

RESOLUTION 75 - 22

RESOLUTION OF THE BOROUGH OF CLAYTON AUTHORIZING EXECUTION OF ANY AND ALL DOCUMENTS NECESSARY FOR PARTICIPATION IN THE LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM (LIHWAP)

WHEREAS, access to safe and affordable drinking water and wastewater services is a fundamental element of health, safety, and well-being for households across America; and

WHEREAS, for many low-income households across America, water affordability needs have been significantly exacerbated by the COVID-19 public health crisis, and while water is required to follow the federal guidance from the Centers for Disease Control and Prevention (CDC) advising washing hands frequently in order to reduce the transmission of Covid-19, the pandemic has made it significantly more difficult for individuals and families to pay their home drinking water and wastewater bills; and

WHEREAS, the Low-Income Household Water Assistance Program (LIHWAP) provides critical nationwide emergency support; and

WHEREAS, LIHWAP, a federally funded, State of New Jersey facilitated, COVID-19 relief related assistance program has been made available to the Borough of Clayton Water and Sewer Utility; and

WHEREAS, in order for eligible residents in the Borough of Clayton to participate in this program, the Borough must enter into a Contract for Services with the Low-Income Household Water Assistance Program (LIHWAP) through the New Jersey Department of Community Affairs.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey that Mayor and/or Borough Administrator be and is hereby authorized to execute the Contract for Services with the Low Income Household Water Assistance Program (LIHWAP) NJ Department of Community

Affairs, the Data Sharing Agreement Between the State of New Jersey Department of Community Affairs and the Borough of Clayton Water Sewer Utility, and any other documents necessary for participation in the Low Income Household Water Assistance Program.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey on March 24, 2022.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

ATTEST:



Christine Newcomb, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on March 24, 2022.

Christine Newcomb, Borough Clerk

DATA SHARING AGREEMENT
BETWEEN
THE STATE OF NEW JERSEY, DEPARTMENT OF COMMUNITY AFFAIRS
AND
CLAYTON WATER DEPARTMENT

I. PARTIES

This Data Sharing Agreement (“Agreement”) is made and entered into by and between the New Jersey Department of Community Affairs (“Department”) whose address is 101 South Broad Street, PO Box 800, Trenton, N.J. 08625-0037, and the Borough of Clayton Water and Sewer Utility, serving as a participating vendor in the Low-Income Household Water Assistance Program (“LIHWAP”) (referred to as “Utility Company”), whose address is 125 N. Delsea Drive, Clayton, NJ 08312. When executed by the Parties, this Agreement shall become effective as of the date of the last signature set forth below.

II. PURPOSE

The purpose of this Agreement is to establish the terms by which the Department and the Utility Company, will share customer information. As a participating vendor, Utility Company is eligible to receive direct payment based on customer’s eligibility for the LIHWAP, the Temporary Assistance for Needy Families (“TANF”) and/or Food Stamp programs and any other program where the customer’s eligibility has already been determined by the Department, or through an eligibility determination process for those customers who are not currently participating in a program administered by the Department.

III. LEGAL AUTHORITY

The Consolidated Appropriation Act 2021 (P.L. 116-260, 2020) and the American Rescue Plan Act of 2021 (P.L. 117-2, 2020) provided the Department with funding to provide relief to assist low-income households with water and wastewater bills. As a result, the Department implemented the LIHWAP Program, to provide relief in the form of benefits directly to water and waste water utility companies. The Department entered into a Grant Implementation Plan that was submitted to the United States Department of Health and Human Services, Administrative for Children and Families, that allows it to receive necessary customer data from the participating Utility Company.

