

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

FEDERAL COMPLIANCE AUDIT REPORT

OF

WARRICK COUNTY, INDIANA

January 1, 2021 to December 31, 2021



FILED

08/19/2022

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Schedule of Officials	2
Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of the Financial Statement Performed in Accordance with <i>Government Auditing Standards</i>	3-4
Independent Auditor's Report on Compliance for Each Major Federal Program; Report on Internal Control over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance	5-8
Schedule of Expenditures of Federal Awards and Accompanying Notes:	
Schedule of Expenditures of Federal Awards	10-11
Notes to Schedule of Expenditures of Federal Awards.....	12
Schedule of Findings and Questioned Costs.....	13-16
Auditee-Prepared Document:	
Corrective Action Plan	18-20
Other Reports.....	21

SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
County Auditor	Deborah K. Stevens	01-01-21 to 12-31-22
County Treasurer	Judy M. Beem	01-01-21 to 12-31-22
Clerk of the Circuit Court	Patricia E. Perry	01-01-21 to 12-31-22
County Sheriff	Michael Wilder	01-01-21 to 12-31-22
County Recorder	Patricia A. Brooks	01-01-21 to 12-31-22
President of the Board of County Commissioners	Terry Phillippe	01-01-21 to 12-31-22
President of the County Council	Greg Richmond	01-01-21 to 12-31-22



INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF THE FINANCIAL
STATEMENT PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

TO: THE OFFICIALS OF WARRICK COUNTY, INDIANA

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statement of Warrick County (County), for the year ended December 31, 2021, and the related notes to the financial statement, which collectively comprise the County's financial statement and have issued our report thereon dated August 4, 2022, wherein we noted the County followed accounting practices the Indiana State Board of Accounts prescribes rather than accounting principles generally accepted in the United States of America.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statement, we considered the County's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statement, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control. Accordingly, we do not express an opinion on the effectiveness of the County's internal control.

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

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

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF THE FINANCIAL
STATEMENT PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*
(Continued)

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the County's financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of This Report

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



Beth Kelley, CPA, CFE
Deputy State Examiner

August 4, 2022



INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE

TO: THE OFFICIALS OF WARRICK COUNTY, INDIANA

Report on Compliance for Each Major Federal Program

Qualified and Unmodified Opinions

We have audited Warrick County's (County) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2021. The County's major federal programs are identified in the Summary of Auditor's Results section of the accompanying Schedule of Findings and Questioned Costs.

Qualified Opinion on COVID-19 - Coronavirus State and Local Fiscal Recovery Funds

In our opinion, except for the noncompliance described in the *Basis for Qualified and Unmodified Opinions* section of our report, the County complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on the COVID-19 - Coronavirus State and Local Fiscal Recovery Funds for the year ended December 31, 2021.

Unmodified Opinion on Each of the Other Major Federal Programs

In our opinion, the County complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its other major federal programs identified in the identified in the Summary of Auditor's Results section of the accompanying Schedule of Findings and Questioned Costs for the year ended December 31, 2021.

Basis for Qualified and Unmodified Opinions

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America (GAAS); the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (*Government Auditing Standards*); and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the County and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of the County's compliance with the compliance requirements referred to above.

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE
(Continued)

Matters Giving Rise to Qualified Opinion on COVID-19 - Coronavirus State and Local Fiscal Recovery Funds

As described in the accompanying Schedule of Findings and Questioned Costs, the County did not comply with requirements regarding 21.027 COVID-19 - Coronavirus State and Local Fiscal Recovery Funds as described in finding number 2021-001 for Allowable Costs/Cost Principles and Period of Performance. Compliance with such requirements is necessary, in our opinion, for the County to comply with the requirements applicable to that program.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the County's federal programs.

Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the County's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material, if there is a substantial likelihood that, individually, or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the County's compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the County's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the County's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE
(Continued)

Other Matters

Government Auditing Standards requires the auditor to perform limited procedures on the County's response to the noncompliance findings identified in our audit described in the accompanying Schedule of Findings and Questioned Costs. The County's response to the noncompliance findings identified in our audit is described in the accompanying Corrective Action Plan. The County's response was not subjected to the auditing procedures applied in the audit of compliance, and, accordingly, we express no opinion on the response.

Report on Internal Control over Compliance

Our consideration of internal control over compliance was for the limited purpose described in the *Auditor's Responsibilities for the Audit of Compliance* section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance, and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we did identify certain deficiencies in internal control over compliance that we consider to be material weaknesses.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. We consider the deficiencies in internal control over compliance, described in the accompanying schedule of findings and questioned costs as item 2021-001, to be material weaknesses.

A significant deficiency in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

Government Auditing Standards require the auditor to perform limited procedures on the County's response to the internal control over compliance findings identified in our audit described in the accompanying Schedule of Findings and Questioned Costs. The County's response was not subjected to the other auditing procedures applied in the audit of compliance, and, accordingly, we express no opinion on the response.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY THE UNIFORM GUIDANCE
(Continued)

Report on Schedule of Expenditures of Federal Awards Required by the Uniform Guidance

We have audited the financial statement of the County, as of and for the year ended December 31, 2021, and the related notes to the financial statement. We issued our report thereon dated August 4, 2022, which contained a dual opinion on the financial statement. An adverse opinion was issued regarding the presentation in accordance with accounting principles generally accepted in the United States of America, and an unmodified opinion was issued regarding the presentation in accordance with the regulatory basis of accounting. Our audit was performed for the purpose of forming an opinion on the financial statement as a whole. The accompanying Schedule of Expenditures of Federal Awards is presented for purposes of additional analysis as required by the Uniform Guidance and is not a required part of the financial statement. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statement. The information has been subjected to the auditing procedures applied in the audit of the financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statement or to the financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Expenditures of Federal Awards is fairly stated, in all material respects, in relation to the financial statement as a whole.



Beth Kelley, CPA, CFE
Deputy State Examiner

August 4, 2022

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND ACCOMPANYING NOTES

The Schedule of Expenditures of Federal Awards and accompanying notes presented were approved by management of the County. The schedule and notes are presented as intended by the County.

WARRICK COUNTY
 SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
 For the Year Ended December 31, 2021

Federal Grantor Agency Cluster Title/Program Title/Project Title	Pass-Through Entity or Direct Grant	Assistance Listings Number	Pass-Through Entity (or Other) Identifying Number	Passed Through to Subrecipient	Total Federal Awards Expended
Department of Housing and Urban Development					
COVID-19 - Community Development Block Grants/State's program and Non Entitlement Grants in Hawaii Office of Community and Rural Affairs State Community Development Block Grant Program	Indiana Office of Community and Rural Affairs	14.228	A192-21-CV-CV3-376	\$ -	\$ 250,000
Total - Department of Housing and Urban Development				-	250,000
Department of Justice					
COVID-19 - Coronavirus Emergency Supplemental Funding Program FY Coronavirus Emergency Supplemental Funding Program	Indiana Criminal Justice Institute	16.034	2020-VD-BX-0244	-	140,240
Missing Children's Assistance Internet Crimes Against Children	Indiana State Police	16.543	2020-MC-FX-K008	-	5,198
Crime Victim Assistance Victims Of Crime Act	Indiana Criminal Justice Institute	16.575	EDS#D3-17-11526	-	80,343
Bulletproof Vest Partnership Program Patrick Leahy Bulletproof Vests Partnership	Direct Grant	16.607		-	5,038
Edward Byrne Memorial Justice Assistance Grant Program Edward Byrne Memorial Drug Crime and Treatment Court Prosecutor	Indiana Criminal Justice Institute	16.738	2020-DJ-BX-0185	-	8,250
Total - Department of Justice				-	239,069
Department of Transportation					
Highway Planning and Construction Cluster Highway Planning and Construction	Indiana Department of Transportation	20.205			
Safe Streets To School			DES#1592154	-	85,960
Bell Road Project			DES#1401384	-	411,442
Bridge Inspection			DES#1593023	-	5,642
Bridge Replacement #113			DES#1600739	-	44,823
Telephone Road			DES#1802049	-	261,314
Bridge 310			DES#1802906	-	135,527
Bridge Inspection 2021-2024			DES#1902074	-	67,026
Bridge 200			DES#1902795	-	42,865
Total - Highway Planning and Construction				-	1,054,599
Total - Highway Planning and Construction Cluster				-	1,054,599
Total - Department of Transportation				-	1,054,599
Department of the Treasury					
COVID-19 - Coronavirus Relief Fund COVID-19 - Coronavirus Relief Fund	Indiana Finance Authority	21.019	FY2021	-	202,991

