A topographic map of the County of Chautauqua, showing its various towns and geographical features like rivers and mountains. The map is in shades of green and brown.

Authorities **B**udget **O**ffice

- *Accountability*
- *Transparency*
- *Integrity*

Operational Review

County of Chautauqua Industrial Development Agency and other local authorities

July 12, 2023

OR-2022-01

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Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices, and reports of public authorities. Our operational review of the County of Chautauqua Industrial Development Agency (CCIDA) was performed from May 2022 to December 2022. It was conducted in accordance with our statutory authority and compliance review protocols, which are based on generally accepted professional standards. The purpose of the review was to evaluate the effectiveness and transparency of CCIDA's operations and management practices, as well as compliance with Public Authorities Law and other provisions of law. As part of this CCIDA review, the ABO also included a limited evaluation of the operations and activities of the Chautauqua Region Economic Development Corporation and the Chautauqua County Capital Resource Corporation.

Background:

The County of Chautauqua Industrial Development Agency (CCIDA) was established in 1972 pursuant to Section 895-h of General Municipal Law to attract, retain and expand businesses in Chautauqua County by providing financial incentives to private entities. CCIDA provides tax abatements, low interest loans and bond financing to create and retain jobs. CCIDA works with the Chautauqua County Department of Planning and Development (Department) along with other local authorities including the Chautauqua Region Economic Development Corporation (CREDC) and Chautauqua County Capital Resource Corporation (CRC).

CREDC and CRC are local authorities separate and distinct from CCIDA. CREDC is a local development corporation (LDC) originally incorporated in 1986 pursuant to Not-For-Profit Corporation Law (NFPCL). CREDC's mission is to relieve and reduce unemployment, promote, and provide for additional employment. CRC is also an LDC incorporated in 2009 pursuant to NFPCL to issue tax-exempt bonds for civic and other facilities.

CCIDA is governed by a board of directors of up to nine members. CCIDA members also serve as the board of directors of CREDC and CRC. In 2021, CCIDA had seven full-time and five part-time employees and contracted with four County employees for staff services. CCIDA's Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) are responsible for the day-to-day operations. CCIDA has a service contract with the County's Deputy County Executive for Economic Development to serve as its CEO and has an employment contract with its CFO. Some CCIDA staff also serve as staff for CREDC and CRC.

Although separate and distinct local authorities, CCIDA, CREDC, and CRC share one operating checking account that is maintained

by CCIDA staff. There is no agreement between CCIDA, CREDC, or CRC for these shared accounts and services.

The primary source of revenue for CCIDA is grant income, administration fees for projects, and interest income on loans. For 2021, CCIDA operating revenues were \$8.3 million and operating expenses were \$2.4 million. As of December 31, 2021, CCIDA reported 36 projects receiving \$34.92 million in total tax exemptions and paid \$1.98 million payments in lieu of taxes (PILOTs).

CREDC and CRC are included in CCIDA's financial audit as component units due to their significant operational and financial relationship. For 2021, CREDC had total revenues of \$301,591 and total expenses of \$369,501. CRC had total revenues of \$62,500 and total expenses of \$62,500.

CCIDA

Key Findings:

The review found the CCIDA board did not provide adequate oversight over management, adopt adequate policies and procedures, and monitor the financial and management controls. Board members did not sign the required acknowledgement of fiduciary duty until this review. Although board members attended the required board member training, the board does not appear to understand their role and responsibilities as fiduciaries of the local authority they serve. As a result of the board's lack of oversight, monitoring, and policies, we found:

- \$1.9 million of combined funds for three separate local authorities (CCIDA, CREDC and CRC) in one bank account and other misallocated expenses among separate local authorities
- \$130,785 in CCIDA funds used for inappropriate and questionable discretionary spending, including sponsorships, donations, holiday dinners, flowers, and other gifts
- \$73,115 in CCIDA credit card purchases made without receipts or adequate documentation, as well as the use of credit cards for \$26,000 in inappropriate meal purchases and \$11,194 in unauthorized purchases for another local authority
- \$50,629 of unauthorized and inappropriate CCIDA payments to the CFO, including \$30,600 in car allowances and \$18,429 in reimbursements for membership and other related expenses at a local golf course
- \$200,179 in compensation to CCIDA staff that were contracted or hired by the CEO to administer and operate another local authority
- \$128,000 in subsidized office space for the County

In addition, we found the CCIDA board abdicated its role in the initial project review process by allowing a committee, made up of the Chair and CCIDA staff, to usurp the board's role and vote to approve projects to move to a public hearing, without the benefit of a full board meeting in order to fast-track some projects.

CCIDA board members also are not filing their required financial disclosures or ensuring that its board members with actual or perceived conflicts of interest are appropriately disclosing their conflicts and removing themselves from board discussions when conflicts arise.

The CCIDA board is also violating Open Meetings Law (OML) by not giving reasons for the use of executive session. We found during 2019, 2020, and 2021, the CCIDA board went into executive session for 28 of 32 meetings, of which 57 percent of the meeting minutes did not include a reason for the use of the executive session. The board is also not ensuring its committee meetings are open to the public, in accordance with OML.

We also found CCIDA did not accurately and timely bill the payments in lieu of taxes (PILOTs) to ensure each PILOT was paid by its agreed upon due date and remitted to taxing jurisdictions within 30 days. CCIDA also did not pay late penalties for PILOTs not paid by the due date and/or held more than 30 days, as required by General Municipal Law.

The details in this report indicate CCIDA board members do not understand their role and responsibilities as fiduciaries of the local authority they serve. In addition, the lack of oversight, review, and monitoring by the CCIDA board exposed CCIDA to unnecessary financial risk and potential misuse of funds. As such, this report serves as a formal warning to CCIDA and its board members to take immediate action to implement the recommendations in this report within ninety days of its issuance or they will be censured by the ABO.

CREDC and CRC Key Findings:

We found both CREDC and CRC are not operating as separate and distinct local authorities as they were created. Both boards also did not provide adequate oversight over management, adopt adequate policies and procedures, and monitor the financial and management controls. The boards have allowed their funds to be combined in one bank account and they have abdicated their responsibility to review and monitor financial controls and operating decisions to CCIDA staff without any established shared services agreements. We also found CRC is not accurately reporting its staff, procurement, and bonds in PARIS and is not ensuring all required information is posted to its website.

Based on the findings outlined in this review, this report serves as a formal warning to CREDC and CRC and its board members to take immediate action to implement the recommendations in this report within ninety days of its issuance or they will be censured by the ABO.

Introduction and Background

Industrial Development Agencies (IDAs) are statutory creations, authorized pursuant to Article 18-A of General Municipal Law (GML) 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. All IDAs are local authorities pursuant to Section 2 (2) of Public Authorities Law (PAL).

Local Development Corporations (LDCs) are not-for-profit organizations. LDCs are created by individuals in support of government and authorized to act under Not-for-Profit Corporation Law (NFPCL) to reduce unemployment, promote and maintain employment opportunities, aid communities attract new industry or to encourage the development or retention of existing industries, lessen the burdens of government, and to act in the public interest. Some LDCs are local authorities, if they meet the definition established in Section 2 (2) of PAL. In this particular review, both LDCs are local authorities under Section 2 (2) of PAL.

Chautauqua County (County) economic development is led by the Chautauqua County Department of Planning and Development (Department) and the County of Chautauqua Industrial Development Agency (CCIDA). The Department and CCIDA also work with the Chautauqua Region Economic Development Corporation (CREDC) and the Chautauqua County Capital Resource Corporation (CRC) to promote economic development in the County. CCIDA, CREDC, and CRC are separate and distinct local authorities.

CCIDA was established in 1972 pursuant to Section 895-h of GML. CCIDA's current mission is to make Chautauqua County a better place to work, live, and visit by attracting new businesses while promoting the retention and expansion of existing businesses. CCIDA provides financial assistance in the form of tax exemptions, bond financing, and administers three federally sourced loan funds to provide local businesses with low-interest financing. In addition, CCIDA markets property it owns or acquires for economic development purposes.

CREDC is an LDC originally incorporated in 1986 pursuant to NFPCL.¹ CREDC's mission is to relieve and reduce unemployment, promote, and provide for additional employment. CREDC acts as a tool for advancing strategic projects and initiatives, including receiving grant funds for various projects. CREDC also applies for grant funding to be used to support economic development activities in the County through the County Partnership for Economic Growth (PEG). PEG is not an entity but exists as a program initiated in 2019 by the County.

CRC is an LDC incorporated in 2009 pursuant to NFPCL to issue tax-exempt bonds for civic and other facilities. CRC's mission is to promote community and economic development and the creation of jobs in the non-profit and for-profit sectors.

¹ CREDC was originally incorporated as Chautauqua Region Industrial Development Corporation (CRIDC) in 1986. In 2015, CRIDC solely filed to change its name to the Chautauqua Region Economic Development Corporation.

Governance

CCIDA is governed by a board of directors of no more than nine members, including the Chair of the County Planning and Economic Development Legislative Committee, serving as ex-officio, one member appointed by the County Legislature and up to seven members appointed by the County Executive. CCIDA board members also serve as the board of directors for CREDC and CRC.

Staffing and Management

In 2021, CCIDA had seven full-time and five part-time employees and contracted with four County Department employees for staff services. CCIDA's service contracts with County employees are separate from their employment with the County. CCIDA's Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) are responsible for the day-to-day operations. CCIDA has a service contract with the County's Deputy County Executive for Economic Development to serve as its CEO and has an employment contract with its CFO. CCIDA staff is also responsible for the administration of the operations and financials of CREDC and CRC. Two CCIDA employees and two of the County employees with service contracts with CCIDA are primarily responsible for the management and operating activities of CREDC and PEG related programs. Another CCIDA employee is responsible for the marketing activities of both CCIDA and CREDC.

