DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAY 15 2007

TO: Elizabeth M. Duke, Ph.D.
Administrator
Health Resources and Services Administration

FROM: Daniel R. Levinson Daniel R. Levinson
Inspector General

SUBJECT: Review of the Management of Unobligated Funds Provided by Title II of the Ryan White Comprehensive AIDS Resources Emergency Act (A-06-04-00060)

Attached is our final report on the Health Resources and Services Administration's (HRSA) management of unobligated funds provided by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act. The CARE Act funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. Title II of the CARE Act, sections 2611–2631 of the Public Health Service Act, provides grants to 59 States and Territories (which we refer to as "States"). These grants fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other health care and support services. During our audit period (grant years 1999–2002), HRSA awarded more than $3.3 billion in Title II grants.

Our objective was to determine whether HRSA complied with applicable requirements and used its offset authority in managing unobligated Title II funds.

During grant years 1999–2002, HRSA did not fully comply with applicable requirements for managing unobligated Title II funds:

- Contrary to the CARE Act, HRSA did not recoup $10,643,244 in Title II funds from States that had not obligated at least 75 percent of their grant awards within 120 days and reallot those funds to other States in proportion to their original grants.

- Contrary to Department of Health and Human Services (HHS) policy, HRSA authorized States to carry over $48,691,425 in unobligated Title II funds beyond one budget period.

Additionally, HRSA did not use the offset authority provided by the CARE Act and HHS grants policy to manage States' unobligated balances. HRSA could have carried over balances from the prior year and offset the amount of current-year funds needed for the grant awards. By doing so,

HRSA would have had available a larger amount of current-year funding to address program needs. For example, the offsetting option might have been useful in grant year 2002, when 10 States had unobligated Title II balances totaling $61,723,742 and 8 States had no balances or small balances and a documented need for additional resources. According to a 2003 report of the ADAP Working Group, the eight States had imposed restrictions to limit expenditures for HIV/AIDS drugs, and five of them had waiting lists of potential ADAP clients. HRSA's distribution of these unobligated funds would have provided States, including these eight States, with additional funding to meet program needs.

We recommend that HRSA:

- monitor the States' compliance with the CARE Act requirement to obligate 75 percent of the grant award within 120 days and, for States that do not meet this requirement, (1) recoup the unobligated portion of the 75 percent of the grant award and (2) reallot such funds to other States in proportion to their original grants;

- comply with the current carryover policy;

- examine the reasons for some States' large unobligated balances; and

- analyze each State's unobligated balance from the preceding grant year in light of relevant factors to determine whether the balance should be deobligated or carried over and, if carried over, determine whether the amount should be (1) an addition to the State's full amount of funding approved for the current grant year or (2) an offset to the State's current-year grant award, which would provide additional funding for other States' unmet program needs.

In its comments on our draft report, HRSA provided information on actions taken or planned on our first three recommendations but generally disagreed with the findings. In response to our last recommendation, HRSA offered several reasons for not using the offset authority provided by the CARE Act. We believe that the Ryan White HIV/AIDS Treatment Modernization Act of 2006, which was passed after we issued our draft report, will address HRSA's concerns about offsetting future grant awards.

HRSA also provided technical comments questioning some of the figures in our draft report. Based on these comments, we requested that HRSA provide documentation that was not available at the time of our review. After carefully considering HRSA's comments and the additional documentation, we revised the report where appropriate.

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) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov. Please refer to report number A-06-04-00060.

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF THE MANAGEMENT OF UNOBLIGATED FUNDS PROVIDED BY TITLE II OF THE RYAN WHITE COMPREHENSIVE AIDS RESOURCES EMERGENCY ACT

Daniel R. Levinson
Inspector General

May 2007
A-06-04-00060

Office of Inspector General

http://oig.hhs.gov

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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

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, Public Law 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the Department of Health and Human Services (HHS), the Health Resources and Services Administration (HRSA) administers the CARE Act.

Title II of the CARE Act, sections 2611–2631 of the Public Health Service Act, provides grants to 59 States and Territories (referred to as "States" in this report). These grants fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other health care and support services. During our audit period (grant years 1999–2002), HRSA awarded more than $3.3 billion in Title II grants.

