plans and deliverables for E-Gov, security, grants and other programs” with the disposition authority ED 066.b, and
2. FOIA Request Files: these files use GRS 14, Item 11a with disposition instructions, “temporary cut off after date of reply. Destroy/delete 2 years after cutoff.” These records should be kept for 6 years.

While at OCIO, the NARA inspection team was led to filing cabinets that were labelled “OCIO Budget Formulation Documents, CIO Memos, Control Correspondence, Congressional Meetings, OMB Memos and Budget Data FY 2014/2015/2016.” These cabinets were locked and the inspection team was unable to review any documents within them.

The purpose of our physical inspection was to verify that the requested records existed, as well as, determine whether or not those records being kept were original documents or reference copies. Since the cabinet was not unlocked while the inspection team was there, NARA cannot validate that the requested records exist.

While at the FSA NARA requested to see:

1. Significant Correspondence (Paper & eFiles): Significant and controlled signed correspondence that documents major program activities or was processed under special handling control procedures because of its importance or turnaround time requirements: Disposition Authority: ED 062 a.\N1-441-08-19.
2. Program Management Files (Paper & eFiles): These files contain materials documenting the ongoing management of program, and routine projects for various offices within the Department. The records relate to both mission and operational programs maintained by various organizational units within the Department: Disposition Authority: ED 066a.\N1-441-10-1.
3. Calendars, Schedules and Logs of Daily Activities (Paper & eFiles): Senior Officials, records documenting substantive meetings, appointments, telephone calls, trips, visits and other substantive activities of federal employees, copies of speeches: Disposition Authority: ED 067b.\N1-441-08-14.

Representatives at the FSA were able to show the inspection team paper records of most of the requested files. During the physical review of the records, NARA identified that the following correspondence was not accounted for:

- FY 1997-1998 correspondence of FSA's first Chief Operating Officer (COO), Greg Woods
- Calendars and schedules of Larry Warder

Recommendation 11: Since ED was unable to physically produce these records during the inspection site visit, in accordance with 36 CFR 1230.14, ED must immediately investigate this issue and report the findings of the investigation, and if necessary, submit a self-report documenting any unauthorized disposition of these records. This report must include all elements described in 36 CFR 1230.14.

Electronic RM and Electronic Recordkeeping Systems

Finding 12: ED has not scheduled all electronic records and electronic systems.

ED ARO indicated that the Department has not scheduled all electronic records and electronic systems, including some records and systems maintained by contractors.

According to 36 CFR 1236.20 (e) & (f) agencies must ensure that all records in a system are retrievable and usable for as long as needed to conduct agency business and meet NARA approved dispositions, as well as identify and effect the transfer of permanent records to NARA based on approved records schedules.

Recommendation 12: ED must inventory and schedule all electronic records and electronic systems throughout the Department, including all systems and electronic records created and maintained by contractors 36 CFR 1236.20 (e) & (f).

Finding 13: ED does not ensure that all electronic systems are compliant with 36 CFR 1236 (b).

ED ARO indicated that all ED electronic systems are required to be compliant with the National Institute for Standards and Technology's (NIST) 800-53 standard; however, ED electronic systems are not required to be compliant with 36 CFR 1236 (b). Since NIST certification does not cover all recordkeeping requirements, ED needs to create a process that ensures all electronic systems are compliant with 36 CFR 1236 (b).

Recommendation 13: ED must ensure that all electronic systems, including those systems designed and maintained by contractors, are compliant with (36 CFR 1236 Subpart b: 1236.10, 1236.12, and 1236.14).

Storage

Finding 14: ED ARO does not know where POs commercial storage locations are, and does not have an inventory of the records stored at these commercial storage locations.

During the inspection, the ED ARO informed us that he knows that some POs use off-site commercial storage, but he does not know where or what records are being stored off-site.

There are specific structural, environmental, property, and life-safety standards that a records storage facility must meet when it is being used to store Federal records. If the ARO is unaware of where POs store Federal records, these records could potentially be at risk if they are not stored in a location that meets the requirements set forth in 36 CFR 1234.3 (b).

Additionally, POs must document what records are being stored off-site to ensure proper disposition is being done for those records.

Recommendation 14: FRMP must identify what commercial off-site storage locations are being used by any PO, ensure that all commercial storage locations used by any POs satisfy requirements stated in 36 CFR 1234.30 (b), and develop a comprehensive list of all records being stored off-site.