CCIDA staff operate out of two office locations in the County. During 2016, CCIDA moved its primary office to a new location in Jamestown, NY and entered into a 10-year lease agreement. CCIDA sub-leases a portion of its Jamestown office space to the County. CCIDA also rents additional office space in Dunkirk, NY from the State University of New York (SUNY) Fredonia.

Financials

Although separate and distinct local authorities, CCIDA, CREDC and CRC share one operating checking account that is maintained by CCIDA staff. There is no agreement between CREDC and CRC with CCIDA for these shared services.

CCIDA operates on a calendar fiscal year and its financial statements include CREDC and CRC as component units because of their significant operational and financial relationship with CCIDA. For 2021, CCIDA generated \$8.3 million in revenue, of which 85 percent was from administrative fees and grant income. Total expenses were \$2.4 million, of which 74 percent was for general and administrative costs. CREDC had \$301,591 in total revenues, of which 97 percent was from grant income. Total expenses were \$369,501, of which 83 percent were for general and administrative costs relating to PEG. CRC had \$62,500 in revenue from two bond sales. Those funds were subsequently transferred to CCIDA through an inter-agency transfer and were included as a CRC expense.

Audited Financial Totals - FYE 2021		
Authority	Revenues	Expenses
CCIDA	\$8,313,882	\$2,396,228
CREDC	\$301,591	\$369,501
CRC	\$62,500	\$62,500

As of December 31, 2021, CCIDA had \$1.86 million in capital assets and \$958,738 in land held for resale. CCIDA also had over \$4 million in long-term debt outstanding payable to the County for four separate bonds purchased from the County to construct and purchase buildings. CCIDA also had one building that it was marketing for sale while leasing it to two active tenants. In 2021, CCIDA had six vacant sites being marketed for sale. CREDC had one building where it was operating an incubator project. CRC does not own property.

Projects and Loans

In 2021 CCIDA reported in the Public Authorities Reporting Information System (PARIS), 36 projects that received \$34.92 million in total tax exemptions, of which 32 paid \$1.98 million in payments in lieu of taxes (PILOTs) for total net tax exemptions of \$32.94 million. This includes \$23.37 million in real property tax exemptions and \$11.55 million in sales tax exemptions. CCIDA did not report providing any mortgage recording tax exemptions. CCIDA also reported three bond projects with \$6.9 million in conduit debt outstanding.

CCIDA also administers three separate loan funds that originated from federal funding.² The AI Tech Loan Fund was established in 2006 with \$10 million from the U.S. Economic Development Administration (EDA) to provide low interest financing to further economic growth and stimulate job retention and creation in the County. In 2020, the EDA authorized CCIDA to use up to \$250,000 of the loan fund to issue working capital loans to businesses affected by the COVID-19 pandemic. The Chautauqua Revolving Loan Fund (CRLF) was established to provide gap financing for minority and small businesses.³ The EDA CARES Loan Fund was established in 2020 with a \$10.5 million grant through Coronavirus Aid, Relief, and Economic Security (CARES) Act to help businesses affected by the COVID-19 pandemic. As of December 31, 2021, CCIDA had \$16.48 million in loans outstanding for 94 loans:

Loan Funds Outstanding in 2021		
Loan Fund	Number of Loans	Amount Outstanding
AI Tech	37	\$8,962,474
CRLF	11	\$497,815
EDA CARES	46	\$7,023,452
Total	94	\$16,483,741

CREDC had limited activities in 2021. CREDC entered into an agreement with a private not-for-profit (Ralph C. Wilson, Jr. Foundation) to receive \$1.05 million over three years to implement priority projects in alignment with the County's economic development strategic plan. In 2021, CRC's activities consisted of refinancing one tax-exempt bond. As of December 31, 2021, CRC reported \$78.1 million in conduit debt outstanding for four bonds.

² The New York State Attorney General has opined (Formal Opinion No. 2014-F1) that an IDA does not have the statutory power to provide grants or loans from its own funds to public or private interests under Section 858 (11) of General Municipal Law. Since CCIDA is administering federally sourced funds these loan funds are allowable.

³ It is unclear when the CRLF loan fund was established; however, the most recent revised operating plan for the fund is dated 1998.

CREDC and CRC Reporting and Website Transparency

CCIDA has historically reported CREDC's financial and operating activity within its annual PARIS reports and website as a subsidiary of CCIDA. However, as part of this review the ABO notified CREDC in June 2022 that the New York State Attorney General has opined (Formal Opinion No. 2014-F1) that industrial development agencies do not have the statutory authority to form subsidiary corporations and that CREDC is a local authority, separate and distinct from CCIDA. The ABO informed CREDC that it is required to report separately from CCIDA in PARIS moving forward for the fiscal year ending 2022.⁴ Given the historical reporting practices, we combined financials and operating activities for CCIDA and CREDC to assess the accuracy of CCIDA's PARIS reporting for this review. We also did not assess if all required information was posted for CREDC on its website. We were able to separately assess the accuracy of CRC's PARIS reporting for 2021 and review CRC's website for required information.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices, and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to evaluate the effectiveness and transparency of the operations and management practices of CCIDA, CREDC and CRC, as well as their compliance with Public Authorities Law and other provisions of law.

Compliance Review Scope and Methodology

Our compliance review was conducted from May 2022 to December 2022. The initial review was to assess the accountability and transparency of select operations and finances for CCIDA, CREDC and CRC for the period of January 1, 2019, through December 31, 2021. However, due to the combined activities and operations of CCIDA, CREDC, and CRC and the limited activities of CREDC and CRC, the review focused primarily on CCIDA operations and practices. To perform our review, we relied on the following documentation and data sources:

- Financial records
- Employment contracts and related documents
- Project agreements and PILOT agreements
- Policies and procedures indicative of good governance practices
- Credit card statements and receipts
- Lease agreements
- Board meeting minutes and board meeting packets
- Annual reports required by Public Authorities Law
- Information posted on CCIDA's and CRC's websites

⁴ For ABO's right to require separate financial reporting, also see, *Madison County IDA v ABO*, 33 N.Y.3d 131, 123 N.E.3d 239, 99 N.Y.S.3d 755 (2019) (The Court of Appeals held that the determination of the New York State Authorities Budget Office (ABO) denying the request of Petitioners - Madison County Industrial Development Agency (MCIDA) and Madison Grant Facilitation Corporation (MGFC) - to file consolidated audit reports was not irrational, arbitrary and capricious, or contrary to law.)

In addition to reviewing documents and records, we attended board meetings, interviewed CCIDA staff and board members, and performed other testing we considered necessary to achieve our review objectives.

Our report contains enforcement actions, as well as several recommendations to improve CCIDA, CREDC and CRC board oversight of their operations to ensure compliance, promote good governance and improve transparency and accountability. See Appendices D, E and F for all recommendations.

The results and recommendations of our review were provided to and discussed with CCIDA, CREDC and CRC officials, and their responses are reflected in the report. Their complete response has been appended to this report in Appendix G. In general, CCIDA, CREDC and CRC officials agree with our recommendations and indicate they are working on establishing and implementing policies and procedures to address the recommendations within the report.

Review Results

Board Members Fiduciary Duty

Section 2824 of Public Authorities Law (PAL) requires board members to provide direct oversight over executive management; understand, review, and monitor the implementation of fundamental financial and management controls and the operating decisions of the authority; and establish written policies and procedures. Members are to perform their duties “in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances”. In essence, board members have a fiduciary duty to safeguard the assets and resources of the authority and ensure that costs incurred, or payments made are reasonable, justified, and appropriate. However, we found the County of Chautauqua Industrial Development Agency (CCIDA) board did not provide adequate oversight over management, adopt adequate policies and procedures, and monitor the financial and management controls of the local authority. As a result of the board’s lack of oversight, monitoring, and policies, we found:

- Combined funds and misallocated expenses among separate local authorities
- Inappropriate and questionable discretionary spending
- Undocumented, improper, and inappropriate credit card purchases
- Unauthorized and inappropriate payments to the CFO
- CEO hired CCIDA staff for another local authority’s operations
- Potential inappropriate use of County employees
- CCIDA subsidized office space for the County
- Board abdicated its initial project review process
- Board failed to file required financial disclosures
- Board did not follow its Conflicts of Interest Policy for disclosure and recusal

We found all CCIDA board members failed to sign the required acknowledgement of fiduciary duty upon appointment.⁵ Section 2824 (1) (h) of PAL requires every authority board member to sign a written acknowledgement of fiduciary duty within sixty days of taking an oath of office. Board members are to acknowledge that they understand their fiduciary obligation to perform their duties and responsibilities in good faith and with proper diligence and care consistent with the Authority’s mission, by-laws, and the laws of New York State. See Appendix A for the Acknowledgement of Fiduciary Duty form.

Section 2824 (2) also requires board members to participate in State approved board member training regarding their legal, fiduciary, financial and ethical responsibilities as board members. We found that all CCIDA board members attended the required board member training sessions. These training sessions address the requirement for board members to acknowledge their fiduciary duty and indicate where the fiduciary duty acknowledgment form can be obtained. The training also addresses the duties of board members to provide adequate oversight of management and establish appropriate policies and procedures and instructs board members of their responsibilities to review and approve annual reports that are submitted to the State.

⁵ In response to our review, current board members signed their acknowledgement of fiduciary duty when such forms were requested. All forms were dated between May and June 2022.