WARRICK COUNTY
 SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
 For the Year Ended December 31, 2021

Federal Grantor Agency Cluster Title/Program Title/Project Title	Pass-Through Entity or Direct Grant	Assistance Listings Number	Pass-Through Entity (or Other) Identifying Number	Passed Through to Subrecipient	Total Federal Awards Expended
COVID-19 - Coronavirus Relief Fund CARES Act Coronavirus Relief Fund and Epidemiology and Laboratory Capacity for Infection Diseases & Immunization and Vaccines for Children	Indiana State Department of Health	21.019	FY2021	-	100,000
Total - COVID-19 - Coronavirus Relief Fund				-	302,991
COVID-19 - Coronavirus State and Local Fiscal Recovery Funds American Rescue Plan Act	Direct Grant	21.027		3,600,000	3,600,000
Total - Department of the Treasury				3,600,000	3,902,991
<u>Election Assistance Commission</u>					
COVID-19 - 2020 HAVA CARES Act Grant COVID-19 - 2020 HAVA CARES Act Grant	Indiana Secretary of State	90.404	IN20101CARES	-	43,335
Total - Election Assistance Commission				-	43,335
<u>Department of Health and Human Services</u>					
Immunization Cooperative Agreements Immunization Cooperative Agreement PPHF Capacity Building Assistance to Strengthen Public Health Immunizations Infrastructure and Performance Financed in part by Prevention and Public Health Funds	Indiana State Department of Health	93.268	NH23IP922631	-	6,963
Child Support Enforcement Clerk IV-D Incentive Clerk Child Supp Reim Title IV-D Incentive Earned Indirect Costs Prosecutor IV-D Incentive Prosecutor Child Supp Reimb	Indiana Department of Child Services	93.563		-	17,484
				-	29,740
				-	20,190
				-	35,914
				-	4,158
				-	156,141
Total - Child Support Enforcement				-	263,627
Opioid STR OPIOID STR Indiana State Opioid Response	Indiana Supreme Court	93.788	215JC89-C87-001	-	32,805
Total - Department of Health and Human Services				-	303,395
<u>Department of Homeland Security</u>					
Emergency Management Performance Grants Emergency Management Performance Grant 2020	Indiana Department of Homeland Security	97.042	EMC2020-EP-00001-S01	-	30,000
Total - Department of Homeland Security				-	30,000
Total federal awards expended				<u>\$ 3,600,000</u>	<u>\$ 5,823,389</u>

The accompanying notes are an integral part of the Schedule of Expenditures of Federal Awards.

WARRICK COUNTY
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

Note 1. Summary of Significant Accounting Policies

A. Basis of Presentation

The accompanying Schedule of Expenditures of Federal Awards (SEFA) includes the federal grant activity of the County under programs of the federal government for the year ended December 31, 2021. The information in the SEFA is presented in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the SEFA presents only a select portion of the operations of the County, it is not intended to and does not present the financial position of the County.

