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September 2017

Arthur J. Nastre, Chairman  
Board of Directors  
Hempstead Industrial Development Agency  
350 Front Street, Room 234-A  
Hempstead, New York 11550

Report Number: S9-15-68

Dear Chairman Nastre and Members of the Board of Directors:

A top priority of the Office of the State Comptroller is to help local officials manage their resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits can also identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six Industrial Development Agencies (IDAs) throughout New York State. The objective of our audit was to determine whether the IDA's Board of Directors provides effective oversight of the IDA's projects. We included the Hempstead IDA (Agency) in this audit. Within the scope of this audit, we examined the Agency policies and procedures and reviewed records and project files for the audit period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to February 24, 2005. This audit was conducted pursuant to Article X, Section 5 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This draft report of examination letter contains our findings and recommendations specific to the Agency. We discussed the findings and recommendations with Agency officials and considered their comments, which appear in Appendix B, in preparing this report. Agency officials generally agreed with our recommendations and indicated they plan to initiate corrective action. At the completion of our audit of the six IDAs, we prepared a global report that summarizes the significant issues we identified at the IDAs audited.

## **Summary of Findings**

We found that, while the Board of Directors (Board) generally provides effective oversight of the Agency's operations, some improvements could be made. While the Board uses a standard project application, it has not developed project selection criteria and does not require applicant information to be verified or confirmed before it approves a project for financial assistance. Although the use of project selection criteria was not required at the time of our audit, legislation that became effective June 2016 requires IDAs to develop and use project selection criteria for new projects. Board members use their collective personal knowledge to evaluate the applicant's cost estimates and job creation goals.

The Agency has been performing analysis comparing project job goals versus actual employment since at least 2007 and reports this information to the Board via its annual compliance review. The report is used to monitor a project's progress and determine whether financial assistance should be clawed back or terminated. For projects falling short of job goals, a letter or memo of justification is required explaining to the Agency the reason for the shortfall. However, the information submitted by project owners was not verified. Although Agency officials were not required by statute to verify submitted project information, Agency officials should ensure that the submitted information reflects the actual results of project activity. The Board did not require project owners to provide documentation to support the number of jobs or salaries the projects were expected to create. However, Agency officials explained that starting in 2017, project owners will be required to annually submit a New York State-45 form to verify project employment and salaries.

While the Board adopted a Uniform Tax Exemption Policy (UTEP), as required, which includes provisions for the recapture or "claw-back" of financial assistance when project goals are not met, the Board has not established procedures to follow to implement a claw-back. In addition, the UTEP does not clearly state when financial assistance should be recovered or terminated. The decision to recapture is done on a case-by-case basis. However, the Board has terminated projects for failure to meet project goals. In our sample of five projects, the Board terminated two projects. It terminated one project for not providing annual employment information and another project for not meeting deadlines set by the Board including job creation goals.

## **Background and Methodology**

An IDA is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State.

IDAs are authorized to provide financial assistance for certain types of projects. Financial assistance includes the issuance of bonds by the IDA to finance construction of a project and straight-lease transactions. Since the property and activities of IDAs are tax exempt, the IDA may pass the benefits of certain tax exemptions (e.g., real property, sales and mortgage recording taxes) to the private entities that undertake the projects. The loss of revenue associated with these tax exemptions can be offset with an agreement for payments in lieu of taxes (PILOTs), under which the private entity agrees to pay all or a portion of the taxes that would otherwise have been imposed

had the project not been an IDA project. The role of the IDA is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements.

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>1</sup> For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

The Agency, created in 1971, is governed by a Board composed of seven members who are appointed by the Town Board. The Board is responsible for the general management and control of the Agency. A Board member's role and responsibilities include executing direct oversight of the Agency's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies; and performing their duties "in good faith and with the degree of diligence, care and skill which an ordinary prudent person in a like position would use under similar circumstances."<sup>2</sup> An Executive Director and Deputy Executive Director, along with other staff members (officers), manage the Agency's day-to-day operations.

For calendar year 2014, the Agency's annual report included 81 active projects including 12 active bonds and 69 active PILOT agreements. The Agency had approximately \$1 million in expenditures in 2014, funded exclusively with fees charged for processing project applications and for administering benefits granted to projects it approves.

To complete our objective, we interviewed the Board members and Agency officials, and we examined Agency records and project files for the period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to February 24, 2005.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

## **Project Approval**

The Board is responsible for reviewing the merits of each project and then making project approval or denial decisions. Because tax benefits granted by the Board to approved projects result in a cost to the community, it is important for the Board to evaluate the merit of each project and the benefits the community should realize from the Agency's investment. Promoting the use of a standard application when project owners request financial assistance from the Agency can help ensure consistency in project evaluation. Although not required at the time of our audit, the Board should adopt uniform criteria for the evaluation and selection of each category of projects (e.g.,

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<sup>1</sup> Chapter 563 of the Laws of 2015.

<sup>2</sup> New York State Public Authorities Law, Section 2824

manufacturing, wholesale, distribution, retail, tourism and housing) for which financial assistance would be provided. Such practices should also include documenting the rationale for approving financial assistance and verifying information provided in the application.

As a matter of good business practice, a standard application should include, among other things:

- A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;
- The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;
- A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;
- A statement that the information is true under penalty of perjury;
- A statement that Agency assistance is necessary to undertake the project; and
- A statement that the project owner is in substantial compliance with all laws, rules and regulations.

Good business practices also promote that an IDA's uniform evaluation criteria should, at a minimum, require that prior to approval of any financial assistance, the IDA should verify and evaluate all material information provided with the application. It should also undertake a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector jobs generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.

We found that the Board uses a standard project application. However, although not required during our audit, the Board did not develop uniform project selection criteria and it does not document its rationale for awarding financial assistance. We also found that, although the application includes a description of the project, cost and performance estimates, and other pertinent information, the Board does not require information such as job retention estimates to be verified or confirmed before the Board votes on awarding financial assistance to the applicant. Board members use their collective personal knowledge to evaluate the applicant's cost estimates and job creation goals.

In addition, the standard application did not include a statement that information is accurate under penalty of perjury and does not require the submission of information on fringe benefits estimates for jobs created or retained. While this information was not required to be part of a project agreement at the time of our audit, it is required under the new legislation for new projects.

As a result, on July 1, 2016 the Agency began using a revised standard application which contains the new legislation's requirements.

We judgmentally selected five projects with project costs totaling about \$147 million to review the project selection process (Figure 1).

<b>Figure 1: Summary of Five Projects Reviewed</b>		
<b>Project Approval Date</b>	<b>Description</b>	<b>Project Cost</b>
101 Uniondale LP (9/17/2014)	Acquisition of a 615-room, 10-story full service hotel	\$69,000,000
HP Lynbrook, LLC (10/22/2014)	Acquisition and rehabilitation of an office building	\$42,360,000
AMB Fund III Mosaic (7/1/2008)	Acquisition of a freight facility	\$19,550,000
PDC Corporation (3/12/2012)	Acquisition, expansion and renovation of a building	\$13,059,850
Rose Fence (2/24/2005)	Facility expansion	\$3,116,000

Agency officials could not provide criteria that was used to evaluate the five projects, and the Board did not document how it arrived at its decision to approve these projects. Board minutes reflected that the projects were approved to receive assistance and Agency monitoring efforts after project approval. Monitoring efforts including the annual review of project goals versus current project employment and other requirements, such as requiring project owners to submit annual employment information or meet Agency expectations. Figure 3 in Appendix A provides additional details on the tax exemptions received by these projects.

### **Project Monitoring**

A significant Board responsibility is to monitor and evaluate the performance of projects receiving financial assistance to determine whether they are meeting the goals included in their applications, such as the number of jobs to be created. The Board should evaluate each project's performance to ensure the project fulfills the commitments made to the residents in exchange for the financial assistance awarded. Although not required at the time of our audit, a uniform project agreement between the IDA and the project owners receiving financial assistance should be in place and used to monitor and evaluate projects' performance. In addition, Agency officials should also use each project's required annual status report to assist in monitoring project performance. Without effective monitoring, the community may not receive the expected benefits from the financial assistance provided.

