



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

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**JAN 15 2014**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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Hari S. Kadavath  
State Accounting Administrator  
Nebraska Department of Administrative Services  
State Capitol Room 1309  
P.O. Box 94664  
Lincoln, NE 68509-4664

**Re:**   **Audit No.:**           A-07-12-18704 (Audit Common Identification Number)  
         **Audit Period:**       July 1, 2010 to June 30, 2011  
         **Auditor:**            Nebraska Auditor of Public Accounts  
         **Audit Type:**        FY 2011 A-133 Single Audit for Nebraska  
         **Program:**           Title IV-E Foster Care (5 ARRA findings)

Dear Mr. Kadavath:

This letter contains the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) decisions regarding the Title IV-E Foster Care findings, including funds provided through the American Recovery and Reinvestment Act (ARRA) of 2009, contained in the FY2011 A-133 Single Audit for Nebraska. Included in our review are responses from grantee officials and corrective actions planned or taken by the grantee. If the audit report contains findings for other Federal programs not shown above, those findings will be addressed separately.

In summary, **\$14,099,650** is disallowed resulting from finding numbers 11-25-34, 11-25-35, and 11-25-37. You must remit this amount per the instructions provided below. Action must be taken within 30 days from the date of this letter.

The audit findings and the ACF decisions are described below.

**FINDING 11-25-34: FOSTER CARE – ALLOWABILITY, ELIGIBILITY, PERIOD OF AVAILABILITY**

*(NEAR Recommendation Code: 332908106)*

**“Program:** CFDA 93.658 – Foster Care Title IV-E and ARRA – Foster Care Title IV-E  
– Allowability / Eligibility / Period of Availability

**Grant Number & Year:** #0G1001NE1401, FFY 2010; #0G1001NE1402, FFY 2010; #0G1101NE1401, FFY 2011; #0G1001NE1402, FFY 2011

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

**Criteria:** Per 45 CFR § 1356.22(b) (October 1, 2010), "Federal financial participation is available only for voluntary Foster Care Maintenance Expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interest of the child.

Per 42 USC § 671(a)(20)(A) (2011), the foster family home must have met a criminal background checks, including a fingerprint-based check.

Per the Office of Management and Budget (OMB) Circular A-133, the Agency has the responsibility to ensure compliance with Federal requirements through the use of sound internal controls. A good internal control plan requires procedures be in place to ensure rates charged to the Title IV-E are reasonable, appropriately approved, and traced to supporting documentation.

The OMB Circular A-87 states that allowable costs must be necessary, reasonable, and adequately documented. The OMB Circular A-87 also states that allowable costs must be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

Per 45 CFR § 92.23(a) (October 1, 2010), "Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period . . ." Per 45 CFR § 95.13(a) (October 1, 2010), "We consider a State agency's expenditure for assistance payments under Title I, IV-A, IV-E, X, XIV, or XVI (AABD) to have been made in the quarter in which a payment was made to the assistance recipient, his or her protective payee, or a vendor payee."

In accordance to the Lead Contractors' Service Contract Amendment 7, dated December 2010, "Monthly payments under Article II. CONSIDERATION B. 6 is contingent upon full and complete performance of the contract obligations but is not contingent upon the dollar amount of statements for services submitted through NFOCUS, beginning January 1, 2011."

Per 42 USC § 675(4)(A) (2010), "The term 'Foster Care Maintenance Payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs

of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.”

**Condition:** We tested 40 Foster Care payments and noted 20 payments did not comply with Federal and State requirements. More than one type of error was noted for some of these 20 payments.

**Questioned Costs:** \$13,611

**Context:** We noted the following during our testing:

- For one case, no voluntary placement was on file for the child, for the beginning of the month, nor was there a judicial determination within 180 days.
- For one Tribal custody case, a criminal records check, including a fingerprint-based check was not done on the foster home. A similar finding was noted in the prior audit.
- Four cases lacked adequate supporting documentation to determine whether the payment was made correctly to the subcontractor or to the foster parent. In two of these four cases, the Lead Contractor went out of business in April 2010, and the Agency did not obtain all documentation to support that payment was made to the subcontractor or foster parent. For one of the four cases, the subcontractor went out of business and the Agency did not obtain documentation to support that the payment was made to the foster parent. In one of the four cases, the subcontractor did not provide the Agency with sufficient information to show that the payment was made to the foster parent.
- Two cases were for payments to Lead Contractors, where the amount charged for maintenance was greater than the amount paid for maintenance to the subcontractor or foster parent. Per Federal regulations, maintenance does not include Lead Contractor administrative or operating costs; therefore, no claim amount in excess of the subcontractor payment is allowable.

Cases	Federal Share of Claim to Lead Contractor	Federal Share of Lead Contractor Payment to Subcontractor or Foster Parent	Unallowable Maintenance
Case 1	\$ 1,700	\$ 1,364	\$ 336
Case 2	\$ 408	\$ 306	\$ 102
Total	\$ 2,108	\$ 1,670	\$ 438

- Four cases did not agree to the rate schedule that the Lead Contractor provided to the Agency. All four cases involved the same Lead Contractor. For three claims, the rate schedule was \$86 per day. However, one claim was paid at \$64 per day, one claim was paid at \$54 per day, and one claim was paid at \$32 per day. The rate schedule for the fourth claim was \$46 per day but it was paid at only \$38 per day. The total amount of these under-billings ranged from \$24 to \$1,620. A similar finding was noted in the prior audit.

- Fourteen cases were rejected claims. These claims were not paid through NFOCUS, a subsystem of the State's accounting system used to record detailed information regarding clients and services. As a result, we were unable to trace the service provided to a paid claim. These claims were also not applied uniformly to Federal and non-Federal activities.

Effective November 1, 2009, the Agency contracted with six private entities to serve as the Lead Contractors in providing service delivery and coordination services for Title IV-E and non-Title IV-E children and families. Beginning in November 2009 through December 31, 2010, the Lead Contractors received a monthly lump sum equal to 1/12 of their yearly contract amount. This was reduced by any direct payments billed through NFOCUS from the previous month. The direct services to children were charged through NFOCUS, with some being charged to Title IV-E and others charged to non-Title IV-E, based on the child's eligibility. The remainder of the monthly contract amount was then paid to the contractor in a lump sum.

The claims processed and paid through NFOCUS were identified as "paid" claims. However, any claim processed through NFOCUS that exceeded the monthly contract amount was identified as "rejected". We tested 14 rejected claims with service dates from March 4, 2010 to February 3, 2011. The Agency prepared a journal entry during the fiscal year to charge rejected Title IV-E claims by transferring the costs from State child welfare funds to Federal Title IV-E funds. However, the Agency did not consider all rejected claims, both Title IV-E and non-Title IV-E, in determining which rejected claims could be transferred from lump sum payments. Therefore, the Agency did not perform procedures uniformly for Federal and non-Federal claims, as required by the OMB Circular A-87. To be allowable, Federal Title IV-E funds should only be charged in a proportionate share of Title IV-E rejected claims to total rejected claims.

Beginning January 1, 2011, the Agency changed its process for paying Lead Contractors. The Agency now pays Lead Contractors for services each month in two installments through EnterpriseOne. Nevertheless, the Lead Contractors are still required to submit their claims for processing through NFOCUS; however, all claims for the Lead Contractors are identified as "rejected" and not paid through NFOCUS. The Agency did not reconcile the claims processed through NFOCUS to what they paid the Lead Contractors through EnterpriseOne. The Agency charged Title IV-E for Title IV-E rejected claims but did not consider non-Title IV-E rejected claims or the total amount paid to Lead Contractors compared to total submitted claims. To comply with the OMB Circular A-87, the Agency must reconcile actual payments to all rejected claims, and charge to Title IV-E only for the proportionate share of claims.

In addition, the Agency used the date in the "status change" field in NFOCUS as the date of the rejected claim. This is not an appropriate date, as it is merely a date

the claim was entered or changed in NFOCUS and does not reflect when the vendor was paid. Because the Lead Contractors are paid each month for that month's services, as opposed to being paid based on when claims are submitted, the Agency should use the date of service. Three of the rejected claims tested were for dates of service prior to the grant award charged and were claimed as current quarter expenditures and were not, therefore, within the period of availability. The total Federal share of rejected claims charged to Title IV-E for service dates December 1, 2009, to April 30, 2011, was \$2,204,007.

Furthermore, as noted in our attestation report of Child Welfare Reform Contract Expenditures from July 1, 2009, through March 31, 2011, reconciliations were not performed between billings sent/billed to the Agency by the Lead Contractors to the corresponding claims recorded in NFOCUS. As a subsystem of the State's accounting system used to record detailed information regarding clients and services, NFOCUS should contain claims data that is complete and accurate. However, the Agency lacked documentation to support that all claims for services provided by the Lead Contractors and their subcontractors were recorded in NFOCUS. As a result, it is difficult, if not impossible, to determine when Lead Contractor claims data in NFOCUS is complete and accurate.

The Lead Contractors indicated that they lacked formal processes for determining whether all claims for services were sent to the Agency, or any issues associated with such claims had been resolved. If discrepancies were found with any service claims received, the Agency's local service areas reviewed and returned those claims to the responsible Lead Contractor for correction. Neither the Agency nor the Lead Contractors monitored the resolution of these discrepancies or issues to ensure that accurate information was then entered into NFOCUS. Furthermore, upon reaching the maximum amount of compensation allowed for services under their respective service contracts, two Lead Contractors acknowledged the possibility that they stopped sending claims to the Agency to be entered into NFOCUS. We were unable to obtain records for another Lead Contractor.

Also, the Agency was delinquent in entering claims in NFOCUS. For instance, we observed Southeast Service Area claims sheets submitted in March 2011 that were finally being entered into NFOCUS in June 2011, some three months after receipt. Similarly, we noted a box of claims totaling \$4,478,367 that had been received by the Agency but not yet entered into NFOCUS. This amount could include duplicate claims, as the claims were not tested. Aside from the documents in that box, the Agency had no other record of those claims or the billed amounts. Another possible contributing factor to NFOCUS variances is the fact that Lead Contractors have 90 days to submit claims.

The total Federal questioned costs noted during testing was \$13,611, of which \$3,186 was for paid claims and \$10,425 was for rejected claims. The total Federal sample tested was \$26,480, of which \$10,425 was rejected claims. Total Federal aid expenditures for the fiscal year was \$7,585,510 of which \$2,204,007

was for rejected claims, and the total number of claims was 18,324. Based on the sample tested, the case error rate was 50% (20/40). The dollar error rate for the sample tested was 19.84% for paid claims (\$3,186/\$16,055) and 100% for rejected claims (\$10,425/\$10,425) which estimate the potential dollars at risk for fiscal year 2011 to be \$3,271,697 (dollar error rate multiplied by aid amount; \$1,067,690 for paid claims and \$2,204,007 for rejected claims).

**Cause:** There was inadequate caseworker review and inadequate controls over processing claims. The Agency changed the process for how the Lead Contractors were paid and how the claims entered into NFOCUS were handled; individual claims are no longer paid through NFOCUS.

**Effect:** Without adequate controls to ensure claims are paid per Federal requirements, there is an increased risk of Federal noncompliance and a loss or misuse of Federal funds.”

