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Kerry Winterer, Chief Executive Officer
Nebraska Department of Health and Human Services
301 Centennial Mall South, 3rd Floor
Lincoln, NE 68509-5026

Dear Kerry:

Although the audit work addressed herein was performed as part of the fiscal year 2013 CAFR and Statewide Single audit, this communication is provided pursuant to AICPA Auditing Standards, AU Section 325.19, which encourages auditors to communicate some matters, at an interim date, because of the significance and urgency for corrective follow-up action. This communication is based on our audit procedures performed through November 19, 2013. Because we have not completed our fiscal year 2013 Statewide Single audit, additional matters may be identified and communicated in our final report.

Draft copies of this letter were furnished to the Agency to provide them an opportunity to review the letter and to respond to the comment and recommendation included in this letter. The formal response received has been incorporated into this letter. The response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time, but will be verified in the next audit.

LIHEAP Carryover Issues

We noted the Nebraska Department of Health and Human Services (the Agency) did not adequately monitor the Low-Income Home Energy Assistance Program (LIHEAP) to meet Federal requirements and to maximize Federal funding available to help qualified Nebraskans.

LIHEAP is a block grant program to help low-income people meet the costs of home energy, increase their energy self-sufficiency, and reduce their vulnerability resulting from energy needs. The Federal government has requirements regarding the obligation, liquidation, and earmarking of funds. Per 45 CFR § 96.14(a)(2), only 10% of the total award each year may be carried over to the next fiscal year. Per the LIHEAP Terms and Conditions addendum, the grantee must liquidate all funds by December 31 of the second year of the award. Finally, per 42 USC § 8624(b)(9)(A), only 10% of the total award may be used for administrative costs, which applies in the aggregate to both State and subrecipient levels.

The prior 2012 Statewide Single audit noted numerous compliance issues due to Agency efforts to rapidly spend down the 2011 and 2012 Federal grants. Additionally, that prior audit noted the Agency exceeded the allowable carryover of 2011 funds by \$967,932. The Agency thought some of this amount was obligated as they shared a portion of the 2011 grant funds with the Nebraska Energy Office (NEO) by awarding a contract to NEO. The Agency considered the contract with NEO to be an obligation. The NEO sub-awards to subrecipients to assist low-income households with energy weatherization related improvements. However, the Agency and NEO are both State agencies, at the same level of government. Per LIHEAP Information Memorandum 1999-11, to be obligated, funds must be “legally committed for weatherization purposes to an entity other than an entity of the State government.” In September 2013, the Agency transferred the \$967,932 from the 2011 grant to the 2012 grant to correct the prior audit carryover finding.

During the current audit, we noted the following:

2011 Grant

We noted the 2011 grant had a remaining award at September 30, 2012. In October 2012, the Agency moved \$2,624,215 from the 2012 grant to the 2011 grant to close out the 2011 grant. The Agency moved the remaining \$28,444 in January 2013. The \$28,444 transfer was not done until January 30, 2013, which is after the 2011 grant’s liquidation deadline of December 31, 2012. Therefore, \$28,444 is considered questioned costs.

2012 Grant

The Agency prepared the Carryover Report for the FFY 2012 grant, and reported an estimated carryover amount of \$3,000,000. The allowable carryover is \$3,020,791, 10% of the grant authorization \$30,207,907. The Agency left the line item Reallotment Amount blank. This line item is required by 45 CFR § 96.81(b) and is a key line item per the June 2013 OMB Circular A-133 Compliance Supplement. Per discussions with the Agency, they did not intend to report any amount to be reallotted. However, unexpended and unobligated funds at September 30, 2012, exceeded the allowable carryover by \$5,799,567:

Total grant authorization		\$ 30,207,907
Expenditures 9/30/2012 per General Ledger	\$ 24,436,064	
Less October transfer to 2011 Grant*	(2,624,215)	
Less Administrative costs over 10% limit**	<u>(424,300)</u>	
Allowable expenditures at 9/30/2012		<u>21,387,549</u>
Unobligated funds at 9/30/2012***		8,820,358
Allowable carryover (10% of grant)		<u>3,020,791</u>
Grant funds awarded no longer available for expenditure		\$ 5,799,567

*These expenditures were not obligated for the 2012 grant as the Agency anticipated transferring them to the 2011 grant. This is evidenced by the Agency reporting the 2011 grant as fully expended at September 30, 2012.

**Additionally, as of September 30, 2012, the Agency exceeded its 10 percent administration limit by \$424,300. Therefore, they could not consider these funds obligated. In the grant system, the Agency improperly set aside 12.64% of the award for administrative costs at both the State and subrecipient level, instead of the 10% limit. The administrative expenditures in excess of the 10% limit at June 30, 2013, were \$656,590 and are questioned costs for fiscal year 2013.

***The Agency contracted \$3,624,949 of the FFY 2012 Federal funds with NEO. However, the Agency did not sign the agreement with NEO until September 28, 2012, only two days before the funds would have to be obligated to subrecipients. NEO did not award (obligate) the funds to subrecipients until dates ranging from November 2012 through January 2013. Therefore, these amounts were not obligated at September 30, 2012. The Agency has continued to spend 2012 grant funds on the assumption these were allowable carryover amounts. At November 19, 2013, the Agency has overspent the 2012 grant by \$1,486,764 total for aid and administration. Any additional amounts spent after November 19, 2013, would be unallowable.

