NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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December 13, 2023

John Hilgert, Director
Nebraska Department of Veterans' Affairs
301 Centennial Mall South, 4th Floor
Lincoln, Nebraska 68509

Dear Mr. Hilgert:

We have audited the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the State of Nebraska (State), as of and for the year ended June 30, 2023, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and we have issued our report thereon dated December 13, 2023. In connection with our engagement to audit the financial statements, we considered the State's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

In connection with our engagement to audit the financial statements as described above, we noted certain internal control or compliance matters related to the activities of the Department of Veterans' Affairs (Department) or other operational matters that are presented below for your consideration. These comments and recommendations, which have been discussed with the appropriate members of the Department's management, are intended to improve internal control or result in other operating efficiencies.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

Draft copies of this letter were furnished to the Department to provide management with an opportunity to review and to respond to the comments and recommendations contained herein. All formal responses received have been incorporated into this letter. The responses were not subjected to the other auditing procedures applied in the engagement to audit the financial statements and, accordingly, we express no opinion on them. Responses that indicate corrective action have been taken was not verified at this time, but they will be verified in the next audit.

The following are our comments and recommendations for the year ended June 30, 2023.

1. ARPA Premium Pay Issues

In fiscal year 2023, the Department recorded a journal entry in the State's accounting system to use $3,546,602 in Federal funds from the American Rescue Plan Act (ARPA), Coronavirus State and Local Fiscal Recovery Funds (SLFRF), program to fund premium pay increases for each of the State's Veterans' Homes. These funds were allocated to the Department under Legislative Bill (LB) 1014 (2022).

The Auditor of Public Accounts (APA) determined that the Department failed to review adequately the Federal eligibility requirements for premium pay under the ARPA SLFRF program and, ultimately, improperly calculated premium pay in accordance with Federal guidelines. The table below summarizes the errors:

Description of Error	Amount
The Department used employees' gross wages in its calculation instead of using only the increase in pay, as required by Federal regulations. In our test of 25 employees, $371,683 in wages was included in the calculation but should not have been.	$ 371,683
The wages of 10 employees were ineligible per Federal guidelines, as their earnings exceeded 150% of the applicable average wages for all occupations and were exempt from the Fair Labor Standards Act overtime provisions.	$ 357,039
The wages of 17 employees exceeded the $25,000 maximum allowance per employee, as set in the Federal guidelines, due the Department's failure to review employees paid from multiple funding sources.	$ 145,206

After these initial errors were communicated, the Department provided an updated calculation of the amount that should have been charged to the ARPA SLFRF program. In reviewing the new calculation, the APA determined that the original journal entry exceeded the amount of actual premium pay expenses by $2,028,510 and, therefore, was ineligible under the ARPA SLFRF program.

Enacted in March 2021, ARPA created the SLFRF program. This program provides state, local, and tribal governments with resources needed to respond to the COVID-19 public health emergency and its economic effects, including providing premium pay to eligible workers as specified in the Code of Federal Regulations (CFR).

Under the U.S. Treasury's regulations, specifically 31 CFR § 35.3 (July 1, 2022), "premium pay" is defined as follows:

> *Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, <u>in addition to wages or remuneration the eligible worker otherwise receives</u>, for all work performed by the eligible worker during the COVID–19 public health emergency. <u>Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker.</u> Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. <u>Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives</u> if, as measured on an hourly rate, the premium pay is . . . (2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is <u>in addition</u> to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.*

(Emphasis Added.) Additionally, 31 CFR § 35.6(c) (July 1, 2022) describes the guidelines for providing premium pay to eligible workers as follows, in relevant part:

> *(c) Providing premium pay to eligible workers. A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work . . . . A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if:*
>
> *(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;*

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

A proper system of internal control requires procedures to ensure compliance with applicable Federal regulations prior to the reimbursement of expenses from Federal Funds, thereby assuring the reimbursements are for actual eligible expenditures. Without such procedures, there is an increased risk of both material noncompliance with Federal regulations and material misstatement to the financial statements.

> We recommend the Department: 1) correct the journal entry in question to ensure Federal charges are in accordance with Federal regulations; and 2) implement procedures to ensure Federal regulations are reviewed for compliance requirements prior to recording any financial entries to reimburse expenses from Federal funds.

Department's Response: NDVA made all recommended adjustments to their FY23 premium pay calculations to ensure amounts reported as of June 30, 2023, are in accordance with CSLFRF eligibility requirements. All regulations will be thoroughly reviewed and consulted with the State Accounting Administrator at the Department of Administrative Services.

APA Response: We recommend that the Department ensure that adjustments are appropriately reflected in the accounting system.