**Audit Recommendation:**

“We recommend the Agency review its procedures for rejecting claims in NFOCUS and ensure all Federal charges are in accordance with Federal regulations. We recommend also that the Agency implement procedures to ensure: 1) all voluntary placement agreements are on file; 2) all foster families have a criminal records check, including a fingerprint-based check; and 3) all supporting documentation is obtained when a Lead Contractor or subcontractor goes out of business. We recommend further that maintenance charges include only costs as defined by 42 USC § 675(4)(A). Finally, we recommend the Agency implement procedures to ensure all rates agree to supporting documentation, and the rates charged are reasonable and in accordance with Federal regulations.”

**Grantee Response and Corrective Actions Planned or Taken:**

**Management Response:** The Agency partially agrees with the condition reported. The Agency disagrees with the APA’s statement that the Federal claim amount cannot exceed the amount paid by the lead agency to its’ subcontractor. The Agency can contract for maintenance and pay the contractor accordingly; the cost of the contractor to produce the service is not relevant to the amount that the Agency can claim.

The Agency would note that the sample size of the test is not statistically valid to support extrapolation of the results of this test to the entire population; therefore, we disagree that the dollars at risk should be stated in the APA’s findings.”

**Corrective Action Plan:** Additional training on parameters for Federal financial participation for voluntary foster care maintenance expenditures was provided to Income Maintenance Foster Care staff and their supervisors on October 26, 2011. Federal funds have been or will be unclaimed for the case in question.



Tribal social services staff received training regarding the required criminal history checks and notice was given to the tribes that without documentation of the required checks, tribally licensed foster homes no longer are considered to be eligible for Title IV-E payments. In December 2011, a review was done of all tribal homes shown on NFOCUS as tribally licensed. The Title IV-E indicator on each home was changed to non-Title IV-E unless the Agency had documentation that the required checks had been made. Any payments rendered from Title IV-E for children in the homes without documentation of the required checks beginning September 1, 2011, have been or will be unclaimed.

The Agency has established a new Quality Assurance position for Child Welfare and is currently seeking a qualified individual to fill the position. This position will, in part, be responsible for establishing procedures that assure proper documentation for all Foster Care Title IV-E and non-Title IV-E services.

The agency will establish a process that reconciles the claims for services to the payments made to the Lead Contractors prior to including the claims on the Federal financial report.

**Anticipated Completion Date:** September 30, 2012

**APA [Nebraska Auditor of Public Accounts] Response:** The extrapolation method is in accordance with auditing standards. As noted above, Federal regulations define foster care maintenance payments as payments to cover the cost of providing food, clothing, shelter, and daily supervision. These items are provided by the foster family. When the Lead Contractor is paid more than the amount subsequently paid to the foster family, those excess funds are not for food, clothing, or shelter to the child; instead, they constitute administrative costs and profit, not maintenance, as defined by Federal regulations.

**ACF Decision:**

While we concur with the finding and recommendations, through our extensive review of Nebraska's Child Welfare Reform Contracting Initiatives over the past 2 years, including site visits, documentation review, conference calls, consultations with Nebraska's state auditors, reviews of related and recently issued State Auditor and State Legislature reports<sup>1</sup>, and most recently our review of FY2010 claiming documentation provided by Nebraska during its appeal of our FY2010 audit disallowance, we have determined that, in addition to the specifically cited questioned costs in this finding, all of Nebraska's Title IV-E Foster Care maintenance claims reported on Part 1, line 1 of its quarterly

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<sup>1</sup> Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures, July 1, 2009 Through March 31, 2011, Nebraska Auditor of Public Accounts, September 7, 2011; DHHS Privatization of Child Welfare and Juvenile Services, Committee Report, Vol. 17, No. 1, Nebraska Legislature Performance Audit Committee, November 2011; Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform, Health and Human Services Committee, December 15, 2011.

Federal financial report (Form ACF- TitleIV-E-1 or Form CB-496) since FFY2010, totaling \$14,099,650, are unallowable.

In accordance with Titles IV-B and IV-E of the Social Security Act (Act), Nebraska has flexibility in determining how to implement its child welfare programs. However, such flexibility does not preclude the adherence to Title IV-E as well as other applicable Federal regulations and requirements with respect to Title IV-E claimed amounts.

Our review of FY2010 claiming documentation revealed, and Nebraska confirmed during an April 5, 2013 conference call, that it has been and is continuing to report total costs derived from “bundled rates” as constituting Title IV-E foster care maintenance assistance payment claims on Part 1, line 1 of its quarterly Federal financial report. Nebraska conceded that these “bundled rates” include *non*-TitleIV-E allowable maintenance costs, such as contractor administrative costs. During its appeal of our FY2010 audit disallowance, Nebraska provided FY2010 claiming documentation in an effort to support its Title IV-E maintenance cost claims. The documentation provided consisted of lead and sub-contractor invoices. Despite several requests from the ACF, Nebraska was unable to provide any source documentation of actual payments made to foster parents for Title IV-E allowable maintenance expenditures. During discussions of this lack of actual source documentation, Nebraska indicated that it has claimed “bundled rates”, such as those shown on the contractor invoice documentation provided, for both reform and non-reform contractors as its Title IV-E allowable foster care maintenance costs. The Special Projects Administrator for the Director of Nebraska’s Department of Health and Human Services said that Nebraska has followed this claiming protocol since prior to its reform initiatives and continues to do so in FY2013. Due to a lack of proper supporting documentation, Nebraska withdrew its appeal of our FY2010 disallowance decision in May 2013.

In addition, in both a June 26, 2013 and a July 10, 2013 letter received from Nebraska as part of its Title IV-E waiver proposal, Nebraska’s Division of Children and Family Services Director said that Nebraska “is willing to shift 15% of the maintenance claims” on line 1 to the administrative line, stating that “[t]he 15% is based on research of “reasonable” administrative rates.” First, this provides further confirmation that Nebraska’s line 1 claims include non-Title-IV-E maintenance expenditures. Second, applying a percentage that is unrelated to the actual costs in question does not identify the appropriate classification of costs and is therefore unacceptable. Nebraska was thus not able to provide any reasonable means by which to identify and segregate costs that are allowable Title IV-E maintenance from those that are not Title IV-E allowable maintenance.

This lack of supporting documentation for Title IV-E foster care maintenance expenditure claims has persisted from at least FY2010 to today. Also, while the Nebraska FY2011 Single Audit determined a “Qualified” opinion for Nebraska’s foster care program, they identified an “Adverse” opinion for FY2012 for the same repeat findings. Finally, the auditors noted in their FY2012 findings that Nebraska has not made any changes to address the identified repeating issues.



Nebraska's claiming of "bundled rates" on Part 1, line 1 of its quarterly Federal financial report as its foster care maintenance claims does not meet Title IV-E requirements. Specifically:

***Nebraska's claims do not meet Title IV-E allowable maintenance as defined by the Social Security Act:***

**Social Security Act Section 475 (4)**

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

***Nebraska's claims do not meet Title IV-E allowable maintenance as described by the Child Welfare Policy Manual (CWPM):***

**8.1C TITLE IV-E, Administrative Functions/Costs, Calculating Claims**

**1. Question:** May a State claim Federal financial participation (FFP) in the Title IV-E foster care and adoption assistance programs based on estimates of quarterly expenditures, or must FFP be claimed on the basis of actual expenditures reported quarterly?

**Answer:** In accordance with regulations at 45 CFR 95.4, a "claim" is defined as "...a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued thereunder." The instructions for completing Form ACF IV-E-1 state that all amounts must be for actual expenditures made under the State's approved IV-E plan in accordance with applicable statutes and regulations. These claims must be supported by accounting records and source documentation at the time they are submitted. Estimates of quarterly expenditures do not represent a "claim" as defined above and, as such, may not be reported on the Form IV-E-1 for the purpose of claiming FFP. All claims must be comprised of actual expenditures and filed within two years from the end of the quarter within which the expenditures were made.

- **Source/Date:** ACYF-CB-PIQ-96-01 (10/8/96)
- **Legal and Related References:** 45 CFR 95.4; ACYF-OC-PI 99-01 (9/22/99)

**CWPM: 8.1E Title IV-E, Administrative Functions/Costs, Contracting**

**2. Question:** Title IV-E administrative costs may be claimed for activities completed by child placing agencies. When an institution participates in case review, case supervision and case management, can an allocated amount of this time be charged to Title IV-E administration? If not, what is the appropriate way of allocating these costs? When an institution participates in making a treatment plan and in daily recording of a child's progress, to what should these activities be allocated?

**Answer:** The first statement in the question is not entirely accurate. Title IV-E administrative costs may be claimed when the State contracts with child-placing agencies to perform foster care related administrative functions of the State.

45 CFR 1356.60 (c)(2) includes in the list of allowable State administrative costs those costs which are necessary for the administration of the foster care program.

Costs for these State administrative activities, when performed by a child-care institution, may be claimed by the State as the State's administrative costs if the State contracts with the institution to perform these activities. These costs may not also be claimed as part of the child's Title IV-E maintenance payment.

The institution's provision of social services in relation to the child's personal or behavioral problems, counseling to ameliorate home conditions and daily recording of progress would not be considered administrative activities of the Title IV-E foster care maintenance program and the costs are not allowable for purposes of Federal financial participation (45 CFR 1356.60 (c)(3)).

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** 45 CFR 1356.60 (c)

***Nebraska's claims do not meet Title IV-E allowable maintenance as instructed by the Title IV-E Programs Quarterly Report Form CB-496 Completion Instructions:***

The ACF Federal Title IV-E financial reporting requirements define "expenditures" claimed for Federal reimbursement as "actual payments made" for goods or services and may not be either "estimates" or "advances". However, Nebraska's practices of claiming "bundled rates", which include contractor administrative costs, do not reflect "actual payments made" for Title IV-E allowable maintenance. In fact, as noted in the Nebraska Legislature LR37 Report issued December 15, 2011, sub-contractors would often adjust contractor rates (both reform and non-reform contractor rates) "for their administrative fees" and foster families would be reimbursed "between 45-55% of the contracted rate received from the Department of Health and Human Services (DHHS) or lead agencies".

The ACF Federal Title IV-E financial reporting requirements require amounts reported to be actual, verifiable transactions supported by readily available source documentation. Such financial and programmatic records must be available and retained in accordance with applicable regulations at 45 CFR 92.42.

***Nebraska's claims and claiming processes do not meet Lead State Agency oversight and internal control requirements:***

Nebraska's DHHS has inadequate oversight of its contractors and inadequate internal controls over its Title IV-E claiming processes. As the designated State Agency for Nebraska's Title IV-E program, Nebraska DHHS, has the responsibility for the "efficient and effective administration of Federal awards through the application of sound management practices" and "in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award" to ensure that "Federal awards bear their fair share of cost" (2 CFR 225 or OMB Circular A-87). The lack of State agency information and oversight of contractor rates, costs and activities prevents it from meeting these responsibilities.