The Board uses a uniform project agreement, including a UTEP, actively monitors projects, and is provided with project status reports detailing the number of jobs each project created or retained compared to each project's job goals. For all projects that have not met their job goals, an explanation for the shortfall must be provided. Agency officials also review the project's prior year performance to see whether improvement has been made. Board minutes often contain discussions pertaining to project performance or job performance goals.

Project Agreements – To properly monitor projects, IDAs should adopt and use uniform project agreements. A uniform project agreement should, at a minimum, include:

- The Agency purpose to be achieved by the project;
- A description of the project and the financial assistance to be provided;
- A requirement for an annual certification by the project owner, occupant or operator of full-time equivalent jobs created and retained as a result of the financial assistance;
- The dates when PILOT payments are to be made and estimates of the amounts or formulas by which these amounts are calculated;
- A provision for the suspension or discontinuance of financial assistance, or for the modification of any PILOT agreement to require increased payments, for certain defined performance shortfalls;
- A provision for the return of all or a part of the financial assistance provided for in accordance with Agency policy; and
- A provision that the business certify, under penalty of perjury, that it is in substantial compliance with all laws, rules and regulations.

The Agency's project agreement contains most of the best practice components. However, for our sample of five projects, we found the project agreements were missing components that could help the Agency more effectively monitor the projects. For example, the agreements did not state the Agency purpose to be achieved, require updated information if salaries or benefits for these jobs change, or state under penalty of perjury that the project owner is compliant with all laws and regulations. As of July 1, 2016, the Agency began using a new uniform project agreement that contains all of the new legislation requirements.

Additionally, all five projects included in our sample, dating back to 2005, contain provisions that allow for recapture of financial assistance if the projects do not meet the employment goals outlined in their project applications. Of the five projects in our sample, the Board voted to terminate PDC Corporation's financial assistance for noncompliance with timelines and failure to create the intended jobs. The Board also terminated Rose Fence's financial assistance for failure to provide updated project information to the Agency. Although the Board approved the 101 Uniondale project, its owner decided not to proceed with the project after the Board denied the owner's request for additional property tax abatements. AMB Fund II Mosaic did not meet its job goals. However, the project owner provided an explanation for its shortfall, which the Board accepted. The HP Lynbrook, LLC, project reported it exceeded its job goals.

Job Performance – At the time of our audit, the Board did not require project owners to provide documentation to support the number of jobs or salaries associated with the jobs they purportedly created or retained. While this documentation was not required during our audit, it would have provided Agency officials with information to assess whether each project's stated goals are being met. The Board and Agency officials relied on the project owner's integrity to ensure the number

of jobs created and retained are accurately reported. As a result, the Agency did not know if promised jobs were actually created or retained or if the employees were paid at rates stated in the project application. However, starting in the year 2017 the Agency will be requiring project owners to annually submit a NYS-45 form to verify employment figures and salaries.

We reviewed 65 approved projects<sup>3</sup> to determine whether they created and retained the number of jobs specified in their project agreements. We found 53 project owners agreed to create and/or retain 4,317.5 jobs and they reported they created and retained 9,379 jobs. However, the remaining 12 project owners reported they did not (Figure 2). For example, these projects should have created and retained a total of 1,291 jobs. The 2014 annual reports for the projects indicate that 1,050 jobs were created or retained, a shortfall of 241 (19 percent).

<b>Figure 2: Projects Falling Short of Job Creation and Retention Goals</b>			
<b>Project Approval Date</b>	<b>Job Creation and Retention Figures</b>		<b>Variance</b>
	<b>Project Agreement</b>	<b>2014 Annual Report</b>	
Hebrew Academy of the Five Towns (5/2/2003)	342	230	(112)
AMB Fund III Mosaic (7/1/2008)	127	85	(42)
Mental Association of Nassau County (9/10/2004)	157	130	(27)
Millenium Realty, LLC (1/21/2010)	147.5	126	(21.5)
Covanta Hempstead Company (5/9/2006)	94	84	(10)
HUH Hempstead BJ 2012 (12/19/2012)	250	240	(10)
Angion Biomedica Corp. (4/11/2011)	40	33	(7)
Summit Hotel OP, LP (12/19/2012)	33	27	(6)
Peninsula Counseling (1/30/2008)	86	83	(3)
Equus Power I LP (10/9/2003)	4	3	(1)
Hempstead Village Housing Association/Woods Edge (4/1/2005)	6	5	(1)
130 Hempstead Avenue Apartment Investors, LLC (1/23/2014)	4.5	4	(.5)
<b>Total</b>	<b>1,291</b>	<b>1,050</b>	<b>(241)</b>

<sup>3</sup> The Agency's 2014 annual report included 81 approved projects. Of these, we reviewed 65 projects that should have created or retained jobs, as they were not in the construction phase, assigned to a new project owner or terminated.

## Annual Reporting

IDAs are required to maintain specific information on all projects for which they approve financial assistance. While the project owner is responsible for providing project information to the IDA, the IDA is responsible for collecting and reporting the data. IDAs use this information to submit an annual report of their operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller. Before the Agency submits its annual report, the Board should review the information for accuracy. The Agency's chief financial officer (CFO) must then certify that it is complete and accurate. Good business practices require the Board to establish policies and procedures for obtaining and reporting reliable project information.

To develop the annual report, the Agency sends a letter to each project owner requesting updated project information, including current employment numbers. To determine whether the Agency correctly reported project information, we compared its 2014 annual report, which included 81 projects, to project documentation maintained by Agency officials. We found the information published in the Agency's annual report was accurate.

## Recommendations

The Board should:

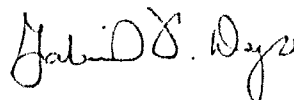
1. Develop and implement uniform project selection criteria and document the rationale for awarding financial assistance to project owners.
2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.
3. Develop and implement UTEP implementation policies and procedures including, but not limited to, clearly defining when a claw-back should occur.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Board Secretary's office.

Our office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief Examiner of the Statewide and Regional Projects Unit, at (607) 721-8306.

We thank Agency officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,



Gabriel F. Deyo  
Deputy Comptroller



## APPENDIX A

### PROJECT TAX EXEMPTIONS

<b>Figure 3: Tax Exemptions Provided to Projects</b>					
<b>Project Approval Date</b>	<b>Property Tax Abatement<sup>a</sup></b>		<b>Tax Exemptions</b>		<b>Total</b>
	<b>Received</b>	<b>Pending<sup>b</sup></b>	<b>Sales and Use</b>	<b>Mortgage Recording</b>	
101 Uniondale, LP <sup>c</sup> (9/17/2014)	\$5,640,302	\$0	\$0	\$0	\$5,640,302
HP Lynbrook, LLC (10/22/2014)	\$162,735	\$2,004,993	\$0	\$0	\$2,167,728
AMB Fund III Mosaic (7/1/2008)	\$898,042	\$281,994	\$0	\$0	\$1,180,036
Rose Fence <sup>c</sup> (2/24/2005)	\$57,666	\$0	\$413,608	\$244,965	\$716,239
PDC Corporation <sup>c</sup> (3/12/2012)	\$202,703	\$0	\$213,038	\$52,628	\$468,369
<b>Total</b>	<b>\$6,961,448</b>	<b>\$2,286,987</b>	<b>\$626,646</b>	<b>\$297,593</b>	<b>\$10,172,674</b>

<sup>a</sup> Amounts were calculated using PILOT payment and schedules from Agency officials and information in the project agreements.  
<sup>b</sup> Assumes a 2 percent annual tax rate increase.  
<sup>c</sup> Project terminated

## **APPENDIX B**

### **RESPONSE FROM AGENCY OFFICIALS**

The Agency officials' response to this audit can be found on the following pages.

