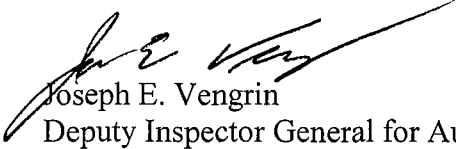




FEB 12 2007

**TO:** Joan Ohl  
Commissioner, Children's Bureau  
Administration for Children and Families

**FROM:**   
Joseph E. Vengrin  
Deputy Inspector General for Audit Services

**SUBJECT:** Audit of New Mexico's Title IV-E Contracted University Training Costs for the 2-Year Period Ended September 30, 2002 (A-06-06-00045)

Attached is an advance copy of our final report on New Mexico's Title IV-E contracted university training costs for the 2-year period ended September 30, 2002. We will issue this report to the New Mexico Children, Youth and Families Department (the State agency) within 5 business days.

Title IV-E of the Social Security Act, as amended, authorizes Federal funds for States to provide foster care and adoption assistance pursuant to an approved State plan. The State agency, which administers the Title IV-E program in New Mexico, contracted with three State universities to provide a portion of its training needs.

Our objective was to determine whether the Federal share of the three universities' Title IV-E training costs claimed by the State agency was allowable, supported, and allocated in accordance with Federal requirements.

For the 2 years ended September 30, 2002, the State agency claimed \$4,625,600 (Federal share) of allowable and \$1,188,154 (Federal share) of unallowable or unsupported Title IV-E training costs. The unallowable or unsupported amount included:

- \$491,605 for administrative costs that two universities computed using an incorrect distribution base;
- \$348,808 for three universities' administrative costs that were overstated because costs were incorrectly billed at the 75-percent training rate rather than the 50-percent administrative rate; and
- \$347,741 for one university's direct training costs that were not supported by ledgers or invoices, expressly unallowable (such as donations and entertainment), or not reasonable

and necessary for operating the program, as well as the indirect costs associated with these unallowable amounts.

In addition, the State agency claimed \$47,734 for one university that incorrectly computed administrative costs using an unsupported indirect-cost rate.

These errors occurred because the State agency did not adequately negotiate or monitor its training contracts with the universities to ensure compliance with Federal requirements. As a result, the State agency claimed \$1,188,154 for unallowable and unsupported costs and \$47,734 for costs that were set aside for further review by the State agency and the Administration for Children and Families (ACF).

We recommend that the State agency:

1. refund \$1,188,154 to the Federal Government,
2. work with ACF to identify the allowable portion of the \$47,734 in indirect costs allocated to the Title IV-E program,
3. implement procedures to adequately review university contracts and amend the contracts as necessary to comply with Federal requirements that limit administrative costs to the 50-percent administrative rate when the requirements of 45 CFR § 235.64 are not met, and
4. implement procedures to more closely monitor university billings to ensure that universities bill only for costs that are allowable and supported in accordance with program requirements.

In its comments on our draft report, the State agency disagreed that it had incorrectly computed administrative costs and used an incorrect reimbursement rate, but agreed that it had claimed costs that were unsupported, unallowable, or not reasonable and necessary.

We carefully considered the State agency's comments, held further discussions with the parties to the audit, and reviewed additional information. As a result, we clarified our position on the first two findings in our draft report, increased the amount of the disallowances related to the third finding, and added a recommendation for a set-aside.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1166 or through e-mail at [Joe.Green@oig.hhs.gov](mailto:Joe.Green@oig.hhs.gov) or Gordon L. Sato, Regional Inspector General for Audit Services, Region VI, at (214) 767-8414 or through e-mail at [Gordon.Sato@oig.hhs.gov](mailto:Gordon.Sato@oig.hhs.gov). Please refer to report number A-06-06-00045.

Attachment



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Office of Audit Services  
1100 Commerce, Room 632  
Dallas, Texas 75242

FEB 16 2007

Report Number: A-06-06-00045

Ms. Dorian Dodson  
Director of Protective Services  
Children, Youth and Families Department  
1120 Paseo De Peralta, Room 254  
Santa Fe, New Mexico 87502

Dear Ms. Dodson:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Audit of New Mexico's Title IV-E Contracted University Training Costs for the 2-Year Period Ended September 30, 2002." A copy of this report will be forwarded to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to the public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-06-06-00045 in all correspondence.

Sincerely,

A handwritten signature in black ink that reads "Gordon L. Sato".

Gordon L. Sato  
Regional Inspector General  
for Audit Services

Enclosures

**Direct Reply to HHS Action Official:**

Leon McCowan  
Regional Administrator  
Administration for Children and Families  
U.S. Department of Health and Human Services  
Region VI  
1301 Young Street, Room 914  
Dallas, Texas 75202-5433

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**AUDIT OF NEW MEXICO'S TITLE  
IV-E CONTRACTED UNIVERSITY  
TRAINING COSTS FOR THE 2-  
YEAR PERIOD ENDED  
SEPTEMBER 30, 2002**



Daniel R. Levinson  
Inspector General

February 2007  
A-06-06-00045

# ***Office of Inspector General***

<http://oig.hhs.gov>

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The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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# *Notices*

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**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
at <http://oig.hhs.gov>

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR part 5.)

## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



## **EXECUTIVE SUMMARY**

### **BACKGROUND**

Title IV-E of the Social Security Act, as amended, authorizes Federal funds for States to provide foster care and adoption assistance for children pursuant to an approved State plan. At the Federal level, the Administration for Children and Families (ACF) administers the program; in New Mexico, the Children, Youth and Families Department (the State agency) administers the program. Title IV-E provides Federal funding at the rates of 50 percent for administrative expenditures and 75 percent for certain training expenditures.

The State agency contracted with State universities to fulfill a portion of its training needs. The universities included New Mexico Highlands University, Western New Mexico University, and New Mexico State University. The State agency claimed \$7,815,318 (\$5,861,488 Federal share) of Title IV-E training costs for training that the universities conducted from October 1, 2000, to September 30, 2002.

### **OBJECTIVE**

Our objective was to determine whether the Federal share of the three universities' Title IV-E training costs claimed by the State agency was allowable, supported, and allocated in accordance with Federal requirements.

### **SUMMARY OF FINDINGS**

For the 2 years ended September 30, 2002, the State agency claimed \$4,625,600 (Federal share) of allowable and \$1,188,154 (Federal share) of unallowable or unsupported Title IV-E training costs. The unallowable or unsupported amount included:

- \$491,605 for administrative costs that two universities computed using an incorrect distribution base;
- \$348,808 for three universities' administrative costs that were overstated because costs were incorrectly billed at the 75-percent training rate rather than the 50-percent administrative rate; and
- \$347,741 for one university's direct training costs that were not supported by ledgers or invoices, expressly unallowable (such as donations and entertainment), or not reasonable and necessary for operating the program, as well as the indirect costs associated with these unallowable amounts.

In addition, the State agency claimed \$47,734 for one university that incorrectly computed administrative costs using an unsupported indirect-cost rate.

These errors occurred because the State agency did not adequately negotiate or monitor its training contracts with the universities to ensure compliance with Federal requirements.



As a result, the State agency claimed \$1,188,154 for unallowable and unsupported costs and \$47,734 for costs that were set aside for further review by the State agency and ACF.

## **RECOMMENDATIONS**

We recommend that the State agency:

1. refund \$1,188,154 to the Federal Government,
2. work with ACF to identify the allowable portion of the \$47,734 in indirect costs allocated to the Title IV-E program,
3. implement procedures to adequately review university contracts and amend the contracts as necessary to comply with Federal requirements that limit administrative costs to the 50-percent administrative rate when the requirements of 45 CFR § 235.64 are not met, and
4. implement procedures to more closely monitor university billings to ensure that universities bill only for costs that are allowable and supported in accordance with program requirements.

## **STATE AGENCY'S COMMENTS**

In its comments on our draft report, the State agency disagreed that it had incorrectly computed administrative costs and used an incorrect reimbursement rate, but agreed that it had claimed costs that were unsupported, unallowable, or not reasonable and necessary. The complete text of the State agency's comments is included as Appendix B.

## **OFFICE OF INSPECTOR GENERAL'S RESPONSE**

We carefully considered the State agency's comments; discussed the issues with the State agency and university, ACF, and Division of Cost Allocation officials; and reviewed additional documentation provided by New Mexico Highlands University and the State agency. As a result, we clarified our position on the first two findings in our draft report, increased the disallowances related to the third finding, and added a recommendation for a set-aside.

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## INTRODUCTION

### BACKGROUND

#### **Title IV-E Program**

Title IV-E of the Social Security Act, as amended, authorizes Federal funds for States to provide foster care and adoption assistance for children pursuant to an approved State plan. At the Federal level, the Administration for Children and Families (ACF) administers the program; in New Mexico, the Children, Youth and Families Department (the State agency) administers the program.

Federal funds are available to States for the following Title IV-E administrative and training costs:

- Administrative costs cover staff activities, such as case management and supervision of children placed in foster care, preparation for and participation in court hearings, placements of children, and recruitment and licensing for foster homes and institutions. Also reimbursable under this category is a proportionate share of overhead costs. Administrative costs qualify for a 50-percent Federal funding rate.
- Training costs cover the expenses of training personnel employed or preparing for employment by the State or local agency administering the Title IV-E State plan and include the costs of inservice training and short- and long-term training at educational institutions. Certain training costs qualify for an enhanced 75-percent Federal funding rate.

In addition to providing inhouse training, the State agency contracted with State universities to fulfill a portion of its training needs. The universities included New Mexico Highlands University (Highlands), Western New Mexico University (Western), and New Mexico State University (NM State). The contracts required the universities to provide the State match and provided for reimbursing the universities for their expenditures up to the yearly budgeted amounts set in the contracts. The budgets included direct training costs, administrative costs, and funding reimbursement rates.