We note the following from the HHS Departmental Appeals Board (DAB) Decision No. 2080 (May 2007) involving Florida:

- *"The requirement that a single state (i.e., governmental) agency administer or supervise the administration of the program is "central to most mandatory grant programs under various titles of the Act" and "provides federal funding sources with a degree of accountability that is especially important where IV-E administrative costs are at issue, because of the distinctly limited nature of the activities for which IV-E administrative funding is available.".... "A result of the limited nature of the IV-E program and the requirement that the single state agency administer or supervise the administration of the program is that federal funding is not available for the activities that a number of people from different agencies and disciplines may provide in foster care cases.""*
- *"Administering or providing services "through" a private entity under contract does not mean ceding to the private entity the single state agency's administrative authority and responsibilities. The state remains the program administrator but is permitted to use contracts with private organizations to administer or provide services."*

Regarding the contractor-submitted invoices, Nebraska said that it does not conduct formal monitoring procedures of the reform contractors' submitted invoices. Therefore, there is no assurance that the submitted invoices are allowable, reasonable or supportable by source documentation. Title IV-E agency monitoring of grant and sub-grant activities to assure compliance with applicable Federal requirements and that performance goals are being achieved is required as per 45 CFR 92.40.

In addition, Nebraska's State auditors confirmed that Nebraska DHHS does not perform any reconciliation between fixed contract prices and actual services delivered to assess allowability, reasonableness, or accuracy of the services obtained for the fixed prices paid. Nebraska explained that the fixed prices for the reform contracts were "determined based on prior assistance payments". Nebraska believes that its fixed reform contract prices do not require any further justification or explanation than that.

Federal statutes and regulations impose conditions on the receipt of Title IV-E funding for the foster care maintenance payment program. The conditions usually referenced are those including the provision of reasonable efforts, the use of judicial determinations, and the development of case plans. However, these conditions also impact what is allowable to claim as maintenance costs versus what is allowable to claim as administrative costs. [See New York DAB Decision 1701, August 25, 1999].

Nebraska has and continues to claim "bundled rates" that include non- Title IV-E allowable costs on Part 1, line 1 of its quarterly Federal financial report. Lacking proper supporting documentation to determine what, if any, portion of these claims are allowable as Title IV-E foster care maintenance, all line 1 claims, net of prior quarter adjustments, submitted in FFY2010 and FFY2011 are disallowed, totaling \$14,099,650:

Federal Share of Reported Line 1 Claims Net of Prior Quarter Adjustments by FFY			
	FFY 2010	FFY 2011	Net Total Disallowance
<b>Disallowance</b>	<b>\$8,016,935</b>	<b>\$7,878,355</b>	<b>\$15,895,290</b>
Adjust for FY2010 Single Audit disallowance paid during FFY2012 (as a prior quarter adjustment)	\$-1,795,640		\$-1,795,640
<b>Total Disallowance</b>	<b>\$6,221,295</b>	<b>\$7,878,355</b>	<b>\$14,099,650</b>

You must remit \$14,099,650 per the instructions provided below. Action must be taken within 30 days from the date of this letter.

**FINDING 11-25-35: ALLOWABILITY**

*(NEAR Recommendation Code: 074908105)*

**“Program:** CFDA 93.658 – Foster Care Title IV-E and ARRA – Foster Care Title IV-E – Allowability

**Grant Number & Year:** #0G1001NE1401, FFY 2010; #0G1001NE1402, FFY 2010; #0G1101NE1401, FFY 2011; #0G1001NE1402, FFY 2011

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

**Criteria:** Per Child Welfare and Juvenile Services Reform (Reform) contracts, “The Contractor will submit a schedule of rates for services provided under this contract. The DHHS must approve the rates for services prior to contract start date. The Contractor may adjust the rates upon written approval of the DHHS.” A good internal control plan requires procedures be in place to ensure rates charged to Title IV-E are reasonable, appropriately approved, and traced to supporting documentation. The OMB Circular A-87 requires allowable costs to be necessary, reasonable, and adequately documented. Per 45 CFR § 92.22(a) (October 1, 2010), “Grant funds may be used only for: (1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and (2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.”

Per 45 CFR § 92.30(d) (October 1, 2010), “Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated: (4) Under no construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award.

This approval requirement is in addition to the approval requirements of Sec. 92.36 but does not apply to the procurement of equipment, supplies, and general support services.” Per 42 USC § 675(4)(A) (2010), “The term ‘foster care maintenance payments’ means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.”

**Condition:** During the fiscal year, the Agency had three Lead Contractors to provide safety and in-home services to both Title IV-E and non-Title IV-E children. We tested the rates charged for Title IV-E services and noted the following: 1) the rates were not appropriately approved by the Agency; 2) the rates did not agree to the contractors’ schedules of rates; 3) the rates for out-of-home care varied significantly across contractors, from \$35 per day to \$92 per day; and 4) the Agency did not have any documentation to support that the rates were reasonable. Additionally, we noted the Agency has not yet received approval from the Federal government for Lead Contractor services, leading to questions regarding the allowability of the Lead Contractor costs.

**Questioned Costs: Unknown**

**Context:** The Lead Contractors were paid a flat fee each month regardless of the amount or value of services they provided. Previously, services had been provided by a large number of contractors based on a fee-for-service model. The shift in the way the Agency purchased services for foster children was a result of the Reform.

Under the Reform, the Agency allowed Lead Contractors to set their own rates for direct services. Per the Service Contracts, the Lead Contractors were to submit a schedule of rates, and this schedule was to be approved by the Agency. We observed emails that indicated personnel in the individual service areas were aware of and accepted the rates. Additionally, the Agency entered the rates into NFOCUS; however, the individual service areas did not formally approve those rates until the new rates became effective January 2011. The rates the Agency paid for services varied significantly among the Lead Contractors – with no documentation to support the reason for those variances. The Agency did not obtain the rates the Lead Contractors were going to pay their subcontractors and foster families or the rates the subcontractors were going to pay their foster families in order to ensure the rates being billed to the Agency were reasonable, and the contractors received only a reasonable profit. The rates paid to Lead Contractors in excess of the rates Lead Contractors paid to subcontractors and foster families should not be claimed as maintenance. Rates for out-of-home care ranged from \$35 to \$92, and the Agency could not provide documentation to support that these rates were reasonable. A similar finding was noted in the 2010 Statewide Single Audit, and the Agency’s Corrective Action Plan did not adequately address the finding.

In addition to the service contracts with the Lead Contractors, the Agency entered into contracts with other contractors to provide out-of-home care.

The rates paid under those separate contracts were \$24, \$42, and \$65 per day for out-of-home care, based upon the child's needs, and were effective July 1, 2010, through September 30, 2010. New contracts were entered into effective October 1, 2010, through June 30, 2011. The rates on the new contracts were \$32, \$43, and \$69 per day for out-of-home care, also based upon the child's needs. There was no documentation supporting that these rates were reasonable.

The total Federal share of claims paid through NFOCUS to the Lead Contractors for the fiscal year was \$1,130,865. The total Federal share of rejected claims charged to Title IV-E for the fiscal year was \$2,204,007. These rejected claims were for status change dates of May through June 2010 and January through June 2011. The Agency had not charged rejected claims with status change dates of July 2010 through December 2010 as of June 30, 2011.

**Cause:** The Agency delegated the approval and monitoring of the rates to the individual service areas. No central authority oversaw the rates until January 2011.

**Effect:** The aid expenses are charged to the Federal fund at the Federal Medical Assistance Percentage (FMAP), which was 66.76% for FFY 2010 and 63.76% for FFY 2011. Administration expenses are charged only 50% to the Federal fund. Because the rates charged could be incorrect, there is an increased risk that the total amount paid to each contractor for IV-E could be incorrectly divided among aid expenses and administration expenses. If too much was charged to aid, Federal funds would be overcharged because aid expenses are coded to the Federal fund at a higher rate than administration expenses. Similarly, if too much was charged to administration, Federal funds would be undercharged because administration expenses are coded to the Federal fund at a lower rate than aid expenses.

When the Agency allows the Lead Contractors to set their own rates with no documentation supporting those rates, there is an increased risk the rates established may not be reasonable, and the Agency cannot ensure compliance with 45 CFR § 92.22(a) (October 1, 2010)."

**Audit Recommendation:**

"We recommend the Agency implement procedures to ensure all rates charged are appropriately approved by the Agency, the rates agree to the contractors' rate schedules, and the rates charged are reasonable and in accordance with Federal requirements."

**Grantee Response and Corrective Actions Planned or Taken:**

**Management Response:** The Agency partially agrees with the condition reported. The Agency disagrees that the rates were not appropriately approved by the Agency and that the rates charged by Lead Contractors were not reasonable.

The Agency did approve the rates submitted by the Lead Contractors and the rates previously paid by the Agency were considered in reviewing the rates.

**Corrective Action Plan:** A team has been established in the Southeast and Eastern Service Areas to review the contractor's current schedule of rates and adjustment of rates. The Lead Contractor is to provide additional justification if the rate is notably different from the Agency or the other Lead Contractor rate for service. The Billing and Payment staff have been directed that if a Lead Contractor submits an invoice for an amount higher than the approved rate, the Agency will only charge up to the highest approved rate for that particular service. The Agency will not enter any invoices into NFOCUS for services if the rate has not been approved. The Agency approved rates for one Lead Contractor on August 1, 2011, and the other on February 1, 2012."

**Anticipated Completion Date:** "Ongoing"

**ACF Decision:**

We concur with the finding and recommendations. We also note that the auditors found substantial differences between amounts claimed by contractors versus amounts actually received by foster parents in both FY2011 and FY2012.

We confirmed in our September 2011 site visit that the 'approved' contractor rates are actually only rates used for lead contractor-submitted invoices and for the State's Federal Title IV-E claiming. Thus, the rates that are the subject of this audit finding are not the actual rates paid by sub-contractors for services nor are they the actual rates received by foster parents.

The Nebraska Legislature LR37 Report, issued December 15, 2011, indicated that sub-contractors would often adjust the DHHS or Lead Contractor rates "for their administrative fees" and foster families would be reimbursed "between 45-55% of the contracted rate received from DHHS or lead agencies".

We found that Nebraska does not have a formal review process of the rates used by its Lead Contractors to either ascertain or justify reasonableness or allowability. Nebraska also does not monitor or review rates charged by sub-contractors of the Lead Contractors nor do they monitor or review actual payments made to foster families.

Moreover, during Nebraska's reform implementation period (i.e., November 2009 through June 30, 2013), Nebraska's fixed price reform contracts have not addressed the required distinction of Title IV-E maintenance versus Title IV-E administrative costs, nor do they provide a basis to segregate costs that are not Title IV-E allowable as either maintenance or administration. Thus, there is no means by which to identify, or assess the reasonableness of, Title IV-E allowable administrative costs that may be directly related to allowable Title IV-E maintenance payments.



The State Title IV-E agency is required as per 45 CFR 1356.21(m)(1) to review and assure the continued appropriateness of the amount of foster care maintenance payments. This task cannot be accomplished absent information on the actual payments made for actual Title IV-E allowable items or activities.

While there are no specifically identified questioned costs, our disallowance decision for finding #11-25-34 also applies to this finding.