The details in this report indicate CCIDA board members do not understand their role and responsibilities as fiduciaries of the local authority they serve. In addition, the lack of oversight, review, and monitoring by the CCIDA board exposed CCIDA to unnecessary financial risk and potential misuse of funds. As such, this report serves as a formal warning to CCIDA and its board members to take immediate action to implement the recommendations in this report within ninety days of its issuance or they will be censured by the ABO. See Appendix D for all CCIDA recommendations.

CCIDA, CREDC, and CRC responded that its board members provided direct oversight of senior management and that board members understand, reviewed, and monitored the implementation of the fundamental, managerial, and operational controls and decisions of the IDA and its affiliates. However, the authorities did not provide any supporting documentation to dispute the facts outlined in the report, while the results and examples outlined in this report indicate otherwise.

The response also states the ABO's conclusion "rests on ABO best practices and guidelines, and ultimately lacks legal foundation and relies on the ABO's subjective opinion and administrative measuring sticks." However, this statement is incorrect. As noted by the New York State Court of Appeals, Public Authorities Law grants the ABO "broad oversight authority" over public authorities (*Matter of Madison County Indus. Dev. Agency v. State of N.Y. Auths. Budget Off.*, 33 N.Y.3d 131, 137 (2019)). In addition to powers granted by the Public Authorities Accountability Act (PAAA) of 2005, the Public Authorities Reform Act (PARA) of 2009 made the ABO an independent entity and "enhanced its powers" as detailed in Section 6 of Public Authorities Law. This section, among other things, requires that the ABO "conduct reviews and analysis of the operations, practices and reports of state and local authorities to assess compliance" with the PAAA and other applicable provisions of law, as well as "assist state and local authorities in improving management practices and procedures" for public disclosure of activities and financial practices (Public Authorities Law § 6 [1] [a]-[o]; see *Matter of Madison County Indus. Dev. Agency*, 33 N.Y.3d 131, 136). As such, the ABO has the authority to assess compliance with Section 2824 of Public Authorities Law (Role and responsibilities of board members), particularly those sections which prescribe board members' responsibilities for direct oversight of "effective and ethical management of the authority," review and monitoring of financial controls and operational decisions, and acting in accord with their fiduciary duty (Public Authorities Law Section 2824 [1][a], [b], and [g]). These sections of law provide the basis for, and align with, the ABO's Policy Guidance and Recommended Practices documents identified in this report. Based on its authority, the ABO's review was reasonable and conducted in accordance with its compliance review protocols, which are based on generally accepted audit standards.

Combined Accounts and Misallocated Expenses

The County of Chautauqua Industrial Development Agency (CCIDA), Chautauqua Region Economic Development Corporation (CREDC) and Chautauqua County Capital Resource Corporation (CRC) are separate and distinct local authorities that must act independently of each other and establish their own corporate governance structure to promote accountability and transparency. As part of accountability and transparency, each authority must manage its operations and maintain and account for its assets and resources separately from any other organization.

We found CCIDA, CREDC and CRC share one operating checking account that is maintained by CCIDA staff. Funds of each local authority are deposited and paid from the sole operating checking account. As of December 31, 2021, the combined checking account had a balance of \$1.9 million, per CCIDA's general ledger. There is no agreement between CCIDA, CREDC or CRC for these shared accounts.

We also found there are no accounting policies or procedures for fund allocations for revenues and expenses of the CCIDA, CREDC and CRC. In absence of policies and procedures CCIDA staff explained that payment vouchers are prepared by the CCIDA Controller who determines which fund to allocate for each expense. The CFO then reviews vouchers for accuracy. CCIDA staff stated that all expenses are paid by CCIDA unless a specific allocation to CREDC or CRC is documented and then that expense is allocated to CREDC or CRC.

The lack of policies and procedures increases the risk of misallocation of payments. For example, we found CCIDA paid \$3,242 in legal fees in 2020 that had been invoiced for CREDC legal work related to the creation of a limited liability corporation. When questioned about this transaction, CCIDA staff stated that the reason this legal fee was expensed to CCIDA and not CREDC was most likely due to CREDC not having adequate funds at that time. This response presents a culture where CCIDA and its board members are accepting of using one local authority's funds, paying for the expenses of a separate local authority. This practice is inappropriate and raises concerns of the board's lack of financial oversight.

Further, in 2021 we found a transfer of \$62,500 from the CRC fund account to the CCIDA fund account. CCIDA staff indicated the transfer was for payroll expenses for three CCIDA staff that provided administrative services to CRC. However, the transfer was not supported by the documentation provided by CCIDA. CCIDA staff stated time allocation studies are completed on a quarterly basis to determine the percentage of their time spent on CCIDA loan programs and for other local authorities. The studies are then used to allocate CCIDA payroll expenses to the respective loan program or local authority. We reviewed the time studies for 2021 and found that the CRC was not included in these time studies. Therefore, we could not verify from the documentation what services were provided by CCIDA to CRC to support the transfer for payroll expenses.

Based on the findings above regarding the lack of board oversight over combined funds, this report serves as a formal warning to CREDC and CRC and its board members to take immediate action to implement the recommendations in this report within ninety days of its issuance or they will be censured by the ABO.

CCIDA, CREDC and CRC responded that they will establish individual policies and operational procedures to ensure that each operates as a separate and distinct local authority, including establishing separate bank accounts and accounting records. The response also notes that the COVID-19 pandemic adversely impacted their ability to account for certain expenses identified by the ABO and that they will establish policies, procedures, and agreements necessary to ensure proper back-up documentation is provided for any payments for services provided by and between CCIDA, CREDC and CRC.

CCIDA, CREDC, AND CRC RECOMMENDATIONS:

- The boards should ensure each local authority operates as the separate and distinct local authority that they were created to be.
- The boards should maintain separate bank accounts and accounting records.
- The boards should separately adopt accounting policies and procedures and monitor the financial and management controls.
- The boards should ensure adequate documentation for any payments for services provided.

Inappropriate and Questionable Discretionary Spending

Section 2824 (1) (e) of PAL requires boards of state and local authorities to adopt written policies and procedures for the procurement of goods and services. Procurement guidelines help to ensure authority funds are used to support the mission of the authority, enable authorities to acquire maximum quality at the lowest possible cost, and guard against favoritism, fraud, and corruption.

The ABO has issued policy guidance stating, at a minimum, procurement guidelines should address approval thresholds, describe the types of goods and services eligible to be procured and establish the authority's policies regarding soliciting proposals, obtaining quotes, selecting contractors, and awarding, monitoring, and reporting of contracts.⁶ In addition, the ABO also recommends all authorities adopt written policies for the proper use of authority discretionary funds.⁷ Such policies should address what constitutes a proper discretionary expenditure related to the mission and public purpose of the authority, as well as what would be considered an improper use of those funds that the board will not approve. Examples of inappropriate use of authority funds would include, but need not be limited to:

- Food, beverage, and other refreshments purchases for personal use of directors, management or other employees, or persons with whom the authority conducts business
- Flowers and gifts for staff, directors or family members
- Celebrations for special occasions that do not directly relate to the purpose of the authority, such as catering for holiday parties
- Charitable contributions or sponsorships of events not associated with the authority's mission
- Assignment of cell phones to non-authority staff

CCIDA's Procurement Policy identifies the policies for purchases of commodities, equipment, goods, public works, and services, including when verbal or written quotes are required, when purchases are to be made at the discretion of management due to low dollar threshold, and how contracts are awarded. However, we found the policy does not

⁶ ABO Policy Guidance No. 17-02 Public Authority Procurement Guidelines

⁷ ABO Recommended Practice: Written Policies Governing the use of Authority Discretionary Funds

include provisions regarding the proper use of CCIDA discretionary funds. In addition, the policy does not include any provision for board approval. The lack of board involvement in the procurement process does not allow the board to provide the oversight required under PAL 2824.

Given the lack of policies for the use of discretionary funds, we reviewed CCIDA vendor payments from its general ledger for 2019, 2020, and 2021 to identify any potentially questionable expenditures. We identified \$130,785 in CCIDA funds were used for inappropriate and questionable expenses, including sponsorships, donations, employee memberships, holiday dinners, flowers, and other gifts. Of the total, \$101,378 was for sponsorships and donations (78 percent). For example, CCIDA paid \$10,000 during the period to the National Comedy Center for an endowment. In addition, CCIDA paid \$14,500 to the Northwest Arena, \$1,500 per year for an annual sponsorship and a lump sum of \$10,000 in 2021 with no description included in the ledger. Discretionary funds may be used for appropriate purposes related to the CCIDA's mission. However, given the absence of board approved policies governing the use of discretionary funds the spending for sponsorships and donations are inappropriate.

We also found in 2021 CCIDA paid \$6,898 to a local hotel for the "CCIDA Holiday Dinner". Further, six individuals received between \$50 and \$75 for Christmas gifts between December 2020 and January 2021. The gift recipients include two CCIDA employees, one CCIDA staff member (contractor), one Chautauqua Planning and Development employee, one Chautauqua Lake and Watershed Alliance employee, and one previous County employee. In addition, we found CCIDA paid \$450 for a "Holiday Party Gift". These gifts are an inappropriate use of CCIDA funds.

In addition, we found CCIDA provided its two contracted employees who do the work for the CREDC PEG program with a \$50 monthly stipend to cover their cell phone expenses. Cell phone stipends amounted to \$2,100 over the period reviewed. As recommended in the ABO's Policy Guidance, providing cell phones to non-authority staff is inappropriate.