Contracts and Contractors

Finding 15: The FSA does not execute sufficient controls regarding how long-term temporary records are managed by its contractors.

During the inspection interview with the FSA, the FSA Records Manager stated that she had little to no control regarding how long-term temporary records that document the primary mission of the FSA (e.g. Master Promissory Notes and other student loan documentation) are maintained and managed by its contractors. This is primarily because FSA does not use the NARA language (or equivalent) developed for contracts to ensure proper management and ownership of Federal records.

36 CFR 1222.32 requires Federal agencies to safeguard records created, processed, or in the possession of a contractor or a non-Federal entity. Additionally, agencies must specify in their contract agreements government ownership and the delivery to the government of all records necessary for the adequate and proper documentation of contractor-operated agency activities and programs.

When Federal agencies acquire goods or services, they need to determine what Federal records management requirements should be included in the contract. Federal contractors often create, send, or receive Federal records. Federal contracts should provide clear legal obligations describing how the contract employees must handle Federal records.

Agency records officers, procurement counsel, and acquisitions officers must discuss how to integrate records management obligations into their existing procurement processes. NARA has

developed language to be included as agency-specific terms and conditions in Federal contracts for a variety of services and products and Federal agencies should adopt this or equivalent language to ensure proper management of records created and maintained by contractors.

Finally, it was noted that the FSA does not have a comprehensive inventory list of all records created, maintained/managed, and stored with its contractors. 36 CFR 1225.12(a) and (b) requires federal agencies to initiate and complete full inventories of their records. If an agency is unaware of what records exist with their contractors, it is impossible to control or effectively manage the information created and maintained by them.

Recommendation 15.1: All ED contracts, including those that relate to the FSA, should outline how records in the contractors' control must be managed in order to satisfy all Federal RM regulations and guidelines 36 CFR 1222.32(b).

Recommendation 15.2: All ED POs must meet the requirements of 36 CFR 1220.30 and 36 CFR 1222.32 and should include the contract language as stated in the NARA RM Handbook, RM Language for Contracts section, to ensure proper disposition of records in their custody.

Recommendation 15.3: ED must have a comprehensive and up-to-date inventory list of all records created, managed, and stored with ED contractors, and subcontractors, in all media formats, and update these lists annually, to ensure that all information created for the Federal government is managed and scheduled for disposition appropriately (36 CFR 1222.32 (b)).

CONCLUSION

The recent internal reorganization of ED places the FRMP in a part of the Department that supports an enterprise-wide approach to managing government records as outlined in the OMB/NARA Directive (M-19-21).

The ARO has indicated that he was aware of many of the findings NARA made in this report prior to the inspection. Thus, the ARO had already started responding to deficiencies within ED RM policies and practices, to mitigate the risks posed to agency records, and to address areas of non-compliance with Federal RM regulations.

The "United States Department of Education FRMP FY 2019 Strategic Goals" document provides a comprehensive set of strategic goals that should ensure policies, technology, and customer services are in place to establish, maintain and promote effective Department-wide information management practices, as required by Federal law and regulation.

Additionally, partnerships with the Chief Information Officer, General Counsel, and Information Technology providers should help formalize automation of the Department's records retention policies and configure Department-wide technology with those policies, with hopes that this will establish centrally administered controls of information within the Department. To successfully create this new paradigm, the ARO plans to establish an enterprise-wide level working group to ensure programmatic stakeholders understand the changes, concur with the new policies, and agree to their new responsibilities.

The FRMP should be successful in establishing a comprehensive RM program that addresses governance, information management, lifecycle management, compliance, engagement and education if the Department provides the necessary resources, and the POs effectively collaborate with the ARO to implement the FY 2019 Strategic Goals.

APPENDIX A INSPECTION PROCESS

OBJECTIVE AND SCOPE

The objective of this inspection was to examine how well ED records management program complies with statutory mandates and RM requirements. The inspection focused on the development of records management policies and procedures by ED RM program and its implementation throughout the organization. There was particular emphasis on electronic records management and the implementation of OMB/NARA Managing Government Records Directive (M-12-18) and OMB/NARA Guidance on Managing Email (M-14-16) goals.

METHODOLOGY

NARA carried out this inspection by conducting interviews at ED Headquarters with seven POs and by reviewing program documentation from all ED POs. More specifically, the inspection team:

- reviewed records management policies, directives, and other documentation provided by ED and its POs;
- interviewed RM representatives from the seven POs and the FRMP;
- guided the course of the inspection using a detailed checklist of questions based on Federal statutes, Federal regulations, and NARA guidance; and
- reviewed ED and PO responses to current and past annual Records Management Self-Assessments (RMSA) and current and past reports of Senior Agency Official for Records Management (SAORM).