**FINDING 11-25-36: PERIOD OF AVAILABILITY AND REPORTING**

*(NEAR Recommendation Code: 399905105)*

**“Program:** CFDA 93.658 – Foster Care Title IV-E and ARRA – Foster Care Title IV-E – Period of Availability / Reporting

**Grant Number & Year:** #0G1001NE1401, FFY 2010; #0G1001NE1402, FFY 2010; #0G1101NE1401, FFY 2011; #0G1001NE1402, FFY 2011

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

**Criteria:** 45 CFR § 92.20(a) (October 1, 2010) requires fiscal control and accounting procedures of the State sufficient to permit both preparation of required reports and the tracing of funds to expenditures adequate to establish that the use of these funds were not in violation of applicable regulations. The OMB Circular A-87 states that allowable costs must be necessary, reasonable, and adequately documented. Per 45 CFR § 95.13(a) (October 1, 2010), “We consider a State agency’s expenditure for assistance payments under Title I, IV-A, IV-E, X, XIV, or XVI (AABD) to have been made in the quarter in which a payment was made to the assistance recipient, his or her protective payee, or a vendor payee.”

A good internal control plan requires procedures to reconcile submitted reports to the accounting system. EnterpriseOne is the State’s accounting system. Such reconciliation should include procedures to ensure all adjustments and reconciling items are resolved in a timely manner.

**Condition:** The Agency did not properly reconcile EnterpriseOne General Ledger expenditures to the September 30, 2010, quarterly financial report. The adjustment to EnterpriseOne for items noted in the September 30, 2010, reconciliation was not performed in a timely manner. The Agency also reported rejected claims on the December 31, 2010, and the March 31, 2011, quarterly financial reports. These rejected claims do not appear to have been reported in the correct period and are also invalid, as the amounts do not represent actual payments to the Lead Contractors. (See explanation of rejected claims in finding #11-25-34).

**Questioned Costs:** \$2,164,706

**Context:** The Agency included \$1,853,042 in rejected claims (\$1,237,091 Federal share) on the September 30, 2010, quarterly report. Of this amount, \$1,128,465 was for May 2010 and \$724,577 was for June 2010 status change dates. The service dates for these claims were from November 2009 through May 2010 but were reported as current assistance. Those claims were never entered into the State's accounting system, EnterpriseOne.

It was noted on the Agency's spreadsheet that this entry needed to be made; however, there was also a note to postpone the entry. As a result, the entry was never entered into EnterpriseOne. Also, while in the process of gathering information based on our request, the Agency realized that it had duplicated the May 2010 claims of \$1,128,465 on the September 2010 quarterly report (\$753,363 Federal share). Furthermore, as the Agency did not reconcile all claims (Title IV-E and non-Title IV-E) to the amounts actually paid to the Lead Contractors, there was no assurance that the amount of rejected claims charged to Title IV-E was appropriate.

The Agency also reported \$7,625 in rejected claims (\$5,090 Federal share) on the December 31, 2010, quarterly financial report and \$1,443,701 in rejected claims (\$922,525 Federal share) on the March 31, 2011, quarterly financial report. The service dates for these rejected claims were from June 2010 through February 2011. These claims were entered into NFOCUS for the Lead Contractors under the Reform but were not paid through NFOCUS. Rather, the Lead Contractors received lump sum payments through EnterpriseOne. The Agency did not reconcile the claims processed through NFOCUS to what the Lead Contractors were paid through EnterpriseOne.

Additionally, the Agency decided to use the "status change" field in NFOCUS to identify the date of the rejected claims. The status change date is used to identify the date of the adjustment when completing the quarterly financial reports. This is not an appropriate date to use for identifying claims dates, as it is merely a date the claim was entered or changed in NFOCUS and does not reflect when the vendor was paid. Because the Lead Contractors are paid each month for that month's services, as opposed to when claims are submitted, the Agency should identify the rejected claims by the date of service. Using the status change date gives rise to the risk that past claims will be misidentified as current quarter claims. As the Agency did not reconcile all claims (Title IV-E and non-Title IV-E) to the amounts actually paid to the Lead Contractors moreover, there was no assurance that the amount of rejected claims charged to IV-E was appropriate.

**Cause:** The reconciliation of EnterpriseOne to the quarterly financial reports did not ensure reconciling items were properly adjusted in a timely manner. The Agency changed the process for how the Lead Contractors would be paid and how claims entered into NFOCUS would be handled; claims are rejected rather than paid individually.

**Effect:** A lack of adequate controls increases the risk of both inaccurate Federal reporting and inadequate support for the financial reports. Without adequate review and controls to ensure claims are paid per Federal requirements, there is an increased risk of Federal noncompliance and loss or misuse of Federal funds."

**Audit Recommendation:**

“We recommend the Agency review its process of reconciling EnterpriseOne with the quarterly financial reports. This reconciliation should ensure all adjustments are made in a timely manner.

We recommend further that the Agency review its procedures for reporting rejected claims to ensure amounts are appropriate and in accordance with Federal regulations.”

**Grantee Response and Corrective Actions Planned or Taken:**

**Management Response:** The Agency partially agrees with the condition reported. The Agency prepared a reconciliation that agreed with the EnterpriseOne General Ledger expenditures to the September 30, 2010, quarterly report. The Agency does not agree that there is a basis in this finding to question costs of \$2,164,706.

**Corrective Action Plan:** The Agency will prepare entries in EnterpriseOne each quarter based on the results of the reconciliation. The amounts reported in NFOCUS do not reflect payments made to the Lead Contractors but rather are the amounts charged by the Lead Contractors for services rendered. The Agency will report amounts charged by the Lead Contractors in the actual period that the payment is made to the Lead Contractor rather than the NFOCUS process date. The Agency, also, will reconcile Title IV-E and non-Title IV-E claims to the total payments to assure the total NFOCUS charges do not exceed the amount paid and adjust the Title IV-E claim as necessary.”

**Anticipated Completion Date:** May 15, 2012

**APA [Nebraska Auditor of Public Accounts] Response:** The reconciliation is not complete until all necessary adjustments are performed. The rejected claims reported were not reconciled to the Lead Contractor payments to determine if those claims were actually paid. As there was not adequate support that the claims were paid, the amounts were questioned.”

**ACF Decision:**

We concur with the finding and recommendation and verified that Nebraska did correct the duplicate claim.

**FINDING 11-25-37: ALLOWABLE COSTS**

*(NEAR Recommendation Code: 337348105)*

**Program:** CFDA 93.658 – Foster Care Title IV-E and ARRA – Foster Care Title IV-E – Allowable Costs / Cost Principles

**Grant Number & Year:** #0G1001NE1401, FFY 2010; #0G1001NE1402, FFY 2010; #0G1101NE1401, FFY 2011; #0G1001NE1402, FFY 2011

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

**Criteria:** A good internal control plan requires that documentation be maintained to support the amounts paid to Lead Contractors under service contracts. Additionally, the OMB Circular A-87, which sets out criteria for determining allowable expenditures of Federal award monies, requires that costs be necessary, reasonable, and adequately documented. That same Federal circular states:

*“A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:*

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.*
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.*
- c. Market prices for comparable goods or services.*
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.*
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.”*

Additionally, good internal control requires the Agency to monitor closely the financial activity reported by Lead Contractors to ensure that such information is correct, accurate, and supported by adequate documentation.

**Condition:** As noted in our attestation report of Child Welfare Reform Contract Expenditures from July 1, 2009, through March 31, 2011, contract amendments significantly increased amounts paid to Lead Contractors for Title IV-E and non-Title IV-E services. Due to the Agency's lack of documentation, we were unable to determine whether the payments to the Lead Contractors were in accordance with the OMB Circular A-87 criteria. We noted further that the Agency did not perform any financial reviews of Lead Contractors for the period July 1, 2009, through March 31, 2011.

**Questioned Costs:** Unknown

**Context:** The original service contract amounts for fiscal year 2011 totaled \$107,396,893; however, by July 1, 2010, only three of five Lead Contractors remained. On September 30, 2010, Boys and Girls Home (BGH) ceased performance, leaving only Nebraska Families Collaborative (NFC) and KVC Behavioral Healthcare Nebraska, Inc. (KVC). Amendments increased the original service contract with BGH by \$6,255,271

for July 2010 through September 2010. Amendments also increased the NFC and KVC contract amounts by a total of \$27,472,498 for 2011.

The Agency did not provide adequate explanations for the increases provided, as well as how the dollar amounts for those amendment increases were determined.

After several requests for the above documentation, the Agency responded that the amounts paid to the Lead Contractors, along with the amendments to the service contracts, were the product of negotiations between the parties; however, no support was provided to substantiate either the necessity of the dramatic increase in expenditures or a reasonable basis for the amounts paid.

**Cause:** The following are the explanations offered by the Agency for the increased Lead Contractor funding resulting from the service contract amendments:

**Amendment #1 (January 2010):** *The funding available to the contractors was determined by a formula based upon the total funds the Agency had used to purchase services within the previous year, minus an agreed-upon estimated amount of funds necessary for the Agency to pay remaining service claims received between July 1, 2009, and June 30, 2010, for direct services provided outside of these contracts. In subsequent meetings between the Agency and the contractors, it was agreed that the Agency had been conservative in the estimation of funds needed to pay prior service claims. Based upon that conclusion, the Agency agreed to hold back fewer funds.*

**Amendment #5 (October 2010):** *Contracts were developed with KVC and NFC for a one-time payment in the sum of \$6,000,000. The Agency and the contractors were to develop strategies and targeted improvements to obtain timely permanency for children, and decrease the frequency and duration of out-of-home and congregate placements and increase the utilization of children and families served in the family home. When non-medically necessary treatment is ordered by the court, the parties will work together to identify alternatives for the court's consideration.*

**Amendment #7 (December 2010):** *Contracts were developed with KVC and NFC for a one-time payment in the sum of \$19,000,000 – an amount resulting from the general fund dollars freed up by the one-time Temporary Assistance for Needy Families (TANF) dollars. The following is a breakdown of the funding:*

- \$10.1 million from the following:
- \$3.8 million – Federal emergency TANF funds for Employment First activities,
- \$2.3 million – Federal funds for Aid to Dependent Children cash grants, and
- \$4.0 million – Federal funds for Child Welfare Family Preservation
- \$4.6 million from the estimated annual savings resulting from moving case management activities from the public sector to the private sector (NFC and KVC); and
- \$4.3 million from unspent general funds retained from State Fiscal Year (SFY) 2009 and SFY 2010.

**Effect:** Payments to Lead Contractors may not be reasonable. Because expenditures reported by Lead Contractors may be inaccurate, failure to perform such financial reviews could cause the Agency to agree to unnecessary contract costs.”

**Audit Recommendation:**

“We recommend the Agency implement procedures to control service contract costs, as well as to ensure that such costs are in accordance with Federal regulations. To help accomplish this, we further recommend that the Agency monitor Lead Contractors’ financial records.”

**Grantee Response and Corrective Actions Planned or Taken:**

**Management Response:** The Agency partially agrees with the condition reported. The Agency acknowledges that the amount of money devoted to child welfare has increased significantly. The scope of services and compensation provisions of the contracts were amended in response to indications that anticipated goals and objectives were taking longer than initially planned. The amendments to the contracts resulted after negotiation between the parties. This investment of additional funds has been to maintain the integrity of the system. The Agency believes the amounts being paid to the Lead Contractors are necessary and reasonable.

**Corrective Action Plan:** The Lead Contractors are required under the contract to submit monthly financial statements for the Agency to review. Beginning in August 2011, the Agency implemented additional oversight functions related to review of the financial statements of the Lead Contractors. The Agency will continue to review and enhance its procedures and internal controls to adequately monitor the finances of the Lead Contractors.