INDUSTRIAL  
DEVELOPMENT  
AGENCY

FREDERICK E. PAROLA  
EXECUTIVE DIRECTOR  
CHIEF EXECUTIVE  
OFFICER

ARTHUR J. NASTRE  
CHAIRMAN

BOARD MEMBERS  
FLORESTANO GIRARDI  
JOHN R. FERRETTI  
WILLIAM HENDRICK  
ERIC C. MALLETTE  
STEVEN RAISER  
GERILYN S. SMITH



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IDAMAIL@TOHMAIL.ORG

May 11, 2017

Ms. Ann Singer  
Office of the New York State Comptroller  
44 Hawley Street, Ste. 1702  
Binghamton, New York 13901-4417

Dear Ms. Singer,

On behalf of the staff of the Town of Hempstead IDA, please accept this letter as our formal response to your draft audit report covering the period of January 1, 2014 through May 31, 2015 including selective review dating back to February 24, 2005. We thank you for the exit interview and appreciate the intent of these reports as well as the professionalism the staff was shown during the process. This Agency staff continues to make efficiency, accountability, transparency and accuracy our prime focus.

All new requirements defined and mandated in June of 2016 became effective and were implemented July 1, 2016. This includes, but is not limited to, the Universal application and the Recapture Agreement as a standalone policy. The Recapture Agreement is also defined within the closing documents and reflected in the Uniform Tax Exemption Policy.

Although our Uniform Tax Exemption Policy included recapture language, the IDA will again review and consider expanding upon, as appropriate, a more defined and concise procedure for recovery and or termination of a project. This will be developed using the Recapture Policy, adopted in 2016, as a guideline.

With regard to employment verification, this Agency takes the responsibility of job creation and retention very seriously. The Agency has had a long standing compliance verification process that includes the monitoring of employment and financial benefits granted to all projects. This process includes gathering data by a notarized affidavit (using the recommended language of "Under Penalty of Perjury") and an Annual Compliance Data Sheet. The data is collected, reviewed and audited annually in advance of the submission of the PARIS report and adoption by the IDA

Board. These employment figures are compared directly with the application submitted by the company/project. The IDA staff has always prided itself on receiving 100% responses on all projects. Additionally, through this process the Agency identifies employment shortfalls. These shortfalls are reviewed through written correspondence with the company/project and reviewed by the Board for termination of benefits, recapture of benefits or termination of benefits. This particular process takes place in either April or May of each calendar year. On several occasions, the Agency Board has taken action to terminate a project that was not in compliance. Using the Recapture Policy and or the Recapture Agreement within the closing documents, the termination process has been effective with the assistance of Agency Counsel and Transaction Counsel. There are many considerations that go into this review including the impact of a termination on a community; the impact on specific populations like children, education, mental health services, homelessness, energy and refuse removal from of the overall township. These aspects are considered in determining whether a project is to continue to receive benefits. The Staff will request from the Board more definition of when a claw-back should occur.

In the fall of 2016, the Agency explored several options to strengthen our compliance review of employment. The Agency staff also spoke to the "onsite" auditors about a procedure to verify employment in the Fall of 2015. We were advised that they did not have any specific recommendations, but would hope a best practice procedure would be identified. The staff of the Agency was in contact with many of the other IDAs around the state to understand the procedures that they use both the point of data collection during the application process and during the review period (January – March). There was one procedure the Agency explored and appeared to give the most accurate picture of current employment at a project site. Namely, collection of the Company's quarterly State Tax reporting form would provide a specific number of employees to be accounted for. Although no a perfect system, because some Projects have many tenants and obtaining that additional information may be difficult, the IDA staff had decided to use the New York State Form 45 for the collection of data. However, due to of other pressing issues specifically related to the Town of Hempstead IDA and the transition of all new Board Members, the policy could not be instituted for the 2016 calendar year review. The Agency will be using this new procedure for the first time for the 2017 Compliance Review.

The Audit also highlights the need for the Board to develop and implement uniform project evaluation criteria and document the rationale for awarding financial assistance to project owners. When a company/project makes application to the Agency, the Board is furnished with a company/project abstract outlining the project type (housing, manufacturing, tourism, retail, housing etc.) and the decisions for the benefits granted are based on New York State Law and weighed against feasibility studies for specific projects and community based needs. The Board will be presented with your example evaluation criterion that was outlined in your email of April 26, 2017.

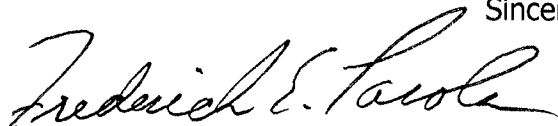
This will be the guideline the Board will use to create a clearer set of criteria to evaluate projects.

We appreciate the Audit recognizing that the Agency's information, reported in the PARIS system and in the Agency's Annual Financial Report, for 81 projects as being accurate. The Agency strives for complete transparency and accuracy in all aspects of the Town of Hempstead IDA but specifically as it relates to reporting the employment numbers and verification with the initial application. All information furnished and confirmed in the Annual report is audited by an independent auditor before it is furnished to the Board for adoption and reporting in the PARIS system. ( I note on page 9 of the audit a statement that the board needed to review the information for accuracy. At or before 2007, the audited report is furnished to the Board in the format of an excel spreadsheet to mirror the records of the PARIS reporting system. In addition to the annual compliance review, all benefits that are granted for a project are monitored closely and include bi- annual reporting to the Agency of Sales Tax Exemption benefits provided. This allows the IDA to verify the exemption amount as requested by the company and reported to the New York State Department of Taxation. Through the use of the ST-60 and ST-123 forms and the request for a company to furnish a copy of their annual ST-340 form, the Agency has the ability to track company expenditures closely and monitor how much is granted through the exemption so as not to exceed the sum permitted to the company/project at closing.

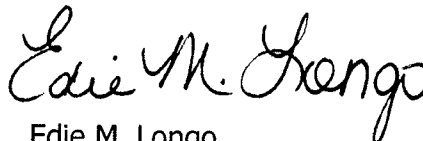
The Town of Hempstead IDA is proud of its accomplishments particularly in the area of job creation. With projections to retain and/or create 4,317.5 and an actual job creation of 9,379 (for the review period) our positive employment impact speaks for itself. As reported on Page 9 in the audit report, one of our projects reflected a shortfall, HUH Hempstead BJ 2012. The numbers in the application were reported incorrectly and once discovered by the Agency, staff immediately notified the ABO for a reset to change the historical data (see attached communication). On May 17, 2016, the Agency received an email from Mr. Feliciano of the Authority Budget Office that the change had been made for HUH Hempstead BJ 2012. (see attached email). As of the 2016 Annual Financial Report filing, HUH Hempstead BJ 2012 has 135 employees.

The Agency staff will continue to strive for accuracy in reporting and enhance the procedures necessary to continue to promote job growth and economic stability in the Town of Hempstead.

Sincerely,



Frederick E. Parola  
Executive Director/CEO



Edie M. Longo  
Chief Financial Officer/  
Deputy Executive Director



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September 15, 2015

Edie M. Longo, Deputy Executive Director/CFO  
Town of Hempstead Industrial Development Agency  
350 Front Street  
Hempstead, New York 11550

**Re: HUH Hempstead BJ 2012, LLC  
Property at 711 Stewart Avenue, Garden City, New York**

Dear Ms. Longo:

Please allow this letter to serve as a response to your letter dated March 6, 2015 with regard to the above-referenced property. It has taken some time for us to investigate and obtain the appropriate information from our subtenant, BJ's Wholesale Club ("BJ's"), in order to respond to your request for an explanation regarding the apparent "employment shortfall" reflected in the Annual Compliance Data Sheet for 2014.

Upon investigation of this matter, we have determined that the projected Full-Time Equivalent ("FTE") employment numbers which are found in the Unit 1 Facility Lease Agreement between the IDA and AG-Metropolitan 711 Stewart Avenue, L.L.C., dated March 27, 2013, and, subsequently, assigned to HUH Hempstead BJ 2012, LLC by the Unit 1 Facility Assignment and Assumption of Lease Agreement, dated March 27, 2013 (the "Lease"), were mistakenly overestimated and cannot possibly be complied with by BJ's. After much discussion with BJ's, it has been determined that even their best stores throughout the country can only support as many as 150 FTE's. Further, it is clear from BJ's current representations that the appropriate number of FTE's for this project should be, conservatively, 130.

As to why the original number shown in the lease agreement was overestimated, it is our opinion that this number was the result of a division of one overall projected FTE number for the original project, which was then split into three separate estimates at the time that the previous owner of the subject property turned this project into a three unit condominium (thru a certain Condominium Declaration dated March 26, 2013) and subdivided the three units into three separate "projects" under the IDA umbrella. As you know, this was done prior to our acquisition of the Unit 1 Facility and a second of the three units, the Unit 3 Facility.

