



**STATE OF MAINE
OFFICE OF THE STATE AUDITOR**

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October 18, 2016

Honorable Paul LePage, Governor
Honorable Janet Mills, Attorney General

Honorable Eric Brakey and Honorable Andrew Gattine, Chairs
Committee on Health and Human Services

Honorable James Hamper and Honorable Margaret Rotundo, Chairs
Committee on Appropriations and Financial Affairs

Honorable Rodney Whittemore and Honorable Roland Martin, Chairs
Committee on State and Local Government

Honorable Michael Thibodeau and Honorable Mark Eves, Chairs
Committee on Legislative Council

Dear Governor LePage, Attorney General Janet Mills, Senators and Representatives,

This letter is our formal and required communication regarding a significant financial matter related to internal control over compliance with the Federal program, *Temporary Assistance for Needy Families (TANF)*. We consider the matter involving the *Use of the TANF Transfers to the Social Services Block Grant* to be significant because it involves thirteen million four hundred thousand dollars. The Office of the State Auditor (OSA) intends to include the attached OSA audit finding, DHHS' management's response to the finding and our concluding remarks, in our statewide Single Audit Report due to the federal government by March 31, 2017.

We consider this matter to be improper management of funds at the agency level that should rise to the attention of the Governor, the Attorney General and the Legislature. Therefore, this communication to you by the State Auditor is explicitly required by Title 5 Section 243-B and Title 5 Section 244.

Our finding is based on our audit procedures performed through October 17, 2016. In planning and performing our audit of this specific matter we considered compliance with the applicable requirements as described in the *United States, Office of Management and Budget, Compliance*

Supplement for the year ended June 30, 2016. We also considered DHHS' internal control over compliance with the *Use of the TANF Transfers to the Social Services Block Grant*. This was done to determine the auditing procedures that would be appropriate in the circumstances for the purpose of expressing an opinion on compliance and to test and report on internal control over compliance in accordance with the Uniform Guidance promulgated by the federal government.

Our consideration of internal control over compliance is for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in the entity's internal control that might be material weaknesses or significant deficiencies. However, based on the audit procedures performed through October 17, 2016, we identified a deficiency in internal control over compliance identified as 16-1111-01 that we consider being a material weakness. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a Federal program will not be prevented, or detected and corrected, on a timely basis.

The purpose of this communication is solely to communicate, prior to the completion of our Statewide audit, that a specific deficiency in internal control over compliance is expected to be reported as a material weakness. Accordingly, this report is not suitable for any other purpose than evaluating this specific matter.

I hope you find this information to be helpful and important for your purposes.

Yours truly,



Pola Buckley, CPA, CISA
State Auditor

cc: Commissioner Mary Mayhew, Department of Health and Human Services

attachment: 16-1111-01

(16-1111-01)

Title: TANF grant funds transferred to SSBG used for unallowable purposes

Prior Year Findings: None

State Department: Health and Human Services (DHHS)

State Bureau: Office for Family Independence

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

CFDA Title: TANF Cluster (TANF)

CFDA #: 93.558

Federal Award #: 1502METANF, 1602METANF

Compliance Area: Activities allowed or unallowed
Subrecipient monitoring

Type of Finding: Material weakness
Material noncompliance

Questioned Costs: \$13.4 million of TANF grant funds were transferred to the Social Services Block Grant (SSBG) and used for unallowable purposes. However, the entire \$13.4 million was returned to the Federal government by July 2016.

Criteria: 42 USC 604(d)(3)(B); 2 CFR 200.407; 2 CFR 200.331(d)

Condition: The Department did not ensure that TANF funds drawn from the Federal government and transferred to the SSBG were earmarked for children or their families whose income is less than 200% of the poverty level. The Department used the transferred TANF money to fund subrecipient contracts for the Home Based Care (HBC) program. HBC supports the elderly and adults with disabilities, rather than children or their families. Furthermore, the Department did not obtain documentation from the subrecipients to ensure the required population was served.

Context: The Department drew down and transferred \$7.8 million from the Federal fiscal year 2015 grant and \$5.6 million from the Federal fiscal year 2016 TANF grants to SSBG between September 2015 and June 2016. The total of \$13.4 million was returned to the Federal government by July 2016. We reviewed four large SSBG contracts that received funding through the TANF transfers.

Cause: The Department took an overly aggressive approach to maximize Federal funds. The Department was encouraged by the State's Department of Administrative and Financial Services to seek written Federal approval for the Department's revised plan for the use of these TANF funds. This prior written approval is explicitly allowed by the Federal government's Uniform Guidance (2 CFR 200.407). The Department, however, did not obtain this prior written approval from the Federal Administration for Children and Families (ACF) even though the allowability of the intended use of these grant funds

was known to them as being questionable. The Department relied on their ability to return the Federal funds if the use of these funds was later questioned, rather than first determining if the intended use was allowable.