OBJECTIVE

Our objective was to determine whether HRSA complied with applicable requirements and used its offset authority in managing unobligated Title II funds.

SUMMARY OF FINDINGS

During grant years 1999–2002, HRSA did not fully comply with applicable requirements for managing unobligated Title II funds:

- Contrary to the CARE Act, HRSA did not recoup $10,643,244 in Title II funds from States that had not obligated at least 75 percent of their grant awards within 120 days and reallot those funds to other States in proportion to their original grants.

- Contrary to HHS policy, HRSA authorized States to carry over $48,691,425 in unobligated Title II funds beyond one budget period.

Additionally, HRSA did not use the offset authority provided by the CARE Act and HHS grants policy to manage States' unobligated balances. HRSA could have carried over balances from the prior year and offset the amount of current-year funds needed for the grant awards. By doing so, HRSA would have had available a larger amount of current-year funding to address program needs. For example, the offsetting option might have been useful in grant year 2002, when 10 States had unobligated Title II balances totaling $61,723,742 and 8 States had no balances or small balances and a documented need for additional resources. According to a 2003 report of the ADAP Working Group, the eight States had imposed restrictions to limit expenditures for HIV/AIDS drugs, and five of them had waiting lists of potential ADAP clients. HRSA's distribution of these unobligated funds would have provided States, including these eight States, with additional funding to meet program needs.

RECOMMENDATIONS

We recommend that HRSA:

- monitor the States' compliance with the CARE Act requirement to obligate 75 percent of the grant award within 120 days and, for States that do not meet this requirement, (1) recoup the unobligated portion of the 75 percent of the grant award and (2) reallot such funds to other States in proportion to their original grants;

- comply with the current carryover policy;

- examine the reasons for some States' large unobligated balances; and

- analyze each State's unobligated balance from the preceding grant year in light of relevant factors to determine whether the balance should be deobligated or carried over and, if carried over, determine whether the amount should be (1) an addition to the State's full amount of funding approved for the current grant year or (2) an offset to the State's current-year grant award, which would provide additional funding for other States' unmet program needs.

HEALTH RESOURCES AND SERVICES ADMINISTRATION'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its comments on our draft report, HRSA provided information on actions taken or planned on our first three recommendations but generally disagreed with the findings. In response to our last recommendation, HRSA offered several reasons for not using the offset authority provided by the CARE Act. We believe that the Ryan White HIV/AIDS Treatment Modernization Act of 2006, which was passed after we issued our draft report, will address HRSA's concerns about offsetting future grant awards.

HRSA also provided technical comments questioning some of the figures in our draft report. Based on these comments, we requested that HRSA provide documentation that was not available at the time of our review. After carefully considering HRSA's comments and the additional documentation, we revised the report where appropriate. HRSA's comments are included as the Appendix.

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HEALTH RESOURCES AND SERVICES ADMINISTRATION'S COMMENTS

INTRODUCTION

BACKGROUND

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, Public Law 101-381, funds health care and support services for people who have HIV/AIDS and who have no health insurance or are underinsured. As the Federal Government's largest source of funding specifically for people with HIV/AIDS, the CARE Act assists more than 500,000 individuals each year. Within the Department of Health and Human Services (HHS), the Health Resources and Services Administration (HRSA) administers the CARE Act.

Title II of the CARE Act, sections 2611–2631 of the Public Health Service Act, provides grants to 59 States and Territories (referred to as "States" in this report). These grants fund the purchase of medications through AIDS Drug Assistance Programs (ADAP) and other HIV/AIDS health and support services, such as home- and community-based health care, substance abuse and mental health treatment, case management, housing assistance, and insurance assistance. HRSA's formula for calculating the States' Title II grant amounts is based on the most recent 10 years of data on the number of individuals in each State who are living with AIDS. (HRSA obtains these data from the Centers for Disease Control and Prevention (CDC).) Each State receives an ADAP award designated specifically for drug therapy and an award to provide other health care and support services.

During our audit period (grant years 1999–2002), HRSA awarded more than $3.3 billion in Title II grants. (See Table 1.) HRSA notified the States of the award amounts by issuing Notices of Grant Award at the beginning of each grant year (April 1). About 66 percent of these funds were designated for ADAPs.