IV. RESPONSIBILITIES OF THE PARTIES

- A. **Warranties** The Parties make no warranty, either express or implied, regarding the accuracy, reliability, completeness, or suitability of the information for any particular purpose.
- B. **Access to Customer Data** This Agreement covers the Department and the Utility Companies sharing of customer data for the purpose of implementing the LIHWAP Program. Customer data is defined as the customer's name, mailing address, e-mail address, utility account numbers, phone number and amount owed ("Customer Data"). Neither Party is authorized to add to, amend, or delete information contained in the others Customer Data, in any manner whatsoever.
- C. **Information Provided** The Utility Company shall provide the Department with an up-to-date list on the 15th of every month of all Utility Company customers that are overdue on either their water or sewer bills in order to permit the Department to provide, by regular mail, to all such Utility Company customers notice of their possible eligibility to participate in the LIHWAP to assist in making outstanding payments for water and/or sewer bills.

A list of eligible Utility Company customers seeking to participate in the LIHWAP will be provided to the appropriate Utility Company and the named customers shall be enrolled in the LIHWAP on the 15th of every month.

- D. **Use of Information** The Department agrees to collect individual Customer Data through an encrypted email or similar secure process. The Department shall restrict access to the Customer Data received to employees or workforce that need the Customer Data to perform their official duties in connection with the purpose of this Agreement. Any Department employee or workforce who access, disclose or use the Customer Data in a manner or for a purpose not authorized by the Agreement may be subject to civil or criminal sanctions contained in applicable federal or state statutes. Customer Data shall be processed so as to protect the confidentiality of the data, and in such a way that unauthorized persons cannot retrieve such records by means of computer, remote terminal, or any other means. Customer Data obtained under this Agreement shall not be disclosed to any third parties, unless otherwise specified in this Agreement.

The Department will limit access to the individual customer data to only those employees or authorized representatives required to determine LIHWAP eligibility and to make LIHWAP payments, and who are otherwise bound by the confidentiality obligations contained herein.

The Utility Company agrees to limit access to the data to only those employees and officials who need it to perform their official duties in connection with the LIHWAP Program.

It is expressly understood and agreed by the Utility Company that no lists of LIHWAP recipients will be developed or maintained by any Utility Company and the identifying information contained on any LIHWAP check will be used solely for the purpose of applying the amount of the benefit to the recipient's water/sewer utility account.

E. **Confidentiality** The Utility Company understands and agrees that pursuant to statutes, regulations, and policies, certain information provided by the Department to the Utility Company is deemed confidential. The Utility Company understands and agrees that it is obligated to ensure that no confidential information shall be disclosed to any third party, except so as to effectuate the purpose as stated in this Agreement or as required by law.

- a. The Utility Company further agrees to maintain the same standard of confidentiality in accordance with 45 CFR 205:50(a) (2) (11); and
- b. To advise all Utility Company personnel who will have access to the data of the confidential nature of the information, the safeguards required, and the criminal and civil sanctions for non-compliance contained in Federal Statutes, such as Section 1106(a) of the Social Security Act, 5 U.S.C. 5522a(i), and Section 7217 of the Internal Revenue Code, and any other relevant State Statutes.

F. **Requests for Information** Any receipt by a Utility Company of a request under the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 ("OPRA"), by subpoena or any other manner of request for any records of individual recipients of assistance from the Department, shall be provided by the Utility Company to the Department within 24 hours of receipt in order to allow the Department to timely assert any privilege associated with a Utility Company customer's participation in an assistance program.

F. **Liability** The Department assumes no liability for the improper or illegal use of information obtained from the Department and provided to the Utility Company.

The Utility Company assumes no liability for the improper or illegal use of information obtained from the Utility Company and provided to the Department.

H. **Compliance with Applicable Law** The Parties agree that in the performance of this Agreement they shall comply with all applicable State, and Federal laws and regulations, including, but not limited to, laws and regulations which address the confidentiality of the records/data and information contained in the Parties files.

I. **Parties' Representatives** The Department's representative is _____, or the duly appointed successor. The Department representatives are authorized to receive correspondence, including notices referenced in this Agreement and/or otherwise pertaining to its subject matter. However, notifications as to data breaches or incidents shall be communicated as set forth in Subsection V of this Agreement.

The Utility Company's representative is Donna Nestore, Chief Financial Officer. The Department and the Utility Company's representatives may agree to designate specific employee(s) as a contact person responsible to produce/receive the customer information.