#### **Federal Regulations and Other Requirements**

Regulations (45 CFR § 1356.60) identify the training and administrative costs that the Title IV-E program may reimburse. Pursuant to 45 CFR § 1356.60(c), Title IV-E provides for reimbursement of administrative costs at a 50-percent rate for expenditures necessary for the proper and efficient administration of the Title IV-E State plan.

Pursuant to 45 CFR § 1356.60(b), the Federal reimbursement rate is 75 percent for certain costs of training personnel employed or preparing for employment by the State or local agency administering the Title IV-E State plan. This section also allows for short- and long-term training provided at educational institutions pursuant to sections 235.63 through 235.66(a). The

enhanced 75-percent reimbursement rate is available to educational institutions, as described at 45 CFR § 235.64(c), for “salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials, and equipment [45 CFR § 235.64(d)].”

During the audit period all programs funded under Title IV-E were to comply with 45 CFR part 74. Part 74 applies to all subawards received by institutions of higher education, including subawards received from States. Regulations (45 CFR § 74.27(a)) state that the allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of Office of Management and Budget (OMB) Circular A-21, “Cost Principles for Educational Institutions.”

Circular A-21 requires grantees and subgrantees that are educational institutions, such as New Mexico’s State universities, to use indirect-cost rates negotiated with the Federal Government; requires costs to be reasonable and allocable; and specifies that certain costs, such as those for donations and entertainment, are unallowable.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether the Federal share of the three universities’ Title IV-E training costs claimed by the State agency was allowable, supported, and allocated in accordance with Federal requirements.

### **Scope**

We reviewed \$7,815,318 (\$5,861,488 Federal share) of the \$12,746,972 in Title IV-E State and local training costs that the State agency claimed for the period October 1, 2000, to September 30, 2002. The \$7,815,318 represents all of the costs claimed under the State agency’s training contracts with the three universities.

We gained an understanding of the State agency’s system of accounting for university costs charged to the Title IV-E program, the State agency’s controls for monitoring the universities’ billings, and the universities’ Title IV-E billing processes. We did not review the Title IV-E eligibility of persons attending training at the universities.

We conducted our fieldwork at the State agency’s office in Santa Fe, New Mexico, and at Highlands in Las Vegas, New Mexico.

### **Methodology**

To accomplish our audit objective, we:

- reviewed applicable Federal requirements, the State agency’s training contracts with the universities, and each university’s negotiated indirect-cost-rate agreement;

- interviewed State agency and university officials;
- gained an understanding of the universities' Title IV-E billing processes and the State agency's process for negotiating and monitoring its contracts with the universities;
- reconciled the amounts claimed for Federal reimbursement to the State agency's accounting records;
- reconciled State agency claims for the universities' training costs to university billing records;
- determined whether (1) the universities stayed within contracted budgets, (2) the contracted indirect-cost rates complied with negotiated indirect-cost-rate agreements, and (3) indirect costs were based on methodologies in the negotiated agreements for all billings of the audit period;
- determined whether the universities (1) based billings on appropriate Federal reimbursement rates, (2) used ratios of Title IV-E-eligible to non-Title-IV-E-eligible children to compute claimed amounts, and (3) used ratios in their billing computations that were supported by the State agency's case count records;
- reviewed supporting invoices and performed detailed testing of \$2,365,826 of the \$3,818,198 Federal share that Highlands billed and reconciled costs to ledgers;
- reviewed supporting invoices and performed detailed testing of \$95,028 of the \$388,471 Federal share that Western billed;
- reviewed supporting invoices and performed detailed testing of \$363,440 of the \$1,654,819 Federal share that NM State billed; and
- reviewed supporting invoices and performed detailed testing of \$670,002 for Highlands, \$40,086 for Western, and \$330,156 for NM State of the amounts incurred to meet the State match requirement.

We conducted our audit in accordance with generally accepted government auditing standards.

### **FINDINGS AND RECOMMENDATIONS**

For the 2 years ended September 30, 2002, the State agency claimed \$4,625,600 (Federal share) of allowable and \$1,188,154 (Federal share) of unallowable or unsupported Title IV-E training costs. The unallowable or unsupported amount included:

- \$491,605 for administrative costs that two universities computed using an incorrect distribution base;

- \$348,808 for three universities' administrative costs that were overstated because costs were incorrectly billed at the 75-percent training rate rather than the 50-percent administrative rate; and
- \$347,741 for one university's direct training costs that were not supported by ledgers or invoices, expressly unallowable (such as donations and entertainment), or not reasonable and necessary for operating the program, as well as the indirect costs associated with these unallowable amounts.

In addition, the State agency claimed \$47,734 for one university that incorrectly computed administrative costs using an unsupported indirect-cost rate. See Appendix A for a schedule of the findings by issue and university.

These errors occurred because the State agency did not adequately negotiate or monitor its training contracts with the universities to ensure compliance with Federal requirements. As a result, the State agency claimed \$1,188,154 for unallowable and unsupported costs and \$47,734 for costs that were set aside for further review by the State agency and ACF.