Table 1: Title II Funding for Grant Years 1999–2002

1999	2000	2001	2002	Total
$709,904,300	$794,314,000	$874,624,500	$942,258,000	**$3,321,100,800**

Attached to each Notice of Grant Award is a document called "Title II Conditions of Award," which requires States to submit to HRSA, by September 1 of the grant year, interim financial status reports showing the amount of Title II funds obligated by the 120th day of the award. Also, 45 CFR § 92.41(b) and the Public Health Service Grants Policy Statement, section 8, "Postaward Administration," require States to submit final financial status reports to HRSA within 90 days after the end of the grant year. The interim and final reports show such information as the total Federal funds authorized for the funding period, the total Federal share of outlays and unliquidated obligations, and the unobligated balance of Federal funds.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether HRSA complied with applicable requirements and used its offset authority in managing unobligated Title II funds.

Scope

Our review covered the period April 1, 1999, through March 31, 2003 (grant years 1999–2002). Title II awards for this period totaled more than $3.3 billion.

We did not review HRSA's overall internal control structure. We performed sufficient work to obtain an understanding of controls related to unobligated Title II funds.

We did not evaluate the validity of data on States' financial status reports, HRSA's Notices of Grant Award, CDC's calculation of estimated living AIDS cases, HRSA's formula for allocating funds to the States, or information published by the ADAP Working Group.[1]

We performed our fieldwork at HRSA offices in Rockville, Maryland.

Methodology

To accomplish our objective, we:

- reviewed the CARE Act and HHS policies to identify the requirements and mechanisms available to HRSA for managing unobligated Title II funds;
- interviewed HRSA officials to determine how HRSA identified and managed unobligated Title II funds;
- reviewed States' interim financial status reports to determine compliance with the CARE Act requirement to obligate 75 percent of grant funds within 120 days;
- reviewed information made available to us as of October 2004, including (1) States' final financial status reports, which showed unobligated Title II funds for grant years 1999–2002, and (2) HRSA's Notices of Grant Award, which showed funds awarded to the States and funds approved for carryover; and
- analyzed the total amount of unobligated Title II funds during grant years 1999–2002.

[1]The ADAP Working Group is an ad hoc coalition of HIV/AIDS community-based organizations and biotechnology, pharmacy, and pharmaceutical research companies. It is part of an HIV advocacy group called the Title II Community AIDS National Network.

We performed our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

During grant years 1999–2002, HRSA did not fully comply with applicable requirements for managing unobligated Title II funds:

- Contrary to the CARE Act, HRSA did not recoup $10,643,244 in Title II funds from States that had not obligated at least 75 percent of their grant awards within 120 days and reallot those funds to other States in proportion to their original grants.

- Contrary to HHS policy, HRSA authorized States to carry over $48,691,425 in unobligated Title II funds beyond one budget period.

Additionally, HRSA did not use the offset authority provided by the CARE Act and HHS grants policy to manage States' unobligated balances. HRSA could have carried over balances from the prior year and offset the amount of current-year funds needed for the grant awards. By doing so, HRSA would have had available a larger amount of current-year funding to address program needs. For example, the offsetting option might have been useful in grant year 2002, when 10 States had unobligated Title II balances totaling $61,723,742 and 8 States had no balances or small balances and a documented need for additional resources. According to the ADAP Working Group, the eight States had imposed restrictions to limit expenditures for HIV/AIDS drugs, and five of them had waiting lists of potential ADAP clients.[2] HRSA's distribution of these unobligated funds would have provided States, including these eight States, with additional funding to meet program needs.

OBLIGATION OF 75 PERCENT OF TITLE II GRANT AWARD WITHIN 120 DAYS

Pursuant to the CARE Act, if a State has not obligated at least 75 percent of the Title II grant award within 120 days,[3] the unobligated portion of the 75 percent must be repaid to the Secretary and reallotted to other States in proportion to the original grants made to such States.[4]

Interim financial status reports submitted to HRSA showed that States generally complied with this requirement during our audit period.[5] However, as shown in Table 2, four States had not obligated at least 75 percent of their grant awards within 120 days.