PRINCIPAL OFFICES INTERVIEWED

NARA visited the FRMP and seven POs in Washington, DC, area on April 22-26, 2019.

1. Federal Student Aid
 2. Office of Chief Information Officer
 3. Office of Career, Technical, and Adult Education
 4. Office of Communication and Outreach
 5. Office of Elementary and Secondary Education
 6. Office of the Inspector General
 7. Office of the Secretary
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APPENDIX B
RELEVANT INSPECTION DOCUMENTATION

- FRMP FY2019 Strategic Goals
 - ED Records Information Management Directive
 - ED Records Retention and Disposition Directive
 - ED PO File Plans
 - FY 2017 Departmental Assessment
 - ED Annual RM Training
 - Department of ED Organizational Chart
 - ED FSA GAO Report
 - Regional Office Information Management Assessment
 - EERMS Program and Technical Services: ED Retention Schedule Assessment
 - ED RLO Handbook
 - RDMD Insider Connection Newsletter
 - Self-Assessment Review SOP
 - FRMP FY 2018 Accomplishments
 - Information Brief: Capstone Federal Records
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APPENDIX C

Authorities and Follow-up Activities

Authorities

- 44 U.S.C. Chapter 29
- 36 CFR Chapter XII, Subchapter B
- 36 CFR 1239, Program Assistance and Inspections

Other Guidance

- OMB/NARA Managing Government Records Directive (M-12-18)
- OMB/NARA Guidance on Managing Email (M-14-16)
- Other NARA Bulletins currently in effect

Statutes and Regulations

36 CFR Chapter XII, Subchapter B, specifies policies for Federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, and records disposition. The regulations in this Subchapter implement the provisions of 44 U.S.C. Chapters 21, 29, 31, and 33. NARA provides additional policy and guidance to agencies at its records management website - <http://www.archives.gov/records-mgmt/>.

At a high level, agency heads are responsible for ensuring several things, including:

- The adequate and proper documentation of agency activities (44 U.S.C. 3101);
- A program of management to ensure effective controls over the creation, maintenance, and use of records in the conduct of their current business (44 U.S.C. 3102(1)); and
- Compliance with NARA guidance and regulations, and compliance with other sections of the Federal Records Act that give NARA authority to promulgate guidance, regulations, and records disposition authority to Federal agencies (44 U.S.C. 3102(2) and (3)).

Follow-up Activities

ED will submit to NARA a Plan of Corrective Action (PoCA) that specifies how the agency will address each recommendation, including a timeline for completion and proposed progress reporting dates. The plan must be submitted within 60 days after the date of transmittal of the final report to the head of the agency.

NARA will analyze the adequacy of ED's action plan, provide comments to ED on the plan within 60 calendar days of receipt, and assist ED in implementing recommendations. ED will submit to NARA progress reports on the implementation of the action plan until all actions are completed. The frequency of progress reports will be determined during the development of the PoCA. NARA will inform ED when progress reports are no longer needed.

APPENDIX D

ED Response to NARA RM Inspection Report Draft





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE CHIEF INFORMATION OFFICER

THE CHIEF INFORMATION OFFICER

January 10, 2020

Mr. Laurence Brewer
Chief Records Officer
for the U.S. Government
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740

Dear Mr. Brewer:

I am pleased to provide the U.S. Department of Education's (ED's or Department's) response to the National Archives and Records Administration's (NARA's) final report, *Department of Education Records Management Program (Report)*.

We appreciate the opportunity to respond to this Report; however, the Report contains insufficient explanation of, and inadequate information forming the basis for NARA's findings and recommendations for the Department to appropriately and fully respond. After reviewing the earlier draft of the Report, the Department communicated these concerns to NARA orally and in written comments, and in written questions. Additionally, we requested and did not receive the relevant work papers for the draft Report.

During our review of the draft Report and this version of the Report, we noted and continue to note that some of the findings and recommendations fall into the category of best practices that will help improve the management and oversight of Department records. In those cases, we partially concur or non-concur with those recommendations not supported by legislative mandate or OMB policy.