At this time, we respectfully request that the existing agreements between the IDA and HUH Hempstead BJ 2012, LLC be revised to properly memorialize the expected annual FTE number of 130.

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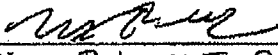
Page 2  
September 15, 2015

If you should have any questions or comments, please do not hesitate to contact me.

Very truly yours,

**HUH HEMPSTEAD BJ 2012, LLC**

By: HUH US Real Estate Income REIT Inc.,  
its Sole Member

By:   
Name: Robert T. Schmitt  
Title: Executive Vice President

cc: Daniel J. Baker, Esq.  
Michele C. O'Dowd, Esq.

**Edie Longo - Hempstead IDA Historical Data Change Request**

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Date:** 5/17/2016 3:17 PM  
**Subject:** Hempstead IDA Historical Data Change Request  
**Cc:** [REDACTED]  
**Attachments:** [REDACTED]

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Good afternoon Edie,

We have decided that we can not make the data change requested for the projects mentioned below based on the supporting documentation submitted to us.

1) **HUH Hempstead BJ 2012-** Upon further investigation, we believe the original value of 250 should be what stays in the # of FTE's before IDA status. The application is incomplete because there is no job data listed. According to the last three years of reported current jobs they had 2013-270, 2014-239.5, and 2015-241. From the documentation we can see BJ's was brand new. Sounds like the jobs should not have been # FTE before IDA status, but Jobs to be created. (See link to news article below ). Also we have an email from 9/13/10 stating jobs at BJ's would be 250 and another email (it was sent regarding the LAF project but it lists the BJ's employment as well) from 11/18/12 stating BJ's had 250 jobs. At this point they are two email's two years apart that stated the jobs should have been 250. According to data submitted and certified in PARIS, BJ's was able to maintain the 250 or close to it for three years. Also the Tax Exemptions and PILOTS granted were based on the original figures. So we will not be changing. Also we agreed to change the jobs to be created back to zero. Here are the two emails I cited:

Project Co	Project Name	Fiscal Ye	Field to be changed	Original Vali	Updated Vali
2802-12-16A	HUH Hempstead BJ 2012	2013-2015	Original Estimate of Jobs to Be Created	0	40
2802-1217A	HUH Hempstead BJ 2012		# of FTE's before IDA status	250	130



## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine if the Agency's Board was providing effective oversight responsibilities of the Agency's operations for the period January 1, 2014 through May 31, 2015. For selected projects, we extended our audit period back to the date of their inception.

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed the Board and Agency officials to understand and assess the Agency's processes and procedures.
- We reviewed the Agency's policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected five projects to obtain a sample of various sizes and types of projects for further review and testing. This testing included comparing amounts projected to be spent and amounts actually spent, comparing the reported actual job numbers by the businesses to projected jobs on the application, and reviewing PILOT agreements and payments to ensure that they were accurate and complied with the agreements.
- We reviewed Board minutes to identify project monitoring or job creation discussions and reports to the Board regarding projects failing to achieve project goals.
- We reviewed the Agency's project application, project agreements, and any applicable evaluation criteria and compared them to the new legislation.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

OFFICE OF THE NEW YORK STATE COMPTROLLER

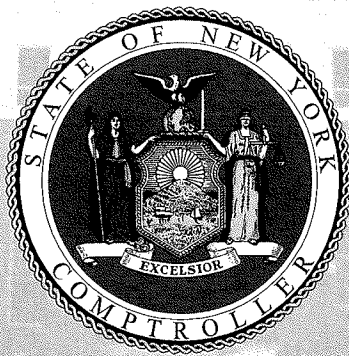


DIVISION OF LOCAL GOVERNMENT  
& SCHOOL ACCOUNTABILITY

# Industrial Development Agency

## Board Governance

2017-MS-1



Thomas P. DiNapoli

# Table of Contents

	<b>Page</b>
<b>AUTHORITY LETTER</b>	1
<b>EXECUTIVE SUMMARY</b>	2
<b>INTRODUCTION</b>	5
Background	5
Objective	6
Scope and Methodology	6
Comments of IDA Officials	7
<b>STATUTORY AUTHORITY AND REPORTING</b>	8
Statutory Authority	8
Annual Reporting	10
Recommendations	11
<b>STANDARD APPLICATION AND REVIEW PROCESS</b>	12
Recommendations	15
<b>PROJECT MONITORING</b>	16
Recommendations	20
<b>APPENDIX A</b> Additional IDA Project Information	22
<b>APPENDIX B</b> Responses from IDA Officials	23
<b>APPENDIX C</b> Audit Methodology and Standards	24
<b>APPENDIX D</b> How to Obtain Additional Copies of the Report	25
<b>APPENDIX E</b> Local Regional Office Listing	26

# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

September 2017

Dear Agency Officials:

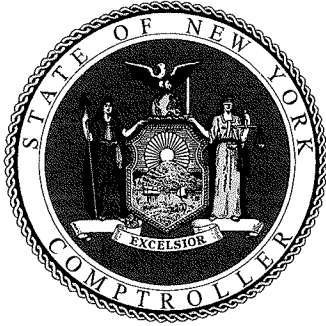
A top priority of the Office of the State Comptroller is to help local officials manage government resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard governmental assets.

Following is a report of our audit entitled Industrial Development Agency Board Governance. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for agency officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*



## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

An industrial development Agency (IDA) is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State.

The IDA's role is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements. An IDA's Board is responsible for the IDA's general management and control.

We audited six IDAs across New York State: Auburn, Bethlehem, Erie, Hempstead, Orange and Steuben.

#### **Scope and Objective**

The objective of our audit was to determine whether IDA Boards provided effective oversight of the IDAs' operations for the period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to October 16, 1996. Our audit addressed the following related questions:

- Are the IDAs' actions consistent with the Boards' statutory authority?
- Do the Boards have standard applications and consistent review processes?
- Do the Boards monitor approved project results and take action if project goals are not realized?

#### **Audit Results**

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>1</sup> For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or

<sup>1</sup> Chapter 563 of the Laws of 2015

modify financial assistance or tax exemptions. Many of the areas we reviewed were not requirements during our audit period. Discussion of these areas in this report is made with the acknowledgment that, while they were not mandated, they were considered good business practices and, therefore, included as a part of our review.

We found IDAs could do more to provide effective oversight of their operations. Orange's Board acted outside of its authority when it accepted and agreed to administer a \$1 million grant. Although Hempstead accurately reported its project information to the Authorities Budget Office and the Office of the State Comptroller, the remaining five IDAs submitted annual reports that contained numerous errors. We reviewed 155<sup>2</sup> projects to determine whether the IDAs reported accurate project information and found that 49 contained incorrect information, including inaccurate job creation and retention numbers, project status and transfer information. All six IDAs used a standard project application. However, four (Auburn, Hempstead, Orange and Steuben) did not develop and use any uniform project selection criteria. Further, they did not document their rationale for awarding financial assistance to the project owners.

We also found 24 of the 35 IDA projects we reviewed to evaluate the IDA's approval processes and project monitoring practices did not include terms for recapture or termination of financial assistance when project goals were not met or maintained. Auburn, Hempstead, Orange and Steuben did not require project owners to provide records to support the number or salaries associated with the jobs they purportedly created or retained. In contrast, Erie requests all project owners to annually provide a New York State-45 (a quarterly wage report) to support its job numbers, performs random site visits and provides brief status reports to the Board.

While all IDAs adopted a Uniform Tax Exemption Policy (UTEP), which includes provisions for the recapture of financial assistance, they had not established UTEP implementation procedures for claw-backs of financial assistance. In addition, none of the UTEPs clearly stated when financial assistance should be recovered or terminated. Therefore, recapture of financial assistance may be inconsistently applied to projects that do not meet the terms of their project agreement.

We also compared the reported employment in the 2014 annual reports for a sample of 196 applicable projects. We found 127 (65 percent of project owners) reported they created and retained the jobs they agreed to. However, the remaining 69 (35 percent of project owners) reported they did not. Specifically, their 2014 annual reports indicated they would create or retain 13,818 jobs, but they actually created or retained 10,209 jobs, a shortfall of 26 percent. However, IDA officials rely on the project owner's integrity to self-report employment data.