Effect: The Department did not spend Federal grant funds in accordance with Federal grant regulations.

Recommendation: As the Department pursues their efforts to maximize Federal funds, we recommend that the Department thoroughly consider and document not only their intentions, but also, how they will achieve compliance with Federal requirements. We recommend that the Department refrain from using Federal funds where compliance is uncertain until appropriate approvals have been secured. We also recommend that the Department consider legal and ethical restraints when using Federal funds.

Management's Response: *The Department of Health and Human Services ("DHHS" or "the Department) disagrees with this finding. In an August meeting with State Auditor staff, DHHS officials made clear that this misconceived finding should not exist. Furthermore, we question the timing of the finding outside the normal schedule of State Auditor reports. Such timing raises serious concerns about the politicization of the State Auditor process and of this matter.*

First, the "Questioned Costs" and "Context" sections are telling. As stated during the August meeting, the Department sought to maximize federal block grant dollars to benefit needy Mainers. When DHHS could not obtain formal guidance from federal officials permitting more flexible use of TANF dollars, the Department reversed prior transfers. Funds from those transfers that were directed to community-based services contracts were replaced by General Fund dollars. Each of these actions occurred within the allowable time-period of the federal grant, thereby mitigating any actual impact to DHHS finances. That is why the finding explicitly states in the Questioned Costs section that there were no questioned costs. Moreover, the Context section states that, "The total of \$13.4 million was returned to the Federal government by July 2016," meaning that the transfers in question had no net effect. This review of expenditures throughout a federal fiscal year related to federal grants is not only allowable, it is expected. The purpose of any review by the state of current expenditures related to federal grants is then to utilize the process of reversing such transactions, if necessary, based on that review.

Second, the finding's "Cause" and "Effect" sections are both misleading. The former states that, "The Department was encouraged by the State's Department of Administrative and Financial Services to seek written Federal approval for the Department's revised plan for the use of these TANF funds," subsequently claiming that DHHS did not do so. That is not the case, however, as Department officials explained to State Auditor staff in August. The fact is that the Department did seek—and continues to seek—formal guidance from federal officials. Indeed not receiving formal, written guidance factored prominently into the Department's decision to reverse the transfers.

In addition, the Effect section holds that, “The Department did not spend Federal grant funds in accordance with Federal grant regulations.” But if there were no questioned costs—which the finding states clearly—then the State Auditor has already conceded that the Department did not spend funds inappropriately. Otherwise, there would be questioned costs.

Next, the finding recommends that, “the Department refrain from using Federal funds where compliance is uncertain until appropriate approvals have been secured.” Because the grant period remained ongoing, however, DHHS did just that. Had the transfer occurred outside the federal grant period—and had Maine been liable for penalties—then the recommendation would be merited. As it is, the latter just affirms that the Department’s actions were appropriate.

Finally, the “Recommendation” section concludes by stating, “We also recommend that the Department consider legal and ethical restraints when using Federal funds.” The Department adheres to this standard; did so in this case; and rejects the unfounded implication otherwise.

Contact: Management’s response was received in an email on October 11, 2016 from the Director of Internal Audit at DHHS. Other key personnel at DHHS were copied.

Auditors Concluding Remarks:

The objectives of internal control over compliance requirements for Federal awards as defined in 2 CFR section 200.62 is to provide reasonable assurance that *transactions* are executed in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and any other Federal statutes and regulations that are identified in the Compliance Supplement issued by the United States, Office of Management and Budget. The Compliance Supplement clearly identifies the allowable uses for TANF grant funds transferred to the SSBG. The decision to spend Federal funds on costs unallowed by Federal regulations with the intent of returning the funds to the Federal government if and when the unallowed costs are questioned, does not represent a valid system of internal control over Federal awards. Furthermore, there is no allowable time period where DHHS is permitted by the Federal government to spend grant funds on unallowable costs. The fact that DHHS considers this acceptable is troublesome. It is further troublesome that the *DHHS Management Response*, does not address the seriousness of the audit finding and does not focus their attention on the key control and compliance issues.

The Office of the State Auditor conducts audits in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). DHHS is responsible for establishing and maintaining effective internal control over compliance and it is the responsibility of the Office of the State Auditor to report deficiencies in those controls to the appropriate

parties at the appropriate time. In accordance with auditing standards, early communication of identified internal control deficiencies to management and those charged with governance is encouraged to allow management to take corrective action as quickly as possible and mitigate the risk of further improper award expenditures. The Office of the State Auditor felt the amount and circumstances surrounding this serious matter met the criteria for communication.

The finding remains as stated.