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[2]"The History and Status of the ADAP Funding Crisis—as of August 2003," issued August 28, 2003. Available online at http://www.thebody.com/adapwg/adap_funding.html. Accessed on June 22, 2005.

[3]See section 2618(c)(1) of the Public Health Service Act (42 U.S.C. § 300ff-28(c)(1)).

[4]See section 2618(d) of the Public Health Service Act (42 U.S.C. § 300ff-28(d)).

[5]Of the 172 interim financial status reports due from the States during our audit period, 156 were accessible for our review.

Table 2: States That Did Not Obligate 75 Percent of Grant Awards Within 120 Days

(A)	(B)	(C)	(D)	(E)	(F)
Grant Year and State	**Award Amount**	**75 Percent of Award Amount** (B) x 0.75	**Amount Obligated at 120 days**	**Difference** (C) – (D)	**Percent Obligated at 120 days** (D) ÷ (B)
2000:					
Wyoming	$205,536	$154,152	$42,315	$111,837	21%
2001:					
District of Columbia	13,851,117	10,388,338	5,134,320	5,254,018	37%
2002:					
Arizona	10,130,689	7,598,017	4,785,822	2,812,195	47%
Arkansas	4,397,016	3,297,762	832,568	2,465,194	19%
Total	**$28,584,358**	**$21,438,269**	**$10,795,025**	**$10,643,244**	

In these four instances, HRSA did not take action to meet the CARE Act requirements pertaining to unobligated balances. Specifically, HRSA did not recoup $10,643,244 (the difference between 75 percent of the awards and the obligated amounts) and then reallot those funds to other States in proportion to the original grants.

CARRYOVER OF UNOBLIGATED FUNDS BEYOND 1 YEAR

The HHS Grants Policy Directive 2.04.H.4, issued in November 1999, stipulates that "... carryover of unobligated balances by the grantee is authorized only from one budget period to the next."

HRSA's Notices of Grant Award, which include carryover amounts and the years from which the carryovers were authorized, indicated that, from 1999 through 2001, HRSA authorized States to carry over $48,691,425 for 2 to 4 years beyond the original grant year. These carryover amounts were added to the States' original grant awards, rather than used to offset subsequent grant awards, a management option discussed in the section below. Table 3 shows, based on information available as of October 2004, the amounts of unobligated funds that HRSA approved for carryover for grant years 1999–2002.

Table 3: Unobligated Title II Funds Approved for Carryover

Grant Year	Total Amount Approved for Carryover	Less Carryover to the Next Grant Year	Carryover Beyond 1 Year
1999	$35,833,503	$14,842,373	$20,991,130
2000	60,552,163	38,358,257	22,193,906
2001	68,546,317	63,039,928	5,506,389
2002	56,218,947	56,218,947	0
Total	**$221,150,930**	**$172,459,505**	**$48,691,425**

AUTHORITY TO CARRY OVER UNOBLIGATED FUNDS AND OFFSET CURRENT-YEAR GRANT FUNDS

Section 2618(a)(2)(G) of the CARE Act states:

> The Secretary may, in determining the amount of a grant for a fiscal year under this subsection, adjust the grant amount to reflect the amount of unexpended and uncanceled grant funds remaining at the end of the fiscal year preceding the year for which the grant determination is to be made. The amount of any such unexpended funds shall be determined using the financial status report of the grantee.

In addition to this statutory authorization, HHS grants policy provides HRSA with authority and specific direction for managing unobligated balances from the prior budget period.[6] Under this policy, the awarding agency (HRSA in this case) should review the unobligated balance reported by the recipient and assess the recipient's need and use for these funds. The assessment would consider factors such as (1) the size of the unobligated balance, (2) a pattern of significant unobligated balances, (3) the time remaining in the project period, (4) the recipient's ability to spend the funds appropriately within the remaining timeframe, and (5) the recipient's progress. Based on this assessment, HRSA may deobligate the unobligated balance or authorize the carryover of some or all of the unobligated balance. If HRSA authorizes a carryover of funds, it may add the funds to the full amount of funding approved for the next budget period or offset (reduce) the amount of funding approved for the next budget period, reducing the amount of new Federal funds awarded for that period. Any offset amounts would need to be redistributed to all States, including the States with offset awards, using the statutory formula.