By not adequately monitoring ongoing projects or verifying reported employment data, the IDAs did not know whether project owners were fulfilling their job goal commitments. As a result, there was an increased risk that projects received tax benefits and IDA financing without fulfilling their commitments to the community.

Since the new legislation became effective, the Boards have taken steps to improve their oversight of

<sup>2</sup> We selected 158 projects to determine whether the IDAs publicly reported accurate project information and found Orange had three project applications that contained inconsistent job creation and retention numbers, so we could not determine the employment goals for these projects.

IDA operations. For example, Auburn, Hempstead, Orange and Steuben now require project owners to provide documentation to support the number of jobs they report as created and retained. Also, starting July 2016, Erie began to recapture financial assistance for projects that failed to meet the material terms outlined in their agreements. Between July 2016 and February 2017, Erie recaptured tax abatements totaling \$855,089 from six projects and returned the moneys to the taxing jurisdictions. Additionally, between January 2016 and March 2017, Erie collected \$473,488 from project owners that exceeded their approved sales tax exemptions and returned the moneys to the New York State Tax Department. Bethlehem recaptured financial assistance from one project for \$85,580, and Hempstead and Orange have terminated projects for poor performance and failure to meet project goals.

#### **Comments of IDA Officials**

The results of our audit and recommendations have been discussed with IDA officials and their comments, which appear in Appendix B, have been considered in preparing this report.

## Introduction

### Background

Industrial Development Agencies (IDAs) are authorized to provide financial assistance for certain types of projects. Financial assistance includes the issuance of bonds by the IDA to finance construction of a project and straight-lease transactions. Because IDAs' property and activities are tax exempt, the IDA may pass the benefits of certain tax exemptions (e.g., real property, sales and mortgage recording taxes) to the private entities that undertake the projects. The loss of revenue associated with these tax exemptions can be offset with an agreement for payments in lieu of taxes (PILOTs), under which the private entity agrees to pay all or a portion of the taxes that would otherwise have been imposed had the project not been an IDA project. The IDA's role is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements.

An IDA's Board is responsible for the IDA's general management and control. A Board member's role and responsibilities include executing direct oversight of the IDA's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies; and performing their duties "in good faith and with the degree of diligence, care and skill which an ordinary prudent person in a like position would use under similar circumstances."<sup>3</sup>

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>4</sup> For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

We audited six IDAs across the State to determine whether the IDAs' Boards were providing effective oversight of the IDAs' operations for the period January 1, 2014 through May 31, 2015, prior to the implementation of the 2016 legislation. Figure 1 provides relative statistics for these IDAs.

<sup>3</sup> New York State Public Authorities Law, Section 2824

<sup>4</sup> Chapter 563 of the Laws of 2015.



**Figure 1: 2014 Active Projects**

Agency	Project Count	Projects' Value (millions)	Expenditures (millions)
Auburn	16	\$222.9	\$1.3
Bethlehem	16	\$478.5	\$.159
Erie	276	\$5,325.6	\$2.6
Hempstead	81	\$1,945.5	\$1.1
Orange	41	\$1,035.6	\$2.5
Steuben	45	\$1,503.7	\$.952

**Objective**

The objective of our audit was to determine whether IDA Boards were providing effective oversight of the IDAs' operations. Our audit addressed the following related questions:

- Are the IDAs' actions consistent with the Boards' statutory authority?
- Do the Boards have standard applications and consistent review processes?
- Do the Boards monitor approved project results and take action if project goals are not realized?

**Scope and Methodology**

We examined IDA records and interviewed IDA and Board officials to identify practices to determine whether the Boards were providing effective oversight of IDA operations for the period January 1, 2014 through May 31, 2015, prior to the implementation of the 2016 legislation. For selected projects, we expanded the audit period back to October 16, 1996. For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

**Comments of  
IDA Officials**

The results of our audit and recommendations have been discussed with IDA officials and their comments, which appear in Appendix B, have been considered in preparing this report.

## Statutory Authority and Reporting

New York State Public Authorities Law grants local authorities only those powers explicitly granted or necessarily implied by statute. IDAs are also required to maintain specific information on all projects for which they approve financial assistance. IDAs use this information to submit an annual report of their operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller.

As noted above, the 2016 legislation requires new projects use standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions. Many of the areas we reviewed were not requirements during our audit period. Discussion of these areas in this report is made with the acknowledgment that, while they were not mandated, they were considered good business practices and, therefore, included as a part of our review.

We found, with the exception of Orange IDA (Orange), the IDAs' actions were consistent with their statutory authority. Orange's Board acted outside of its authority by agreeing to accept a grant and administering the grant funds in consideration for approving a payment in lieu of taxes (PILOT) agreement. It also acted outside of its authority by making a short-term loan to a project owner. We reviewed 175<sup>5</sup> projects to determine whether the IDAs reported accurate project information on their 2014 annual reports. We found Hempstead accurately reported its project information. However, the remaining five 2014 IDA annual reports contained numerous errors. Their 155 projects contained 49 instances of incorrect information, including inaccurate job creation and retention numbers, project status and transfer information.

### Statutory Authority

Local authorities may engage in only those activities and exercise those powers which are expressly authorized in law or which are incidental to performing their statutory purposes. A local authority,

<sup>5</sup> We selected 158 projects to determine whether the IDAs publicly reported accurate project information and found Orange had three project applications that contained inconsistent job creation and retention numbers, so we could not determine the employment goals for these projects.

unless otherwise empowered under the law, may not grant or loan its moneys to public or private corporations, private businesses or interests, civic associations, charitable groups, educational institutions, not-for-profit corporations, or any other social religious, fraternal or cultural organization. An IDA may not, under any circumstances, award grants or make loans of its own moneys<sup>6</sup> and cannot administer a grant on behalf of another company.

With the exception of Orange, the IDAs' actions were consistent with their statutory authority, mission and goals. Orange's bylaws, however, define its mission as "...the Agency shall: (1) seek, outreach and process applications for financial assistance...; (2) consider and make grants to qualified applicants for eligible economic development projects;..." Since 2009, Orange has administered grant funds on behalf of the Millennium Pipeline Company (Company), which is not within Orange's statutory authority.

According to Orange's Board minutes, the Board approved the Company's request for a PILOT abatement for a project to upgrade its existing pipelines.<sup>7</sup> At the time the PILOT was authorized, the Company made a significant commitment to Orange<sup>8</sup> and agreed to contribute \$1,080,000 over a 10-year period for economic development in the County, beginning 60 days after commercial operation of the project.<sup>9</sup>

A grant commitment letter dated December 4, 2008 sets forth the terms for administering the grant funds. Under the agreement, Orange will administer the Company's grant and determine the criteria for eligibility, qualifications, credit standards, and terms and conditions of the use of the funds. The first grant payment of \$108,000 was received from the Company on February 23, 2009, and the Company has provided Orange with annual grant payments since 2009. In 2010, the Board approved the use of the grant funds as a short-term loan to another business, Continental Organics. As of 2012, the grant funds have been paid to the Orange County Funding Corporation, a non-profit corporation that Orange controls.

By agreeing to accept a grant and administering the grant funds in consideration for approving a PILOT agreement, and also making a short-term loan to a project owner, Orange's Board has acted outside its statutory authority. The Board updated the Agency bylaws on July 6, 2016. The revised bylaws no longer allow the Agency to administer grants.

<sup>6</sup> Authorities Budget Office Policy Guidance No. 15-01

<sup>7</sup> May 17, 2006 Board minutes

<sup>8</sup> March 18, 2009 Board minutes

<sup>9</sup> December 17, 2008 Board minutes

## Annual Reporting

IDAs are required to maintain specific information on all projects for which they approve financial assistance. While the project owner is responsible for providing project information to the IDA, the IDA is responsible for collecting and reporting the data. IDAs use this information to submit an annual report of their operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller. Before the IDA submits its annual report, the Board should review the information for accuracy. The IDA's chief financial officer must then certify that it is complete and accurate. The Board should establish policies and procedures for obtaining and reporting reliable project information.

