



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen
State Auditor

Charlie.Janssen@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
www.auditors.nebraska.gov

November 22, 2022

Dannette R. Smith, Chief Executive Officer
Nebraska Department of Health and Human Services
301 Centennial Mall South
Lincoln, Nebraska 68509

Jim Macy, Director
Nebraska Department of Environment and Energy
245 Fallbrook Blvd.
PO Box 98922
Lincoln, Nebraska 68509

Dear Ms. Smith and Mr. Macy:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the expenditure of Low Income Home Energy Assistance Program (LIHEAP) funds, including specific funding allocations within the weatherization program, and American Rescue Plan Act (ARPA) funds. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested information from both the Nebraska Department of Health and Human Services (DHHS) and the Nebraska Department of Environment and Energy (NDEE) regarding the LIHEAP funds. Based upon the outcome of this preliminary planning work, including an analysis of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time as the APA will be testing LIHEAP as part of the 2022 Statewide Single Audit.

Nevertheless, during the preliminary planning work, the APA noted a certain issue that merits attention.

Background Information

Congress created the Low Income Home Energy Assistance Program (LIHEAP) in 1981, as part of the Omnibus Budget Reconciliation Act (P.L. 97-35), to provide funds to states, the District of Columbia, U.S. territories and commonwealths, and Indian tribal organizations for assisting low-income households pay home energy expenses.

LIHEAP is codified at 42 U.S.C. § 8621 et seq., and its implementing regulations are published at 45 CFR Part 96. Per 42 U.S.C. § 8621(a), the Secretary of the U.S. Department of Health and Human Services “is authorized to make grants . . . to States to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.” States seeking LIHEAP funds must apply for them each fiscal year.

The Nebraska Department of Health and Human Services (DHHS) administers the distribution of LIHEAP funds to qualifying residents of this State. Neb. Rev. Stat. § 68-1215 (Supp. 2021) sets out the income restrictions for funding recipients, in accordance with the requirements of 42 U.S.C. § 8624(b)(1), as follows:

For purposes of determining eligibility of a household for the low-income home energy assistance program pursuant to section 68-1201 as administered by the State of Nebraska pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, the Department of Health and Human Services shall apply a household total annual income level of one hundred fifty percent of the federal poverty level published annually by the United States Department of Health and Human Services or such successor agency which publishes the federal poverty level.

Those eligible may receive funding for heating, cooling, crisis, or weatherization assistance. To administer the latter of those services, DHHS has relied upon the Nebraska Department of Environment and Energy (NDEE) Nebraska Weatherization Assistance Program (NeWAP), which awards subgrants to various Community Action Partnerships in Nebraska and Habitat for Humanity of Omaha.

Through LB 306 (2021), codified at Neb. Rev. Stat. § 68-1216 (Supp. 2021), the Nebraska Unicameral Legislature mandated that DHHS “annually allocate at least ten percent of available funds for the low-income home energy assistance program . . . to weatherization assistance for eligible households as administered by the department or other agencies of the state.” Passed over the Governor’s veto on May 26, 2021, that legislation became operative on the following day.

Comments and Recommendations

1. Failure to Allocate LIHEAP Funds in Accordance with State Law

On May 4, 2021, the State of Nebraska was awarded \$41,180,965 in Low Income Home Energy Assistance Program (LIHEAP) funds through the American Rescue Plan Act (ARPA) of 2021. Those funds were designated for the project period beginning March 11, 2021, and ending September 30, 2022. The Notice of Award received from the U.S. Department of Health and Human Services states, “You may use this funding to support obligations from March 11, 2021 [sic] through September 30, 2022. No carry over is permitted into FY 2023.” The September 30 deadline is based on the Federal fiscal year.

In early September of 2021, the Nebraska Department of Health and Human Services (DHHS) entered into an Interagency Agreement (Contract # 96819 – O4) with the Nebraska Department of Environment and Energy (NDEE) to expend \$4,118,097 of the LIHEAP ARPA funds – approximately 10 percent of the total received by the State of Nebraska, as required by § 68-1216 – “to provide weatherization services statewide to eligible households.” Section 4.4 of the agreement states the following:

All funds must be expended or obligated by 9/30/22. Any unobligated funds after 9/30/22 must be returned to DHHS. Any de-obligated or recaptured funds after 9/30/22 must be returned to DHHS. No funds can be reallocated from one agency to another after 9/30/2022.