B. Other Significant Accounting Policies

Expenditures reported on the SEFA are reported on the cash basis of accounting. Such expenditures are recognized following, as applicable, either the cost principles in OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, or the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowed or are limited as to reimbursement. When federal grants are received on a reimbursement basis, the federal awards are considered expended when the reimbursement is received.

Note 2. Indirect Cost Rate

The County has elected not to use the 10 percent de minimis indirect cost rate allowed under the Uniform Guidance.

WARRICK COUNTY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS

Section I - Summary of Auditor's Results

Financial Statement:

Type of auditor's report issued:	Adverse as to GAAP; Unmodified as to Regulatory Basis
Internal control over financial reporting:	
Material weaknesses identified?	no
Significant deficiencies identified?	none reported
Noncompliance material to financial statement noted?	no

Federal Awards:

Internal control over major programs:	
Material weaknesses identified?	yes
Significant deficiencies identified?	none reported
Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)?	yes

Identification of Major Programs and type of auditor's report issued on compliance for each:

Assistance Listings Number	Name of Federal Program or Cluster	Opinion Issued
21.027	COVID-19 - Coronavirus State and Local Fiscal Recovery Funds	Qualified
93.563	Child Support Enforcement	Unmodified

Dollar threshold used to distinguish between Type A and Type B programs: \$750,000

Auditee qualified as low-risk auditee?	no
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Section II - Financial Statement Findings

No matters are reportable.

WARRICK COUNTY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
(Continued)

Section III - Federal Award Findings and Questioned Costs

FINDING 2021-001

Subject: COVID-19 - Coronavirus State and Local Fiscal Recovery Funds -
Allowable Costs/Cost Principles, Period of Performance
Federal Agency: Department of the Treasury
Federal Program: COVID-19 - Coronavirus State and Local Fiscal Recovery Funds
Assistance Listings Number: 21.027
Compliance Requirements: Allowable Costs/Cost Principles, Period of Performance
Audit Findings: Material Weakness, Modified Opinion

Condition and Context

An effective internal control system was not in place at the County to ensure compliance with requirements related to the grant agreement and the Allowable Costs/Cost Principles and the Period of Performance compliance requirements.

The County, through its Economic Development Department entered into a Broadband Economic Development Agreement with Mainstream Fiber Networks, LLC (Mainstream) on October 18, 2018, to design, develop, construct, and operate a fiber based broadband network to service large portions of the County. The County's contribution to Mainstream for the broadband project was \$4,925,030.

On August 12, 2021, a payment in the amount of \$1,325,030 was made to Mainstream from funds received from the issuance of Revenue Bonds, Series 2019 (Broadband Project). On September 3, 2021, a payment in the amount of \$3,600,000 was made to Mainstream from the County's allocation of Coronavirus State and Local Fiscal Recovery Funds.

The County incurred a financial obligation at the time the Broadband Economic Development Agreement was entered into on October 18, 2018; therefore, the costs of \$3,600,000 spent from the COVID-19 - Coronavirus State and Local Fiscal Recovery Funds on September 3, 2021, were for an obligation that was incurred prior to the period of performance which began on March 3, 2021. We consider \$3,600,000 to be questioned costs.

In addition, the County did not have written procedures for determining the allowability of costs in accordance with Subpart E of 2CFR 200.

The lack of internal controls and noncompliance were systemic issues throughout the audit period.

Criteria

2 CFR 200.303 states in part:

"The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in 'Standards for Internal Control in the Federal Government' issued by the Comptroller General of the United States or the 'Internal Control Integrated Framework', issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). . . ."

WARRICK COUNTY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
(Continued)

31 CFR 35.5(a) states:

"In general. A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable."

2 CFR 200.1 states in part:

". . . *Financial obligations*, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment. . . ."

31 CFR 35.3 states in part:

". . . *Obligation* means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment. . . ."