To develop the annual report, the IDAs send an annual letter to each project owner requesting updated project information, including current employment numbers. To determine whether the IDAs correctly reported project information, we compared each IDA's 2014 annual report to its project documentation for either a sample of projects (if the IDA had more than 50 projects) or the project population.

Hempstead accurately reported 20 projects information. However, the remaining five 2014 annual reports contained numerous errors. The Auburn, Bethlehem, Erie, Orange and Steuben IDAs' annual reports included a total of 394 projects. We examined 158 of the projects and found Orange had three project applications that contained inconsistent job creation and retention numbers, so we could not determine the employment goals for these projects. Of the remaining 155 projects, 49 contained erroneous information. Examples are included below; some examples contained more than one type of error.

- Forty projects had incorrect job creation and retention numbers (Auburn, Bethlehem, Erie, Orange and Steuben). For example,
  - o Orange consistently reported the Millennium Pipeline project would create 350 new jobs. However, the project application indicated 27 jobs would be created but did not state these jobs would be in Orange County. Orange officials told us the project was never expected to create jobs.
  - o Auburn consistently reported the AAF McQuay International project would retain 483 jobs and create five jobs. However, the project application indicated 651 jobs would be retained and 58 jobs would be created.

- Seven projects were either reported as active when the projects ended years ago, reported twice, or were active but not reported (Bethlehem, Orange and Steuben). For example,
  - o Orange reported the Millwood Place, LLC project in its 2014 annual report but the project ended in 2008.
  - o Steuben erroneously omitted two projects (Fortitude Industries and Corning Refractories) from the Authorities Budget Office 2014 annual report. However, the two projects were correctly listed on the annual report on the Agency’s website.
- Three projects were sold, assigned or amended, and the transfers were not properly reported (Bethlehem and Orange). For example,
  - o Bethlehem assigned the Selkirk Ventures, LLC project to ARCP ID Feura Bush NY, LLC in 2014, but did not include the new owner into the annual report.

As previously noted, before an IDA submits its annual report, it must review the information and certify that it is complete and accurate. However, the IDAs’ reviews did not identify the erroneous project information. The errors were caused, in part, because the Boards did not establish adequate policies and procedures to report reliable information from project owners. The Boards do not review or approve the annual reports before they are provided to the Authorities Budget Office and the Office of the State Comptroller. The implementation of adequate policies and procedures and a review of the information by the Board prior to the chief financial officer certifying the annual report may have identified these errors and helped ensure accurate project information was publicly reported.

**Recommendations**

The Boards should:

1. Ensure the IDAs’ actions are consistent with their statutory authorities.
2. Develop policies and procedures for obtaining and reporting reliable project information for the IDAs’ annual report.
3. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.

## Standard Application and Review Process

The Board is responsible for reviewing the merits of each project and then making project approval or denial decisions. Because tax benefits granted by the Board to approved projects result in a cost to the community, it is important for the Board to evaluate the merit of each project and the benefits the community should realize from the IDA's investment. Promoting the use of a standard application when project owners request financial assistance from the Agency can help ensure consistent project evaluation. The Board should adopt uniform criteria for the evaluation and selection of each category of projects (e.g., manufacturing, wholesale, distribution, retail, tourism and housing) for which financial assistance would be provided. Such practices should also include documenting the rationale for approving financial assistance and verifying information provided in the application.

A standard application should include, among other things:

- A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;
- The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;
- A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;
- A statement that the information is true under penalty of perjury;
- A statement that IDA assistance is necessary to undertake the project; and
- A statement that the project owner is in substantial compliance with all laws, rules and regulations.

An IDA's uniform evaluation criteria should, at a minimum, require that, prior to approval of any financial assistance, the IDA should verify and evaluate all material information provided with the

application. It should also undertake a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector investment generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.

To determine how the Boards reviewed and approved projects, we interviewed Board members and IDA officials. We also reviewed the IDAs' project documentation and Board minutes. Further, we judgmentally selected a sample of 35 projects totaling \$1,095,997,012 to review the project selection process.

All six IDAs used standard project applications that generally included a description of the project, cost and performance estimates and other pertinent information. However, four IDA Boards (Auburn, Hempstead, Orange and Steuben) did not develop and did not use any uniform project selection criteria. Further, they did not document their rationale for awarding financial assistance to the project owners.

Erie's evaluative criteria was limited to certain categories such as senior housing projects and adaptive reuse.<sup>10</sup> Bethlehem had the most comprehensive evaluation criteria, adopted in 2014. It included evaluating the nature of the property before the project begins (for example, vacant land or building), the extent to which the project will create or retain permanent jobs, the impact of the proposed project on existing and proposed businesses and economic development in the Town, the likelihood of accomplishing the proposed project in a timely fashion, and whether financial assistance was necessary for the applicant to undertake the project. However, Bethlehem's criteria was general and used for all project types. The new legislation requires a set of criteria specific to each project type (i.e., housing, manufacturing, retail, etc.).

In addition, five Boards (Auburn, Erie, Hempstead, Orange and Steuben) do not require the applicant's information, including job retention estimates, to be verified or confirmed before Board members vote to award financial assistance to the applicant. Only Bethlehem requests and receives confirmation figures. The Board also adopted a monitoring policy<sup>11</sup> which requires retained job estimates to be verified with quarterly income tax reports.

<sup>10</sup> Erie refers to adaptive reuse as projects where the land or building in discussion has been primarily vacant for at least three years.

<sup>11</sup> Bethlehem adopted the monitoring policy officially in May 2015 and began informally requesting this information prior to adoption of the policy in 2014. It received the NYS-45 forms for the only project approved during our audit period.



During our audit period, the standard applications did not contain several of the components we previously identified. Specifically,

- Five IDAs (Auburn, Erie, Hempstead, Orange and Steuben) do not require project owners to certify that application information is accurate under penalty of perjury.
- Four IDAs (Auburn, Erie, Hempstead and Orange) do not include fringe benefit estimates for jobs created or retained.
- Four IDAs (Auburn, Erie, Orange and Steuben) do not provide a statement that the applicant is compliant with all laws and regulations.
- Three IDAs (Auburn, Orange and Steuben) do not state that IDA assistance is necessary to complete the project.
- Three IDAs (Auburn, Orange and Steuben) did not include a statement that false information can lead to termination of financial assistance.<sup>12</sup>
- One IDA (Orange) does not include timeframes for jobs to be created.

For all 35 projects we reviewed, Board members used their collective personal knowledge to evaluate the applicant's cost estimates and job creation goals. Officials could not provide criteria that they used to evaluate these projects, and the Boards did not document how they arrived at their decisions to approve these projects. Although Bethlehem and Erie have adopted some evaluation criteria, these 35 projects were dated prior to the adoption of the criteria and did not have this evaluation documented.

Further, during our audit period, a total of 68 projects were presented to the IDA Boards for approval. The Erie, Orange and Steuben Boards approved the 50 projects that were presented to them. Auburn did not approve or deny any applications in our audit period. Bethlehem and Hempstead rejected two of the 18 projects presented for approval. Bethlehem rejected a project it found was not in line with its mission. Although Hempstead's Board approved a project, its owner decided not to proceed with the project after the Board denied the owner's request for additional property tax abatements.

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<sup>12</sup> The application requires a certification from the applicant that the information presented is accurate but does not state that financial assistance can be terminated if false information is provided.

Without documented criteria for evaluating projects and comprehensive project applications, residents do not have assurance that IDA benefits are awarded through a fair and consistent process. Positively, after our audit fieldwork was completed, all IDAs have adopted standard applications that are fully compliant with the recently approved legislation.

**Recommendations**

The Boards should:

- 4. Develop and implement uniform project selection criteria and document the rationale for awarding financial assistance to project owners.
- 5. Require financial assistance application information to be verified and confirmed before the Board approves new projects.

## Project Monitoring

A significant Board responsibility is to monitor and evaluate the performance of projects receiving financial assistance to determine whether they are meeting the goals included in their applications, such as the number of jobs to be created. The Board should evaluate each project's performance to ensure the project fulfills the commitments made to the residents in exchange for the financial assistance awarded. A uniform project agreement between the IDA and the project owners receiving financial assistance should be in place and used to monitor and evaluate projects' performance. In addition, IDA officials should also use each project's required annual status report to assist in monitoring project performance. Without effective monitoring, the community may not receive the expected benefits from the financial assistance provided.