Discretionary Spending Analysis Totals				
Expense Type	2019	2020	2021	Total
Sponsorships	\$36,998	\$12,050	\$36,480	\$85,528
Donations	\$5,500	\$10,250	\$100	\$15,850
Holiday Dinners	\$2,572	N/A	\$6,898	\$9,470
Cell Phones (non-authority staff)	\$300	\$600	\$1,200	\$2,100
Gifts	N/A	\$75	\$750	\$825
Flowers	N/A	\$118	\$290	\$408
Memberships	\$75	\$200	N/A	\$275
Totals	\$45,445	\$23,293	\$45,718	\$114,456

*N/A represents no expenses found

CCIDA officials stated that although the board did not approve a policy for discretionary spending, the expenses for sponsorships and donations were incurred for CCIDA publicity and advertising. CCIDA responded that it will review and amend its Travel Policy and Procurement Policy and establish a new Discretionary Funds Policy to ensure all expenditures are made in support of its mission and purpose.

CCIDA RECOMMENDATIONS:

- The board should discontinue the use of discretionary funds for inappropriate expenditures, including, but not limited to, sponsorships, donations, employee memberships, dinners, flowers, gifts, and cell phone stipends for non-authority staff.
- The board should review and amend its procurement guidelines to ensure there is adequate board oversight over the procurement process.
- The board should approve policies governing the proper use of CCIDA discretionary funds.

Undocumented, Improper and Inappropriate Credit Card Purchases

Section 2824 (1) (e) of PAL requires public authority boards to establish written policies and procedures including policies for the procurement of goods and services. Further, the Office of the New York State Comptroller (OSC) has issued best practices for the use of credit cards to help local governments⁸ ensure credit cards are only used for approved and necessary expenses.⁹ The guidance states local governments should have both a credit card policy and a system of internal controls in place. The best practices OSC recommends include:

- Require each credit card to be authorized by the governing board before it is issued
- Require itemized receipts and never pay claims without documentation.
- Document the purpose of each purchase
- Establish guidelines for internet purchases
- Require card holders to provide the names of anyone who incurred the expense. (For example, if food was supplied at a meeting, indicate who attended.)
- Prohibit the use for personal expenses
- Segregate duties among staff and never allow anyone to review and approve their own purchases
- Don't use automatic payment deductions to pay credit card bills

Between 2019 and 2021, CCIDA had eight active credit cards. Six were issued to CCIDA employees including the CFO, Controller, and project managers. The remaining cards were issued to the CCIDA CEO and a CREDC PEG Program Manager.

We found the CCIDA board has not adopted policies and procedures for the use of credit cards and does not have an adequate internal control structure in place to minimize the risk of error, misuse, and fraud. The CFO stated credit cards are used for ordering supplies and meals while meeting with clients. The CFO does not provide pre-approval for purchases, but indicated receipts are expected for all purchases. This practice does not

⁸ General Municipal Law Section 10 defines "local government" as any municipal corporation, school district, board of cooperative educational services, district corporation, special improvement district governed by a separate board of commissioners, industrial development agency or authority of public library.

⁹ Office of the State Comptroller Local Government Publication: Cost-Saving Ideas: Credit Card Accountability - Minimizing the Risk of Error, Misuse and Fraud. Updated 2016.

allow for adequate oversight before making payment including a reconciliation of credit card statements with itemized receipts and invoices.

We also found a lack of segregation of duties over credit card usage and payments. The Controller is responsible for reviewing and maintaining receipts for all eight credit cards, entering all credit card transactions in the general ledger, accounting for expenses and reconciling receipts to the monthly credit card statements for each credit card. Given the Controller has a credit card, this practice creates a financial risk as it allows the Controller to make purchases, review their purchases, record their purchases, and pay for their purchases with no outside review or approval. In addition, CCIDA has its monthly credit card balance set up as an automatic payment deduction from its operating bank account.

As a result of the lack of policies and inadequate internal controls we identified \$73,115 in credit card purchases made without adequate documentation to support the CCIDA business purpose. The majority of these purchases (69 percent) were made by the CFO and Controller, totaling \$27,874 and \$22,624, respectfully. Given the roles of these two individuals over the finances of the organization, it is concerning the value of the purchases made without adequate supporting documentation. We also found \$26,000 in inappropriate meal purchases; \$11,194 in improper purchases for a separate local authority; and \$400 in unnecessary sales tax payments. Additional results of our review are detailed below.

No Receipts or Documentation to Support the Purpose of Purchases

According to the CFO, credit cards are used for ordering supplies and meeting with clients and paying for their meals. The CEO concurred and indicated that verbal pre-approval is given for certain purchases and that receipts are expected for all purchases.¹⁰ We reviewed the credit card statements and corresponding receipts and documentation for all credit cards in 2019, 2020, and 2021. For the period, there were 1,232 credit card purchases across the eight cards, totaling \$116,380. We found receipts are not consistently maintained and the purpose of each purchase is not always documented when the receipt is available for review. Of the total transactions, 639 transactions (52 percent) totaling \$66,831 were not supported by a receipt. Additionally, there were 112 transactions that, while receipts were available for review, these did not include a documented purpose for the purchases. Altogether, there were 751 transactions (61 percent) totaling \$73,115 where the lack of receipts or stated purpose greatly increased the risk of theft or misuse of public funds. The remaining 481 transactions had receipts available for review and a stated purpose for each receipt.

2019-2021 Breakdown of Credit Card Transaction Documentation				
Receipt Analysis Results	Number of Transactions	Percentage of Total	Value of Transactions	Percentage of Total
No Receipt or Documented Purpose	751	61%	\$73,115	63%
Receipts with Purpose Included	481	39%	\$43,265	37%
Totals	1,232	100%	\$116,380	100%

¹⁰ We were unable to confirm verbal pre-approvals as documentation for such approvals is not maintained by CCIDA.

Inappropriate Meal Purchases

We found credit cards are frequently used to purchase meals for the personal use of management, staff and people with whom the CCIDA conducts business. Over the three-year period, of the 1,232 credit card purchases made, at least 372 of those purchases totaling more than \$26,000 were spent at restaurants. Further, CCIDA officials stated its project managers are encouraged to meet their clients and cover meal costs associated with the meeting to eliminate the perception of a conflict of interest. Food, beverage, and other refreshments purchased for the personal use of directors, management or other employees, or by persons with whom the authority conducts business are considered by the ABO to be inappropriate without prior authorization.¹¹

Unauthorized and Improper Use of Credit Cards by CREDC

We found \$11,194 in purchases that were expensed to CREDC for its PEG program. In 2019 a credit card was issued to the County employee managing CREDC's PEG program under a service contract with CCIDA. However, we reviewed board meetings minutes for 2019, 2020, and 2021 and found no board authorization for this individual to be issued a CCIDA credit card. Of the total PEG purchases for the period, this individual had purchases totaling \$9,563 for CREDC's PEG program. Without formal board authorization, it is unclear if this individual was authorized to use the CCIDA credit card for such purchases. However, even with board approval this practice is inappropriate since CREDC is a separate independent local authority and should not have access to CCIDA credit cards for its purchases and expenses. As previously stated, CREDC should maintain its own separate accounts, including any credit card accounts.

Inappropriately Incurring Sales Tax on Amazon Purchases

We found 63 online Amazon purchases totaling approximately \$5,650 which included payments of \$400 in sales tax through these credit card purchases. As a public benefit corporation, IDAs should not be paying sales tax and CCIDA officials should ensure sales tax is not paid on any purchases it makes.

CCIDA responded that all credit card expenditures were appropriately made to facilitate its mission and purpose. However, this response fails to address CCIDA's lack of documentation to support such statement. CCIDA's response does acknowledge that better controls will provide better accountability and transparency and stated that it has engaged legal counsel to establish a new Credit Card Policy and system of internal controls.

CCIDA RECOMMENDATIONS:

- The board should adopt a credit card policy and develop adequate internal controls to ensure credit card purchases are adequately reviewed, documented, and supported for approved and necessary CCIDA expenses. Such policy should also ensure adequate segregation of duties.

¹¹ ABO Recommended Practice: Written Policies Governing the use of Authority Discretionary Funds

- The board should discontinue the use of automatic payment deductions from its bank account for its credit card balance.
- The board should discontinue the practice of allowing a separate local authority to use its credit cards for purchases.
- The board should ensure it is not paying sales tax for purchases.

Unauthorized and Inappropriate payments to CFO

Due to the lack of board oversight, we identified \$50,629 of unauthorized and inappropriate payments to the CFO. The CCIDA board approved an employment contract with its CFO in December 2016. The contract provides a brief description of the CFO's duties and responsibilities and a salary amount with yearly raises to be determined by the CEO. The CFO is responsible for approval of all CCIDA payments, which are then signed by the CEO and an authorized signatory over \$1,000. The CFO reports to the board at its meetings regarding CCIDA financials, including its balance sheet, revenues and expenses and year-to-date budget to actuals. We found during the review period the CFO received a total of \$30,600 in payments for car allowances (\$850 per month) and purchased \$1,600 in gas using a CCIDA credit card. The CFO also received \$18,429 in CCIDA reimbursements for a golf membership and related expenses at a local golf course. These additional benefits are not included in the CFO's employment contract, and we found no board approval for such payments. In addition, CCIDA's Travel Policy does not include any provisions for a car allowance for the CFO and only allows for reimbursement for employee gas purchases for CCIDA business. The CFO approved each of these transactions without board authorization.