V. DATA BREACH OR INCIDENT NOTIFICATION

- A. The Parties agree to immediately, by telephone and email, notify the other Party upon the discovery of: a data breach or incident (suspected or actual) related to the Customer Data or participation in the LIHWAP Program, or a data breach or incident (suspected or actual) of a program having confidential Customer Data that has resulted in the disclosure of confidential Customer Data.

Each Party reserves the right to conduct an assessment of and/or bring in a third party to work with the Utility Company or Department on any incident (suspected or actual), data breach, intrusion, loss or unauthorized use or disclosure of the Customer Data in violation of this Agreement.

The Utility Company shall submit such notification to the Department of Community Affairs at _____. The Department shall submit such notification to the Utility Company at dnestore@claytonnj.com.

- B. Ensure that the initial notification includes contact and component information; a description of the incident and/or data breach, loss with scope, numbers of files or records, type of equipment or media, approximate time and location of incident and/or data breach or loss; description of how the data was physically stored, contained, or packaged (e.g., password protected, encrypted, locked briefcase, etc.); whether any individuals or external organizations have been contacted; and whether any other reports have been filed.
- C. Take prompt corrective action to mitigate any risks or damages involved with the incident and to protect the operating environment.
- D. Investigate the incident (suspected or actual) and produce a written incident report within two (2) business days of the incident, detailing what data elements were involved; a description of the unauthorized persons known or reasonably believed to have improperly used or disclosed customer information; a description of where the customer information and their participation in the LIHWAP is believed to have been improperly transmitted, sent, or used; a description of the probable cause of the incident; a detailed corrective action plan including measures that were taken to halt and/or contain the incident. The Utility Company shall submit the incident report to the Department of Community Affairs at _____. The Department shall submit the incident report to the Utility Company at dnestore@claytonnj.com.

The Party suffering from the breach will notify individuals of the incident (suspected or actual), data breach or unauthorized use or disclosure of the customer's participation in the LIHWAP Program, when applicable state or federal law requires notification. The Utility

Company shall obtain the approval of the: Department of Community Affairs, Information Technology, John Harrison, John.Harrison@dca.nj.gov, for the time, manner and content of any such required notifications. The Department shall obtain the approval of the Utility Company, Clayton Borough Administrator, Susan Miller, smiller@claytonnj.com. The Party that has experienced a breach shall be responsible for the cost of such notification to the extent that such data breach or unauthorized use or disclosure is due to the negligence or intentional misconduct of the Party. To the extent, such data breach or unauthorized use or disclosure is due to the negligence or intentional misconduct of the Party who experienced the breach that Party shall be responsible for notifying individuals and shall be responsible for any costs of notification. If there is any question as to whether the Department or the Utility Company is responsible for an incident, data breach or unauthorized use or disclosure of the customer information, the breached Party shall issue a notice and Utility Company and the Department shall subsequently determine responsibility for purposes of allocating the costs of such notices.

- E. In the case of an incident, data breach, theft, unauthorized use, disclosure, or crime related to the Customer Data maintained by either Party or the information contained therein, the Parties reserve the right to involve state and/or federal law enforcement officials in a data breach investigation, and/or involve a third party, including but not limited to specialists or subject matter experts, to help or conduct an independent investigation of any data breach or incident. The Parties agree to fully cooperate with any assessment or investigation related to a data breach or incident. In cases where notification to the other Party may compromise an ongoing assessment or criminal investigation of a data breach or incident, the Parties reserve the right to NOT provide notice. However, to the extent where such notice would not compromise an ongoing assessment or criminal investigation of an incident, data breach, theft, unauthorized use, disclosure, or crime related to the Customer Data, including their participation in the LIHWAP Program maintained by either Party, the investigating Party will provide written notice to the other Party regarding the existence of said assessment or criminal investigation.