### **INCORRECTLY COMPUTED ADMINISTRATIVE COSTS**

The State agency claimed \$491,605 (Federal share) for administrative costs that two universities incorrectly computed using an incorrect distribution base:

- Highlands computed its administrative costs by applying its indirect-cost rate to a direct-cost base that incorrectly included equipment and stipends. These costs should not have been part of the base according to its federally negotiated agreements, which were in effect during our 2-year audit period ended September 30, 2002.
- Western computed its administrative costs by applying its indirect-cost rate to a direct cost base that incorrectly included equipment, supplies, travel, and other nonsalary and nonwage items. These costs should not have been part of the base according to its federally negotiated agreement, which was in effect during the first year of our audit period until June 30, 2001.

In addition, the State agency claimed \$47,734 (Federal share) for administrative costs that Western computed using an unsupported indirect-cost rate. The Department of Health and Human Services (HHS) correctly determined that, as of July 1, 2001, during the second year of our audit, Western did not need its own negotiated rate because Western had not received any grants or contracts directly from the Federal Government. Western computed and claimed its administrative costs during the year ended September 30, 2002, using a State-contracted indirect cost rate that it set and negotiated with the State agency because it did not have a federally negotiated rate. However, the State-contracted rate was unsupported, and there was no information on the indirect-cost pools or distribution base used to set the rate.

During the audit period all programs funded under Title IV-E were to comply with 45 CFR part 74. Part 74 applies to all subawards received by institutions of higher education, including subawards received from States. Regulations (45 CFR § 74.21(b)(7)) state that source documentation must support accounting records. The regulations also state that the allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21 (45 CFR § 74.27(a)).

Circular A-21 requires subgrantees that are educational institutions to use indirect-cost rates negotiated with the Federal Government. The circular specifies how to compute indirect-cost rates and requires facility and administrative costs to be distributed to benefiting activities based on “modified total direct costs,” which consist of “salaries and wages, fringe benefits, materials and supplies, services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract.” The circular states at section G.2 that “Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000 shall be excluded from modified total direct costs.” Stipends are generally considered a type of scholarship. Circular A-21 also provides at section H for a simplified methodology when direct costs do not exceed \$10 million. If the simplified method is used, the circular also allows the use of “salaries and wages” as the distribution base. Indirect-cost rates are to be applied to the “direct salaries and wages for individual agreements to determine the amount of facility and administrative costs allocable to such agreements” (OMB Circular A-21, sections G and H).

In accordance with these provisions in Circular A-21, the universities’ federally negotiated agreements specified that:

- For Highlands, the direct-cost base on which indirect costs were calculated was to include “salaries and wages, fringe benefits, [and] materials” but was to exclude “equipment . . . scholarships, and fellowships . . . .”
- For Western, the direct-cost base was to consist of “direct salaries and wages, including vacation, holiday, sick pay and other paid absences” but was to exclude all other fringe benefits.

These errors occurred because the State agency did not negotiate contracts with universities requiring the use of federally negotiated indirect-cost rates and distribution bases to claim administrative costs. State agency officials indicated that they were unaware of the universities’ federally negotiated indirect-cost rate agreements. In addition, the State agency did not derive Western’s State-contracted indirect-cost rate using empirical cost information from university records for the second year covered by the audit, when there also was no federally negotiated agreement in place. As a result, the State agency claimed \$491,605 in unallowable costs (because it used an incorrect distribution base). It also claimed \$47,734 in unsupported administrative costs (because it used unsupported rates and an unsupported distribution base). However, the unsupported costs may ultimately be shown to include some allowable costs. Therefore, we are setting the costs aside for further review by the State agency and ACF.

## **INCORRECT REIMBURSEMENT RATE**

The State agency overstated its training costs by \$348,808 (Federal share) for the administrative costs of three universities because it incorrectly claimed reimbursement using the 75-percent training rate instead of the 50-percent administrative rate. This occurred because the three universities billed the State agency for administrative costs based on the 75-percent training rate when these costs were eligible for reimbursement only at the 50-percent administrative rate.

The universities generally calculated the administrative portion of their training costs billed to the State agency by applying their State-contracted or federally negotiated indirect-cost rates to their direct training costs. The State agency should not have claimed these costs at the 75-percent training rate because the universities calculated these costs based on (1) federally negotiated indirect-cost rates that included costs not listed as allowable under 45 CFR § 235.64(d) or (2) State agency contracted rates for which there was no documentation to show that the rates were derived based only on costs listed as allowable under 45 CFR § 235.64(d). As a result, the administrative portions of training costs were unallowable at the enhanced rate of 75 percent, and were reimbursable only at the 50-percent administrative rate under Title IV-E.

During the audit period all programs funded under Title IV-E were to comply with 45 CFR part 74. Part 74 applies to all subawards received by institutions of higher education, including subawards received from States. Regulations (45 CFR § 74.21(b)(7)) state that source documentation must support accounting records.