Despite this language, NDEE inquired with DHHS regarding whether funds needed to be spent or just obligated by September 30, 2022. Over the course of the next several months, NDEE and DHHS would correspond between themselves and the Administration for Children and Families, the Federal partner for the LIHEAP ARPA grant, to seek further guidance. One of the questions asked of the Federal partner was, “[I]s it correct that the LIHEAP ARPA funds must be obligated by 9/30/22 but obligated funds can continue to be expended through 12/31/25?” For months, DHHS repeatedly followed-up on this question, but did not receive a response until early January of 2022. The email reply did not specifically respond to the question posed by DHHS; rather, the Federal partner provided a link to specific guidance that had been released in December by the Division of Energy Assistance. Based on this guidance, DHHS ultimately concluded that the deadline for the disbursement of the grant funds at issue was September 30, 2022.

On April 21, 2022, NDEE contacted its subgrantees to ask whether any of them could help spend the money before the September 30, 2022, deadline. None responded affirmatively. Consequently, on May 2, 2022, NDEE informed DHHS of the decision to return all of the grant money. One month later, on June 3, 2022, both agencies signed a “Mutual Termination” agreement. The weatherization funds that were originally allocated were then spent for other LIHEAP services by DHHS. As a result, none of those monies were allocated for weatherization services, as required by § 68-1216 – which, as explained earlier herein, requires that DHHS “annually allocate at least ten percent of available funds for the low-income home energy assistance program . . . to weatherization assistance for eligible households as administered by the department or other agencies of the state.”

Good internal controls require procedures to ensure compliance with applicable statutory requirements of weatherization funds. Without such procedures, there is an increased risk for noncompliance with State statute.

We recommend both DHHS and NDEE continue working together, pursuing further guidance from the appropriate Federal authorities – as well as the Nebraska Attorney General, if needed – to implement a process for distributing LIHEAP funds in compliance with § 68-1216.

DHHS Response: The Agency disagrees with this finding. The Nebraska Revised Statute 68-1216 states: "The Department of Health and Human Services shall annually allocate at least ten percent of available funds for the low-income home energy assistance program established pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, to weatherization assistance for eligible households as administered by the department or other agencies of the state." 45 Code of Federal Regulations (C.F.R.) Part 75.2 states: "Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives." and "Expenditure means charges made by a non-Federal entity to a project or program for which a Federal award was received." The Department of Health and Human Services (DHHS) was awarded \$41,180,965 in Low Income Home Energy Assistance Program (LIHEAP) funds as a result of the American Rescue Plan Act (ARPA). DHHS awarded \$4,118,097 to the Nebraska Department of Environment and Energy (NDEE) via an interagency agreement to provide weatherization services. DHHS complied with the Nebraska Revised Statute 68-1216 as at least 10% of the funds received for LIHEAP were allocated for weatherization services. Since the allocated funds were unable to be expended for weatherization services, NDEE returned the funds to DHHS. DHHS utilized the funds to assist eligible households with other state and federally-allowable LIHEAP services. This ensured eligible households received assistance with the funds that would have otherwise been unexpended.

* * * * *

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and suggestions that we hope will be useful to the State of Nebraska.

Draft copies of this letter were furnished to both agencies to provide its management with an opportunity to review and to respond to the comments and recommendations contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the State of Nebraska and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this communication is a matter of public record, and its distribution is not limited.

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

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor

Mason Culver – Auditor-In-Charge

Cody Guillot – Auditor-In-Charge

Sincerely,



Craig Kubicek, CPA, CFE

Deputy Auditor

Auditor of Public Accounts

Room 2303, State Capitol

Lincoln, NE 68509

Phone (402) 471-3686

craig.kubicek@nebraska.gov