2 CFR 200.403 states in part:

"Except where otherwise authorized by statute, costs must meet the following general criteria to be allowable under Federal awards: . . .

(h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3)."

2 CFR 200.302(b) states in part:

"The financial management system of each non-Federal entity must provide for the following:
. . .

(7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award."

Cause

Management had not developed a system of internal control that would have ensured compliance with the compliance requirements listed above.

Effect

The failure to establish an effective system of internal control enabled material noncompliance to go undetected. Noncompliance with the grant agreement and the Allowable Costs/Cost Principles and the Period of Performance compliance requirements could have resulted in the loss of federal funds to the County.

Questioned Costs

Questioned costs in the amount of \$3,600,000 were identified as noted in the *Condition and Context*.

WARRICK COUNTY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
(Continued)

Recommendation

We recommended that the County's management establish a system of internal control related to the grant agreement and the Allowable Costs/Cost Principles and the Period of Performance compliance requirements.

Views of Responsible Officials

For the views of responsible officials, refer to the Corrective Action Plan that is part of this report.

Auditor's Response

It is the County's responsibility to comply with applicable federal regulations and guidelines when accepting and managing a federal award. The County had designed and implemented a system of internal control; however, these controls were not effective in ensuring that federal funds were obligated during the period of performance.

The Interim Final Rule, which was effective May 17, 2021, "adopts a definition of 'obligation' that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar." Per 2 CFR 200.1, a financial obligation "when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment." In addition, 31 CFR 35.3 defines an obligation as "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment."

The Interim Final Rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that ***begin incurring costs in the anticipation of enactment of the ARPA*** and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.

The County incurred a financial obligation when the agreement was entered into on October 18, 2018. The Interim Final Rule specifically precludes use of funds to cover the costs of debt incurred prior to March 3, 2021. The contracts and corresponding financing documents were completed prior to the period of performance and could not have been enacted in anticipation of the passage of the Act, as they were executed years prior to referenced legislation.

We reaffirm our finding and will review the status of the finding during our next audit.

AUDITEE-PREPARED DOCUMENT

The subsequent document was provided by management of the County. The document is presented as intended by the County.

WARRICK COUNTY
COMMISSIONERS
107 W. LOCUST STREET
COURTHOUSE; ROOM 301
BOONVILLE, IN 47601
PHONE (812) 897-6120 FAX – (812) 897-6189

DAN SAYLOR

TERRY J PHILLIPPE

ROBERT JOHNSON

CORRECTIVE ACTION PLAN

FINDING 2021-001

Contact Person Responsible for Corrective Action: Terry Phillippe, Board President
Contact Phone Number: (812) 897-6120

Views of Responsible Official:

Warrick County does not agree with and rejects the findings as set forth in the SBOA's Section III Report.

On October 18, 2018, Warrick County, through its Economic Development Department, entered into a Broadband Economic Development Agreement (the "Agreement") with Mainstream Fiber Networks, LLC ("Mainstream") for the design, development, construction, and operation of a fiber based broadband network throughout Warrick County. As part of the Agreement, the County agreed to contribute \$4,925,030.00 to the overall cost of the project. Importantly, however, the Agreement made it clear that such contribution "shall **not be due** and payable to Mainstream until (i) Mainstream has fully completed all elements of work identified in the Project Plan...[and] (ii) all of the Backbone Fiber has been built and lit by Mainstream, [and] tested and accepted by the Economic Development Department...." These conditions made it clear that the County had no obligation to tender *any* payment to Mainstream unless it satisfied very specific criteria. And only upon full certification and acceptance by the County that the project was complete would any obligation of the County be triggered.

