

STATE OF NEBRASKA
LIHEAP Finding
Year Ended June 30, 2012

Finding #12-25-26

Program: CFDA 93.568 – Low-Income Home Energy Assistance – Allowability

Grant Number & Year: #G11B1NELIEA, FFY 2011; #G12B1NELIEA, FFY 2012

Federal Grantor Agency: U.S. Department of Health and Human Services

Criteria: Title 45 CFR § 96.30(a) (October 1, 2011) states, "...a State shall obligate and expend block grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of its own funds." The Agency incorporates its NAC regulations into a State Plan, which is reviewed and approved by the Federal government. Per 42 USC § 8624 (2011), "The State shall expend funds in accordance with the State plan under this subchapter or in accordance with revisions applicable to such plan." 42 USC § 8624 also states, "no funds shall be allotted to such State for any fiscal year under this subchapter unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this subchapter for such fiscal year."

Per Title 476 NAC 5-002, "payment must go to the provider if crisis assistance was previously received by a household." Per Title 476 NAC 5-002.03, "payments are made to the provider when...crisis assistance payment was received the previous year." Per Title 476 NAC 5-006.02, "the [Agency] must make crisis assistance payments directly to the provider...crisis payments should never be authorized in an amount greater than what is necessary to alleviate the crisis."

Per Title 476 NAC 5-006, the situation demanding crisis assistance must constitute a threat to client health and may result from the following types of emergencies: blizzard, extreme cold weather, power outage, fuel shortage, natural disaster, or outstanding fuel bill.

Per Title 476 NAC 6-003 regarding conditions of eligibility for cooling assistance,

"Elderly persons (age 70 and older) and persons for whom the Department has purchased an air conditioner in the last four years are eligible for cooling assistance without a medical statement. All other clients must have a medical statement verifying that they have a severe illness or condition which is aggravated by extreme heat."

On August 25, 2011, "contingency" payments were made to all clients in the amount of \$250 or \$500, depending on home type. The Agency's Policy Log on August 23, 2011, stated, "households that receive a contingency payment will not be eligible for any additional crisis payments for the next six months unless they can verify that they used their contingency payment for an [*sic*] utility expense (heating, cooling or water)." Also per the Policy Log, "if a household is determined eligible for a crisis

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energy payment or basic cooling payment between August 23, 2011 and September 30, 2011 a contingency payment must be provided. If the client is eligible for crisis and the amount to avoid the crisis is less than the contingency amount, the household can be provided the full contingency amount they would have been eligible for.”

Per Title 476 NAC 5-004, “payment amounts according to the charts may be adjusted uniformly to allow for increased or decreased payments if projected funding or number of participants changes significantly.”

Title 476 NAC 5-001.01 states, “a multi-family living arrangement is eligible for a half benefit. This includes individuals residing in apartments, duplexes, triplexes, etc.”

A good internal control plan requires procedures to ensure payments are adequately documented, the correct provider is paid, and assistance is coded correctly.

Condition: The Agency did not follow State regulations when it issued \$17,663,000 in “contingency” payments on August 25, 2011, or when it issued \$9,522,250 in “supplemental” payments on June 13, 2012.

We further noted 23 of the 45 assistance payments tested did not comply with Federal and State requirements, because there was inadequate documentation, the payment was not made directly to the utility provider, or the amount paid was incorrect. Some payments had more than one type of error.

Questioned Costs: \$17,665,219 known

Context: The Low-Income Home Energy Assistance Program (LIHEAP) is a block grant program in which States design their own programs, within very broad Federal guidelines. The objectives of LIHEAP are to help low-income people meet the costs of home energy (defined as heating and cooling of residences), increase their energy self-sufficiency, and reduce their vulnerability resulting from energy needs.

Total energy assistance provided during the fiscal year was \$42,463,290, of which \$27,185,250 was “contingency” or “supplemental” payments. We noted the following:

On August 25, 2011, the Agency made \$17,663,000 in energy assistance payments from the 2011 grant directly to 43,059 LIHEAP recipients. The Agency termed these payments “contingency” payments. Payments made were either \$250 or \$500, depending on whether the recipient resided in a multi-family or single-family dwelling. The Agency made these payments in addition to their regular heating, cooling, and crisis payments, in order to spend down the 2011 grant before the end of

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the Federal fiscal year, September 30, 2011. Only 10% of the total grant award may be carried forward to the subsequent year.