Also, program regulations (45 CFR § 1356.60(b)) state that “Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of training personnel employed or preparing for employment by the State or local agency administering the plan.” The regulations also state that “Short and long-term training at educational institutions and in-service training may be provided in accordance with the provisions of [sections] 235.63 through 235.66(a),” which limit the training costs that may be reimbursed at the 75-percent rate.

Pursuant to 45 CFR § 235.64(d), “FFP [Federal financial participation] is available for payments to educational institutions . . . for salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials and equipment.” The Title IV-E program provides for paying training costs at 75 percent only if 45 CFR § 235.64(d) lists the costs as allowable. Otherwise, administrative costs are reimbursable at a rate of 50 percent for expenditures necessary for the proper and efficient administration of the Title IV-E State plan (45 CFR § 1356.60(c)).

The State agency overstated these claims because it did not negotiate contracts with universities that specify that indirect costs are limited to the 50-percent administrative rate when the requirements of 45 CFR § 235.64(d) are not met and because it did not document that its State agency contracted rates with universities met these requirements.

## **UNALLOWABLE COSTS**

The State agency claimed \$347,741 (Federal share) of Title IV-E direct training costs that were unsupported, expressly unallowable, or not necessary and reasonable for operating the program,



as well as the indirect costs associated with these unallowable amounts. Highlands billed all of these costs, including:

- \$236,973 for costs not supported by its ledger or by detailed invoices;<sup>1</sup>
- \$5,500 for two donations that its ledger classified as “advertising/publicity” and “professional services,” respectively, but that Highlands gave to (1) a camp providing counseling services to children and (2) a group for a national display of artwork by abused children;
- \$4,863 for items that its ledger classified as “supplies” and “other” and that consisted of candles, corsages, boutonnieres, food, and T-shirts that were not reasonable and necessary for operating the Title IV-E program;
- \$1,050 for entertainment costs, which its ledger classified as “other”; and
- \$99,355 for the indirect costs associated with these unallowable amounts.

Regulations (45 CFR § 74.21(b)(7)) state that source documentation must support accounting records. Regulations (45 CFR § 74.27) also state that the allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21. OMB Circular A-21, section C.1, states that the costs of a sponsored agreement include the institution’s allowable direct costs plus the allocable portion of its allowable administrative costs. Sections C.2 and C.3 state that costs must be reasonable and “allocable to sponsored agreements under the principles and methods provided herein.” Furthermore, these sections state that major considerations involved in the determination of the reasonableness of a cost are “whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the sponsored agreement.”

Circular A-21 also specifies particular unallowable costs. Section J.13.b states that “Donations or contributions made by the institutions, regardless of the recipient, are unallowable.” Section J.15 states that “Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.”

The State agency included these costs in its claims because it did not adequately monitor what the universities billed as costs or whether adequate documentation supported the billings. The State agency performed spot checks of support for the universities’ billings only every 3 years. If these checks did not disclose errors, the State agency relied on external auditors’ yearly OMB Circular A-133 audits to ensure compliance with its contracts.

## **RECOMMENDATIONS**

We recommend that the State agency:

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<sup>1</sup>We gave Highlands numerous opportunities to provide support for these claims.

1. refund \$1,188,154 to the Federal Government,
2. work with ACF to identify the allowable portion of the \$47,734 in indirect costs allocated to the Title IV-E program,
3. implement procedures to adequately review university contracts and amend the contracts as necessary to comply with Federal requirements that limit administrative costs to the 50-percent administrative rate when the requirements of 45 CFR § 235.64 are not met, and
4. implement procedures to more closely monitor university billings to ensure that universities bill only for costs that are allowable and supported in accordance with program requirements.

## **STATE AGENCY'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE**

In its comments on our draft report, the State agency disagreed that it had incorrectly computed administrative costs and used an incorrect reimbursement rate, but agreed that it had claimed costs that were unsupported, unallowable, or not reasonable and necessary. The State agency's comments are discussed below and included in their entirety as Appendix B.

We carefully considered the State agency's comments; discussed the issues with the State agency and university, ACF, and Division of Cost Allocation officials; and reviewed additional documentation provided by Highlands and the State agency. As a result, we clarified our position on the first two findings in our draft report, increased the amount of the disallowances related to the third finding, and added a recommendation for a set-aside.

### **Incorrectly Computed Administrative Costs**

#### *State Agency's Comments*

The State agency disagreed that the universities had incorrectly computed administrative costs. The State agency said that the universities had complied with the terms of their subcontracts, which clearly stated that approved indirect-cost rates could be applied to total direct costs, including stipends and equipment. According to the State agency, it had authority to negotiate and approve training and other contracts and indirect cost rates with universities. The State also quoted 45 CFR § 92.20(b)(5), which requires grantees and subgrantees to determine allowable costs based on their grant and subgrant agreements as well as OMB cost principles and agency regulations. The State agency said that the subcontracts clearly stated the indirect percentage amounts; therefore, the universities properly applied the indirect cost rates to invoices.