Project Agreements – To properly monitor projects, IDAs should adopt and use uniform project agreements. A uniform project agreement should, at a minimum, include:

- The IDA purpose to be achieved by the project;
- A description of the project and the financial assistance to be provided;
- A requirement for an annual certification by the project owner, occupant or operator of full-time equivalent jobs created and retained as a result of the financial assistance;
- The dates when PILOT payments are to be made and estimates of the amounts or formulas by which these amounts are calculated;
- A provision for the suspension or discontinuance of financial assistance, or for the modification of any PILOT agreement to require increased payments, for certain defined performance shortfalls;
- A provision for the return of all or a part of the financial assistance provided for in accordance with IDA policy; and
- A provision that the businesses certify, under penalty of perjury, that they are in substantial compliance with all laws, rules and regulations.

To determine how the Board monitors projects, we interviewed certain Board members and IDA officials, reviewed Board minutes for the period January 2007 through May 2015 and reviewed project documentation for the 35 projects we previously discussed. We found that the project agreements were missing components that could help the IDAs to more effectively monitor their projects. For example:

- None of the IDA agreements require the project owner to certify under penalty of perjury that the project owner is compliant with all laws and regulations.
- Five IDAs (Auburn, Erie, Hempstead, Orange and Steuben) have agreements that do not state the IDA's purpose to be achieved by the project.
- Five IDAs (Auburn, Bethlehem, Erie, Hempstead and Orange) have agreements that do not require updated information if salaries or benefits for these jobs change.
- Orange's agreements do not contain a requirement for annual certification of jobs created and retained.

Additionally, 24 of the 35 IDA projects we reviewed have historically not included terms for recapture or termination of financial assistance when project goals are not met or maintained. The exclusion of recapture provisions in project agreements significantly hinders the IDAs' ability to recapture or terminate financial assistance or makes it unlikely for the IDA to take action when a project fails to meet its project goals. While most IDAs have moved towards including recapture provisions for employment targets in their project agreements, Orange and Steuben have not. Specifically:

- One IDA (Hempstead) has included specific employment targets for recapture in its project agreements for all projects we reviewed from 2005 onward.
- Two IDAs (Bethlehem and Erie) have included specific employment targets for recapture in their project agreements consistently since 2012 and 2013, respectively.
- One IDA (Auburn) had recapture language written into its project agreements inconsistently throughout the past few years. For example, the Goulds Pumps, Inc. project was approved in June 2001 and included recapture language related to job goals. However, the Seminary Commons project, approved in June 2011, did not.

After our audit fieldwork was completed, five of the six IDAs (Auburn, Erie, Hempstead, Orange and Steuben) adopted project agreements that were fully compliant with the new legislation requirements.

Job Performance — Positively, we found that Erie requests all project owners to annually provide a New York State 45 form (NYS-45 form), a quarterly wage report, so it can verify the project owner's self-reported annual employment figures. Erie also performs random site visits of ongoing projects, and the Board receives brief status reports that include an indication of whether job goals are being met.<sup>13</sup> However, Auburn, Hempstead, Orange and Steuben did not require project owners to provide records to support the number or salaries associated with the jobs they purportedly created or retained. The Boards and IDAs relied on the project owners' integrity to accurately report the number of jobs they created and retained. As a result, the IDAs may not know whether agreed upon jobs were actually created or retained or whether the individuals employed are paid the salary the project owner said it would pay in the project application.

As of May 2015, Bethlehem began to require project owners to provide a NYS-45 form that it uses to verify reported employment figures. Additionally, although we saw no approved project agreements containing a verification requirement, the uniform project agreements used by Orange and Steuben in 2015 now include an annual requirement to provide the NYS-45 forms to verify reported employment figures. After our fieldwork was completed, Auburn and Hempstead also began to require project owners to submit the NYS-45 forms to verify their reported employment figures.

To determine whether approved projects created and retained the number of jobs specified in the project agreements, we used the 2014 annual reports and compared the reported employment for a sample of 196 applicable projects.<sup>14</sup> Of these projects, 127 (65 percent of project owners) reported they created and retained the jobs they agreed to create or retain. However, the remaining 69 (35 percent of project owners) reported they did not. These projects indicated they would create or retain 13,818 jobs but actually created or retained 10,209 jobs (26 percent shortfall).

<sup>13</sup> Employment numbers are not verified during site visits via any source documentation (for example, payroll report or New York State – 45 forms) but through conversations with project owners and observations.

<sup>14</sup> We compared all projects for Auburn, Bethlehem, Hempstead, Orange and Steuben because they had under 100 active projects. We sampled and compared 40 projects (using a random number generator) at Erie because it had 276 active projects. Some projects were not applicable for job goal comparisons because the projects were still in the construction period.

IDA officials said these variances are likely attributed to many circumstances, including project owners overstating job creation and retention goals in project applications, running a facility more efficiently, or facing poor economic conditions. However, in exchange for financial assistance, including significant property tax reductions, the businesses agreed to create and retain a specific number of jobs and should be held accountable for failing to do so. At a minimum, the IDAs should know the precise reason for the project owner failing to create or retain the jobs detailed in the contractual agreement.

We found only Bethlehem's and Hempstead's procedures require the IDA to learn why the project owners failed to meet their job goals. The Boards consider the explanation for the job shortfall when they determine whether recapturing financial assistance is warranted. While Auburn, Erie and Steuben compare project goals to current employment levels, they do not require project owners to provide explanations for their project shortfalls. While Steuben provided documentation explaining some project shortfalls, it did not have explanations for all projects that failed to meet their job goals. Orange does not provide its Board with project status reports. The IDAs should have taken appropriate actions, including terminating the project or recapturing financial assistance granted to the project owner. However, the IDAs typically did not take such actions.

Recapture Provisions — Although all IDAs adopted a Uniform Tax Exemption Policy (UTEP) which includes provisions for the recapture or “claw-back” of financial assistance, they have not established UTEP implementation procedures for claw-backs of financial assistance.<sup>15</sup> Officials rarely claw-back financial assistance or terminate a project for poor performance. Four of the 35 projects reviewed experienced a claw-back or termination of assistance for failure to meet project goals. For example:

- Bethlehem recaptured financial assistance for one project when the project owner failed to maintain the job goals outlined in the project application.
- Hempstead terminated financial assistance to three projects. It terminated one project because the project owner did not submit the required annual report of project jobs created and retained. It terminated another project for not meeting job goals and IDA timelines for progression of the project.

<sup>15</sup> Erie has a separate recapture policy that does provide procedures for implementing a claw-back. However, it is not included in the UTEP and does not define a threshold percentage for shortfalls in employment goals when the claw-back should be enforced.

It terminated the last project when a current project owner sought amended PILOT agreement terms to further reduce their PILOT payments.

Three IDAs (Auburn, Bethlehem and Hempstead) have a statement that recapture of financial assistance can be enforced if project goals are not met. For example, Hempstead's UTEP states that a company's failure to create or retain the number of private sector jobs stated in its application could trigger recapture of financial assistance. Similarly, the UTEPs for Bethlehem and Auburn explain that if the PILOT agreement includes goals for employment and they are not being met, the IDA can enforce recapture. However, none of the six IDAs' UTEPs clearly state when financial assistance should be recovered or terminated. There are no set thresholds that determine when claw-backs should be implemented. Officials explained their policies were intended to be vague so they have flexibility in determining when the provision should be used and to treat each project on a case-by-case basis.

By not adequately monitoring ongoing projects or verifying reported employment data, the IDAs do not know whether project owners are fulfilling their job goal commitments. As a result, there is an increased risk that projects received tax benefits and IDA financing without fulfilling their commitments to the community.

In July 2016, Erie began to recapture financial assistance for projects that failed to meet the material terms outlined in their agreements. Between July 2016 and February 2017, Erie recaptured tax abatements totaling \$855,089 from six projects and returned the moneys to the taxing jurisdictions. Additionally, in November 2015, Erie established an internal tracking system to monitor sales tax exemptions. As a result, between January 2016 and March 2017, it collected \$473,488 from project owners that exceeded their approved sales tax exemptions and returned the moneys to the New York State Tax Department. Orange terminated a project in May 2017 for improper leasing of property without IDA prior approval and late payment of real estate taxes.