**Anticipated Completion Date:** “August 31, 2011 and ongoing.”

**ACF Decision:**

We concur with the finding and recommendations. We note that all of the foster care findings in Nebraska’s FY2011 and FY2012 Single Audits describe the many aspects of the systemic problem of a lack of supporting documentation. Understandably, with a lack of supporting documentation, identifying specific questioned costs is difficult if not impossible. Thus, our disallowance decision for Finding #11-25-34 also applies to this finding.

**FINDING 11-25-38: SUBRECIPIENT MONITORING**

*(NEAR Recommendation Code: 212908106)*

**Program:** CFDA 93.658 – Foster Care Title IV-E and ARRA – Foster Care Title IV-E – Subrecipient Monitoring

**Grant Number & Year:** #0G1001NE1401, FFY 2010; #0G1001NE1402, FFY 2010; #0G1101NE1401, FFY 2011; #0G1001NE1402, FFY 2011

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

**Criteria:** Per 45 CFR § 92.22(a) (October 1, 2010), "Grant funds may be used only for: (1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and (2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee."

Per the OMB Circular A-133 § 210(d), "In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor."

**Condition:** The Agency considers the Lead Contractors to be vendors and not Subrecipients.

**Questioned Costs:** Unknown

**Context:** Per the OMB Circular A-133 § 210(c)(3), operating in a competitive environment is one determining characteristic of a vendor – not one of a subrecipient. Concluding accurately whether the Lead Contractors are subrecipients is important, as Federal requirements do not allow profits to subrecipients.

With regard to the Service Contracts, we noted the following – all of which, per the OMB Circular A-133 § 210, indicate a subrecipient relationship: (1) the contracts were not competitively bid; (2) the Lead Contractors provide services that are key to the operation of the Federal program; (3) performance of the Lead Contractors is measured against whether the objectives of the Federal program are met; and (4) the Lead Contractors are subject to compliance requirements of the Federal program.

The Agency's determination that the Lead Contractors are vendors and not subrecipients appears questionable. Although, the OMB Circular A-133 § 210(b) acknowledges that determining whether an entity is a subrecipient or vendor is a matter of judgment, we believe that characteristics attributable to the Lead Contractors are indicative of a subrecipient relationship.

**Cause:** Per the Agency, the contractors do not determine eligibility for the services in question. In addition, they do not have ultimate responsibility for programmatic decision making, as all case plans must receive Agency approval. Many vendor relationships have characteristics of a subrecipient relationship. Nevertheless, the Agency believes that the Lead Contractors more closely resemble vendors than subrecipients.



**Effect:** A lack of adequate consideration given to the accurate identification of subrecipients increases the risk of noncompliance with Federal requirements, as well as the risk of resultant Federal sanctions.”

**Audit Recommendation:**

“We recommend the Agency review its vendor versus subrecipient determinations with the Federal Grantor Agency.”

**Grantee Response and Corrective Actions Planned or Taken:**

**Management Response:** The Agency agrees with the condition reported.

**Corrective Action Plan:** The Agency met with the Federal Grantor Agency in November 2011 to discuss the Agency’s determination that the agreements with Lead Contractors constituted a vendor relationship. The Agency has received no notification from the Federal Grantor Agency that the Agency’s determination is in error.”

**Anticipated Completion Date:** November 9, 2011”.

**ACF Decision:**

We concur with the finding and recommendation. Nebraska inappropriately treats its reform contractors as “service providers”, i.e., as vendors, when they should be treated as sub-recipients per the OMB Circular A-133 Section 210. As the criteria indicate, the substance of the relationship is more important than the form of the agreement in the determination of whether a subrecipient or vendor relationship exists. Nebraska’s admitted purpose and intention from the outset with its reform initiatives was to “privatize” its entire child welfare program. And, as Nebraska stated in proposed cost allocation plan amendment, the reform contracts were for the provision of “*all services necessary for the foster care ward*”. Moreover, the Nebraska state legislature, in its 450+ page review and assessment of the reform initiatives, considered the reform contracts to be “global transfer contracts which are the most at-risk contracts”. Furthermore, the contracts were fixed-price contracts for which contractors were paid their full contracted fixed amounts regardless of the number of children served or services performed and little if any guidance was provided on how to accomplish the goals of the contract. This certainly meets the criteria for a sub-recipient relationship as intended by A-133 Section 210.

We noted that Nebraska’s FY2012 Single Audit, submitted to the Federal Audit Clearinghouse on March 29, 2013, and includes a repeat of this finding and that Nebraska agreed with the finding and the recommendation. Nebraska’s State Fiscal Year 2013 agreement with its current Lead contractor is considered a sub-recipient relationship.

## **REPAYMENT AND APPEAL INFORMATION**

### **Repayment:**

Within 30 days of the date of this letter, you must initiate the return of the disallowed funds via one of the following actions:

- Submit an original or revised financial report which includes decreasing adjustments in Part 2, Prior Quarter Expenditure Adjustments, totaling the full amount of disallowed funds by finding. The ACF will issue a negative grant award recouping the full amount of the disallowance.

***OR***

- Submit a request to the ACF to recoup the disallowed funds via the issuance of a negative grant award. The ACF will issue a negative grant award recouping the full amount of the disallowance.

An extended repayment plan may be requested under 45 CFR § 30.17, Collection in installments. Such request and approval must be received within 15 days of the date of this letter by the ACF Regional Grants Management Office. Interest may be charged.

### **Appeal:**

You may appeal this disallowance decision with the Departmental Appeals Board (DAB) in accordance with 45 CFR Part 16. Your written request to appeal must be postmarked no later than 30 days from the date of this letter and be sent, via certified mail return receipt to:

U.S. Department of Health and Human Services  
Departmental Appeals Board MS 6127  
Appellate Division  
Cohen Building, Room G-644  
330 Independence Avenue, S.W.  
Washington, D.C. 20201

You must attach to your request for appeal a copy of this disallowance letter, state the amount in dispute, and briefly state why you think that the decision is incorrect. An original and two copies of all documents must be submitted to the Departmental Appeals Board. The Board will notify you of further procedures.

Additionally, please mail or email a copy of your request to appeal to: Nadine Roth, Grants Management Officer, 601 E. 12<sup>th</sup> Street, Room 349, Kansas City, MO 64106 or [nadine.roth@acf.hhs.gov](mailto:nadine.roth@acf.hhs.gov).

**Interest and Penalties:**

If you appeal, you may repay the amount at issue pending a decision or you may retain the funds pending a decision. If you retain the funds and all or part of the disallowance is sustained, interest and penalties will be charged from the date of this determination letter on funds determined as properly disallowed in accordance with 45 CFR Part 30.18. The current interest rate is 10.125%. No interest will be charged on amounts repaid in full as described above.

Your entity is required by the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Nonprofit Organizations*, to follow-up and to take corrective action on audit findings and to report the status of audit findings in the subsequent audit's Summary Schedule of Prior Audit Findings. Also, your auditor is required by the OMB Circular A-133 to follow up on prior audit findings, to perform procedures to assess the reasonableness of the Summary Schedule of Prior Audit Findings, and to report exceptions.

As a reminder, future Single Audits should be submitted to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after receipt of the auditor's report or nine months after the fiscal year ends, in accordance with Section 320 of the OMB Circular A-133. Beginning with fiscal years ending on or after January 1, 2008, reports on the OMB Circular A-133 audits must be submitted to the FAC online at <http://harvester.census.gov/fac/index.html>.

Your assistance and cooperation in the timely resolution of this matter is greatly appreciated. If you have any questions or need further information, please contact Rosalyn Wilson, Child Welfare Regional Program Manager in Region VII, at 816-426-2262 or by e-mail at [rosalyn.wilson@acf.hhs.gov](mailto:rosalyn.wilson@acf.hhs.gov).

Sincerely,



Oscar Tanner  
Director  
Office of Financial Services  
Office of Administration

cc: Pat Reding, Assistant Deputy State Auditor, Nebraska Auditor of Public Accounts; Lincoln, NE  
Thomas Pristow, Director, Nebraska Division of Children and Family Services; Lincoln, NE  
Kevin Nelson, Internal Auditor, Nebraska Dept. of Health and Human Services – Operations; (Lincoln, NE)  
Nancy Achord, HHS Assistant Regional Counsel; Kansas City, MO  
Joseph J. Bock, Deputy Associate Commissioner, ACF/Children's Bureau; Washington, DC  
Gail Collins, Director; Division of Program Implementation, ACF/Children's Bureau; Washington, DC  
Rosalyn Wilson, Child Welfare Regional Program Manager; ACF/Children's Bureau, Region VII; Kansas City, MO  
William Meltzer, Senior Program Specialist, ACF/Children's Bureau; Washington, DC  
Nadine Roth, Grants Management Officer, ACF Region VII; Kansas City, MO  
Debi Hatfield, Child Welfare Program Specialist, ACF Region VII; Kansas City, MO  
Ruth Anne Decker, Mandatory Grants Team Lead, ACF Region VII; Kansas City, MO



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

370 L'Enfant Promenade, S.W., Washington, D.C. 20447 www.acf.hhs.gov

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

7009 1680 0001 6588 3224

Hari S. Kadavath  
State Accounting Administrator  
Nebraska Department of Administrative Services  
State Capitol Room 1309  
P.O. Box 94664  
Lincoln, NE 68509-4664

**Re:**   **Audit No.:**           A-07-13-22268 (Audit Common Identification Number-CIN)  
      **Audit Period:**       July 1, 2011 to June 30, 2012  
      **Auditor:**            Nebraska Auditor of Public Accounts  
      **Audit Type:**        FY 2012 A-133 Single Audit for Nebraska  
      **Program:**           Title IV-E Foster Care (2 findings)

Dear Mr. Kadavath:

This letter contains the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) decisions regarding the title IV-E Foster Care findings contained in the FY2012 A-133 Single Audit for Nebraska. Included in our review are responses from grantee officials and corrective actions planned or taken by the grantee. If the audit report contains findings for other Federal programs not shown above, those findings will be addressed separately.

In summary, \$7,857,405 is disallowed resulting from finding number 12-25-34. You must remit this amount per the instructions provided below. Action must be taken within 30 days from the date of this letter.

The audit findings and the ACF decisions are described below.

**FINDING 12-25-34: FOSTER CARE – ALLOWABILITY / ELIGIBILITY / PERIOD OF AVAILABILITY AND REPORTING**

*(NEAR Recommendation Codes: 332908100, 302923100)*

**“Program:** CFDA 93.658 – Foster Care Title IV-E – Allowability/Eligibility/Period of Availability/Reporting

**Grant Number & Year:** #1101NE1401, FFY 2011; #1201NE1401, FFY 2012

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

**Criteria:** Per 45 CFR § 1356.22(b) (October 1, 2011),

*"Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child."*

Per 42 USC § 671(a)(20)(A) (2011), the foster family home must have met a criminal records check, including a fingerprint-based check.

A good internal control plan requires procedures to discontinue benefits when eligibility expires, including when a judicial determination is not made within 180 days for a voluntary placement and for when a child is placed in a non-IV-E eligible home.

