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U.S. Department of Education
Office of Inspector General
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Washington, D.C. 20202-1510
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUG 22 2013

RE: FOIA Request No. 13-02120-F

This is in response to your August 3, 2013, Freedom of Information Act (FOIA) request for a copy of the documents and/or any other response provided to the Bicameral Task Force on Climate Change in response to their February 25, 2013, letter to our office signed by Co-Chairs Henry A. Waxman, Sheldon Whitehouse, Edward J. Markey, and Benjamin L. Cardin.

We have enclosed documents responsive to your request. If you have any questions concerning this response, please contact Ms. Chaun Eason, our FOIA and Privacy Act Coordinator, at (202) 245-7001.

Sincerely,

A handwritten signature in black ink, appearing to read "Marta Erceg".

Marta Erceg
Counsel to the Inspector General

cc: Department FOIA Office



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

March 29, 2013

The Honorable Sheldon Whitehouse
Co-Chair
Bicameral Task Force on Climate Change
U.S. Senate
Washington, D.C. 20515

The Honorable Henry Waxman
Co-Chair
Bicameral Task Force on Climate Change
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Benjamin Cardin
Co-Chair
Bicameral Task Force on Climate Change
U.S. Senate
Washington, D.C. 20515

The Honorable Edward Markey
Co-Chair
Bicameral Task Force on Climate Change
U.S. House of Representatives
Washington, D.C. 20510

Dear Senator Whitehouse, Senator Cardin, Representative Waxman, and Representative Markey:

Thank you for your recent request for information on activities by the U.S. Department of Education to address climate change. Attached you will find the results of our review.

If you have any questions or need more information, please do not hesitate to contact me directly at (202) 245-6900, or have a member of your staff contact our Congressional Liaison, Catherine Grant, at (202) 245-7023.

Sincerely,

Kathleen S. Tighe
Inspector General

Attachment

cc: The Honorable Gabriella Gomez, Assistant Secretary, Office of Legislation and Congressional Affairs, U.S. Department of Education

U.S. Department of Education Office of Inspector General
Response to Bicameral Task Force on Climate Change
March 29, 2013

On February 25, 2013, the Bicameral Task Force on Climate Change sent a request to the Inspector General of the U.S. Department of Education (ED) seeking information on ED's efforts related to climate change. The request asked that the Office of Inspector General (OIG) provide answers to two sets of questions: the first set involved ED's compliance with Federal requirements related to climate change; the second set involved OIG's assessment of ED's authorities and additional steps ED could take to reduce emissions of heat-trapping pollution. To address the questions posed in each set, we reviewed Federal statutes, regulations, executive orders, and other directives. We also interviewed ED's Sustainability Officer and reviewed ED-produced reports and documents related to climate change and energy efficiency. Below are the results of our review.

Questions – Part 1

(1) Identify the existing requirements in legislation, regulation, executive order, and other directives that apply to ED.

Federal legislation, regulations, executive orders, and other directives that address climate change and include provisions applicable to ED are as follows:

- Executive Order 13514, “Federal Leadership in Environmental, Energy, and Economic Performance” (October 5, 2009), which sets sustainability goals for Federal agencies and focuses on making improvements in their environmental, energy, and economic performance. The Executive Order incorporated authorities and directives included in other Federal statutes, regulations, and directives, specifically:
 - The Energy Independence and Security Act of 2007;
 - The Energy Policy Act of 2005;
 - Federal Acquisition Regulation (FAR) Part 23, “Environment and Energy Policy”; and 10 C.F.R. Part 436, “Federal Procurement of Energy Efficient Products;”
 - Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management” (January 27, 2007);
 - Presidential Memorandum, “Federal Fleet Performance” (May 24, 2011);
 - Presidential Memorandum, “Implementation of Energy Savings Projects and Performance-Based Contracting for Energy Savings” (December 2, 2011); and

- Presidential Memorandum, “Driving Innovation and Creating Jobs in Rural America through Biobased and Sustainable Product Procurement” (February 21, 2012).

ED believes that some of the requirements specified in Executive Order 13514 are not applicable to ED because it leases all of its office buildings from the General Services Administration (GSA). As a tenant in the buildings it occupies, the energy, water, and waste management services are all included in its leases and thus are paid by GSA.¹ According to the Federal Greenhouse Gas Accounting and Reporting Guidance (October 6, 2010), if an agency leases space from GSA (where GSA or a private entity owns the facility), and the agency does not directly pay energy bills, GSA is responsible for reporting the emissions associated with those energy bills. There are, however, provisions in the Executive Order that are applicable to ED, specifically provisions requiring that it:

- Prepare and implement a Strategic Sustainability Performance Plan that establishes targets and discusses progress the agency is making in reducing greenhouse gasses.
 - Reduce the use of fossil fuels by the agency’s motor vehicle fleet.
 - Advance sustainable acquisition, including electronics stewardship.
 - Designate a Sustainability Officer.
- Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994), which became applicable to ED as a result of an August 4, 2011, Memorandum of Understanding between the White House and 17 Federal agencies. Although it does not specifically address climate change, this Executive Order states that each participating Federal agency should make environmental justice a part of its mission. As such, ED is required to prepare an environmental justice strategy and prepare an annual progress report. ED is also a member of the Interagency Working Group on Environmental Justice, whose role is to guide, support, and enhance Federal environmental justice and community-based activities.
 - Higher Education Opportunity Act (Public Law 110-315, August 2010), required ED, in consultation with the Environmental Protection Agency, to convene a summit of leaders from higher education, business and industry, labor, government, and non-governmental organizations to build strategies for education’s role in developing a sustainable and green economy, and submit a set of recommendations for addressing sustainability through institutions of higher education.

¹ Per ED’s Sustainability Officer, ED operates out of 31 buildings, 8 of which are owned by GSA.

(2) Is ED meeting these requirements?

Based upon our review of ED-produced reports and other documents and our interview with ED's Sustainability Officer, we believe ED is meeting those requirements included in Executive Order 12898 and in the Higher Education Opportunity Act, as well as meeting requirements included in Executive Order 13514 where it has the information and ability to do so. Specifically, we found:

- Executive Order 13514:
 - Strategic Sustainability Performance Plans: ED prepared and publicly issued a Strategic Sustainability Performance Plan as required for fiscal year (FY) 2010, FY 2011, and FY 2012. ED's reports included required elements and noted limitations or exemptions, where applicable, in reporting other required elements. It also included information in its reports that was not required, including information on its environmental management system, and information on other related activities it was conducting.

As stated in each of its Sustainability Plans, ED is a 100 percent tenant agency and "is not intimately involved in monitoring its energy, water, and waste services nor does it have major influence in effecting change in these areas." Per the ED Sustainability Officer, GSA collects and shares with ED only limited information concerning ED's facilities use. This is due to the fact that, other than the ED headquarters building, ED offices are located in mixed tenant buildings throughout the country for which GSA does not collect ED-specific data. This process creates challenges for effective reporting because many of ED's operations are carried out in regional offices outside of its headquarters. As stated in its Sustainability Plans and reiterated by ED's Sustainability Officer, this lack of information is ED's greatest challenge in reducing energy use and associated greenhouse gas emissions.

Nonetheless, we found that ED is committed to working with GSA and taking actions it can to increase energy efficiency. For example, ED worked with GSA to complete a range of energy saving measures within its headquarters building, including installing occupancy sensors (turning lights off automatically when no one is in a given office space); six air-to-air energy recovery units (that exchange the energy contained in exhausted building air and use it to treat the incoming outdoor ventilation air, which reduces total energy use and improves indoor air quality); and a demand response ventilation system (controlling the amount of ventilation for the actual number of occupants). ED also developed and implemented an electronic stewardship plan to ensure procurement of Electronic Product Environmental Assessment Tool (EPEAT)-certified computers and monitors, "greened" its headquarters cafeteria with compostable tableware, Energy Star-rated equipment, and environmentally-friendly tables and chairs, and

continues to make duplex printing the default for all printers in its headquarters and regional offices.

In addition, in 2012, ED issued its Climate Change Adaptation Plan that integrates climate change strategies into ED programs and operations. We understand that ED also continues to explore other potential opportunities for integrating sustainability into its mission, including provisions for sustainable building design in grants and loans targeted for infrastructure improvement at academic institutions and giving priority to grants for career and technical schools and community colleges that offer curricula in “green” education programs. ED has also established the Green Ribbon Schools Grant Program (funded through Section 5411(b)(5) of the Elementary and Secondary Education Act of 1965, as amended). The program, now in its second year of operation, provides incentives and recognizes K-12 schools for developing healthier learning space, environmental literacy, and community engagement.

- Reduce Fossil Fuels by Motor Vehicle Fleet: At present, this requirement does not apply to ED because it does not have a sufficient number of non-exempt vehicles to activate the requirement. The majority of ED’s vehicles (all leased) are law enforcement vehicles used solely by OIG criminal investigators. Law enforcement vehicles have been exempted consistent with Section 18(b) of Executive Order 13514 and the 2011 Presidential Memorandum, “Federal Fleet Performance.”²
- Acquisitions and Electronic Stewardship: ED includes information in its Sustainability Plans on its electronic stewardship and data centers. This includes color-coded standards for success regarding agency-wide procurement of Electronic Product Environmental Assessment-certified computers and monitors, power management-enabled computers, laptops and monitors, procurement and installation of energy efficient lighting and water efficient equipment, and environmentally-friendly end-of-life disposal of electronics. In its FY 2012 Sustainability Plan, ED earned a “green” score, signifying that it achieved its