In March 2021, the County was allocated \$12,236,623.00 in State and Local Fiscal Recovery Funds under the American Rescue Plan Act ("ARPA"). Due to the initially limited eligible uses of the ARPA funds, the County began to look into whether ARPA allowed for the County's allocation of funds to be used towards its ongoing broadband project. As of March 3, 2021, the County had still not incurred any expense on the project and by the terms of the Agreement had not yet become obligated to make any payment to Mainstream. In fact, Mainstream was still constructing the fiber backbone cable in Warrick County and, under the terms of the Agreement, the County had not yet even investigated whether the installation of fiber was satisfactory, compliant, and operational – all of which was ultimately under the final discretionary acceptance of the County.

In investigating the ability of the County to apply a portion of its ARPA funds towards the broadband project, counsel for Warrick County conducted an extensive, months-long review of all available guidance from Treasury, as well as seeking independent analysis from other lobbying groups and legal counsel to County government units throughout the United States. In explaining the history of the broadband project, the terms of the Agreement, and what the County understood ARPA and Treasury guidelines to provide, each of the independent organizations from which the County sought expertise responded that they believed the use to be allowable under ARPA, and

that the fact that the Agreement – with conditional obligations of the County to be determined at a later date – was executed in 2018 did not preclude its eligibility.

Nevertheless, the County continued its effort to ensure that such an expense would be eligible, choosing not just to rely on the recommendation of other independent analysts. With respect to specific regulatory guidance, the County relied, among other things, FAQs issued by Treasury to help frame its understanding of the eligibility of the broadband project as a permitted expense. On June 8, 2021, Treasury issued a FAQ that directly pertained to the expense at issue:

- 4.7 Investments in Water, Sewer, and Broadband – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to make necessary investments in water, sewer, and broadband. See FAQ Section 6. **Recipients may use Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the Coronavirus State and Local Fiscal Recovery Funds were incurred after March 3, 2021.**

(emphasis added). This FAQ issued by the Treasury has never been deleted or modified by the IRS and remains posted on the IRS website to this day. The above Treasury FAQ on its face clearly serves as authoritative guidance that the County was permitted to apply a portion of its ARPA allocation towards costs associated with the broadband project that was started prior to March 3, 2021.

Even with the above FAQ guidance from Treasury, the County continued to conduct further due diligence to make as reasonably certain as possible that a payment to Mainstream would constitute an eligible expense. Specifically, the County looked for direction as to what “incurred” meant. To be sure, the Final Rule governing the use of the County’s ARPA funds has since addressed this confusion, stating “the deadline for costs to be incurred – which the final rule clarifies means obligated.” See *Coronavirus State and Local Fiscal Recovery Funds Final Rule*, pg. 355. It is important to note, however, that this clarifying statement was only made for the first time under the *Final Rule*, which was issued in January 2022 and with actual effective date of April 1, 2022. Finding 2021-001 places upon the County a requirement to know the content of the Final Rule issued in 2022 more than six (6) months after the funds were utilized based upon guidance then in existence.

However, back in July 2021 when the County was searching for the definition of “incurred,” there was no such clarifying language. At that time, the Treasury’s *Interim Final Rule* governed the County’s use of ARPA funds, which made it plainly obvious that no one, not even Treasury itself, knew what “incurred” meant within the context of ARPA, with the Interim Final Rule positing “the definition of ‘incurred’ does not have a clear meaning.” See *Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule*, pg. 97. This is especially relevant when considering how the Interim Final Rule addressed “obligations,” for which Treasury had no trouble or confusion in coming up with a definition (in contrast with “incurred”). It was only in the eventual Final Rule issued in January 2022 where Treasury decided that “incurred” and “obligation” suddenly had the same meaning, despite taking specific linguistic efforts in the Interim Final Rule to, at a minimum, differentiate them as separate, identifiable actions.