OMB Circular A-87 states that to be allowable, costs must be necessary, reasonable, and adequately documented. OMB Circular A-87 states also that allowable costs must be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit. A good internal control plan requires procedures be in place to ensure rates charged to IV-E are reasonable, appropriately approved, and trace to supporting documentation. Per 45 CFR § 92.22(a) (October 1, 2011),

*"Grant funds may be used only for: (1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and (2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee."*

Per 42 USC § 675(4)(A) (2010),

*"The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence."*

According to the Reform Contractors' Service Contract Amendment 7, dated December 2010, "Monthly payments under Article II. CONSIDERATION B. 6 are contingent upon

full and complete performance of the contract obligations but are not contingent upon the dollar amount of statements for services submitted through NFOCUS, beginning January 1, 2011.”

Per 45 CFR § 92.30(d) (October 1, 2011) “Grantees or subgrantees must obtain the prior approval of the awarding agency whenever...obtaining the services of a third party to perform activities which are central to the purposes of the award.”

Per 45 CFR § 95.13(a) (October 1, 2011), “We consider a State agency’s expenditure for assistance payments under title I, IV-A, IV-E, X, XIV, or XVI (AABD) to have been made in the quarter in which a payment was made to the assistance recipient, his or her protective payee, or a vendor payee...” A good internal control plan requires procedures be in place to ensure claims are reported in the correct period and for actual amounts.

**Condition:** We tested 40 Foster Care payments and noted 31 payments did not comply with Federal and State requirements. More than one type of error was noted for some of these 31 payments.

Additionally, the Agency reported rejected claims on their quarterly financial reports. These rejected claims do not appear to have been reported in the correct period and are also invalid, as the amounts do not represent actual payments to the Reform Contractors.

A similar finding was noted in our prior audit.

**Questioned Costs:** \$5,175,329

**Context:** Effective November 1, 2009, the Agency contracted with six private entities to serve as the Reform Contractors in providing service delivery and coordination services for IV-E and non-IV-E children and families. Reform Contractors were paid a flat fee regardless of the amount or value of services they provided. Previously services had been provided by a large number of contractors based on a fee-for-service model. This shift in the way the Agency purchased services for foster children was referred to as Child Welfare and Juvenile Services Reform (Reform). During fiscal year 2012, two of the Reform Contractors remained.

We noted the following during our testing:

Placements

- One case, which was a voluntary placement, did not have a court order within 180 days stating that such placement was in the best interest of the child.
- For one Tribal custody case, a criminal records check, including a fingerprintbased check, was not done on the foster family. (\$4 questioned costs)

Rates for Paid Claims

For service areas not covered by Reform Contractors, the Agency entered into agreements with other contractors to provide out-of-home care and emergency foster care. The rates were \$32, \$43, and \$69 per day for out-of-home care, based upon the child's needs and \$69 per day for emergency foster care. These rates were effective July 1, 2011 through June 30, 2012. There was no documentation to support these rates were reasonable. The initial rate for out-of-home care and emergency foster care provided by contractors was determined in 1995 after an analysis of cost components was completed. The rates since then have changed, most notably by the out-of-home care rates going from one standard rate to three rates corresponding with various levels of care. Even though these rates have evolved since 1995, both out-of-home care and emergency foster care rates continue to use the 1995 rate as a benchmark for future rate changes. However, that initial rate included cost components that were not allowed to be included as foster care maintenance payments, namely the administrative and specialist components. Furthermore, there has been no additional analysis since 1995 to determine what a reasonable rate would be and if the current rate is appropriate. Furthermore, the Agency did not monitor the amounts paid by the contractors to the foster parents to ensure only a reasonable profit was earned by the contractor per 45 CFR § 92.22. During testing we noted:

- For one claim the contract rate was \$65 per day and the claim was paid at \$69 per day, for seven days, resulting in an overbilling of \$28.
- Seven cases were payments for either emergency foster care or Agency supported foster care made to contractors where the amount charged for maintenance was greater than the amount paid to the foster parents.

Claim	Total Paid by Agency to Contractor	Total Payment by Contractor to Foster Parent	Total Unallowable Maintenance	Federal Share Unallowable Maintenance
1	\$ 483	\$ 189	\$ 294	\$ 166
2	483	120	363	206
3	992	620	372	211
4	960	600	360	204
5	1,333	682	651	369
6	1,290	660	630	357
7	960	600	360	204
Total	\$ 6,501	\$ 3,471	\$ 3,030	\$ 1,717

The Agency paid \$2,719,535 to contractors for Agency supported foster care during the fiscal year (\$1,552,206 Federal share).



### Reform Contractor Rates

The Agency allowed Reform Contractors to set their own rates for direct services. Per the contracts, they were to submit a schedule of rates to the Agency. The auditor observed an approval of these rates by the Agency for the two Reform Contractors. However, the rates varied significantly among the Reform Contractors with no documentation to support the reason for those variances. Additionally, rates set by Reform Contractors in excess of the rates Reform Contractors paid to subcontractors and foster families should not be claimed as maintenance. Rates for out-of-home care ranged from \$31 to \$92, and the Agency could not provide documentation to support that these rates were reasonable. A similar finding was noted in the State fiscal year 2011 Single audit. As noted by the APA in the action plan did not adequately address the finding. We also noted the following during testing:

- Twelve rejected claims did not agree to the rate schedule the Reform Contractor provided the Agency. All twelve involved the same contractor. The claims were submitted at \$40 per day, even though that rate did not appear on the rate schedule.
- Five cases were for amounts paid by a Reform Contractor to subcontractors or foster families that were incorrect. In two of the cases, no payment was made from the Reform Contractor to the subcontractor, or to the foster family/group home for services provided. In one case, payment was made to a foster parent for a foster child who no longer resided in the foster parent's home. In the two remaining cases, the payment made from the subcontractor to the foster family was for a different amount of days than what the Agency had authorized for payment, one claim being for two days too many, and one claim being for one day too few.
- Rates submitted by the Reform Contractor to the Agency for cases tested ranged from \$40 to \$96 per day; however, rates paid by the Reform Contractor to the subcontractor or foster parent ranged from \$10 to \$33 per day.

Questioned costs are included in rejected claims noted below.

### Rejected Claims

Direct services to children were recorded through NFOCUS, with some being charged IV-E and others charged non-IV-E, based on the child's eligibility. Non-reform claims are processed and paid through NFOCUS and identified as "paid" claims. However, the Agency paid Reform Contractors for services each month in two installments through EnterpriseOne. Nevertheless, the Reform Contractors are still required to submit their claims for processing through NFOCUS; however, all claims for the Reform Contractors are identified as "rejected" and not paid through NFOCUS. The Agency did not reconcile the claims processed through NFOCUS to what they paid the Reform Contractors through EnterpriseOne. The Agency charged IV-E for IV-E rejected claims but did not consider non-IV-E rejected claims or the total amount paid to Reform Contractors compared to total submitted claims. To comply with OMB Circular A-87,

the Agency must reconcile actual payments to all rejected claims, and charge IV-E only for the proportionate share of claims. The Agency reported the rejected claims on their quarterly financial reports based on the "status change" field in NFOCUS as the date of the rejected claim. This is not an appropriate date, as it is merely a date the claim was entered or changed in NFOCUS and does not reflect when the vendor was paid. These rejected claims do not appear to have been reported in the correct period and are also invalid, as the amounts do not represent actual payments to the Reform Contractors.

Furthermore, reconciliations were not performed between billings sent/billed to the Agency by the Reform Contractors to the corresponding claims recorded in NFOCUS. As a subsystem of the State's accounting system used to record detailed information regarding clients and services, NFOCUS should contain claims data that is complete and accurate. However, the Agency lacked documentation to support that all claims for services provided by the Reform Contractors and their subcontractors were recorded in NFOCUS. As a result, it is difficult, if not impossible, to determine when Reform Contractor claims data in NFOCUS is complete and accurate.

During testing we noted:

- Twenty-three cases tested were rejected claims. These claims were not paid through NFOCUS, a subsystem of the State's accounting system used to record detailed information regarding clients and services. As a result, we were unable to trace the service provided to a paid claim. Additionally, these claims are not allowable because there was no reconciliation done between billings sent to the Agency by the Reform Contractors and claims recorded in NFOCUS. These claims were also not applied uniformly to Federal and non-Federal activities.
- One rejected claim was to a foster parent who did not actually provide foster care services because the foster child was no longer residing in the foster parent's home.

The total Federal share of rejected claims charged to IV-E for the fiscal year was \$5,173,608. These rejected claims were for status change dates of July 2011 through June 2012, and service dates of March 2010 through April 2012.

A letter issued by the Federal Department of Health and Human Services Administration for Children and Families (ACF) Children's Bureau, dated August 27, 2012, concurred with APA findings stating that Nebraska's foster care direct service claims and foster care administrative claims are not in compliance with Federal Title IV-E financial reporting requirements. This letter's compliance decision pertained to the findings of the Nebraska Single Audit Report for the year ended June 30, 2010. However, the compliance decision is still applicable for the current Single Audit because no changes have been made by the Agency in regards to these issues raised during State fiscal year 2012. Specific issues noted by ACF related to direct service costs that have not been resolved by the Agency include,

*"The ACF Federal Title IV-E Financial Reporting Requirements define 'expenditures' claimed for Federal reimbursement as 'actual payments made' for goods or services and may not be either 'estimates' or 'advances.' However, Nebraska's Federal direct service claims related to its Reform contractors do not reflect 'actual payments made' to Reform contractors."*

Additionally, "the ACF Federal Title IV-E Financial Reporting Requirements require amounts reported to be actual, verifiable transactions supported by readily available source documentation." These same issues were noted for claims for administrative costs.

The total Federal questioned costs noted during testing were \$5,175,329, of which \$1,721 was for paid claims and \$5,173,608 was for rejected claims. The total Federal sample tested was \$19,953, of which \$11,118 was rejected claims. Total Federal aid expenditures for the fiscal year were \$8,908,678 of which \$5,173,608 was for rejected claims, and the total number of claims was 21,513. Based on the sample tested, the case error rate was 77.5% (31/40). The dollar error rate for the sample tested was 19.48% for paid claims (\$1,721/\$8,835) and 100% for rejected claims (\$11,118/\$11,118) which estimates the potential dollars at risk for fiscal year 2012 to be \$5,901,200 (dollar error rate multiplied by aid amount; \$727,592 for paid claims and \$5,173,608 for rejected claims).

**Cause:** There was inadequate caseworker review and inadequate controls over processing claims. The Agency was waiting on a decision from the Federal government regarding compliance with Federal Title IV-E financial reporting requirements for the foster care direct service claims and foster care administrative claims. This letter was not received until August 27, 2012.

**Effect:** Without adequate controls to ensure claims are paid per Federal requirements, there is an increased risk of Federal noncompliance and the loss or misuse of Federal funds."

**Audit Recommendation:**

"We recommend the Agency review its procedures for rejecting claims in NFOCUS and ensure all Federal charges are in accordance with Federal regulations. We also recommend the Agency implement procedures to ensure: 1) all voluntary placement agreements are accompanied by court orders within 180 days of placement stating such placement was in the best interest of the child; 2) all foster families have a criminal records check, including a fingerprint-based check; and 3) all IV-E benefits are terminated when eligibility expires. We recommend further that maintenance charges include only costs as defined by 42 USC § 675(4)(A). Finally, we recommend the Agency implement procedures to ensure all rates agree to supporting documentation, and the rates charged are reasonable and in accordance with Federal regulations."