- The payment to recipients included the following explanation, “This is a one-time payment for the Energy Program. It is provided due to the recent inclement weather and should be used for paying your heating/cooling bills.” For Federal fiscal year 2011, only 6,052 of 45,129 assisted households were eligible for and received cooling assistance. Also, it is unlikely that households would have current heating bills in August. Therefore, it appears that to be eligible for a payment under State NAC regulations, the recipients would have needed to be in crisis. The payments were coded as crisis assistance on the State’s accounting system and were reported as crisis on the Annual Report on Households Assisted by LIHEAP. However, the Agency did not obtain documentation of an actual crisis for any of the contingency payments.
- All of the August 2011 contingency payments, totaling \$17,663,000, were made directly to recipients rather than to providers, and without obtaining evidence of any crisis. We further noted \$7,753,750 of these payments were made to 18,784 recipients who had received crisis assistance in the past year. Per regulations, all crisis assistance must be paid directly to the provider. Payments must also go to a provider if the recipient had received crisis assistance in the past year.

We reviewed the utility account histories for 135 of the 43,059 recipients who received an August 2011 “contingency payment” to verify whether the recipients used these funds to pay off their utility bills. For the 135 recipient accounts reviewed, there were only six instances where the recipient paid the full warrant amount to the utility company in the next billing cycle. The following table illustrates the situations of some recipients of the August 2011 contingency payments. As noted in the following, as well as in many other instances, the recipient was in arrears on their utility bills both before and after receiving the contingency payments, but they did not spend their full contingency payment on their utility bills. There were instances where the recipient’s account was not in arrears and it actually had a credit balance, without the entire payment being applied at the time of payment, a couple examples are shown below. The following are seven examples:

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#	Contingency Payment Made Directly to Recipient by Agency	Date of August 2011 Utility Balance	Utility Balance	Date of Next Payment Made by Recipient to Utility Company	Amount of Next Payment Made by Recipient to Utility Company	New Utility Balance
1	\$ 500.00	8/26/2011	\$ 241.74	9/28/2011	\$ 50.00	\$ 191.74
2	\$ 500.00	8/26/2011	\$ 323.27	8/29/2011	\$ 80.95	\$ 242.32
3	\$ 500.00	Various	\$ 450.74	N/A	\$ -	\$ 450.74
4	\$ 500.00	Various	\$ 406.88	9/15/2011	\$ 30.22	\$ 376.66
5	\$ 500.00	Various	\$ 598.71	N/A	\$ -	\$ 598.71
6	\$ 500.00	Various	\$ (397.77)	8/31/2011	\$ 122.00	\$ (519.77)
7	\$ 500.00	Various	\$ (399.33)	9/2/2011	\$ 200.00	\$ (599.33)

Notes: We reviewed account histories from Hastings Utilities, Omaha Public Power District and Metropolitan Utilities District.

Dates shown as "Various" represent combined balances or payments from more than one utility company; an example is combining Omaha Public Power District and Metropolitan Utilities District.

For #3 above, it appears the recipient moved and never paid off their outstanding bills.

For #5 above, the Date of Next Payment Made by Recipient to Utility Company is "N/A" because the next payment was not until November 2011, for one utility company, and December 2011, for another utility company.

For #6 and #7 above, the recipient had a credit balance both before and after receipt of the August 2011 payment.

We also reviewed the warrants for those 135 recipients and noted 1 was cashed at Ralston Keno, 2 were cashed at Sanchez Plaza, 19 were cashed at Wal-Mart, and 22 were cashed at other establishments such as grocery stores and paycheck advance.

- We noted 261 recipients of the contingency payments were deceased prior to August 25, 2011. The dates of death ranged from February 27, 2010 to August 22, 2011. The original warrants written to deceased recipients totaled \$111,750. As of March 11, 2013,
 - 78 warrants were cashed and totaled \$35,250,
 - 73 had been voided, and
 - 110 had expired, meaning to receive payment for the warrant, the recipient would have to go through Administrative Services Risk Management Division to obtain payment.