HRSA did not use the authority provided by the CARE Act and HHS grants policy to manage Title II unobligated funds. Had it done so, HRSA could have carried over unobligated funds from the prior budget period and, based on an assessment of relevant factors, offset the amount

[6]See HHS Grants Policy Directive 2.04 and the HHS "Awarding Agency Grants Administration Manual," sections 2.04.104B-4.A.2.a and 2.04.104B-5.E.

of current-year money needed to meet the grant award amount. These steps would have created a larger amount of current-year funds to address program needs.

Data from grant year 2002 illustrate how the carryover and offset mechanisms could have been applied to create a larger pool of funding to meet Title II program needs in grant year 2003. Based on the States' final financial status reports as of the end of grant year 2002, 10 States had unobligated balances greater than 25 percent of their grant awards and in excess of $100,000 each.[7] As shown in Table 4, these States' unobligated balances totaled $61,723,742, with Pennsylvania and New Jersey each having a balance of more than $10 million.

Table 4: Ten States With Significant Unobligated Grant Year 2002 Funds

State	Award	Unobligated Balance	Unobligated Balance as a Percentage of Award
Ohio	$14,653,307	$9,333,846	64%
Mississippi	7,994,828	4,780,351	60%
Tennessee	16,464,366	7,609,011	46%
Michigan	13,817,447	5,225,472	38%
Delaware	4,549,172	1,660,000	36%
New Hampshire	1,170,914	389,414	33%
Pennsylvania	32,266,464	10,479,069	32%
Maryland	28,539,346	9,170,876	32%
South Dakota	372,293	111,867	30%
New Jersey	45,652,579	12,963,836	28%
Total	**$165,480,716**	**$61,723,742**	**37%**

In contrast, the financial status reports for grant year 2002 showed that eight States had unobligated balances of less than 3 percent of their grant awards. These States had a demonstrated need for additional resources. As of March 2003, according to the ADAP Working Group, the eight States had imposed restrictions to limit expenditures for HIV/AIDS drugs, such as capped enrollment, reduced formulary, and tightened financial eligibility requirements. In addition, five of the eight States had waiting lists of potential ADAP clients.[8] (See Table 5.)

[7]The interim financial status reports for these 10 States showed that at least 75 percent of the grant award was obligated at 120 days, thus avoiding the requirement previously discussed that the unobligated portion of the 75 percent be repaid to HRSA and reallotted to other States. A State could legitimately have obligated 75 percent of the grant award at 120 days but still report that greater than 25 percent of the grant award was unobligated at the end of the budget year if, for instance, a State deobligated funds for a contract that came in under bid.

[8]See footnote 2 on page 3.

HRSA's distribution of the unobligated funds of the 10 States with large balances would have provided States, including these 8 States, with additional funding to meet program needs.

Table 5: Eight States That Obligated Most of Their Grant Year 2002 Funds and May Have Needed Additional Funds

			Per the ADAP Working Group	
State	**Award**	**Unobligated Balance**	**Type of ADAP Restriction**	**Number of ADAP Clients on Waiting List**
Alabama	$11,005,960	$7	Capped enrollment	104
Nebraska	1,752,274	20,096	Capped enrollment and reduced formulary	24
Oregon	5,266,094	137,441	Capped enrollment, reduced formulary, and tightened financial eligibility	145
Texas	70,384,189	435,846	Restricted access to antiretroviral drugs	0
Virgin Islands	840,949	0	Tightened financial eligibility	0
Washington	10,243,929	0	Reduced formulary, tightened financial eligibility, and cost sharing	0
West Virginia	1,856,487	0	Capped enrollment	4
Wyoming	340,041	0	Capped enrollment, reduced formulary, and tightened financial eligibility	3

CONCLUSION

HRSA did not fully comply with the CARE Act or HHS policy in managing unobligated Title II balances for grant years 1999–2002. HRSA did not recoup $10,643,244 in Title II funds from States that had not obligated at least 75 percent of their grant awards within 120 days. Contrary to HHS policy, HRSA also authorized States to carry over unobligated Title II funds totaling $48,691,425 beyond one budget period. Further, HRSA did not use the offset authority provided

by the CARE Act and HHS grants policy in managing States' unobligated balances to meet program needs.