While we do not believe that NARA has provided sufficient information for us to appropriately respond to the Report, what follows is a response and a brief narrative that explains progress made by the Department in implementing its 21st century vision and responses to each of the Report's findings. The report does not account for the compensating records management controls provided by certain systems including, for example, ED's enterprise-wide deployment of Office 365, which resulted in a Report that shows some fundamental misunderstandings or incomplete information of ED's Records Management Program.

Finding 1: RM staff do not have RM duties written into their position descriptions.

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Recommendation 1: ED should ensure that RM duties are written into the position description of those employees who serve as Records Liaison Officers (RLO), Federal Records Management Program (FRMP) staff, and anyone required to support ED's RM program.

Department Response: The Department does not concur with this finding. There is no specific requirement to include records management responsibilities in RLO or other staff position descriptions within Title 36 of the Code of Federal Regulations (CFR), Chapter XII, Subchapter B. That said, we note the Office of Personnel Management's (OPM's) intent (per OMB Directive M 19-21) to revise position classification standards for archival and records management occupational series to incorporate electronic records management responsibilities and functions in 2020. In accordance with this Directive, the Department is planning to revise current Records and Information Management Program guidance to ensure RLO, FRMP staff, and others performing Records Management (RM) duties have functions written into their position descriptions, where applicable, once OPM issues updated position classification standards. In the meantime, we believe that records management duties are being carried out effectively and appropriately under the current position descriptions, and that no changes are needed in the interim.

Finding 2: POs have not developed and disseminated general and specific RM guidance as required by the Department's RM Directive and RM regulations.

Recommendation 2: ED must develop and disseminate general and specific RM guidance for PO's as required by the Department's RM Directive and RM regulations.

Department Response: The Department partially concurs with this finding. We have significantly enhanced our training program for senior officials (and other officials with key responsibilities) of each Principal Operating Component (POC), and this has been very well-attended and well-received. In addition, there are POCs that have developed and disseminated their own general and specific RM guidance as required by the Department's Directive. The Departmental Directive OM: 6-103, "Records and Information Management Program" (OM: 6-103), will be updated and replaced in fiscal year 2020 to further enhance guidance to help ensure the Agency Records Officer (ARO) is working with POC staff to ensure the management of records consistent with statute and Departmental policy.

Finding 3: ED RM policies lack sufficient information regarding reporting on allegations of unauthorized disposition of Federal records.

Recommendation 3: ED must inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of agency records in accordance with 36 CFR 1230.10 (b).

Department Response: The Department does not concur with this finding. The Department's current guidance, OM: 6-103, related to this topic sets forth safeguards to prevent the unlawful or accidental removal, defacing, alteration, or destruction of records for all employees (Government & Contractors) in accordance with 36 CFR 1230.10. As such, the Department manages allegations of unauthorized dispositions appropriately when they are received. We recognize improvements can always be made, particularly in strengthening investigation and reporting techniques, which will be covered in the forthcoming updates to OM: 6-103.

Finding 4: ED RM guidance regarding the disposition of agency records is outdated and not sufficiently disseminated throughout the Department.

Recommendation 4: ED must develop and disseminate to all staff comprehensive and up-to-date RM guidance that covers all department records disposition processes, policies, and procedures. (36 CFR 1220.32 (c) and NARA Bulletin 2017-002)

Department Response: The Department partially concurs with this finding. OM: 6-103 is readily available to employees on an internal website and existing records retention policies are on the public website (<https://www2.ed.gov/notices/records-management/index.html>). The successor to OM: 6-103 will be further updated to enhance General Records Schedule (GRS) disposition requirements for Department records in any media reflecting recent experiences and technological advances.

Finding 5: ED does not have a comprehensive list of department schedules and some of ED records schedules do not cover records in all formats.

Recommendation 5.1: ED must develop and disseminate an accurate, current and comprehensive list of schedules for all department records (36 CFR 1225.10).

Recommendation 5.2: ED must review, and if necessary, update all record schedules that are not media neutral, or do not cover records in all media formats (36 CFR 1225.10).

Department Response: The Department partially concurs with this finding. OM: 6-103 is readily available to employees on an internal website and existing records retention policies are on the public website (<https://www2.ed.gov/notices/records-management/index.html>). The successor to OM: 6-103 will be further updated to enhance General Records Schedule (GRS) disposition requirements for Department records in any media reflecting recent experiences and technological advances.

Finding 6: ED POs do not perform annual RM evaluations/audits/inspections.

Recommendation 6: ED must establish annual RM evaluations/audits/inspections with plans of corrective action throughout the entire Department in accordance with 36 CFR 1220.34(j).