V. MISCELLANEOUS

- A. **Termination** This Agreement shall remain in effect until terminated as follows:

- Unilaterally and immediately by the Department for any reason, upon 14-days' written notice to the Utility Company;
- Unilaterally and immediately by the Utility Company, for any reason, upon 14-days' written notice to the Department; and
- Mutually upon written agreement of the Department and the Utility Company, at any time.

- B. **Subject to the Availability of Funding** The Department's obligations under this Agreement are subject to appropriations and the availability of funds. A failure by the

Department to make any payment required by this Agreement or to observe and perform any condition on its part to be performed under this Agreement as a result of the failure of the Legislature to appropriate necessary funds shall not in any manner constitute a breach or default by the Department and the Department shall not be held liable in any manner whatsoever because of the absence of available funding.

- C. **Amendment/Waiver** This Agreement cannot be amended, modified, or revised unless done so in writing signed by the Parties. No provision may be waived, except in a writing signed by the Parties. The failure of a Party to enforce any provision of this Agreement, or to require performance by the other Party, will not be construed to be a waiver, or in any way affect the right of either Party to enforce such provision thereafter.
- D. **Assignment** This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. No permitted assignment shall relieve a Party of any of its responsibilities under this Agreement. Any assignment in violation of this Section shall be void. This Agreement shall be binding upon the Parties and their respective successors and assigns.
- E. **Third Party Beneficiary Rights** The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the Parties and shall inure solely to their benefit. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under its terms. The parties intend and expressly agree that only they shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance of, or failure to perform, in accordance with any term or condition of this Agreement, or to bring an action for the data breach of this Agreement.
- F. **Entirety of Agreement** This Agreement, including any amendment executed by all parties and incorporated into this Agreement, is complete and contains the entire understanding among the parties relating to the subject matter contained herein, including all terms and conditions. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties hereto, whether written or oral.
- G. **Governing Law** This Agreement shall be governed by the law of the State of New Jersey.
- H. **Unenforceability and Severability** If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
- I. **Indemnification Obligations of the Parties**

The Department. Subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and appropriations and the availability of funding, the Department shall, at its own expense, be responsible for and

defend itself against any and all suits, claims losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the Department, its employees, representatives, agents, independent contractors or invitees, related to this Agreement.

AND

The Utility Company. The Utility Company shall, at its own expense, be responsible for and defend itself against any and all suits, claims losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the employees, representatives, agents, independent contractors or invitees of the Utility Company and/or its Represented Agencies, related to this Agreement.

J. **Section Headings** Section Headings that appear in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

IN WITNESS WHEREOF, the terms of this Agreement have been read and understood by the persons whose signatures appear below, the parties have executed this Agreement.

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

By: _____

Dated: _____

UTILITY COMPANY

By:  _____
Mayor

Dated: 3/24/22



New Jersey Department of Community Affairs
Division of Housing and Community Resources
Low Income Household Water Assistance Program (LIHWAP)
LIHWAP@dca.nj.gov

CONTRACT FOR SERVICES
BETWEEN
NJ DEPARTMENT OF COMMUNITY AFFAIRS (LIHWAP)
AND
CLAYTON WATER DEPARTMENT

This Vendor Contract is entered into by and between the State of New Jersey, Department of Community Affairs, Division of Housing and Community Resources under the following terms:

1. Definitions

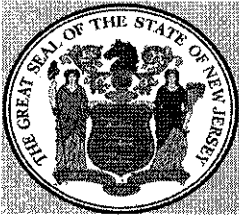
- a) Department means the New Jersey Department of Community Affairs.
- b) Division means the Division of Housing and Community Resources.
- c) LIHWAP means the Low-Income Household Water Assistance Program.
- d) LIHWAP payment includes home drinking water and wastewater benefits.
- e) Vendor means any private or public entity in the business of supplying water and/or wastewater related services to customers.
- f) LIHEAP means the Low-Income Home Energy Assistance Program.