**Grantee Response and Corrective Actions Planned or Taken:**

**“Management Response:** The Agency agrees with the condition reported.

**Corrective Action Plan:** The Agency will ask supervisors to review the policies regarding fingerprint checks and voluntary placement agreement with staff in an effort to resolve these issues. The Agency is now entering actual invoices from NFC for claiming maintenance payments through Federal Title IV-E. Currently, DHHS is not claiming any administrative dollars for the Eastern Service Area until ACF approves a cost allocation plan.

**Anticipated Completion Date:** January 15, 2013”

**ACF Decision:**

While we concur with the finding and recommendations, through our extensive review of Nebraska’s child welfare reform contracting initiatives over the past 2 years, including site visits, documentation review, conference calls, consultations with Nebraska’s state auditors, reviews of related and recently issued State Auditor and State Legislature reports<sup>1</sup>, and most recently our review of FY2010 claiming documentation provided by Nebraska during its appeal of our FY2010 audit disallowance, we have determined that, in addition to the specifically cited questioned costs in this finding, all of Nebraska’s title IV-E Foster Care maintenance claims reported on Part 1, line 1 of its quarterly CB-496 Federal financial report for FFY2012 (net of prior quarter adjustments and after removing the FY2010 audit disallowance paid as a prior quarter adjustment during this year) of \$7,857,405 are unallowable.

In accordance with titles IV-B and IV-E of the Social Security Act (Act), Nebraska has flexibility in determining how to implement its child welfare programs. However, such flexibility does not preclude the adherence to title IV-E as well as other applicable Federal regulations and requirements with respect to title IV-E claimed amounts.

Our review of FY2010 claiming documentation revealed, and Nebraska confirmed during an April 5, 2013 conference call, that it has been and is continuing to report total costs derived from “bundled rates” as constituting title IV-E foster care maintenance assistance payment claims on Part 1, line 1 of its quarterly Federal financial report. Nebraska conceded that these “bundled rates” include *non*-IV-E allowable maintenance costs, such as contractor administrative costs. During its appeal of our FY2010 audit disallowance, Nebraska provided FY2010 claiming documentation in an effort to support its title IV-E maintenance cost claims. The documentation provided consisted of lead and sub-contractor invoices. Despite several requests from ACF, Nebraska was unable to provide any source documentation of actual payments made to foster parents for title IV-E

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<sup>1</sup> Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures, July 1, 2009 Through March 31, 2011, Nebraska Auditor of Public Accounts, September 7, 2011; DHHS Privatization of Child Welfare and Juvenile Services, Committee Report, Vol. 17, No. 1, Nebraska Legislature Performance Audit Committee, November 2011; Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform, Health and Human Services Committee, December 15, 2011.

allowable maintenance expenditures. During discussions of this lack of actual source documentation, Nebraska indicated that it has claimed "bundled rates", such as those shown on the contractor invoice documentation provided, for both reform and non-reform contractors as its title IV-E allowable foster care maintenance costs. The Special Projects Administrator for the Director of Nebraska's Department of Health and Human Services said that Nebraska has followed this claiming protocol since prior to its reform initiatives and continues to do so in FY2013. Due to a lack of proper supporting documentation, Nebraska withdrew its appeal of our FY2010 disallowance decision in May 2013.

In addition, in both a June 26, 2013 and a July 10, 2013 letter received from Nebraska as part of its title IV-E waiver proposal, Nebraska's Division of Children and Family Services Director said that Nebraska "...is willing to shift 15% of the maintenance claims" on line 1 to the administrative line, stating that "[t]he 15% is based on research of "reasonable" administrative rates." First, this provides further confirmation that Nebraska's line 1 claims include non-title-IV-E maintenance expenditures. Second, applying a percentage that is unrelated to the actual costs in question does not identify the appropriate classification of costs and is therefore unacceptable. Nebraska was thus not able to provide any reasonable means by which to identify and segregate costs that are allowable title IV-E maintenance from those that are not title IV-E allowable maintenance.

This lack of supporting documentation for title IV-E foster care maintenance expenditure claims has persisted from at least FY2010 to today. Also, while the Nebraska FY2011 single audit determined a "Qualified" opinion for Nebraska's foster care program, they identified an "Adverse" opinion for FY2012 for the same repeating findings. Finally, the auditors noted in their FY2012 findings that Nebraska has not made any changes to address the identified repeating issues.

Nebraska's claiming of "bundled rates" on Part 1, line 1 of its quarterly Federal financial report as its foster care maintenance claims does not meet title IV-E requirements. Specifically:

***Nebraska's claims do not meet title IV-E allowable maintenance as defined by the Social Security Act:***

**Social Security Act Section 475 (4)**

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

***Nebraska's claims do not meet title IV-E allowable maintenance as described by the Child Welfare Policy Manual (CWPM):***

**8.1C TITLE IV-E, Administrative Functions/Costs, Calculating Claims**

**1. Question:** May a State claim Federal financial participation (FFP) in the title IV-E foster care and adoption assistance programs based on estimates of quarterly expenditures, or must FFP be claimed on the basis of actual expenditures reported quarterly?

**Answer:** In accordance with regulations at 45 CFR 95.4, a "claim" is defined as "...a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued there-under." The instructions for completing Form ACF IV-E-1 state that all amounts must be for actual expenditures made under the State's approved IV-E plan in accordance with applicable statutes and regulations. These claims must be supported by accounting records and source documentation at the time they are submitted. Estimates of quarterly expenditures do not represent a "claim" as defined above and, as such, may not be reported on the Form IV-E-1 for the purpose of claiming FFP. All claims must be comprised of actual expenditures and filed within two years from the end of the quarter within which the expenditures were made.

- **Source/Date:** ACYF-CB-PIQ-96-01 (10/8/96)
- **Legal and Related References:** 45 CFR 95.4; ACYF-OC-PI 99-01 (9/22/99)

**CWPM: 8.1E Title IV-E, Administrative Functions/Costs, Contracting**

**2. Question:** Title IV-E administrative costs may be claimed for activities completed by child placing agencies. When an institution participates in case review, case supervision and case management, can an allocated amount of this time be charged to title IV-E administration? If not, what is the appropriate way of allocating these costs? When an institution participates in making a treatment plan and in daily recording of a child's progress, to what should these activities be allocated?

**Answer:** The first statement in the question is not entirely accurate. Title IV-E administrative costs may be claimed when the State contracts with child-placing agencies to perform foster care related administrative functions of the State.

45 CFR 1356.60 (c)(2) includes in the list of allowable State administrative costs those costs which are necessary for the administration of the foster care program.

Costs for these State administrative activities, when performed by a child-care institution, may be claimed by the State as the State's administrative

costs if the State contracts with the institution to perform these activities. These costs may not also be claimed as part of the child's title IV-E maintenance payment.

The institution's provision of social services in relation to the child's personal or behavioral problems, counseling to ameliorate home conditions and daily recording of progress would not be considered administrative activities of the title IV-E foster care maintenance program and the costs are not allowable for purposes of Federal financial participation (45 CFR 1356.60 (c)(3)).

- **Source/Date:** ACYF-CB-PIQ-85-06 (6/5/85)
- **Legal and Related References:** 45 CFR 1356.60 (c)

***Nebraska's claims do not meet title IV-E allowable maintenance as instructed by the Title IV-E Programs Quarterly Report Form CB-496 Completion Instructions:***

ACF Federal title IV-E financial reporting requirements define "expenditures" claimed for Federal reimbursement as "actual payments made" for goods or services and may not be either "estimates" or "advances". However, Nebraska's practice of claiming "bundled rates", which include contractor administrative costs, do not reflect "actual payments made" for IV-E allowable maintenance. In fact, as noted in the Nebraska Legislature LR37 Report issued December 15, 2011, sub-contractors would often adjust contractor rates (both reform and non-reform contractor rates) "for their administrative fees" and foster families would be reimbursed "between 45-55% of the contracted rate received from DHHS or lead agencies".

ACF Federal title IV-E financial reporting requirements require amounts reported to be actual, verifiable transactions supported by readily available source documentation. Such financial and programmatic records must be available and retained in accordance with applicable regulations at 45 CFR 92.42.

***Nebraska's claims and claiming processes do not meet Lead State Agency oversight and internal control requirements:***

Nebraska DHHS has inadequate oversight of its contractors and inadequate internal controls over its title IV-E claiming processes. As the designated State Agency for Nebraska's title IV-E program, Nebraska DHHS, has the responsibility for the "efficient and effective administration of Federal awards through the application of sound management practices" and "in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award" to ensure that "Federal awards bear their fair share of cost" (2 CFR 225 or OMB Circular A-87). The lack of State agency information and oversight of contractor rates, costs and activities prevents it from meeting these responsibilities.



We note the following from the HHS Departmental Appeals Board (DAB) Decision No. 2080 (May 2007) involving Florida:

- *"The requirement that a single state (i.e., governmental) agency administer or supervise the administration of the program is "central to most mandatory grant programs under various titles of the Act" and "provides federal funding sources with a degree of accountability that is especially important where IV-E administrative costs are at issue, because of the distinctly limited nature of the activities for which IV-E administrative funding is available.".... "A result of the limited nature of the IV-E program and the requirement that the single state agency administer or supervise the administration of the program is that federal funding is not available for the activities that a number of people from different agencies and disciplines may provide in foster care cases.""*
- *"Administering or providing services "through" a private entity under contract does not mean ceding to the private entity the single state agency's administrative authority and responsibilities. The state remains the program administrator but is permitted to use contracts with private organizations to administer or provide services."*

Regarding the contractor-submitted invoices, Nebraska said that it does not conduct formal monitoring procedures of the reform contractors' submitted invoices. Therefore, there is no assurance that the submitted invoices are allowable, reasonable or supportable by source documentation. Title IV-E agency monitoring of grant and sub-grant activities to assure compliance with applicable Federal requirements and that performance goals are being achieved is required as per 45 CFR 92.40.

In addition, Nebraska's state auditors confirmed that Nebraska DHHS does not perform any reconciliations between fixed contract prices and actual services delivered to assess allowability, reasonableness, or accuracy of the services obtained for the fixed prices paid. Nebraska explained that the fixed prices for the reform contracts were "determined based on prior assistance payments". Nebraska believes that its fixed reform contract prices do not require any further justification or explanation than that.

Federal statutes and regulations impose conditions on the receipt of title IV-E funding for the foster care maintenance payment program. The conditions usually referenced are those including the provision of reasonable efforts, the use of judicial determinations, and the development of case plans. However, these conditions also impact what is allowable to claim as maintenance costs versus what is allowable to claim as administrative costs. [See New York DAB Decision 1701, August 25, 1999].