Per NFOCUS case activity, the Agency was aware of the recipient's death prior to the issuance of the contingency payments in 73 of 78 cashed warrant instances. For the other 5, the Agency was no longer following the cases because the recipients were no longer receiving assistance and the cases had been closed prior to the death. Closure dates for those 5 cases ranged from July 26, 2010, to August 1, 2011. Below is a chart for the ten oldest dates of death for cashed warrants and the date the Agency noted they were aware of the death:

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#	Date of Death	Date Agency Knew About Recipient's Death
1	5/29/2010	6/11/2010
2	8/28/2010	9/1/2010
3	11/30/2010	12/29/2010
4	12/6/2010	12/9/2010
5	12/21/2010	12/21/2010
6	12/29/2010	1/3/2011
7	12/31/2010	1/7/2011
8	1/6/2011	1/18/2011
9	1/13/2011	1/28/2011
10	1/15/2011	1/26/2011

We noted an instance on NFOCUS case narrative, where the executor of the estate called indicating the warrant was issued August 25 and the client passed away on August 19. The Agency informed the attorney "...the money could be spent to pay the remaining expenses for utilities, rent and whatever they deemed necessary..."

- The endorsements of the 78 cashed warrants were examined and we noted the following:
 - Warrants were cashed at 20th Street Liquor & Grocery & Fan Tan Club (recipient died May 1, 2011), J-N-J Grocery Store (died March 9, 2011), Wal-Mart (died March 2, 2011), paycheck advance (died January 17, 2011), and funeral homes (died March 11, 2011 and May 19, 2011), which indicate they were not used to meet home energy needs. We further noted for the warrant cashed at J-N-J Grocery Store, that there was a fraud referral in the case narrative on July 13, 2011, noting that the recipient's food stamp card had been used after the recipient's death. This note occurred before the contingency payment was issued.
 - There were 35 warrants endorsed, in writing, with the name of the deceased recipient, indicating a possible forgery.
 - We reviewed the case activity for 10 of the deceased payees where the contingency payment was cashed. The Agency was aware of each of these recipients' deaths within 1 to 13 days after their death and the warrants were issued between 4 and 15 months after the recipients' dates of death. We noted the following:
 - For each of three warrants, the households consisted of a mother and her children, and the mother was the payee but had recently passed away. Each of the three warrants was endorsed with the name of the deceased recipient, indicating a possible forgery.

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- One, it appears a neighbor cashed the deceased person's warrant and also cashed a contingency warrant payable to themselves.
 - One, a relative cashed the warrant, although the level of income indicates they would not have been eligible for energy assistance.
 - One, we could not determine who cashed the contingency warrant, but the children went to live with a relative who also received a separate contingency warrant.
- One warrant appeared to be cashed by a relative. However, this relative was not in the energy household, and the warrant was endorsed with the name of the deceased recipient, indicating a possible forgery.
 - Two warrants were endorsed as paid to the order of utility companies. For one of these, the recipient did not pay their own utility bills, so the warrant could not have been applied to their account. Both warrants were endorsed with the name of the deceased recipient, indicating a possible forgery.
 - One warrant, the spouse was currently living in a nursing home, and there were no other individuals in the household. The warrant was endorsed by the Power of Attorney for the deceased.
 - Two warrants, another member of the household cashed the payment. However, both warrants were endorsed with the name of the deceased recipient, indicating a possible forgery.
 - One warrant included the spouse in the household. The warrant was endorsed by the bank to credit to the account of the named payee.
- The Agency's policy was to disallow any additional crisis assistance for the next six months, unless the recipient could prove that they spent the "contingency" payment on utility costs. A total of \$1,510,944 of additional crisis assistance was paid to recipients of August 2011 contingency funds within the next six months, and an additional \$953,736 was paid through the end of the State fiscal year. During our detail testing, we noted instances where additional crisis assistance was given without requiring the recipient to prove they spent the contingency payments on utility costs.
 - One recipient tested received a \$500 contingency payment and a \$200 additional crisis assistance payment on December 5, 2011. There was no documentation on file to verify the contingency payment was used for utilities.