RECOMMENDATIONS

We recommend that HRSA:

- monitor the States' compliance with the CARE Act requirement to obligate 75 percent of the grant award within 120 days and, for States that do not meet this requirement, (1) recoup the unobligated portion of the 75 percent of the grant award and (2) reallot such funds to other States in proportion to their original grants;

- comply with the current carryover policy;

- examine the reasons for some States' large unobligated balances; and

- analyze each State's unobligated balance from the preceding grant year in light of relevant factors to determine whether the balance should be deobligated or carried over and, if carried over, determine whether the amount should be (1) an addition to the State's full amount of funding approved for the current grant year or (2) an offset to the State's current-year grant award, which would provide additional funding for other States' unmet program needs.

HEALTH RESOURCES AND SERVICES ADMINISTRATION'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its comments on our draft report, HRSA provided information on actions taken or planned on our first three recommendations but generally disagreed with the findings. In response to our last recommendation, HRSA stated that it had opted against using the offset authority provided by the CARE Act. HRSA also provided technical comments questioning some of the figures in our draft report. Based on these comments, we requested that HRSA provide documentation that was not available at the time of our review. After carefully considering HRSA's comments and the additional documentation, we revised the report where appropriate.

HRSA's comments, which are included as the Appendix, and our responses are summarized below.

Obligation of 75 Percent of Title II Grant Award Within 120 Days

HRSA stated that it had reemphasized to States the requirement to obligate 75 percent of grant funds within 120 days and that it would continue to monitor States' compliance and reallocate unobligated funds if necessary. HRSA also stated that, based on its review, all States had complied with this requirement during the audit period, including three States (Wyoming, Arizona, and Arkansas) that inadvertently reported expenditures rather than obligations on their interim financial status reports.

At the time of our review, the documentation in the files showed that the three States had not met the 75-percent obligation requirement, and the additional documentation that HRSA provided did not include revised financial status reports showing otherwise. Also, HRSA did not provide additional documentation to show that the District of Columbia had met its 75-percent requirement in 2001. Therefore, we have no evidence to validate that the three States and the District of Columbia complied with obligation requirements. We continue to recommend that HRSA monitor States' compliance with the requirement to obligate 75 percent of their Title II funds within 120 days.

Carryover of Unobligated Funds Beyond 1 Year

HRSA stated that it was in full compliance with the current HHS carryover policy and that it had made all States aware of the policy. HRSA added that successive carryover requests by States did not violate policy as long as States abided by the first-in, first-out rule.

A first-in, first-out rule, which requires that the oldest money be spent first, does not preclude balances from being carried over beyond 1 year. The Notices of Grant Award for our review period showed instances in which the 1-year carryover policy was not followed. For example, according to Connecticut's Notice of Grant Award, in 2002, HRSA approved $1.7 million in carryover funds from 1999. We continue to recommend that HRSA follow the carryover policy in effect at the time of the grant award.

Reasons for Large Unobligated Balances

HRSA stated that it had reviewed large unexpended funds in several States and found that the rationale varied and was State-specific. For example, in many cases, States did not fill CARE Act program vacancies. HRSA stated that in these situations, it notifies the States of the need to hire staff to properly manage Federal funds.

Authority To Carry Over Unobligated Funds and Offset Current-Year Grant Funds

HRSA provided the following reasons for not using the discretionary provisions of the CARE Act to offset grant awards:

- The offset amounts would need to be redistributed to all States, including the States with offset awards, using the statutory formula. HRSA would not be able to target the recovered funds to jurisdictions in need.

- It is impossible to know the amount available for offset until after the next grant year has begun because final financial status reports are not due until 90 days after the grant year ends.

- The hold-harmless provisions of the CARE Act require that each State receive no less in its total award than it received in the preceding year. The distribution of additional funds

in the current grant year could lead to grant levels that exceed the amount available in the next year's appropriation.