² In the most recent OMB Scorecard on Sustainability/Energy, ED scored a “red” in its reduction in fleet petroleum use, signifying that it did not achieve at least 10 percent reduction in petroleum use in its entire vehicle fleet since 2005. However, this score did not take into consideration the fact that the majority of the cars used by ED are law enforcement vehicles and therefore not subject to this requirement. Neither OMB nor GSA recognizes all cars used by OIG as law enforcement vehicles. OIG does not generally lease law enforcement equipped vehicles from GSA due to the higher cost and limited options available on law enforcement vehicles provided directly from GSA. Rather OIG leases regular, non-law enforcement vehicles from GSA and configures these cars with law enforcement security equipment (e.g. lights and sirens) purchased from other vendors. Further, OIG has adhered to GSA’s November 2011 Bulletin FMR B-33 by ensuring that OIG’s “law enforcement and emergency vehicles are the smallest, most fuel efficient, and least greenhouse gas emitting vehicles necessary to execute mission requirements.” Approximately 75 percent of OIG’s law enforcement vehicles are flexible fuel or hybrid “green” vehicles, but OIG still classifies them as “LE1” vehicles because they are “configured for apprehensions, arrests, law enforcement, police activities or dignitary protection.” With the Government’s focus on cost savings, increased use of flexible fuel or hybrid vehicles and the fact that OIG has the authority to designate its fleet as law enforcement, it is unclear as to why OMB and GSA fail to recognize this exemption and score ED with a more accurate designation.

reduction goal for the previous year and was on track to achieve its 2020 target. Additionally, we understand that ED is working to ensure that all procurements evaluate and consider “green” initiatives and standards in all small purchases by requiring procurement specialists to verify and attest to a vendor’s green ranking and standards.

- Sustainability Officer: ED complied with this requirement by designating a Sustainability Officer who is fulfilling the requirements presented in Executive Order 13514 to the best of ED’s ability as a 100 percent tenant agency.

ED’s Sustainability Plans and documents related to energy efficiency are available to the general public via its Web site.

- Executive Order 12898 and Memorandum of Understanding: ED produced an environmental justice strategy in 2011 that proposed a set of goals, strategies, and actions to fulfill ED’s responsibilities under the Memorandum. In 2012, ED issued its required annual progress report. ED’s strategy and progress reports are available on its Web site.
- Higher Education Opportunity Act: In September 2011, ED held the “Sustainability Education Summit: Citizenship and Pathways for a Green Economy” in Washington, D.C. Approximately 300 participants spent 2 days discussing ideas and proposals for a national agenda to advance a sustainable economy through education. Participants came from Federal agencies, higher education, career and technical education, community colleges, K-12 education, business, and environmental organizations. ED issued a report that included the major recommendations that came out of the Summit. The report is available on ED’s Web site.

(3) If ED is not fully meeting the requirements, make recommendations for improving its performance.

As noted above and based on our review, ED met the requirements of the Higher Education Opportunity Act and is meeting the requirements of Executive Order 12898. ED is also meeting the requirements of Executive Order 13514 where it is able to do so. Because GSA is primarily responsible for ED’s buildings and subject to most of the climate change requirements included in Executive Order 13514, ED is limited in its ability to actively monitor and address energy and efficiency matters related to the buildings it leases. ED is further limited by the lack of data maintained and provided by GSA. Improving GSA’s ability to provide more complete data about ED facilities would enable ED to take a more active role in monitoring, measuring, and ultimately further reducing energy and water use, minimizing waste, and increasing recycling. In addition, ED should continue to work with GSA and OMB to resolve the issue regarding the status of OIG’s law enforcement vehicle fleet (see footnote 2).

Questions – Part 2

(1) What authorities does ED have to reduce emissions of heat-trapping pollution?

Executive Order 13514 and the other authorities noted in your request are the authorities ED, as an executive agency, has to reduce emissions of heat-trapping pollution.

(2) What authorities does ED have to make the nation resilient to the effects of climate change?

ED does not have any specific authority to make the nation resilient to the effects of climate change, apart from the authorities provided by Executive Order 13514 and the other authorities related to climate change noted in your request.

(3) What are the most effective additional steps ED could take to reduce emissions or strengthen resiliency?

Based on the work we conducted in response to the Bicameral Task Force's request, we believe ED should continue to promote energy efficiency and fulfill the requirements established by legislation, regulations, executive order, and other directives where it has the information and ability to do so. It should also continue to work with GSA to obtain information on energy usage and heat-trapping pollutants in ED facilities so it can better work with GSA and other Federal agencies in further reducing emissions and strengthening resiliency.