Expenditures 10/1/2012 thru 11/19/2013	\$ 4,083,255
Allowable carryover (10% of grant)	<u>3,020,791</u>
Questioned costs over allowable carryover	\$ 1,062,464
Questioned costs over administration limit at 9/30/2012 (noted above)	<u>424,300</u>
Total questioned costs for FFY 2012 grant at 11/19/2013	\$ 1,486,764

2013 Grant

Subsequent to the end of our fiscal year, we noted the Agency prepared the required Carryover Report for the FFY 2013 grant, and estimated they would have to return \$2,180,356 of the grant authorization of \$28,196,439. We calculated the amount to be returned to be \$1,301,623:

Unexpended balance at 9/30/2013 per accounting system	\$ 7,880,288
Allowable carryover of 10%	<u>(2,819,644)</u>
Remainder	5,060,644
Unallowable administrative costs*	7,257
Less obligations not paid to subrecipients by 9/30/2013	<u>(3,766,278)</u>
Excess grant funds unavailable for expenditure	\$ 1,301,623

*As of September 30, 2013, the Agency exceeded its 10% administrative costs limit by \$7,257. Therefore, they could not consider these funds to be obligated. In the grant system, the Agency improperly set aside 10.30% of the total award for administration. In addition, the Agency continued to charge administrative costs and at November 19, 2013, the Agency has exceeded allowable administrative costs by \$74,588. Any additional amounts spent after November 19, 2013, would also be unallowable.

Without adequate procedures to administer Federal grants there is an increased risk for loss or misuse of funds. In addition, funds available to assist low-income Nebraskans may be lost without procedures to utilize funds within Federal timelines. Funds not used by Nebraska are re-

allotted to all other grantees. The State lost \$5,799,567 in FFY 2012 grant funds and \$1,301,623 of FFY 2013 grant funds that are no longer available for expenditure. In addition, questioned costs for funds spent over the carryover limit and over the administrative limit will need to be repaid to the Federal government.

We recommend the Agency devote resources to ensure LIHEAP grants are adequately administered in accordance with Federal regulations, including procedures to maximize spending of Federal funding to assist qualified individuals. The Agency should implement procedures to ensure the amount of grant funds carried forward is accurately reported and within the Federal 10% carryover requirement. We further recommend the Agency implement procedures to ensure the 10% administrative costs limit is not exceeded. Funds in excess of requirements should be returned to the Federal government.

Agency's Response: The Department agrees that the \$28,444 of questioned costs from the 2011 grant should be returned to the Federal government. The Department also agrees that state funds should have been used for administrative spending over the 10% cap for the 2012 and 2013 grants in the amounts of \$424,300 and \$7,257, respectively. These amounts should be reimbursed to the Federal government. The Auditor also questioned an additional \$1,062,464 from the 2012 grant. The Department believes these funds would be allowable against the 2013 grant so these expenditures will be transferred to the 2013 grant.

The Department had anticipated that funds from the 2013 grant would not be fully utilized. This is because the LIHEAP funding received in 2013, exceeded the funding required for the number of individuals who applied for and were determined eligible to receive a LIHEAP benefit. As a result of the findings reported by this audit, the previously identified unspent funds, will be from the 2012 grant rather than the 2013 grant. The Department is in agreement that \$5,799,567 in FFY 2012 funds were not expended within the period of availability.

However, these funds would not have been available for distribution to recipients since the Department believes that for the years identified in the audit, any Nebraska household who applied for benefits and was deemed eligible for the LIHEAP program was provided the maximum amount of benefits that the household could receive in accordance with the State's approved plan. For the Department to distribute any additional funds to these households, the Department would have been in violation of the State plan.

The Department is currently reviewing and evaluating its processes and procedures related to the administration of this federal grant including but not limited to the internal controls for ensuring compliance with the 10% cap on administrative spending and the process of sub-granting funds to the Nebraska Department of Energy.

APA Response: For the Department to distribute additional funds to households, an amendment would have been required to the State Plan. A State may make amendments to this plan so long as the amendments comply with the LIHEAP statute and regulations. A

State may also apply for a waiver to increase the funds available for residential weatherization or energy-related home repairs from 15% to 25% of the grant authorization.

After we brought these issues to the Department's attention, they performed a journal entry in an attempt to mitigate the effects of our findings. On November 25, 2013, the Department transferred \$3,020,791 of aid expenditures from the 2013 grant to the 2012 grant. This journal entry would increase questioned costs in the 2012 grant. On December 12, 2013, we met with representatives of the Department and they agreed this entry should be reversed. The Department should ensure that any journal entries performed are in accordance with cost, carryover, and period of availability limits.

This letter is intended solely for the information and use of the Agency, the Governor and State Legislature, others within the Agency, Federal awarding agencies, pass-through entities, and management of the State of Nebraska and is not intended to be and should not be used by anyone other than the specified parties. However, this letter is a matter of public record and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,

SIGNED ORIGINAL ON FILE

Mike Foley
Auditor of Public Accounts