We acknowledge these potential difficulties in administering the discretionary provisions of the CARE Act. We believe that the provisions of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (the Act), Public Law 109-415, will address HRSA's concerns. The Act, which was passed after we issued our draft report, requires States to return any unobligated funds from a grant year unless HRSA approves the carryover of the unobligated balance to the next grant year. Any of these funds that are not expended by the end of the carryover year must be canceled and returned. HRSA must make the returned funds available as supplemental grants to eligible States for the fiscal year immediately following the fiscal year in which the unobligated balance is canceled. The Act also requires HRSA to reduce a State's future-year formula grant award by the amount of any unobligated balance. The grant reduction will be for the award year immediately following the grant year in which the unobligated balance is reported.

APPENDIX

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Rockville MD 20857

OCT 19 2006

TO: Daniel R. Levinson
Inspector General

FROM: Administrator

SUBJECT: Office of Inspector General Draft Report: "Review of the Management of Unobligated Funds Provided by Title II of the Ryan White Comprehensive AIDS Resources Emergency Act" (A-06-04-00060)

Thank you for the opportunity to provide comments on the above subject draft report. Attached for your review are our comments.

Questions may be referred to Gail Lipton in HRSA's Office of Federal Assistance Management at (301) 443-6509.

B Smith for

Betty James Duke

Attachment

Health Resources and Services Administration's response to the Office of Inspector General draft report: "Review of the Management of Unobligated Funds Provided by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act" (A-06-04-00060)

General Comments:

The Health Resources and Services Administration (HRSA) reviewed the draft final report provided by the Office of Inspector General (OIG) and is concerned that the OIG does not fully understand the complexities of the provisions of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act with regard to both the 75 percent obligation provisions and offset language. HRSA does not concur with the OIG findings regarding States meeting their 75 percent obligation requirement under Section 2618 (c) (1) (B) of the Public Health Service Act. HRSA's Division of Grants Management Operations and the HIV/AIDS Bureau (HAB) reviewed information submitted by all Title II grantees and found that all 54 States met the 75 percent obligation requirement; however, three States misunderstood the reporting requirement and reported expenditures rather than obligations. HRSA will work with the three States to educate them about how to demonstrate that they are meeting the 75 percent requirement.

With regard to the OIG's findings concerning carryover, HRSA believes that the OIG failed to understand the complex process by which funds would be reallotted to States. Under the current CARE Act provisions, any funds that are recouped from unobligated balances must be awarded based on a formula distribution, which would mean that some States with unobligated balances would receive a portion of the funds they returned. Under the current CARE Act statute, HRSA does not have the authority to target funds, as OIG suggests, to States most in need.

OIG Finding:

Contrary to the CARE Act, HRSA did not recoup $18,806,535 in Title II funds from States that had not obligated at least 75 percent of their grant awards within the 120 days and reallot those funds to other States in proportion to their original grants.

HRSA Response:

HAB's Division of Service Systems (DSS) requires all grantees funded under the authority of Title II of the CARE Act to submit a signed assurance by the Chief Elected Official that all grant funds will be allocated within 120 days of receipt of the Notice of Grant Award (NGA). In addition, each State is required to submit a Financial Status Report (FSR) on September 1 (150 days after receipt of the grant funding) to establish that such obligations actually occurred. In the draft document, the OIG cites examples of data taken from the FSRs submitted by five States. HRSA's Division of Grants Policy, Division of Grants Management Operations, and DSS, the responsible Program Office, reviewed the appropriate FSRs and did not find the results cited by the OIG in the draft document.

The result of the HRSA review of the appropriate FSR information submitted by Title II grantees indicates that all 54 grantees are in compliance with the 75 percent obligation requirement for the period reviewed by the OIG. However three States incorrectly reported expenditures rather than obligations

In the case of the three States, (Wyoming, Arkansas and Arizona) after obtaining further information from each State about what was reported on the FSR, it is HRSA's determination that Title II funds were obligated by the State upon receipt of the Title II grant award. We made this determination because in each case some contractual or other arrangement, already in place, demonstrated the State's commitment to spend the funds for ADAP purposes. For example, a State's agreement to pay pharmacies for prescriptions as they come in satisfies the obligation requirement. However, for these three States, even where a contract was in place, the States only reported expenditures and not the contract total as an obligation.