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- One recipient tested received a \$500 contingency payment and a \$165 additional crisis assistance payment on January 19, 2012. Documentation was provided to support that only \$434 of the contingency payment was spent on utilities between August 25, 2011, and January 19, 2012, resulting in questioned costs of \$66.
- Of the 43,059 contingency payments, 1,294 warrants totaling \$502,000 expired in August 2012 and those funds were deposited to the State General Fund in September 2012. We reviewed 5 of these warrants and noted:
 - One individual was living in a treatment center at the time of the payment and would not have been eligible;
 - Two individuals had moved to other states per NFOCUS notes in February and May 2011;
 - One individual was no longer on assistance and had moved with no forwarding address in January 2011; and
 - One individual moved to another city in Nebraska in August 2011.

Therefore it appears 4 of the 5 warrants reviewed should not have been issued.

- Our detail testing noted one recipient incorrectly received a \$500 contingency payment on August 25, 2011. This was the rate for a single-family living arrangement. Per review of the applications on file, this individual was living in an apartment, or multi-family living arrangement, and was eligible for only a half benefit, or \$250.
- Additional contingency payments were made between August 23, 2011, and September 30, 2011. If a new client came in requesting cooling assistance or crisis assistance, and was determined eligible for crisis assistance, the Agency's policy was to pay the full contingency amount to the recipient, even if documented crisis assistance was less. Each of the three recipients tested received a \$500 contingency payment after August 25, 2011. We noted:
 - Two recipients each received a \$500 contingency payment but did not have documentation of an actual crisis. Additionally, the payment was made to the individual and not the utility provider. This resulted in questioned costs of \$1,000.
 - One recipient received crisis assistance of \$190 documented and paid to the utility provider. However, they also received an additional \$310 directly that was also considered crisis assistance to equal the \$500 contingency payment, resulting in questioned costs of \$310.

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On June 13, 2012, the Agency made \$9,522,250 in energy assistance payments from the 2012 grant either to the provider on behalf of, or directly to 38,089 LIHEAP recipients, depending on whether they had received crisis assistance previously. The Agency termed these payments “supplemental” payments. These payments were made to recipients who had received regular heating assistance in the previous heating season. The payment amount was \$250 for all recipients, regardless of living situation. Five individuals tested were living in a multi-family dwelling and should have received only a half benefit of \$125, resulting in questioned costs of \$625. Since regulations require recipients living in a multi-family dwelling to receive only a half benefit, this payment structure was out of compliance with regulations.

- We noted 74 of the 38,089 recipients of the supplemental payments were deceased prior to June 13, 2012 payments. The dates of death ranged from October 14, 2011, to June 10, 2012. As of March 11, 2013, seven warrants were still outstanding, sixteen had been voided, and the remaining were cashed. For the cashed payments, we noted the Agency knew about the recipient’s death prior to the issuance of the warrants in 48 of 51 instances. For the other 3, the Agency was no longer following up on the case because the recipient was no longer receiving assistance.

Warrants Issued to or on Behalf of a Deceased Recipient	Amount of Warrant	Amount Cashed
To Utility Provider	\$10,000	\$10,000
Directly to Recipient	\$8,500	\$2,750
Total	\$18,500	\$12,750

There were 11 warrants paid directly to deceased recipients that were cashed. The endorsements of the 11 cashed warrants were examined and we noted the following:

- A warrant was cashed at the United States Postal Service, which indicates it was not used to meet home energy needs.
- There were 4 warrants endorsed, in writing, with the name of the deceased recipient, indicating a possible forgery.

For the 2011 and 2012 grants, the Agency was conservative in its structuring of regular heating assistance, and as a result, millions of dollars needed to be spent by the end of the Federal fiscal year, or returned to the Federal government. The Agency had received 98% of its 2011 grant by the end of January 2011, and 100% of its 2012 grant by the end of January 2012, but it took them until August 2011 and June 2012, respectively, to provide the contingency and supplemental funding to recipients. As the June 2012 payments were linked to the previous heating season, the funding would have been much more helpful to recipients if it had been distributed before the end of winter. The Agency stated that in both instances, it took a long time to determine the structure of the contingency and supplemental payments and how they would be handled, and that the payments had to go through multiple approvals before

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they were ready to be sent out. However, when we requested these approvals, the Agency stated they could not provide support because the approvals were informal. Additionally, despite the ample time the Agency had to structure the payments and determine how they would be handled, numerous incongruities with State regulations existed.

Our detail testing also noted one individual received \$218 for crisis assistance, but this was actually for regular heating assistance. It was also noted the payment was sent to the wrong utility provider. This resulted in questioned costs of \$218.