The State agency also said that Western had submitted an indirect-cost rate proposal to the Department of Health and Human Services (HHS) for approval. HHS determined that, as of July 1, 2001, Western did not need its own negotiated rate because it had not received any grants or

contracts directly from the Federal Government. Therefore, the State agency asserted that the negotiated rate between it and Western under existing approved contracts was valid and that the Title IV-E claims should be allowed.

#### *Office of Inspector General's Response*

The State agency may reimburse universities using the terms it negotiates in contracts with universities, but the costs are not reimbursable to the State agency under the Title IV-E program unless the costs are allowable in accordance with applicable Federal regulations. During the audit period, 45 CFR part 92 did not apply to Title IV-E; it became applicable on September 8, 2003. All programs funded under Title IV-E, including State subawards to universities, were required to comply with 45 CFR part 74, which was applicable during our audit period. Part 74 states that the allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21 (45 CFR § 74.27(a)). The circular required that rates be applied to a specified base computed in accordance with the circular's requirements. Thus, the State agency was required to comply with OMB Circular A-21 in claiming the costs of universities under the Title IV-E program.

Contrary to this principle, the State agency contracted with universities using distribution bases that were inconsistent with the terms of OMB Circular A-21. The rates and distribution bases were also inconsistent with the terms of the federally negotiated indirect-cost rate agreements that the Federal Government had negotiated with Western and Highlands in accordance with the circular. The State agency's subcontracts with Western and Highlands did not require that rates be applied to a modified total direct cost base or a salaries and wages base to distribute facility and administrative costs as required by OMB Circular A-21. As a result, Western and Highlands computed claimed indirect costs using distribution bases that were not allowable under the federally negotiated agreements.

The State agency is correct that Western did not have a federally negotiated agreement in place during the second year of the audit period, although it did have an agreement in the first year of the audit period. However, for the second year, when no Federal rate was established, the State agency could not provide documentation on how the State-contracted rates used to claim costs were computed or demonstrate that the rates included only allowable costs. As a result, there was no assurance that the amounts charged to the program were allowable and supported. We have revised this finding to reflect that all costs claimed by Western during the year ended September 30, 2002, were unsupported. We have also set aside these costs for further examination by ACF.

#### **Incorrect Reimbursement Rate**

##### *State Agency's Comments*

The State agency disagreed that the administrative costs of the three universities were overstated because they used an incorrect reimbursement rate. The State agency said that 45 CFR § 235.64 identifies the costs that are allowable at the enhanced 75-percent rate and that stipends are

considered allowable at the enhanced rate. The State agency also disagreed with this finding for the following reasons:

- Three Office of Inspector General audits conducted during the past 2 years, which had scopes similar to this report's scope, noted no findings disallowing the use of the enhanced 75-percent rate for university grants and stipend contracts.
- On several occasions, ACF had reviewed and approved the university grant and stipend contracts.
- Federal regulations, policy announcements, information memorandums, and Departmental Appeals Board decisions address only indirect costs as they apply to State agency internal training programs, which indicates that they do not apply to indirect costs claimed by universities.
- ACF should have provided guidance to States on which stipend and grant costs a university may claim at the enhanced 75-percent rate.

#### *Office of Inspector General's Response*

During our review, we did not question direct stipend costs; we questioned the inclusion of stipend costs only in the calculation of indirect costs. We agree that stipends and other specified costs may be claimed at the 75-percent enhanced reimbursement rate. However, the universities could not demonstrate that their calculations of the administrative portion of direct training costs claimed included only allowable costs identified in 45 CFR 235.64(d). Therefore, the administrative portion of training costs claimed by the universities was reimbursable only at the 50-percent rate.

In response to the State agency's other comments:

- The three Office of Inspector General audit reports that the State agency reviewed either did not include a review of university grants and stipends or did not find errors in the use of the 75-percent enhanced rate for grants and stipends. However, in a report issued on December 14, 2004 (A-01-03-02503), we questioned a university's use of the 75-percent enhanced rate for costs that were derived using an indirect cost rate that was not specific to training. The indirect rate applied to the general operations of the university and did not meet the requirements for the 75-percent enhanced rate.
- According to an ACF official with Title IV-E oversight, ACF had not reviewed or approved the contracts with the universities for allowability under the Title IV-E program.
- In 1998, Departmental Appeals Board decisions Nos. 1645 and 1666 addressed the 75-percent enhanced training rate for universities. The decisions stated that the enhanced rate must be limited to specific cost items identified in 45 CFR § 235.64 regardless of whether they were claimed as direct or indirect costs.

- According to a regional ACF memorandum issued on November 17, 2003, “It has been a longstanding position of ACF since at least 1994 that there are very specific conditions under which indirect costs associated with direct Title IV-E training costs may be claimed at the ‘enhanced’ 75 percent rate.”