When this legal analysis was conducted and a decision was made back in 2021, the County only had the recommendations of the other resources it had sought who had concluded the expense was eligible under ARPA, and the on-point guidance from the above Treasury FAQ to assist in making certain it was a complaint use of ARPA funds. Again, at that time the Treasury took special, calculated effort to issue a FAQ establishing that a broadband project commenced prior to March 3, 2021 would not be penalized simply because it was planned or started prior to the “period of performance,” so long as the expense sought to be paid using ARPA funds was one that was incurred after March 3, 2021. *The County’s contribution to the broadband project was not approved by the County, and therefore no obligation to contribute pursuant to the contract existed, prior to March 2, 2021.* Taking all of this together, the County reached the reasonable and easily justifiable conclusion that Treasury clearly intended for ARPA funds to be available to cover costs like those incurred by the County on its broadband project which started prior to March 3, 2021

(i.e., October 18, 2018), because the project costs for which the County was allocating a portion of its ARPA funds would be in fact incurred *after* March 3, 2021. Given the self-admitted lack of “clear meaning” as to what “incurred” meant while the Interim Final Rule was still in effect, it is baffling how the County could be expected to reach any other conclusion.

And so, on July 23, 2021, Mainstream completed and the County finally accepted and certified Mainstream’s construction and lighting of the backbone fiber cable under the Agreement, thereby triggering for the first time any actual obligation by the County and incurring its very first expense under the broadband project for purposes of ARPA. A portion of this payment was made on or about September 1, 2021 from the County’s allocation of ARPA funds, all pursuant to a validly executed Subaward Agreement in compliance with all federal rules and regulations associated with subawards of ARPA funds.

Summary.

The County conducted an exhaustive amount of due diligence to determine the eligibility of applying a portion of its ARPA funds towards a broadband infrastructure project that met, and continues to meet, the necessary criteria for such a project under ARPA. In addition to seeking counsel from outside legal resources, the County also pored over all rules and regulations issued by Treasury while forming its comprehensive legal opinion as to the viability of the payment. In addressing the “period of performance,” the County justifiably relied on Treasury’s very own FAQs which clearly authorized the use of ARPA funds to cover costs of broadband projects which began prior to March 3, 2021, so long as the cost itself was “incurred” after March 3, 2021. At the time, ARPA was governed by the Interim Final Rule which acknowledged that “incurred” had no clear definition and gave no inclination that recipients should consider it to mean the same thing as “obligated.” Rather, that clarification only came into effect on April 1, 2022 with the adoption of the Final Rule, well after the County’s payment of a portion of its ARPA funds was made to Mainstream. Instead, in July 2021 the County could only look to the Interim Final Rule, which offered no further guidance, and the aforementioned FAQ which, when read through a legal construction lens (if not a common sense one) was as on-point guidance as the County could have expected. Taking Treasury at quite literally its own word, the County accurately concluded that, although the broadband project was commenced prior to March 3, 2021, the terms of the Agreement were such that the financial responsibility of the County for those costs remained unfulfilled and uncommitted unless and until the project was actually completed and the County accepted the installation and performance of the fiber in its discretion. As of March 3, 2021, no such financial responsibility existed under the contract. On the contrary, only on July 23, 2021, after the performance tests were completed to the satisfaction of the County and after a final determination was made by the County to agree to be obligated to make a payment under the contract, was there any expense charged to Warrick County for the project. Under the clear reading of the Interim Final Rule and subsequent guidance from Treasury, this makes the expense for which the County applied some of its ARPA funds as being “incurred” well after March 3, 2021, and therefore squarely within the “period of performance” as it relates to ARPA.

For these reasons and more, Warrick County firmly rejects any finding of the SBOA that it’s payment of ARPA funds to Mainstream was outside the “period of performance,” lacked sufficient internal controls, was somehow noncompliant with ARPA, and certainly that it constituted a “questionable cost” – a finding that SBOA has yet to clarify or supplement with any further explanation.

Description of Corrective Action Plan:

N/A

Anticipated Completion Date:

N/A

OTHER REPORTS

In addition to this report, other reports may have been issued for the County. All reports can be found on the Indiana State Board of Accounts' website: <http://www.in.gov/sboa/>.