Known questioned costs consist of all August 25, 2011, contingency payments of \$17,663,000 because payments were not in accordance with State and Federal regulations; additional known questioned costs of \$2,219 were related to the detail sample testing. The total sample tested was \$6,496 and total energy assistance payments, less the August 25, 2011, contingency payments of \$17,663,000, were \$24,800,290. The dollar error rate for the sample was 34.16% ($\$2,219/\$6,496$), which estimates the additional potential dollars at risk for fiscal year 2012 to be \$8,471,779 (dollar error rate multiplied by population).

Cause: “Contingency” payments are not defined in State regulations. The Agency did not follow their own regulations regarding crisis assistance or regular heating assistance. Caseworker error or ineffective review also caused some of the errors noted.

Effect: Noncompliance with Federal regulations, including \$17,663,000 distributed directly to recipients without obtaining evidence of any crisis. Even if the August 2011 payments had been classified as supplemental heating assistance, at least \$7,753,750 would still be in error as payments were made directly to recipients who had received crisis assistance in the past year. When heating assistance is received in the summer, it is less likely it will be used for heating assistance as intended. Additionally, when assistance is paid directly to providers many months after the season, there is an increased risk that providers will not be able to apply the funds to current accounts.

Recommendation: We recommend the Agency implement procedures to ensure compliance with State and Federal regulations. The Agency should get formal approval from the Federal government for contingency or other special payments. Heating assistance should be distributed to recipients in a timely manner.

Management Response: The Agency disagrees with the APA’s conclusion that the August 2011 payments required documentation of a crisis. The payments were allowable contingency payments, not crisis payments. The APA’s assumptions that none of the contingency payments were made to households previously determined eligible for cooling assistance and that all households determined eligible for heating assistance were current on their heating bills at the time of the payment is not accurate. The APA’s statement that the payments were

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coded as crisis payments is misleading because it fails to note the payments were originally coded by the LIHEAP Program as contingency payments. The APA's statement that the payments were reported as crisis payments on the Annual Report is also misleading. The Agency previously informed the APA that the payments were initially reported separately on the Annual Report as contingency payments. At the request of the Administration for Children and Families (ACF), the Agency later submitted an amended Annual Report in which the contingency payments were included in the crisis payment field. At no time did the Agency or ACF determine that the contingency payments were actually crisis payments.

The APA's conclusion that all of the August 2011 contingency payments were required to be paid to a provider rather than to the household is also incorrect. Many of the households that received a contingency payment were eligible for cooling assistance. In addition, many of the households that received a contingency payment due to heating assistance eligibility did not previously receive a crisis payment. Finally, many of the households have utilities included in their rent payment. The Agency is not prohibited from making direct payments to any of the above households.

At the time the contingency payments were made, the Agency did not possess current provider information for all households. As the APA notes in the report, this presented a risk that providers would be unable to apply the funds to current accounts. The decision to direct all payments to households was designed to provide the maximum assistance possible to eligible households and to minimize the amount of assistance that the Agency would be required to return to the Federal government.

Corrective Action Plan: An initial draft of revised LIHEAP state regulations will be completed and brought through the hearing process. The LIHEAP state plan will be revised to remove any identified barriers to maximizing federal energy assistance to Nebraska households.

Contact: Teri Chasten, Economic Assistance Policy Chief

Anticipated Completion Date: September 1, 2013

APA Response: The State is required to expend funds in accordance with its State Plan. The Agency did not define contingency payments anywhere in its State Plan, nor did they have provisions for contingency payments in the State Plan or State regulations.

We did not assume that no contingency payments were made to households eligible for cooling assistance or that all households eligible for heating assistance were current on their heating bills at the time of the August 2011 contingency payments. The APA was simply attempting to convey that

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payments made in the summer would more likely be spent on cooling bills than on heating bills; however, most of the August 2011 contingency recipients were not eligible for cooling assistance. In addition, our review of recipients' utility bills indicated that many of these payments did not appear to be used for energy assistance.

Regardless whether the payments made in August 2011 were contingency or crisis payments, per Title 476 NAC 5-002, "payment must go to the provider if crisis assistance was previously received by a household." As noted previously, \$7,753,750 of the \$17,663,000 in contingency payments were made directly to recipients who had received crisis assistance in the past year rather than to the utility provider.