OIG Finding:

Contrary to the Department of Health and Human Services' (DHHS) policy in effect during the audit, HRSA authorized States to carry over $48,576,171 in unobligated Title II funds beyond one budget period.

HRSA Response:

During the period reviewed by the OIG, HAB implementation of HRSA grant policy with regard to the use of carryover followed HRSA grants procedures. HRSA followed appropriate policies with regard to the approval of carryover requested by Title II grantees. HRSA believes the OIG failed to consider that successive requests for carryover from States do not violate policy as long as States abide by the first-in-first-out rule.

It is important to note that during this period, the Title II program was experiencing substantial increases in grant award amounts, which made it difficult for many States to absorb and fully expend all the awarded dollars within the 1-year budget period (see attached Total State Grant Award Amounts, 1999-2002 Table). In fact, of the increases seen in the Title II awards from 2000 to 2002, 100 percent of the increase is directly related to increases in the ADAP earmark. As stated earlier, HRSA believes that the procedures followed with respect to the approval of carryover funds for formula award grantees under the CARE Act's Title II program are consistent with grants policies.

OIG Recommendations:

We recommend that HRSA:

- Monitor the States compliance with the CARE Act requirement to obligate 75 percent of their grant award within 120 days and for States that do not meet this requirement: 1) Recoup the unobligated portion of the 75 percent of the grant award; and 2) Reallot such funds to the other States in proportion to their original grants;

- Comply with DHHS carryover policy, which currently limits the carryover of unobligated grant funds to the next 2 grant years;

- Examine the reasons for some States' large unobligated balances; and,

- Analyze each State's unobligated balance from the preceding grant year in light of the relevant factors to determine whether the balance should be deobligated or carried over and, if carried over, determine whether the amount should be: 1) in addition to the State's full amount of funding approved for the current grant year, or 2) an offset to the States current-year grant award, which would provide additional funding for other States' unmet program needs.

HRSA Response:

Through language in both the HRSA Guidance and NGA, HRSA has reemphasized to grantees that they must obligate 75 percent of the Title II award within 120 days of receipt of the NGA. HRSA/HAB staff will continue to monitor grantees compliance with this requirement and if needed, take appropriate steps to reallocate any funds that failed to be obligated by the due date.

HRSA staff is in full compliance with the current DHHS carryover policy. All grantees have been made aware of the policy and its requirements. HRSA has reviewed large unexpended funds in several States and found that the rationale varies and is State-specific. Program staff, through ongoing monitoring activities, work with States that have indicated that they are unable to expend funds. For example, in many cases States are refusing to fill CARE Act program vacancies. In these situations, HRSA notifies the State of the need to hire staff to properly manage Federal funds. In response, State officials responsible for the Title II Program attempt to get clearance to fill the program vacancies.

With regard to offsetting future awards, the statute states that "The Secretary may…adjust the grant amount to reflect unexpended and uncancelled grant funds…" HRSA has opted against using these discretionary provisions to offset grant awards for Title I and Title II for several reasons. Specifically:

- Amounts used as offsets for one or more grantees must be redistributed, using the same formulas, to all the grantees. This would result in a percentage of the award being returned to the same entity against whom it was offset. Basically, if HRSA were to offset, it would have no ability to target these recovered funds to jurisdictions in need. The offset amount would need to be redistributed through the statutory formulas.

- The statute states that the offset amount "shall be determined using the FSR of the grantee." For each year, the Title II grant period runs from April 1 to March 31. The program makes Title II awards on April 1 of each year. The final reconciliation for each grantee which reports on expenditures and unobligated balances for the previous grant year is not submitted until July 1 of each year. Thus, it is impossible to know

what amount of funds may be available to offset for awards which are made effective April 1 of each year. Furthermore, if necessary, grantees have up to 15 months from the original due date to submit a revised FSR for a grant year cycle.

- The distribution of additional funds in the current grant year would have a significant impact on the next year grant levels because current hold harmless provisions of the statute make clear that a Title II grantee can receive no less in its total award, not counting the ADAP supplemental, than it received in the preceding year. This could lead to a situation where the program would be committed to creating grant levels that exceed the available amount of the appropriation in the next funding year.