Department Response: The Department partially concurs with this finding. We are not aware of a requirement to conduct annual record assessments in 36 CFR 1220.34(j). However, the Department has created and tested an Information Governance Strategy template designed to help ensure POCs' information management practices continue to adhere to applicable laws and Departmental policies.

Finding 7: ED RM basic training is not fully compliant with NARA Bulletin 2017-01.

Recommendation 7: ED must revise its Annual RM Training to ensure that it meets all requirements outlined in NARA Bulletin 2017-01.

Department Response: The Department partially concurs with this finding. While the annual RM training did not fully comply with NARA Bulletin 2017-01, the ARO provided supplemental trainings and leveraged appropriate guidance compliant with NARA Bulletin 2017-01 to include the following: (1) biweekly new employee orientation; (2) individual briefings for newly appointed Capstone Officials; (3) presentations for political appointees; and (4) ad hoc briefings for POCs were also conducted since the ARO's appointment, including all hands presentations at five of the largest regional offices (fiscal year 2018). As noted earlier, we have significantly enhanced our RM training. Existing annual records

management training will be further updated in calendar year 2020 to include all requirements in NARA Bulletin 2017-01.

Finding 8: ED ARO cannot validate that every ED contractor receives RM training.

Recommendation 8: ED must develop and implement processes and procedures to ensure that all contractors receive ED Annual RM Training, and that the completion of training is tracked (36 CFR 1220.34(f), OMB A-130 section 5.h.8, NARA Bulletin 2017-01).

Department Response: The Department does not concur with this finding. OM: 6-103 mandates annual online records management awareness training for both Government and Contractor staff. OM 6-103 further requires validation of contractor training by having contractors forward an email to their respective Contracting Officer Representatives (CORs) certifying that they have completed such training. Therefore, we believe this meets the spirit and intent of 36 CFR 1220.34(f), OMB Circular A-130 and NARA Bulletin 2017-01, as we could not identify a mandate for the ARO to validate that every ED contractor receives RM training. However, we recognize the records training and validation processes could be improved upon and plan to do so through enhancements to OM: 6-103.

Finding 9: ED has limited controls in place to ensure agency records are described, indexed and available for use in accordance with certain RM regulations.

Recommendation 9.1: ED must institute controls that ensure all records, scheduled and unscheduled, regardless of format, are properly organized, classified or indexed, described, and made available for use by all appropriate agency staff, including all records created and maintained by ED contractors (36 CFR 1220 34 (i)).

Recommendation 9.2: ED must suspend the use of all file plans throughout the Department until the ARO reviews and verifies accuracy of all ED file plans.

Recommendation 9.3: The FRMP must review and revise all ED file plans to accurately and comprehensively capture all scheduled and unscheduled records throughout the Department (36 CFR 1225.10).

Recommendation 9.4: ED must develop a process to ensure that permanent and temporary records are physically segregated from each other or, for electronic records, are segregable and identify permanent and temporary records on agency file plans (36 CFR 1224.34).

Department Response: The Department partially concurs with this finding. In accordance with OM: 6-103, the ARO conducts annual reviews of POC file plans and completes triennial assessments which are designed to ensure agency records are described, indexed and available for use in accordance with certain RM regulations. To ensure optimal accuracy the Department will enhance its processes by which records management compliance reviews will replace file plans.

Finding 10: ED ARO is not always made aware of when the Federal Student Aid (FSA) PO's incoming or departing employees are briefed on RM policies and procedures.

Recommendation 10: FSA must regularly report to FRMP all on-boarding and departing

employee briefings to ensure program accountability and proper control of records. (36 CFR 1222.24 (6)).

Department Response: The Department partially concurs with this finding. FSA monitors and regularly updates the ARO on its employee onboarding and separation activities, which fulfills the requirement of 36 CFR 1224.24. The successor to OM: 6-103 will formalize this reporting expectation to (1) ensure all new and separating employees and contractors receive actionable information on records management requirements; and (2) enable the ARO to regularly verify all new and departed employees were appropriately briefed in all POCs including FSA.

Finding 11: Some ED POs are at risk of not capturing and maintaining records of agency activities.

Recommendation 11.1: ED must establish and enforce Department-wide standard operating procedures to ensure that all POs create and preserve all records. (36 CFR 1220.30 (a)).

Recommendation 11.2: The FRMP must work with each PO to identify all records and nonrecords, scheduled and unscheduled records, created and maintained within each PO, including all records created and maintained by ED contractors. (36 CFR 1225.12 (2)).