CCIDA responded that it will ensure only the benefits which the board approved within its employment contract with the CFO are provided. However, CCIDA's response disputes that the CFO's car allowance is unauthorized and states that the car allowance was made with the knowledge of the board. The response indicates that the CFO's contract prior to December 2016 provided for a \$750 monthly car allowance and that the board resolution intended for the updated contract to be in substantially the same form and substance as the existing contract. However, the employment contract between CCIDA and the CFO, signed by the CCIDA Chair on December 13, 2016, does not provide for a car allowance or any reference to the prior contract's benefits. Although the employment contract includes a section for benefits, the only benefits included are those that are provided to all CCIDA employees with specific mention only of health insurance. Furthermore, the contract states that it contains all the covenants and agreements between the two parties with respect to the employment of the CFO in any manner whatsoever, and that the entire agreement supersedes any and all other agreements, either orally or in writing, between the CCIDA and the CFO. As such, based on the contract terms the car allowance would not be an allowable benefit to be provided to the CFO. We requested the employment contract prior to the December 2016 board resolution that included the car allowance, but CCIDA was not able to provide it.

The response also indicates the CFO's reimbursement for membership at a local country club and related expenditures were for business development purposes consistent with the IDA's mission and were undertaken at the specific request, direction and knowledge of the IDA's former CEO. The response states that these are not CFO employee benefits

and that the IDA will look to establish policies that only authorize IDA reimbursements if the expenditures support its mission and purpose.

CCIDA RECOMMENDATION:

- The board should ensure only the benefits to which the board approved within its employment contract with the CFO are provided. Any benefits not approved or authorized should be remitted back to CCIDA.

CEO Hiring Staff for CREDC Operations

CCIDA By-laws provide the CEO with authority to employ personnel necessary to exercise the powers, duties and functions of CCIDA. However, we found the CEO has used this ability to hire individuals to administer and operate programs associated with CREDC, a separate and distinct local authority. For the review period, we identified five individuals hired by CCIDA as contracted staff or as CCIDA employees to do the work for CREDC. These individuals received compensation over the period totaling \$200,179 as outlined below.

- CCIDA's CEO entered into a staff service contract in July 2019 with a County employee to work for CCIDA as contract staff. The individual worked exclusively managing CREDC PEG programs and was paid \$9,000 in 2019, \$18,000 in 2020 and \$22,290 in 2021. We found all compensation was expensed to the CREDC PEG program.
- CCIDA's CEO entered into another staff service contract in January 2021 with another County employee to work for CCIDA as contract staff. The individual worked exclusively on CREDC PEG programs and was paid \$21,448 in 2021. We found all compensation was expensed to the CREDC PEG program.
- CCIDA hired a full-time employee in May 2020 to work on CREDC PEG programs. The individual was paid \$34,942 in 2020 and \$58,495 in 2021 through CCIDA payroll. We found all compensation was expensed to the CREDC PEG program.
- CCIDA hired a part-time employee in February 2021 to work on CREDC's PEG programs. For 2021, the individual was paid \$31,850 through CCIDA payroll. We found all compensation was expensed to the CREDC PEG program.
- CCIDA hired a Director of Public Relations and Communications in December 2021 for marketing and communications. The costs and duties of the individual were to be split between CCIDA and CREDC. The individual was paid \$4,154 in 2021 through CCIDA payroll. We found all compensation was expensed to CCIDA.

CCIDA responded that it has retained legal counsel to assist in reviewing the current staffing relationships and will enter into an appropriate administrative services agreement with CREDC as may be required.

CCIDA RECOMMENDATION:

- The board should discontinue the practice of hiring and contracting with individuals to do work for other local authorities.

Potential Inappropriate Use of County Employees

General Municipal Law (GML) 858 (6) states IDAs have the power to use municipal employees with the municipality's consent and with the IDA paying the municipality its agreed proportion of the compensation or costs of the employees. However, we found no agreement between CCIDA and the County providing consent for the use of County employees or ensuring the County is compensated for its costs for any County employees used by CCIDA. Further, and of more concern, the County employees hired as CCIDA contract staff are being used to do the work of CREDC, which is an LDC. This arrangement is inconsistent with what is allowable under GML.

CCIDA responded that Chautauqua County's Administrative Code (Administrative Code) explicitly states that the County's Department of Planning and Development may periodically provide assistance to the CCIDA, CREDC and CRC, as needed. However, Section 6.01 of the Administrative Code provides that the Deputy County Executive for Economic Development, who oversees the Department of Planning and Development, may periodically provide assistance to the CCIDA, CREDC and the CRC, as needed. The Administrative Code does not include any other provision allowing Department of Planning and Development employees to serve as staff to CCIDA, CREDC or CRC. The response also indicates that assistance provided to the CCIDA, CREDC and CRC should be at no cost to these organizations. However, as outlined in the review the County employees hired by the Deputy County Executive for Economic Development, acting as CCIDA CEO, are not providing assistance at no cost to these organizations. Rather, these individuals are being paid by CCIDA for their services.

The response also states that the IDA, CREDC and CRC have retained legal counsel and will consult with the County Attorney's office to analyze and consider entering into formal agreements with the County for use of County staff in order to appropriately document the scope and extent of such assistance provided by the County and to provide reimbursement of costs that may be required in the discretion of the County.

CCIDA RECOMMENDATION:

- The board should only use County employees after obtaining consent from the County and establishing an agreement for any costs, in accordance with GML. Further, use of such employees should only be for CCIDA operations and not for any other local authority.

CCIDA Subsidizing Office Space for the County

CCIDA leases 3,736 square feet (sq.ft.) of office space in a building in Jamestown. The lease agreement is a triple net lease whereby CCIDA pays rent, utilities, and a proportionate amount of all the expenses of the property, including real estate taxes,

building insurance, and maintenance. Over the review period, CCIDA paid \$443,541 in rent and other expenses for the office space. The total for the period averages \$147,847 per year.

We found CCIDA does not use all of the office space that it leases for its purposes. During the period, CCIDA subleased between 228 and 1,900 sq.ft. of its space to the Chautauqua County Department of Planning and Development. The sublease agreements for the review period state that CCIDA was responsible for all expenses related to the space and required annual rental payments from the County ranging between \$1,500 and \$12,500. We found that the County paid a disproportionate amount of rent compared to the total rent and other expenses incurred by CCIDA for the subleased space. As such, it appears CCIDA inappropriately subsidized the County by a total of \$128,579 for the three-year period as shown in the chart below.

CCIDA Subsidizing County Office Space - Comparison of CCIDA Costs for County Rented Space to Actual Amount Received by County				
	2019	2020	2021	Totals
Total CCIDA Expenses for Office Space	\$145,829	\$147,198	\$150,514	\$443,541
County Subleased Space (sq.ft.)	1,500	228	1,900	
Percent of Space Used by County	40.15%	6.10%	50.86%	
CCIDA Cost of County Space*	\$58,550	\$8,983	\$76,546	\$144,080
Total Rent Paid by County to CCIDA	\$1,500	\$1,500	\$12,500	\$15,500
Difference between Cost of CCIDA Space and Total Rent Received by County (amount subsidized)	(\$57,050)	(\$7,483)	(\$64,046)	(\$128,579)

*Total CCIDA Expenses multiplied by the Percentage of County Space

CCIDA also rents additional office space in Dunkirk, NY from SUNY Fredonia. In 2021 CCIDA paid \$1,480 per month for this space. The CCIDA staff that occupy this office space include three of the County employees contracted by CCIDA, including the CEO and the two individuals that work on the CREDC PEG program, and one of the CCIDA employees that also works on PEG. The use of this additional office space by County employees and staff that administer CREDC programs indicates another example of CCIDA subsidizing office space for other entities. There is no lease agreement with the County or CREDC for this additional office space.

CCIDA responded that it will implement and utilize the provisions and procedures included in its Property Disposition Policy moving forward with respect to subleasing office space to the County or other entities.

CCIDA RECOMMENDATION:

- The board should ensure that it is receiving its proportional share of any office space sub-leased to Chautauqua County or other entities.

Board Abdicating Initial Project Review Process

Preliminary review and authorization of a project application for financial assistance is normally an action of the CCIDA board. For example, the board approved a preliminary resolution for a project (ROM Ventures) on January 28, 2020, authorizing a public hearing

to be held and a notice for a proposed deviation from CCIDA's Uniform Tax Exemption Policy (UTEP) to be sent to affected taxing jurisdictions. Following the project's public hearing on February 19, 2020, the board reviewed the project again and provided its final approval on February 25, 2020.

However, we found the board has abdicated its preliminary authorization for some projects to a Transactions Committee since its creation in 2017. CCIDA staff stated that the Transactions Committee was created to fast-track the project approval process to initiate a public hearing without waiting for full board approval. In February 2017, the CCIDA board created, by resolution, a Transactions Committee to "consider on a preliminary basis projects presented to the Agency." The Transactions Committee is made up of the CCIDA Chair, CEO, CFO, and the project-specific Business Development Manager.¹² One portion of the resolution states that the Transactions Committee is "advisory only," while another section of the resolution states that the Committee has the authority to "provide preliminary authorization to the Agency to further negotiate the terms of the financial assistance package and to initiate the State Environmental Quality Review (SEQR), UTEP deviation and/or public notice(s) processes upon receipt of a completed and executed Application for Financial Assistance." The resolution also states "final decision-making authority on any project shall at all times remain with the members of the Agency."

Although the board's resolution states the Transactions Committee is to be "advisory only" in nature; if the board has delegated the authority to provide preliminary authorization to the agency, then it is not "advisory only." Rather, the Committee serves as a necessary function in the decision-making process. As an example, a project (The Stannard Group) was presented at the Transactions Committee meeting on May 7, 2019, in which the project's application for financial assistance was presented requesting real property tax, sales and use tax, and mortgage recording tax exemptions to build a facility. The request for financial assistance also contained a deviation request from CCIDA's UTEP for a 15-year payment in lieu of taxes (PILOT) that would save the company \$896,004. Following discussions, the Transactions Committee unanimously voted to accept the application, PILOT deviation request, and schedule a public hearing. The public hearing was held on May 23, 2019. On May 28, 2019, the project was presented to the CCIDA board for the first time where it received final approval for the financial assistance requested. According to Transactions Committee's meeting minutes, the Committee voted to approve four projects in 2019, three in 2020, and three in 2021. Although the board has final approval of financial assistance, by allowing the Transactions Committee to usurp the board and approve the preliminary authorization for some projects prior to full board approval, the board is abdicating its fiduciary responsibility.