# **APPENDIXES**

APPENDIX A

FINDINGS BY ISSUE AND UNIVERSITY

Findings	<u>Costs Questioned (Federal Share)</u>				<u>Set Aside</u>	Total
	Highlands	Western	NM State	Subtotal	Western	
Issue 1: Administrative costs incorrectly computed using: Incorrect base Unsupported indirect rate and base	\$454,105	\$37,500	\$0	\$491,605	\$47,734	\$491,605 <u>47,734</u> 539,339
Issue 2: Incorrect reimbursement rate	215,445	5,711	127,652	348,808	0	348,808
Issue 3: Unallowable costs	347,741	0	0	347,741	0	347,741
<b>Total</b>	<b>\$1,017,291</b>	<b>\$43,211</b>	<b>\$127,652</b>	<b>\$1,188,154</b>	<b>\$47,734</b>	<b>\$1,235,888</b>

**State of New Mexico**  
**CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**BILL RICHARDSON**  
GOVERNOR

**DIANE DENISH**  
LIEUTENANT GOVERNOR

**DORIAN DODSON**  
CABINET SECRETARY-DESIGNATE



**DANNY SANDOVAL**  
DEPUTY CABINET SECRETARY

**MARISOL ATKINS**  
DEPUTY CABINET SECRETARY

June 29, 2006

Mr. Gordon L. Sato  
Regional Inspector General  
Office of Audit Services  
1100 Commerce, Room 632  
Dallas, TX 75242

RE: Report Number A-06-06-00045

Dear Mr. Sato:

We have reviewed the Training Costs Claimed Under Title IV-E of the Social Security Act audit report dated March 20, 2006. The New Mexico Children Youth and Families Department (CYFD) takes exception with several of the audit report recommendations detailed in report number A-06-06-00045. We would like to make a number of general comments about the audit report and its findings.

As noted, CFYD disagrees with some of the major audit recommendations. The audit recommendations appear to be inconsistent with the intent behind P.L. 96-272 to enhance the services that are made available to children and families through improved training opportunities. Congress made the linkage at the time of passage of this legislation that training has a direct impact on the quality of services provided to children, thus enhanced federal financial participation (FFP) was authorized for the program.

Since the inception of the enhanced funding for child welfare training activities, regulations, policy announcements, information memorandums and Departmental Appeal Board decisions have been contradictory and ambiguous. In fact, no clear training regulations exist to this date governing Title IV-E training.

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Regional Inspector General  
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Finally, as a general comment, the State of New Mexico has worked very closely with the Administration of Children and Families (ACF) over the past several years regarding university contracts for purposes of training social workers. Representatives from CYFD provided ACF on numerous occasions during audits and site visits, copies of the university contracts and approved budgets by CYFD. During each review ACF approved the current contractual and payment process to the universities at the enhanced Title IV-E training rate of 75-percent.

In the paragraphs that follow, we provide a response to each audit finding raised by the Office of Inspector General (OIG) audit team.

#### **INCORRECTLY COMPUTED ADMINISTRATIVE COSTS**

The draft OIG audit report states, "The State agency claimed **\$521,334** (Federal Share) for administrative costs that two universities incorrectly computed:

- Highlands computed its administrative costs by applying its indirect-cost rate to direct costs, including equipment and stipends, contrary to its negotiated agreement.
- Western computed its administrative costs by applying its indirect-cost rate to direct costs, including equipment, supplies, travel, and other non-salary and non-waged items, contrary to its negotiated agreement."

45CFR92.20(b)(5) Standards for financial management systems: Allowable cost indicates that "applicable OMB cost principles, agency program regulations, and the terms of grant and sub grant agreements will be followed in determining the reasonableness, allowability and allocability of costs." New Mexico Highlands University (NMHU) and Western New Mexico University (WNMU) complied with the terms of the subcontract. The terms of the subcontract clearly stated the approved indirect cost rates for both universities could be applied to total direct cost (which includes stipends and equipment). On numerous occasions the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) agencies reviewed and approved the contracts negotiated with both universities.

CYFD is the single state agency for Title IV-E in New Mexico. As the single state agency for Title IV-E, CYFD can negotiate and approve training and other contracts with providers to assist in the proper and efficient administration of the state plan. Since the contracts were negotiated with CYFD and the funding is unique to Title IV-E training, CYFD has the authority to approve indirect rates for NMHU and NMWU as their cognizant agent for Title IV-E.

Furthermore, as you referenced 45CFR92.20(b)(5), you stated that we are to be held to the terms of the subcontracts. Since the subcontracts clearly state the indirect percentage amounts for each contract, CYFD's position is that indirect cost rates were properly applied to invoices submitted by each university.

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Regional Inspector General  
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In addition to the above-mentioned arguments, WNMU submitted an indirect cost rate proposal to DHHS for approval. DHHS's determination of the indirect rate proposal stated, "Effective 7/01/01, this organization (WNMU) did not receive directly from the federal government, active grants or contracts which require a negotiated indirect cost rate. Therefore CYFD contends the negotiated rate between Western University and the Department under the existing approved contracts was valid and claimed Title IV-E revenues should not be disallowed.