Recommendation 11.3: FRMP must determine:

- a) Whether or not all PO records exist, volume of records, where the records are kept, and who manages the records;*
- b) Whether or not PO records have been captured or prematurely destroyed; and*
- c) Promptly report to NARA as required by 36 CFR 1230.14 all PO records destroyed or deleted.*

Department Response: The Department does not concur with this finding. Per OM: 6-103, the ARO conducts annual reviews of POC files plans and completes triennial assessments which are designed to ensure agency records are described, indexed and available for use in accordance with certain RM regulations. To ensure optimal accuracy the Department will enhance its processes by which records management compliance reviews will replace file plans.

Finding 12: The FSA and the OCIO were unable to provide requested records.

Recommendation 12: Since ED was unable to physically produce these records during the inspection site visit, in accordance with 36 CFR 1230.14, ED must immediately investigate this issue and report the findings of the investigation, and if appropriate, submit a self-report documenting any unauthorized disposition of these records.

Department Response: The Department concurs with this finding. A review will be conducted and reported as requested.

Finding 13: ED has not scheduled all electronic records and electronic systems.

Recommendation 13: ED must inventory and schedule all electronic records and electronic systems throughout the Department, including all systems and electronic records created and maintained by contractors.

Department Response: The Department partially concurs with this finding. In accordance with OM: 6-103, the ARO conducts annual reviews of POC file plans and completes triennial assessments which are designed to ensure agency records are described, indexed and available for use in accordance with certain RM regulations. To ensure optimal accuracy the Department will enhance its processes to enable identification of all electronic records and systems and ensure appropriate data retention policies are applied.

Finding 14: ED does not ensure that all electronic systems are compliant with 36 CFR 1236 (b).

Recommendation 14: ED must ensure that all electronic systems, including those systems designed and maintained by contractors, are compliant with (36 CFR 1236 Subpart b: 1236.10, 1236.12, and 1236.14).

Department Response: The Department partially concurs with this finding. While the Department leverages the National Institute of Standards and Technology (NIST) 800-53 to ensure compliance with 36 CFR 1236 (b) requirements, we recognize improvements can always be made in the oversight of electronic systems and will enhance governance processes of new and existing systems.

Finding 15: ED ARO does not know where POs commercial storage locations are and does not have an inventory of the records stored at these commercial storage locations.

Recommendation 15: FRMP must identify what commercial off-site storage locations are being used by any PO, ensure that all commercial storage locations used by any POs satisfy requirements stated in 36 CFR 1234.30 (b), and develop a comprehensive list of all records stored off-site.

Department Response: The Department concurs with this recommendation. The forthcoming records management compliance reviews will require inventories of paper records in commercial storage locations.

Finding 16: The FSA does not execute sufficient controls regarding how long-term temporary records are managed by its contractors.

Recommendation 16.1: All ED contracts, including those that relate to the FSA, must outline how records in the contractors' control must be managed in order to satisfy all Federal RM regulations and guidelines.

Recommendation 16.2: All ED POs must meet the requirements of 36 CFR 1220.30 and 36 CFR 1222.32 and should include the contract language as stated in the NARA RM Handbook, RM Language for Contracts section, to ensure the proper disposition of records in their custody.

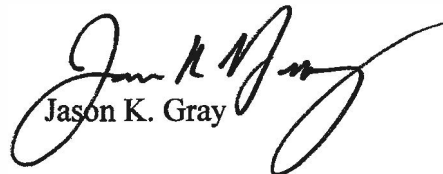
Recommendation 16.3: ED must have a comprehensive and up-to-date inventory list of all records created, managed, and stored with ED contractors, and subcontractors, in all media

formats, and update these lists annually, to ensure that all information created for the Federal government is managed and scheduled for disposition appropriately (36 CFR 1222.32 (b)).

Department Response: The Department does not concur with this finding. OM: 6-103 and the Department's annual training outlines how records in the control of all employees should be managed. The inclusion of NARA's record management obligations language is determined on a case by case basis and included when appropriate. However, we recognize improvements can always be made in the oversight of contracts and will enhance governance processes of new and existing Department contracts in order to satisfy all federal records management regulations and guidelines.

Thank you for affording the Department the opportunity to respond to the findings and recommendations detailed above. You may direct your questions to Jason Lautenbacher, Agency Records Officer at (202) 245-7303 or at Jason.Lautenbacher@ed.gov.

Sincerely,


Jason K. Gray



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