2. Incorrect Pay Increases

In our review of the premium pay calculations noted in Comment and Recommendation #1 ("ARPA Premium Pay Issues") above, the APA identified 10 employees who were paid an incorrect hourly rate for work dates between July 1, 2021, through January 16, 2022.

All 10 employees were under the same job code (food service assistants). The Department appears to have used an incorrect job code (M80012) from the 2021 - 2023 Nebraska Association of Public Employees Local 61 of the American Federation of State, County, and Municipal Employees (NAPE/AFSCME) contract to assign the employees an hourly rate of $13.159 per hour instead of the $12.241 per hour due under the correct job code (M80011) on July 1, 2021.

The red highlighted cells in the image below from the NAPE/AFSCME contract show the different job code pay rates:

M80011 Food Service Assistant	**Step 1**	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**	**Step 7**	**Step 8**	**Step 9**	**Step 10**
	$12.000	$12.120	$12.241	$12.364	$12.487	$12.612	$12.738	$12.866	$12.994	$13.124
	Step 11	**Step 12**	**Step 13**	**Step 14**	**Step 15**	**Step 16**	**Step 17**	**Step 18**	**Step 19**	**Step 20**
	$13.255	$13.388	$13.522	$13.657	$13.794	$13.932	$14.071	$14.212	$14.354	$14.497
	Step 21	**Step 22**	**Step 23**	**Step 24**	**Step 25**	**Step 26**	**Step 27**	**Step 28**	**Step 29**	**Step 30**
	$14.642	$14.789	$14.937	$15.086	$15.237	$15.389	$15.543	$15.699	$15.855	$16.014
	Step 31	**Step 32**	**Step 33**	**Step 34**	**Step 35**	**Step 36**	**Step 37**	**Step 38**	**Step 39**	**Step 40**
	$16.174	$16.336	$16.499	$16.664	$16.831	$16.999	$17.169	$17.341	$17.514	$17.689
M80012 Food Service Worker	**Step 1**	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**	**Step 7**	**Step 8**	**Step 9**	**Step 10**
	$12.900	$13.029	$13.159	$13.291	$13.424	$13.558	$13.694	$13.831	$13.969	$14.109
	Step 11	**Step 12**	**Step 13**	**Step 14**	**Step 15**	**Step 16**	**Step 17**	**Step 18**	**Step 19**	**Step 20**
	$14.250	$14.392	$14.536	$14.681	$14.828	$14.976	$15.126	$15.278	$15.430	$15.585
	Step 21	**Step 22**	**Step 23**	**Step 24**	**Step 25**	**Step 26**	**Step 27**	**Step 28**	**Step 29**	**Step 30**
	$15.740	$15.898	$16.057	$16.217	$16.380	$16.543	$16.709	$16.876	$17.045	$17.215
	Step 31	**Step 32**	**Step 33**	**Step 34**	**Step 35**	**Step 36**	**Step 37**	**Step 38**	**Step 39**	**Step 40**
	$17.387	$17.561	$17.737	$17.914	$18.093	$18.274	$18.457	$18.641	$18.828	$19.016

On November 8, 2021, seven of those employees received a pay differential of $3 per hour and an additional hourly pay increase of 20 percent under a letter of agreement with NAPE/AFSCME to amend the 2021 - 2023 labor contract. Because the original hourly rates of pay were incorrect, however, the rate changes implemented as a result of the letter of agreement were also improper.

The Department corrected the error in late January 2022 but failed to recover wage overpayments made to those employees because of the mistake.

Because of the various overtime premium rates, an exact calculation of the overpayments proved difficult to determine. Despite the APA's request for a calculation of the total overpayments to these 10 employees, the Department claimed to be unable to provide that information due to a lack of available resources.

The APA estimates the amounts overpaid to the 10 employees to total approximately $11,095.

A proper system of internal controls requires procedures to ensure pay rates are in accordance with the terms of the relevant labor contract. Without such procedures, there is an increased risk for loss of Department funds through improper payments to employees.

> We recommend the Department review each of the 10 employee's wages to calculate accurately the total overpayments made to those workers in order to recoup the incorrect disbursements. We further recommend the Department implement procedures to ensure all employee pay rates, as well as any changes thereto, are accurate and in accordance with the terms of the relevant labor contract.

Department's Response: NDVA transitioned payroll internally to ensure proper procedures and controls are in place around the payroll process to provide assurances changes are implemented in accordance with the labor contract.

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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 our knowledge of the Department and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Department.

The purpose of this letter is solely to describe the scope of our testing of internal control over financial reporting and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the State of Nebraska's internal control over financial reporting or on compliance. This letter is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the State of Nebraska's internal control over financial reporting and compliance. Accordingly, this communication is not suitable for any other purposes.

Kris Kucera

Kris Kucera, CPA, CFE
Assistant Deputy Auditor