Nebraska has and continues to claim "bundled rates" that include non-IV-E allowable costs on Part 1, line 1 of its quarterly Federal financial report. Lacking proper supporting documentation to determine what, if any, portion of these claims are allowable as title IV-E foster care maintenance, all line 1 claims, net of prior quarter adjustments, submitted in FFY2012 (net of prior quarter adjustments and after adjusting for the FY2010 audit disallowance paid as a prior quarter adjustment during this year) are disallowed totaling \$7,857,405:

Federal Share of Reported Line 1 Claims Net of Prior Quarter Adjustments		
	FFY 2012	Net Total Disallowance
	6,061,765	
Adjust for FY2010 Single Audit disallowance paid during FFY2012 (as a prior quarter adjustment)	1,795,640	
	7,857,405	7,857,405

You must remit this amount per the instructions provided below. Action must be taken within 30 days from the date of this letter.

**FINDING 12-25-35: FOSTER CARE –SUBRECIPIENT MONITORING / REPORTING**  
(NEAR Recommendation Code: 212908100)

**"Program:** CFDA 93.658 – Foster Care Title IV-E – Subrecipient Monitoring/Reporting

**Grant Number & Year:** #1201NE1401, FFY 2012; #1101NE1401, FFY 2011

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

**Criteria:** OMB Circular A-133 § 210 details characteristics which should be used to determine whether a subrecipient or vendor relationship exists. Per OMB Circular A-133 § 210(d),

*"In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or a vendor."*

OMB Circular A-133 § 400(d) states,

*"A pass-through entity shall perform the following for the Federal awards it makes: (1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and the name of Federal agency... (2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity... (3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved... (4) ensure that subrecipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year."*

2 CFR § 170 Appendix A § I.a.1 (January 1, 2011) states,

*"Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term)."*

2 CFR § 170 Appendix A § I.a.2.ii (January 1, 2011) states,

*"For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)"*

Per Appendix A to 2 CFR § 25 (January 1, 2011), if you are authorized to make subawards under this award, you must notify potential subrecipients that no entity may receive a subaward from you unless the entity has provided its DUNS number to you, and you may not make a subaward to an entity unless the entity has provided its DUNS number to you.

A good internal control plan requires procedures be in place to ensure the Agency accurately identifies its subrecipients so that it can perform required subrecipient monitoring.

**Condition:** With regard to the Reform Contracts, we noted the following – all of which, per OMB Circular A-133 § 210(b), indicate a subrecipient relationship: (1) the contracts were not competitively bid; (2) the Lead Contractors provide services that are key to the operation of the Federal program; (3) performance of the Lead Contractors is measured against whether the objectives of the Federal program are met; and (4) the Lead Contractors are subject to compliance requirements of the Federal program.

During State fiscal year 2012, the Agency considered the Reform Contractors to be vendors and not subrecipients. Therefore, it did not perform adequate subrecipient monitoring and did not report subawards as required. A similar finding was noted in the prior audit.

**Questioned Costs: Unknown**

**Context:** The Agency had two Reform Contractors during State fiscal year 2012. Total funds claimed as IV-E on behalf of these Reform Contractors during the fiscal year was \$5,173,608. Since the Agency did not consider the Reform Contractors to be subrecipients, the Agency did not perform subrecipient monitoring in compliance with Federal regulations.

Specifically, they did not notify their subrecipients of CFDA title and number, award name and number, if the award is Research and Development, and name of Federal agency. They also did not advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity. They also did not monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved. Since the Agency did not conduct formal monitoring procedures of the subrecipients' submitted invoices, they could not provide assurance that they verified the invoices were allowable, reasonable or supportable by source documentation. They also did not require the subrecipients to have A-133 audits. They also did not perform any Transparency Act reporting or require their subrecipients to have DUNS numbers.

Per a letter received by the Agency on August 27, 2012, from the Administration for Children and Families (ACF), a division of the U.S. Department of Health and Human Services,

*"Nebraska inappropriately treats its Reform contractors as 'service providers', i.e., as vendors, when they should be treated as sub-recipients per OMB Circular A-133 Section 210. As the criteria indicate, the substance of the relationship is more important than the form of the agreement in the determination of whether a subrecipient or vendor relationship exists. Nebraska's admitted purpose and intention from the outset with its Reform initiatives was to 'privatize' its entire Child Welfare program. And, as Nebraska stated in a proposed cost allocation plan amendment, the Reform contracts were for the provisions of 'all services necessary for the foster care ward.' Moreover, the Nebraska State legislature, in its 450+ page review and assessment of the reform initiatives, considered the Reform contracts to be 'global transfer contracts which are the most at-risk contracts.' Furthermore, the contracts were fixed-price contracts for which contractors were paid their full contracted fixed amounts regardless of the number of children served or services performed and little if any guidance was*

*provided on how to accomplish the goals of the contract. This certainly meets the criteria for a subrecipient relationship as intended by A-133 Section 210."*

**Cause:** The Agency believed the Reform Contractors more closely resembled vendors than subrecipients. In the prior audit, we brought to the Agency's attention that we believed the Reform Contractors to be subrecipients. The Agency met with the ACF in November 2011 to discuss the Agency's determination that the agreements with the Reform Contractors constituted a vendor relationship. The ACF did not make their determination until August 2012, so during State fiscal year 2012, the Agency continued to treat its Reform Contractors as vendors.

**Effect:** Noncompliance with Federal regulations."

**Audit Recommendation:**

"We recommend the Agency implement procedures to ensure it is adequately monitoring its subrecipients in accordance with Federal regulations."

**Grantee Response and Corrective Actions Planned or Taken:**

**"Management Response:** The Agency agrees with the condition reported.

**Corrective Action Plan:** As of July 1, 2012, DHHS has considered NFC a subrecipient. A letter was mailed to NFC on November 20, 2012, containing the information required to be given to a subrecipient. The letter also requires NFC to provide an A-133 audit on an annual basis.

**Anticipated Completion Date:** November 20, 2012"

**ACF Decision:**

We concur with the finding and recommendation. Nebraska inappropriately treats its reform contractors as "service providers", i.e., as vendors, when they should be treated as sub-recipients per OMB Circular A-133 Section 210. As the criteria indicate, the substance of the relationship is more important than the form of the agreement in the determination of whether a subrecipient or vendor relationship exists. Nebraska's admitted purpose and intention from the outset with its reform initiatives was to "privatize" its entire child welfare program. And, as Nebraska stated in proposed cost allocation plan amendment, the reform contracts were for the provision of "*all services necessary for the foster care ward*". Moreover, the Nebraska state legislature, in its 450+ page review and assessment of the reform initiatives, considered the reform contracts to be "global transfer contracts which are the most at-risk contracts". Furthermore, the contracts were fixed-price contracts for which contractors were paid their full contracted fixed amounts regardless of the number of children served or services performed and little if any guidance was provided on how to accomplish the goals of the contract. This

certainly meets the criteria for a sub-recipient relationship as intended by A-133 Section 210.

Nebraska's State Fiscal Year 2013 agreement with its current Lead contractor is considered a sub-recipient relationship. We will continue to work with Nebraska to ensure proper claiming.

## **REPAYMENT AND APPEAL INFORMATION**

### **Repayment:**

Within 30 days of the date of this letter, you must initiate the return of the disallowed funds via one of the following actions:

- Submit an original or revised financial report which includes decreasing adjustments in Part 2, Prior Quarter Expenditure Adjustments, totaling the full amount of disallowed funds by finding. The ACF will issue a negative grant award recouping the full amount of the disallowance.

**OR**

- Submit a request to the ACF to recoup the disallowed funds via the issuance of a negative grant award. The ACF will issue a negative grant award recouping the full amount of the disallowance.

An extended repayment plan may be requested under 45 CFR § 30.17, Collection in installments. Such request and approval must be received within 15 days of the date of this letter by the ACF Regional Grants Management Office. Interest may be charged.

### **Appeal:**

You may appeal this disallowance decision with the Departmental Appeals Board (DAB) in accordance with 45 CFR Part 16. Your written request to appeal must be postmarked no later than 30 days from the date of this letter and be sent, via certified return receipt mail, to:

U.S. Department of Health and Human Services  
Departmental Appeals Board MS 6127  
Appellate Division  
Cohen Building, Room G-644  
330 Independence Avenue, S.W.  
Washington, D.C. 20201

You must attach to your request for appeal a copy of this disallowance letter, state the amount in dispute, and briefly state why you think that the decision is incorrect. An original and two copies of all documents must be submitted to the Departmental Appeals Board. The Board will notify you of further procedures. Additionally, please mail or email a copy of your request to appeal to: Nadine Roth, Grants Management Officer, 601 E. 12<sup>th</sup> Street, Room 349, Kansas City, MO 64106 or [nadine.roth@acf.hhs.gov](mailto:nadine.roth@acf.hhs.gov).

**Interest and Penalties:**

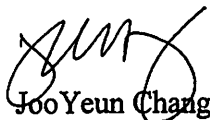
If you appeal, you may repay the amount at issue pending a decision or you may retain the funds pending a decision. If you retain the funds and all or part of the disallowance is sustained, interest and penalties will be charged from the date of this disallowance letter on funds determined as properly disallowed in accordance with 45 CFR Part 30.18. The current interest rate is 10.375%. No interest will be charged on amounts repaid in full as described above.

Your entity is required by the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Nonprofit Organizations*, to follow-up and to take corrective action on audit findings and to report the status of audit findings in the subsequent audit's Summary Schedule of Prior Audit Findings. Also, your auditor is required by the OMB Circular A-133 to follow up on prior audit findings, to perform procedures to assess the reasonableness of the Summary Schedule of Prior Audit Findings, and to report exceptions.

As a reminder, future Single Audits should be submitted to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after receipt of the auditor's report or nine months after the fiscal year ends, in accordance with Section 320 of the OMB Circular A-133. Beginning with fiscal years ending on or after January 1, 2008, reports on the OMB Circular A-133 audits must be submitted to the FAC online at <http://harvester.census.gov/fac/index.html>.

Your assistance and cooperation in the timely resolution of this matter is greatly appreciated. If you have any questions or need further information, please contact Rosalyn Wilson, Child Welfare Regional Program Manager in Region VII, at 816-426-2262 or by e-mail at [rosalyn.wilson@acf.hhs.gov](mailto:rosalyn.wilson@acf.hhs.gov).

Sincerely,



JooYeun Chang  
Acting Associate Commissioner  
Children's Bureau

cc: Pat Reding, Assistant Deputy State Auditor, Nebraska Auditor of Public Accounts;  
Lincoln, NE  
Thomas Pristow, Director, Nebraska Division of Children and Family Services; Lincoln,  
NE  
Kevin Nelson, Internal Auditor, Nebraska Dept. of Health and Human Services –  
Operations; (Lincoln, NE)  
Nancy Achord, HHS Assistant Regional Counsel; Kansas City, MO  
Joseph J. Bock, Deputy Associate Commissioner, ACF/Children's Bureau; Washington,  
DC  
Gail Collins, Director; Division of Program Implementation, ACF/Children's Bureau;  
Washington, DC  
Roselyn Wilson, Child Welfare Regional Program Manager; ACF/Children's Bureau,  
Region VII; Kansas City, MO  
William Meltzer, Senior Program Specialist, ACF/Children's Bureau; Washington, DC  
Nadine Roth, Grants Management Officer, ACF Region VII; Kansas City, MO  
Debi Hatfield, Child Welfare Program Specialist, ACF Region VII; Kansas City, MO  
Ruth Anne Decker, Mandatory Grants Team Lead, ACF Region VII; Kansas City, MO