## Recommendations

The Boards should:

6. Develop and implement project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.
7. Develop policies to recapture, discontinue or modify financial assistance or tax exemptions.

8. Develop and implement UTEP implementation policies and procedures, including but not limited to, clearly defining when a claw-back should occur and repercussions when project owners do not provide annual status reports.



## APPENDIX A

### ADDITIONAL IDA PROJECT INFORMATION

Figure 2: Project Sample – Costs and Tax Exemptions					
Project	Project Cost	PILOT Savings Through 2014	Pending	Sales and Use Tax Exemptions	Mortgage Recording Tax Exemptions
<b>Auburn</b>					
AAF McQuay International	\$9,500,000	\$5,149	(\$338,057) <sup>c</sup>	Unknown <sup>a</sup>	Unknown <sup>a</sup>
Auburn Community Hotel LP	\$11,057,381	\$362,678	\$8,037,839	\$336,000	\$55,000
Goulds Pumps, Inc.	\$3,400,000	\$2,354,088	(\$101,632) <sup>a</sup>	\$24,000	\$0
JBj Real Property, LLC	\$6,700,000	\$313,083	\$271,535	\$176,000	\$0
Seminary Commons, LLC	\$1,450,000	\$84,809	\$398,057	\$15,000	\$14,000
<b>Bethlehem</b>					
35 Hamilton of Glenmont	\$1,200,000	\$34,406	\$24,758	\$48,000	\$11,250
Finke Enterprises, LLC	\$7,171,200	\$134,650	\$2,640,692	\$288,173	\$70,000
PSEG Power NY, Inc.	\$400,000,000	N/A <sup>b</sup>	N/A <sup>b</sup>	Unknown <sup>a</sup>	Unknown <sup>a</sup>
SRS Bethlehem, LLC	\$12,300,000	\$536,470	\$772,189	\$988,763	\$156,506
Selkirk Ventures, LLC	\$7,510,000	\$969,286	\$46,074	Unknown <sup>a</sup>	Unknown <sup>a</sup>
<b>Erie</b>					
500 Bailey, LLC	\$7,193,308	\$724,786	\$158,210	Unknown <sup>a</sup>	Unknown <sup>a</sup>
American Pharmaceuticals Partners, Inc.	\$4,000,320	\$592,006	\$285,267	Unknown <sup>a</sup>	Unknown <sup>a</sup>
API Heat Transfer, Inc.	\$1,732,134	\$62,682	\$538,853	\$96,000	\$0
B&L Wholesale Supply, Inc.	\$1,592,000	\$81,171	\$31,246	Unknown <sup>a</sup>	Unknown <sup>a</sup>
General Motors Company	\$293,000,000	\$2,109,861	\$709,159	Unknown <sup>a</sup>	Unknown <sup>a</sup>
J.M. Lester, LLC	\$1,060,896	\$123,718	\$33,068	Unknown <sup>a</sup>	Unknown <sup>a</sup>
McGard, LLC	\$2,454,000	\$28,750	\$72,964	Unknown <sup>a</sup>	Unknown <sup>a</sup>
New Era Cap Company, Inc.	\$3,165,000	\$318,882	\$5,526	\$160,000	\$31,000
Osiose, Inc.	\$877,000	\$74,476	\$16,988	Unknown <sup>a</sup>	Unknown <sup>a</sup>
Praxair, Inc.	\$976,840	\$36,546	\$16,890	Unknown <sup>a</sup>	Unknown <sup>a</sup>
<b>Hempstead</b>					
101 Uniondale, LP	\$69,000,000	\$5,640,302	\$0	\$0	\$0
AMB Fund III Mosaic	\$19,550,000	\$898,042	\$281,994	\$0	\$0
HP Lynbrook, LLC	\$42,360,000	\$162,735	\$2,004,993	\$0	\$0
PDC Corporation	\$13,059,850	\$202,703	\$0	\$213,038	\$52,628
Rose Fence	\$3,116,000	\$57,666	\$0	\$413,608	\$244,965
<b>Orange</b>					
Airport Properties II	\$15,179,083	\$652,099	\$91,528	\$561,000	\$130,000
CRH Realty II	\$2,720,000	\$1,625,563	\$745,922	\$97,885	\$300,000
Leentjes Amusements	\$4,122,000	\$338,064	\$91,643	\$200,000	\$45,000
Millennium Pipeline Company	\$80,700,000	N/A <sup>b</sup>	N/A <sup>b</sup>	\$3,413,573	\$0
Orange County Choppers	\$13,400,000	\$1,388,037	\$356,229	\$487,500	\$0
<b>Steuben</b>					
Center for Fiber Optic Testing	\$4,000,000	\$70,471	\$9,848	\$347,360	\$0
Decker Parking Garage	\$9,800,000	\$509,997	\$217,739	\$400,000	\$0
Corning Headquarters Expansion	\$25,000,000	\$1,888,319	\$547,928	Unknown <sup>a</sup>	\$0
Photonics Facility	\$7,600,000	\$1,048,240	\$587,815	\$480,000	\$200,000
The Gunlocke Company	\$10,000,000	\$2,070,666	\$811,396	\$30,000	\$0

<sup>a</sup> The project application does not indicate whether tax exemptions were granted, and Agency officials were unable to provide documentation to support whether exemptions were or were not granted. As a result, we could not determine the exemption values.

<sup>b</sup> These property tax exemptions are based on consumption rates. Sufficient information was not available to determine the property tax abatements.

<sup>c</sup> The project was assigned in 2002. The original owner received the significant property tax abatements. The new owner's PILOT agreement will likely result in higher taxes than would be paid had the agreement not have been entered into.

## APPENDIX B

### RESPONSES FROM IDA OFFICIALS

We provided a draft copy of the global report to all six IDAs we audited and requested a response from each IDA. We received global responses from three IDAs, including Hempstead, Steuben and Bethlehem. Auburn, Erie and Orange IDAs said they had no additional comments and referred to their individual letter responses.

IDA officials generally agreed with our findings and recommendations. The following comments are excerpted from the responses received. Comments that were specific to findings at a particular IDA are not included here, but are instead addressed in the IDA's individual report. Each IDA's individual report includes its response to our audit of the IDA.

Hempstead IDA: "...Membership of the Board was reconstituted in November, 2016... However, the new Board has implemented many new policies, especially in the area of increased transparency in operations..."

Steuben County IDA: "...In advance of the audit period, the agency Executive Director was engaged in the development of the Comptroller's reform package...Once the legislation was passed, the IDA quickly adopted the measures outlined in the reform package serving as a leader in State to implement these best practices..."

Town of Bethlehem IDA: "The audit process and report will help the Agency comply with legal requirements and good business practices."

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine whether IDA Boards were providing effective oversight of the IDAs' operations for the period January 1, 2014 through May 31, 2015. For selected projects, we extended our audit period back to the date of their inception.

To achieve our audit objective and obtain valid audit evidence, we performed the following procedures:

- We interviewed the Boards and IDA officials to understand and assess the IDAs' processes and procedures.
- We reviewed the IDAs' policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected 35 projects to obtain a sample of various sizes and types of projects for further review and testing. This testing included, among other things, comparing amounts projected to be spent and amounts actually spent, comparing the reported actual job numbers by the businesses to projected jobs on the application, and reviewing PILOT agreements and payments to ensure that they were accurate and complied with the agreements. We also reviewed the project agreements to determine whether they had provisions for recapture of financial assistance, and if so, whether they were enforced.
- We reviewed the reporting accuracy of 178 projects. We reviewed all projects at the IDA if they had 50 or less in the 2014 reporting year, or we used a random number generator to select 20 projects for testing. If we found any inaccuracies, we used a random number generator to select an additional 20 projects for testing. We compared project application information such as job creation and retention goals to the publicly reported job goals.
- We reviewed Board minutes to identify project monitoring or job creation discussions and reports to the Board regarding projects failing to achieve project goals.
- We reviewed the IDAs' project applications, project agreements and any applicable evaluation criteria and compared them to the new legislation.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## APPENDIX D

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