CCIDA responded and strongly refuted this finding and states the CCIDA board always adopts the statutorily required project approvals, and no such abdication of its role to the Transactions Committee has ever been made.

CCIDA RECOMMENDATION:

- The board should not abdicate its role to management for providing preliminary authorization to a project being considered for financial assistance.

¹² Business Development Managers are CCIDA staff assigned to follow a project through the approval process and monitoring while an active project.

Board Not Filing Required Financial Disclosures

Section 2824 (1) (d) of PAL requires the board to adopt a code of ethics that at a minimum includes the standards of conduct established in Section 74 of Public Officers Law (POL). CCIDA has adopted a Code of Ethics that aligns with Section 74 of POL. The Code of Ethics also requires all officers or employees to file with the chair of the Governance Committee a signed annual disclosure statement within thirty days of employment or taking office and no later than April 30 of each year thereafter. In addition, CCIDA By-laws require officers and employees to file annual financial disclosure statements with the County Board of Ethics. We requested the annual financial disclosure statements for our review period and CCIDA staff stated that officers and employees do not sign and file the annual financial disclosure statements indicated in the Code of Ethics.

CCIDA responded that it will establish administrative procedures to ensure annual financial disclosure statements are completed by members and employees as required.

CCIDA RECOMMENDATION:

- The board should ensure it is following its By-laws and Code of Ethics and filing annual financial disclosure statements with the County Board of Ethics.

Board Not Following its Conflicts of Interest Policy for Disclosure and Recusal

Article 18 of General Municipal Law (GML) requires officers and employees of industrial development agencies to disclose conflicts of interest and specifies the conflicts of interest that are prohibited. In addition, the ABO has issued Recommended Practice: Conflict of Interest Policy for Public Authorities, to assist authorities in establishing their conflicts of interest policy.

CCIDA has adopted a Conflicts of Interest Policy that aligns with the ABO's guidance. The Conflicts of Interest Policy requires the details regarding a member's conflict of interest to be disclosed in writing to CCIDA's Governance Committee and Ethics Officer and to be made part of the official record of the proceedings. The Policy also states a member can't participate in any decision or discussion where they have a perceived or actual conflict of interest. It states members must recuse themselves from deliberations, votes, or internal discussions on the matter. However, we found the board is not adhering to its Conflicts of Interest policy regarding disclosure and participation.

During 2019, 2020, and 2021 the CCIDA board held 32 meetings. We identified 15 instances in board meeting minutes where a board member abstained from voting. Of the 15 abstentions, one included a board member abstaining because the board member arrived late and did not have enough information to vote. For six other abstentions, the minutes indicate the members abstained due to business relationships, but the details of the relationships were not included in the minutes. The other eight abstentions did not provide any reason in the minutes, so it is unclear if these are conflicts or not. In addition, we found two instances where board members abstained from voting but participated in part of the discussion on the project being considered as part of the minutes. For example, in 2020 a board member abstained from approving a project (KGPHJ, LLC), but commented that this was a good business, and that the member liked the resolution being considered. We also found none of the recusals for business relationships that indicated

a potential conflict of interest were reported to the Governance Committee. These actions by the board and its members go against its established policies and the requirements of GML.

CCIDA responded that it will review and amend its Conflicts of Interest Policy and Ethics Code and ensure board members are familiar with these policies. The response also states the IDA will ensure that all conflict disclosures are properly and timely made, recorded in meeting minutes, and that board members with a perceived or actual conflict of interest refrain from discussion on the matter.

CCIDA RECOMMENDATIONS:

- The board should ensure it is following its established Conflicts of Interest Policy, including requiring members to disclose any perceived or actual conflicts of interest in writing as part of the meeting minutes.
- Board members should refrain from participation in any decision or discussion where they have a perceived or actual conflict of interest.

Violations of Open Meetings Law

Article 7 of Public Officers Law, commonly known as Open Meetings Law (OML), requires public authorities to conduct business in an open and public manner. This allows the public to attend and observe the performance of public officials and listen to the deliberations and decision making. Committees, subcommittees or similar bodies consisting of two or more members are also considered a public body and are subject to the OML, as are entities created or appointed to perform a necessary function in the decision-making process. The ABO has also issued Recommended Practice: Meetings – Best Practice Guide for Public Authorities to assist authorities with public authority board meetings.

OML defines “executive session” as a portion of a meeting that is not open to the general public. Under the OML, a public body may hold an executive session only when it is dealing with one of eight exemptions found in Section 105 of OML. These situations are generally limited to matters that, if disclosed to the public, could have a detrimental impact on the Authority, another governmental office, or constitute an unwarranted invasion of personal or health privacy. If a public body wants to hold an “executive session”, it must identify a specific statutory exemption and adequately identify the subject to be discussed. The Committee on Open Government (COOG) has also clarified the use of executive session under OML by providing advisory opinions.

Section 106 of OML also requires minutes to be taken at all meetings of public bodies. This includes meetings of the full board as well as committee meetings. Meeting minutes, at a minimum, are required to include a record of all motions, proposals, resolutions, and any other action items that are to be considered for action by the board. Minutes are the official record of a meeting and contain information about all the actions taken during board meetings and can be considered legal evidence of the facts they report. For this reason, it is important that the minutes be recorded in a way that clearly and accurately reflects all the business transacted during a board meeting.

Inadequate Reasons for Use of Executive Session

During 2019, 2020, and 2021, the CCIDA board spent a period of its meeting in executive session during 28 of the 32 board meetings that were held. For 16 meetings (57 percent), CCIDA board meeting minutes did not include a reason for the use of executive session. This included seven meetings in 2019, three meetings in 2020, and six meetings in 2021. Since the minutes are the official record of the meeting, the lack of description of the statutory exemption and the absence of a subject to be discussed are violations of OML.

We also found the specific detail required to support the statutory exemption(s) being used for executive session is not included in minutes for the remaining 12 meetings. For example, in each of the 12 board meeting minutes, it is indicated that the board entered into executive session to discuss and review the financial and credit history, financial status, or financial position of certain companies. Section 105 (1) (f) of OML states that a public body may enter into an executive session to discuss the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. However, COOG has advised, and courts have ruled that boilerplate motions to enter executive session are a violation of OML if they fail to identify, with specificity, the topic to be discussed.¹³ We found none of the minutes identified the company or topic to be discussed in the use of the executive sessions.

Other reasons to enter executive session in the minutes included discussing the acquisition or lease/straight-lease of property. Section 105 (1) (h) of OML permits a public body to conduct an executive session to discuss “the proposed acquisition, sale or lease of real property...but only when publicity would substantially affect the value thereof”. COOG has advised that a motion under Section 105 (1) (h) of OML should indicate that the public discussion of the proposed action would “substantially affect the value” of the property. We found that none of the minutes indicated such discussions would impact the value of the property.

We further found minutes indicated the use of executive session to discuss personnel matters. COOG has advised that a motion describing the subject to be discussed as “personnel” is inadequate and that the motion should be based upon the specific language of Section 105 (1) (f) of OML and indicate whether the discussion is in regard to a particular person or corporation.

CCIDA responded that procedures have been implemented which require general counsel to provide the statutorily permissible reasons to enter into executive session to the Chair, to ensure that the Chair appropriately cites the specific statutory exemption, identifies the subject matter, and ensures the minutes reflect these items.

¹³ The Appellate Division (4th Dept.) upheld the Supreme Court decision of Zehner v Board of Education of Jordan-Elbridge Central School District, which states “the employment matter of “a particular person or corporation or matters leading to appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation” lacks specificity and fails to identify with particularity the topic to be discussed”.

Committee Meetings Not Open to the Public

In March 2020, the board established a Loan Committee to review loan applications from affected businesses in response to the COVID-19 pandemic. The Loan Committee determines which projects move to the full board for review and approval and its members include the CCIDA Chair, another board member, and five local bankers. We found, despite its decision-making authority the Loan Committee does not hold public meetings nor maintain meeting minutes, in violation of OML. We also found the Transactions Committee, established to provide preliminary authorization to projects for financial assistance, maintains meeting minutes, but its meetings are not open to the public. We believe these meetings should follow OML.

CCIDA responded acknowledging that any committee, subcommittee, or other similar body of the board consisting of two or more “board members” (of that governing board or of a public body) is a “public body” as defined in OML, and that going forward they will conduct meetings of committees and subcommittees in accordance with OML. However, the response also states the CCIDA does not agree that meetings of its Transactions Committee, which, in its present form, include only one member of the IDA board, are subject to open meetings. CCIDA further asserts that actions of the Transactions Committee are merely statutorily required administrative actions and are not actions required to be made only by the IDA board of directors in open session.

However, after discussion with the Committee on Open Government (COOG), we find CCIDA’s response is conflating two separate portions of the definition of “public body.” While the definition of public body includes both the full governing body (i.e., the IDA’s board of directors) and any committee (of two or more individuals) of the board of directors that consists entirely or primarily of board members, the definition of public body under Section 102 (2) of Public Officers Law **also** includes:

“...an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law...”