#### INCORRECT REIMBURSEMENT RATE

The OIG audit report states that the "state agency overstated its training cost by **\$354,810** (federal share) for the administrative costs of three universities because it incorrectly claimed reimbursement using the 75-percent training rate instead of the 50-percent administrative rate. This occurred because the three universities billed the state agency for administrative costs based on the 75-percent training rate when these costs were only eligible for reimbursement at the 50-percent administrative rate."

The universities generally calculated the administrative costs billed to the State and the administrative costs billed to CYFD by applying their negotiated indirect-cost rates to their direct training costs.

The OIG audit team utilized 45 CFR 236.64 as their basis for determining that the indirect costs charged to Title IV-E using the 75-percent matching rate were not allowable at the enhanced rate but rather at the administrative rate of 50-percent.

Federal Regulation (45 CFR 1356.60 (b)) states that "Federal matching funds for State and local personnel training for foster care and adoption assistance are available under Title IV-E at an enhanced 75-percent rate. Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of 45 CFR 235.63-235.66(a)."

CFR 45.263 (c) states "Grants to educational institutions. FFP is available in payment for services rendered under grants to educational institutions provided all of the following conditions are met:

- 1) Grants are made for the purpose of developing, expanding or improving training for personnel employed by the State or local agency or preparing for employment by the State and local agency administering the program. Grants are made for an educational program (curriculum combination of these) that is directly related to the agency's program. Grants are made for not more than 3 years, but may be renewed, subject to the conditions of this sections:
- 2) Grants are made to educational institutional accrediting body recognized by the U.S. Commissioner of Education. When a specialized program within the institution for which there is a specialized accrediting body is

Mr. Gordon L. Sato  
Regional Inspector General  
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used, that program must be accredited by or have pre-accreditation status from that body.”

CFR 235.64 identifies the costs that are allowable at the enhanced rate. In particular stipends are considered allowable for the enhanced rate of 75-percent under Title IV-E.

Based upon the regulations CYFD does not agree with this OIG finding for the following reasons:

- 1) Based upon our review of other OIG audits across the country within the past two years, for which the audit scope was similar to that of New Mexico, there were no audit findings with the university grants or stipends for which all universities included an indirect cost as part of the grant/stipend and were allowed at the enhanced rate of 75-percent. Our review consisted of audits conducted in Kentucky, New Hampshire and Delaware.
- 2) On several occasions the Administration for Children and Families (ACF) reviewed and approved the university grant/stipend contracts.
- 3) Within Federal regulations, policy announcements, information memorandums and Departmental Appeal Board decisions only address indirect costs as they apply to the state agency indirect costs associated with the agencies internal training programs and the direct service worker indirect costs associated with attending training.
- 4) If indirect costs that are included by a university under a grant or stipend be reimbursed at 50-percent, then the Department of Health and Human Services (DHHS), Administration for Children and Families should have provided guidance to states on which costs included by a university for a stipend or grant can be claimed at the enhance rate of 75-percent.

#### UNALLOWABLE COSTS

The State agency claimed **\$183,543** federal share (which has been revised to **\$347,785.63** as per the auditors updated spreadsheet) of Title IV-E direct training costs that were unsupported, expressly unallowable, or not necessary and reasonable for operating the program, as well as the indirect costs associated with these unallowable amounts.

CYFD concurs with the OIG audit finding and has outlined the initial unallowable costs and other costs not identified in the draft audit report. NMHU has taken the following actions to reconcile expenditures and revenues and will reimburse CYFD in order for CYFD to adjust prior period IV-E 1 reported training costs.

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NMHU has reduced the unallowable costs by finding supporting documentation for some of the costs that the auditors did not receive, the over billings per contract, and by providing statements from the OMB A-21 circular for an allowable type of activity. NMHU will reimburse the Children, Youth and Families Department **\$347,785.63** for the unallowable costs computed as follows:

- In fiscal year 2000, NMHU over billed direct cost in the amount of **\$73,052.02**; in fiscal year 2001, NMHU over billed direct cost in the amount of **\$57,105.16**; and in fiscal year 2002, NMHU over billed direct cost in the amount of **\$104,193.18**.
- Total direct cost over billed is **\$234,350.31**. The total unallowable indirect cost based on the over billings is **\$93,740.13**. Total unallowable cost for the over billings is **\$328,090.44**.
- NMHU did not find supporting documentation for **\$2,655.49**; unallowable indirect cost is **\$1,062.20**. A total unallowable cost for unsupported documentation is **\$3,717.69**.
- NMHU unallowable type of activities is **\$11,412.50**. The unallowable indirect cost is **\$4,565.00**. The total amount of unallowable types of activities is **\$15,977.50**.

The Universities and the state have made changes to incorporate processes to more effectively manage the IV-E Stipend program and we continue to look for constructive guidance from your office. On behalf of the universities and the state we appreciate all the assistance and collaborative effort put forth by your staff in order to resolve the audit findings reflected in the draft report. If you have questions or need additional information, please do not hesitate to contact me at (505) 827-7602.

Sincerely,



Danny Sandoval,  
Deputy Cabinet Secretary