2. The Division agrees to the following:

- a) To provide funds for LIHWAP.
- b) To assign a vendor number/business code to each Vendor after the contract is signed.
- c) To issue to a Vendor a single check or Automated Clearing House (ACH) payment that includes benefits for all LIHWAP eligible households. A payment register shall precede the check or ACH deposit. The register includes the name of the LIHWAP applicant, the account name and number, the amount(s) to be applied to each customer, and the address and county of residence of the applicant.

3. The Vendor agrees to the following:

- a) To provide water and/or wastewater services to each eligible residential household in an amount equal to the LIHWAP payment received in the current program year.
- b) To charge LIHWAP eligible households using the Vendor's normal billing process.
- c) To charge all LIHWAP eligible households the price normally charged for home drinking water and/or wastewater supplied to non-eligible households.
- d) Not to discriminate against a LIHWAP eligible household with respect to terms, deferred payment plans, credit, conditions of sale or discounts offered to other customers.
- e) To provide to the Division, upon request, with written reconciliation and confirmation that benefits have been credited appropriately to households and their services have been restored, if terminated, on a timely basis or disconnection status has been removed, if applicable.
- f) To apply LIHWAP payments identified in the payment schedule as directed by the Agency and/or Division.
- g) To post all payments to customer accounts within 3-5 business days upon receipt of payment register.
- h) To clearly enter on LIHWAP households' bill the amount of LIHWAP payment(s) received in a manner which identifies the payment as received from the New Jersey Low Income Household Water Assistance Program or LIHWAP.



- i) To immediately enter into a Deferred Payment Agreement (DPA) with those households whose LIHWAP benefit did not resolve the arrears in its entirety and not terminate services to such households and to not disconnect their service. After receiving LIHWAP payment for restoration of water services, vendors must maintain services for at least 90 days.
- j) Not to charge late fees, interest and penalty charges on outstanding amounts not covered by LIHWAP benefits.
- k) To provide monthly statements to LIHWAP households clearly indicating the cost of home drinking water and/or wastewater services provided.
- l) To send all refunds in compliance with LIHWAP Vendor refund policies no later than September 30, 2022.
- m) To comply with LIHWAP Vendor refund policies, maintain supporting fiscal records for five years, or such longer period as may be required pursuant to law, and provide records to Division representatives upon request.
- n) To fully cooperate with the Division's monitoring practices, including but not limited to, providing requested documentation within set time frames, as well as communicating with Division staff.
- o) To provide at no cost to the Department, Division, or its Agencies and the customer, written information on an applicant household's home drinking water and/or wastewater costs, arrearage history for no more than the previous 12 monthly billing periods.
- p) To comply with all New Jersey laws, regulation, or other requirements pertaining to the supply of home drinking water and/or wastewater services for residential use. In the event of any dispute between the Department, Division or its Agencies and the Vendor, New Jersey law shall govern and the venue for any legal action arising out of this contract shall be At the Department of Community Affairs, Division of Housing and Community Resources, 101 South Broad Street, Trenton, New Jersey.
- q) To provide, within a timely manner and at no cost to the Department, Division or its Agencies, information on household water and/or wastewater costs and usage for participants of LIHWAP at the Department's request for purposes of research, evaluation, and analysis.
- r) To report to the Department, Division or its Agencies situations that threaten life, health, or safety.
- s) To cooperate with the Department, Division and/or its Agencies in developing procedures to respond to immediate and potential emergencies, which includes the provision of household water and/or wastewater services based on the documented promise to pay using LIHWAP funds.
- t) To cooperate with the Agency in providing home drinking water and/or wastewater services to eligible households.
- u) To provide in writing to the Department, Division or its Agencies with business practice and contact information and to notify the Division of any changes.
- v) To comply with the terms of this contract for customers who have LIHWAP payments transferred from another Vendor.
- w) To notify the Department, Division, or its Agencies of mergers and/or acquisitions. Mergers and/or acquisitions may affect the company's policies and service areas. Submission of a new vendor contract may be required within ten business days, reflecting such policy and service area changes.
- x) To hold the Division harmless and to indemnify the Division, the Department, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of Vendor, or its agents, office, employees or subcontractor. Notwithstanding anything else herein to the contrary, in no event will either party be liable to the other for any incidental, indirect, special, consequential, punitive damages, or lost profits.