The Transactions Committee would not be a “committee of the board of directors” because it is not made up entirely or primarily of board members. However, given the Transactions Committee consists of two or more members it would constitute “an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members.” According to COOG, to fit this portion of the definition, the members do not need to be members of the board of directors to qualify as “members.” Therefore, the Transactions Committee, as established, is subject to the provisions of the OML.

Inadequate Details in Board Meeting Minutes

We found instances where the meeting minutes lacked the necessary details to determine what actions were taken by the board. For example, when discussing a proposed project or item the meeting minutes indicate “New Business B 1” without any reference to the

name of the project or item to be discussed. In addition, in many instances the minutes reference a resolution number without indicating the purpose or title of the resolution. This is not transparent to the public since the public may have no knowledge of what “New Business B 1” references. In some instances, the discussion that is included after numbers and resolutions give some insight to the project or resolution being discussed; however, the lack of a sufficient description diminishes the transparency of the meeting minutes by limiting the ability of the public to determine the nature of discussion or action taken by the board.

Further, we found board resolutions are not included or attached to the meeting minutes as required by CCIDA By-laws. This lack of information limits the public’s ability to understand the intent or actions of the board.

CCIDA responded that it will proactively review board meeting minutes to ensure insertion and inclusion of board meeting details and resolutions.

CCIDA RECOMMENDATIONS:

- The board should only use executive sessions for those purposes outlined in Section 105 of Public Officer Law, current case law, and Committee on Open Government advisory opinions to ensure that reasons for executive session include the specific statutory exemption and adequately identify the subject to be discussed.
- The board should ensure all meetings of its established committees are open to the public.
- The board should ensure all meeting minutes clearly and sufficiently describe the business transacted during all board and committee meetings.
- The board should ensure board resolutions are included with the meeting minutes, as required by their By-laws.
- The board should seek separate trainings on the requirements of the Open Meetings Law from the Committee on Open Government.

PILOT Administration

According to Section 874 of GML, any real property owned or controlled by an IDA is not subject to real property taxes. IDAs generally negotiate an agreement for payments in lieu of taxes (PILOTs) with the assisted business to recapture a portion of the real property taxes to then direct or forward to the affected taxing jurisdictions. Section 858 (15) of GML requires PILOT agreements to be in writing and to include the annual amount due to each affected taxing jurisdiction or a formula to calculate the amount due. In addition, Section 874 of GML requires PILOTs received by the IDA to be remitted to each affected taxing jurisdiction within 30 days of receipt. Further, if a PILOT is not paid when its due or is not remitted to the taxing jurisdictions in 30 days, GML requires a late payment penalty of five percent on the initial PILOT due and then an additional one percent interest on any amount due until the PILOT is paid in full.

CCIDA calculates, bills, and collects the PILOTs for its projects and then distributes the PILOTs to the affected taxing jurisdiction based on the PILOT agreement terms. CCIDA staff indicated their practice is to bill projects 45 days prior to the due date to ensure the PILOTs are received and distributed to the taxing jurisdictions by the required due date in the PILOT agreement. We reviewed the PILOT agreements and payment information for four projects (2071 Stoneman, LLC, 320 Roberts Road Freezer LLC, The Stannard Group, Inc., and Wells Enterprise, Inc.) to calculate the PILOTs due in 2019, 2020, and 2021 and compared that to what CCIDA billed each project. We also determined if the PILOTs were paid by their due date and remitted to the taxing jurisdictions within 30 days of receipt by CCIDA. We were only able to assess three projects because the fourth project's PILOT agreement did not include the terms to calculate the PILOT (2071 Stoneman, LLC). CCIDA staff agreed the terms were missing in the PILOT agreement and would address this error at a future board meeting to correct it.

We found CCIDA did not accurately and timely bill PILOTs per the agreement terms to ensure the PILOTs were paid by the due date. We also found CCIDA did not always remit PILOTs to taxing jurisdictions within 30 days of receipt, as required by GML. In addition, CCIDA did not pay late penalties and interest to taxing jurisdictions for PILOTs not paid by the due date and/or held more than 30 days. The results of our review are outlined below.

- *Inaccurate PILOT Bills* - For two projects (The Stannard Group, Inc. and Wells Enterprise, Inc.) we found the 2021-22 school PILOTs were calculated using the wrong tax rate which resulted in one project being billed \$122 less than required (The Stannard Group, Inc.) and the other project being billed \$1,944 more than required (Wells Enterprise, Inc.). The remaining PILOT agreement (320 Roberts Road Freezer LLC) had a fixed payment schedule that started in 2020 and was correctly billed in 2020 and 2021.
- *Late PILOT Billing* – CCIDA did not bill two projects (The Stannard Group, Inc. and 320 Roberts Road Freezer LLC) until after the PILOTs were due to the taxing jurisdictions. According to the PILOT terms the payment due dates to the taxing jurisdictions are clearly identified. For example, according to the PILOT terms for one project (The Stannard Group, Inc.), the 2021 PILOT was due to the school district by September 30, 2021. However, CCIDA did not bill the project until November 3, 2021, 34 days after the PILOT was due to the school district.
- *PILOT Held More Than 30 Days* – The third project's (Well's Enterprise, Inc.) PILOT was billed and received prior to the due date to the taxing jurisdictions. However, CCIDA held the payment for 103 days before forwarding it to the taxing jurisdiction. The PILOTs billed late for the other two projects were sent to the taxing jurisdictions within 30 days of receipt.
- *Not Paying Late Penalties and Interest* – As a result of the late PILOT billings and holding the PILOT for more than 30 days, all PILOTs due for the three projects were made late to the taxing jurisdictions. However, CCIDA did not ensure late penalties and interest were paid to the respective taxing jurisdictions totaling \$6,010.

2019-2021 PILOT Penalties and Interest Not Paid	
Project Name	Total Penalties and Interest
320 Roberts Road Freezer LLC	\$5,347
Wells Enterprise, Inc.	\$415
The Stannard Group, Inc.	\$248
Totals	\$6,010

CCIDA responded that it agrees with the results and recommendations and will adopt an internal controls policy which will include guidance related to PILOT calculations, billing, collections, and disbursements to taxing jurisdictions.

CCIDA RECOMMENDATIONS:

- The board should implement internal controls to ensure PILOT agreements clearly present PILOT terms for the calculation of payments.
- The board should ensure management is calculating PILOTs according to the terms approved.
- The board should ensure PILOT bills are sent timely to project owners.
- The board should ensure PILOTs are received and forwarded to the taxing jurisdictions by the required due date in the PILOT agreement.
- The board should ensure that all PILOTs received are forwarded to the taxing jurisdictions within 30 days as required by GML Section 874 (3).
- The board should ensure that penalties and interest are paid to taxing jurisdictions as required by GML Section 874 (5).

PARIS Reporting

Section 2800 of PAL requires public authorities to submit certified reports on their finances and operations annually to aid in transparency and accountability to the public. The Public Authorities Reporting and Information System (PARIS) is a web-based application to enable public authorities to report the required information in an electronic format. PARIS is jointly maintained by the ABO and the Office of the State Comptroller. The ABO also created a PARIS Handbook to assist authorities in their reporting requirements. Authorities are required to certify that the data reported is complete and accurate. In addition, the authority board is required to review and approve the report data prior to submission. However, we identified instances where the data reported by CCIDA and CRC for procurement, staffing, projects, and bonds are neither complete nor accurate.

CCIDA Procurements Not Reported

Authorities are required to report in PARIS all procurement transactions to a single vendor with a cumulative total of \$5,000 or more annually. For 2021, CCIDA reported CREDC as

a subsidiary and included CREDC's finances and operations in its annual reports.¹⁴ As such CCIDA's 2021 Procurement Report should include all procurement transactions for both CCIDA and CREDC paid to vendors with a cumulative total of \$5,000 or more.

For 2021, CCIDA reported eight procurements that were paid in excess of \$5,000, totaling \$386,877. However, when we reviewed the CCIDA's 2021 vendor payments, we found a total of 37 vendors who were paid \$5,000 or more for CCIDA and CREDC expenses. The total amount paid to these vendors was \$881,196, a difference of \$494,318 from what the CCIDA reported in PARIS.

CCIDA Staff Not Reported and Compensation Reported Inaccurately

Authorities are required to report all individuals working for the authority, including any amount received in compensation. There is no threshold for salary, and reporting should include any individuals that conduct work for the authority, even if they do not receive compensation. For example, staff with service contracts are required to be reported but total compensation should be indicated as \$0. Contracted staff and their compensation should only be entered as a vendor in procurements if the contractor is paid \$5,000 or more annually.

CCIDA's 2021 payroll report includes 12 employees who were paid a total of \$555,190. However, we found CCIDA only reported 11 staff with total compensation of \$497,006. CCIDA did not report the four individuals with staffing contracts as CCIDA staff, which included the CCIDA CEO. In addition, CCIDA did not report a part-time employee who worked a portion of 2021 and paid \$3,158. As such, CCIDA had 16 staff that should have been reported in the 2021 PARIS Annual Report. The remaining difference in total compensation was because seven employees were paid more than what was reported in PARIS.

CRC Staff and Procurements Not Reported and Inaccurate

CRC does not have employees and is administered and staffed by CCIDA. CCIDA's CEO also serves as the CEO of CRC. For 2021, CRC reported three staff with compensation totaling \$62,500 in PARIS. The CEO was not reported in PARIS. Further, the three staff reported are CCIDA employees that administer CRC activities but are paid directly by CCIDA. Based on the PARIS Handbook, CCIDA employees doing the work for CRC should be reported as CRC staff, but with \$0 compensation. The \$62,500 of compensation represents a transfer made from CRC to CCIDA for income received by CRC from two bond issuances in 2021 (NCC and JCCDC). The payment should be reported as a procurement in CRC's Procurement Report; however, CRC reported no procurements in 2021.