4. Length of Contract

- a) This contract is in effect from the date it is executed until terminated as described in the 'Termination' section.



5. Termination

- a) This contract will terminate effective immediately at the discretion of the Department, Division or its Agencies, upon determination that the Vendor is not in compliance with the terms of this contract. The Vendor will be notified in writing within ten business days of termination.

6. Entire Contract

- a) It is understood and agreed that the entire contract between the parties is contained in this Vendor Contract.
- b) This contract supersedes all previous commitments, promises, representations, either oral or written, between the parties relating to the subject matter hereof.
- c) The person signing this contract, on behalf of the Vendor, certifies and attests that they have full and complete authority to bind the Vendor, on whose behalf they are executing this document.

By typing my name in the provided field, I indicate that I am the person named, and this entry is the legal equivalent of a manual/handwritten signature. I further understand that I may print the document and sign by hand.

Vendor Signature

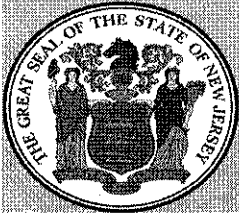
3/24/22
Date (mm/dd/yyyy)

New Jersey LIHWAP Signature

Date (mm/dd/yyyy)

Low Income Household Water Assistance Program (LIHWAP) Vendor Refund Policy

1. Credit Balances - If no change occurs in the residence of the LIHWAP recipient and the recipient retains the same supplier with an active account, the credit balance of LIHWAP funds remains with the Vendor until exhausted.
2. Unclaimed Credit Balances - In the event there is a balance of LIHWAP funds remaining on an account AND the account becomes inactive, AND the Vendor is unable to locate the customer, the balance of the funds is to be returned, by check, to the Division by the end of each program year (September 30). The returned check shall include all information listed in item number seven of this Refund Policy.
3. Move Within State and Change of Water and/or Wastewater Services Provider - If the LIHWAP recipient changes water and/or wastewater services providers or moves to another residence within the state and has a relationship with a new provider, the Vendor holding the credit balance of the LIHWAP payment(s) must transfer the balance to the new water and/or wastewater services provider (Vendor) or new account.
4. Move and No Relationship with Vendor - When a LIHWAP recipient moves his or her household and as a result the recipient has no direct relationship with a Vendor, any credit balance of LIHWAP payments is to be returned by check to the Division with the information listed in number seven of this Refund Policy.
5. Move Out of State - When a LIHWAP recipient moves out of New Jersey, any credit balance of LIHWAP payments shall be returned by check to the Division with the information listed in number seven of this Refund Policy.



6. Deceased Recipient - In the event a credit balance remains, and the account is closed, the credit balance will be refunded to the program no later than the end of the program year (September 30). Submit a check to the Division with the information listed in number seven of this Refund Policy.
7. Return Address for Refunds to the State of New Jersey - Mail refunds to:
 - NJ Department of Community Affairs
 - Division of Housing and Community Resources
 - Low-Income Household Water Assistance Program
 - ATTN: LIHWAP REFUND
 - 101 South Broad Street (5th Floor)
 - Trenton, NJ 08625-0811

Refunds must include the following information: Customer name, Customer address, Date of LIHWAP payment to Vendor, Reason for the return.
8. Vendor Payments – All LIHWAP payments made to a Vendor shall be applied to current water and/or wastewater services costs. LIHWAP payments that exceed current costs shall be applied as credit to the customers' account. Credit balances shall be handled in accordance with the policies of this contract. Any balance remaining shall be credited to the customers' account.
9. Incorrect Payments – All Vendors are required to review the weekly payment register for accuracy of LIHWAP payments. In the event a payment is made in error, the Vendor shall contact the Division's Help Desk at LIHWAP@dca.nj.gov. Contact must occur within 30 days to correct the error. If payments are made in error, any corrections needed will be determined by the Division.