CCIDA Projects Not Reported

IDAs are required to maintain specific information on all projects for which they approve financial assistance and to report all active projects that receive financial assistance in accordance with Section 859 of GML. In reviewing the projects listed on CCIDA's website

¹⁴ ABO notified CCIDA in 2022 that CREDC could no longer be reported as a subsidiary of CCIDA based on the Attorney General Formal Opinion No. 2014-F1 that IDAs do not have the statutory authority to form subsidiary corporations. PARIS reporting for FY2022 will be required to be separate for CCIDA and CREDC.

in comparison to the projects reported in PARIS for 2021, we found five active projects that were not reported in PARIS. One project (ROM Ventures, LLC) was an existing project that was assumed by a new owner in 2020, but CCIDA never reported the new project in PARIS. Two other projects (ECR Properties Inc. and S. St. George Enterprise, Inc.) were also existing projects that submitted applications to CCIDA for additional assistance. However, CCIDA reported the updated projects within existing projects in PARIS and did not report these projects as new projects in accordance with the PARIS Handbook. The PARIS Handbook states a project should be considered a new project in PARIS if the board makes a decision to continue financial assistance to a project that has changed ownership or to extend or to alter the terms of a current financial assistance agreement. The fourth and fifth projects (The Americold Real Estate LP, Love's Travel Stops and County Stores, Inc) were new in 2021 and were provided sales tax exemptions, but CCIDA did not report these new projects in PARIS.

CRC Bond Not Reported

Authorities are required to report all new debt issuances that occurred during the year in PARIS, including conduit debt. However, we found CRC did not report all debt issued in 2021 in PARIS. In October 2021 CRC issued two conduit bonds, one was a new bond totaling \$4,925,000 for the National Comedy Center, Inc. project (NCC) and the other was to refinance a \$19,955,000 bond for the Jamestown Center City Development Corporation (JCCDC). However, CRC did not report the new bond issuance for NCC. As a result, the CRC's conduit debt outstanding for 2021 was underreported by \$4,925,000.

CCIDA and CRC responded that they desire to correct and improve their PARIS data insertion and intend to procure professional consultant services to assist with annual compliance and PARIS reporting requirements.

CCIDA AND CRC RECOMMENDATIONS:

- The boards should establish adequate procedures to review and verify that all data annually reported in PARIS is complete and accurate prior to certifying the data. This should include, but not be limited to, ensuring all procurement transactions, staff and compensation, and active projects are accurately reported.

Website Transparency

Section 2800 of PAL requires public authorities to make documents pertaining to its mission, current activities, and annual financial reports, budgets, and independent audit reports accessible to the public on the authority's official or shared website. To assist state and local authorities meet their disclosure and reporting obligations, the ABO has issued Policy Guidance No. 22-01: Posting and Maintaining Reports on Public Authority Websites. This guidance provides a checklist of policies, reports, and other information that the authorities should maintain online in accordance with the law. We reviewed CCIDA's and CRC's website between May 18, 2022 and August 24, 2022 to determine whether the required information was posted for each local authority.¹⁵

¹⁵ CCIDA shares its website with CRC.

CCIDA Website Review Results

We found CCIDA has posted most of the required financial and operating information on its website in accordance with Public Authorities Law and ABO Regulations.¹⁶ However, we found some required information was missing. For example, we found CCIDA is not posting annual procurement reports and investment reports, board packets, board resolutions, and the assessment of the progress of each active project. In addition, we found CCIDA is posting applications and resolutions for its projects; however, CCIDA could improve by ensuring project agreements and PILOT agreements are posted for all projects. The website review is attached as **Appendix B**.

CRC Website Review Results

We found CRC has not made certain required information available on its website as required by Section 2800 of PAL. For example, there is no mission statement, Certificate of Incorporation, By-Laws, Code of Ethics or CRC policies posted. While there is a board resolution stating the CRC will follow the policies of CCIDA, this policy needs to be conspicuously posted to be transparent to the public. The website review is attached as **Appendix C**.

CCIDA and CRC responded that they intend to procure professional consultant services to update their websites to ensure that they follow ABO Policy Guidance 22-01.

CCIDA AND CRC RECOMMENDATION:

- The boards should review the website review and take the appropriate action so that all information required information is available online and easily accessible to the public.

¹⁶ ABO Regulations 19 NYCRR § 250.1 (ABO Regs) requires IDAs to post project applications, resolutions, and project agreements to their websites.

Appendix A – Acknowledgement of Fiduciary Duty Form



Acknowledgement of Fiduciary Duties and Responsibilities

As a member of the Authority's board of directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Authority and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

I. Mission Statement

I have read and understand the mission of the Authority; and the mission is designed to achieve a public purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Authority is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Authority and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

II. Deliberation

I understand that my obligation is to act in the best interests of the Authority and the People of the State of New York whom the Authority serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Authority and my fiduciary duties as a member of the Authority's board of directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: _____

Print Name: _____

Authority Name: _____

Date: _____

Appendix B: Review of County of Chautauqua Industrial Development Agency's Website

Information To Be Posted on Public Authority's Website	Posted on Website (Yes/No)
Mission Statement	Yes
Enabling Statute	Yes
By-laws	Yes
Code of Ethics	Yes
Conflict of Interest Policy	Yes
Whistleblower Policy	Yes
Organization Chart – including, at a minimum, the IDA's executive structure and major organizational units	Yes
Report on Operations and Accomplishments – including a description of the Authority's operations, completed and active projects, as well as any material changes in Authority operations and programs	No
List of IDA Board Members - including appointing entity, appointment dates, and term	Yes
Each IDA board member's current employment and professional background	Yes, but three members were missing links to their bios
List of Committees and Committee Members	Yes, but information on the Loan Committee and Transactions Committee was not included
Executive Management Team - including professional background and qualifications	Yes, but no professional background or qualifications
Authority Performance Measures	No
Annual Performance Evaluation indicating status of Performance Measures	No
Authority Schedule of Debt (including conduit debt)	Yes, included in audit
Management's Assessment of the Authority's Internal Control Structure and Procedures - including a description of operating and financial risks and any policies to mitigate risk	No
Board meeting schedule	Yes
Board meeting notice	Yes
Board agendas	Yes
Board packets	No
Board meeting minutes	Yes
Board meeting webcasting and video recordings	Yes
Board resolutions	No
Committee meeting schedule	Yes, but the schedule for the Loan Committee and Transactions Committee is not included
Committee meeting notice	Yes
Committee meeting agendas	Yes
Committee meeting packets	No
Committee meeting minutes	Yes, but not all. Minutes for some meetings are missing and minutes for the Loan Committee and Transactions Committee are not included

Committee meeting webcasting and video recordings	No
Annual Budget Report and details of 4-year financial plan	No, only the 2021 budget and 4-year financial plan is included
Annual Independent Certified Financial Audit	Yes
Independent Auditor's Report on Internal Controls over Financial Reporting	Yes
Independent audit management letter	Yes
List of grants provided - including grant recipient's name and address, the purpose of the grant, date awarded, and amount awarded	Yes, included in audit
List of loans provided - including borrower's name and address, loan purpose, date awarded, amount issued, term of the loan, repayment status, principal repaid and amount outstanding as of the end of the fiscal year	Yes, included in audit
List of bonds issued - including bond recipient's name, amount of bonds issued, purpose of bonds, and current amount outstanding as of the end of the fiscal year	Yes, included in audit
List of active IDA projects, including the current year's financial assistance (tax exemptions received and PILOT payments made) and existing jobs	Yes
Assessment of the progress of each active project	No
Standard Application form	Yes
Applications for all active projects	Yes
Resolutions for all active projects	Yes
Project Agreements - including PILOT agreements (if applicable) for all active projects	Yes, but agreements for certain projects are not posted
Uniform Evaluation Criteria and Selection Policy	No
Uniform Tax Exemption Policy	Yes
Policies for the Suspension, Discontinuance or Modification of Financial Assistance	No
Recapture Policy - including policies for return of all or part of financial assistance provided (PILOT and tax exemptions) when a material violation occurs	Yes, part of UTEP
Annual Compliance Report Regarding State Sales Tax Recaptures (ST-62)	No
Property Acquisition Policies	No
Property Disposition Policies	Yes
List of Real Property owned by the Authority	Yes
Personal Property Transactions	Yes
Real Property Transactions	Yes, but property sale dates are not included
Policies for the procurement of all goods and services	Yes
Annual Procurement Report	No
Authority's Procurement Officer	Yes
Investment Policies	Yes
Annual Investment Report - including the investment audit results and management letter, record of investment income, list of fees paid for investment services, and explanation of any amendments to the Investment Policy	No
Fee Schedules (if applicable) of any service or administrative fees charged	Yes, but loan fees are not included
Current Year Official Statements or similar bond documents	N/A

*Review conducted by the Authorities Budget Office between May 18, 2022 and August 24, 2022.

Appendix C: Review of Chautauqua County Capital Resource Corporation's Website

Information To Be Posted on Public Authority's Website	Posted on Website (Yes/No)
Mission Statement	No
Certificate of Incorporation	No
By-laws	No
Code of Ethics	No
Conflict of Interest Policy	No
Whistleblower Policy	No
Organization Chart – including, at a minimum, the executive structure and major organizational units	No
Report on Operations and Accomplishments – including a description of the Authority's operations, completed and active projects, as well as any material changes in Authority operations and programs	No, document provided does not meet requirements
List of LDC Board Members - including appointing entity, appointment dates, and term	Yes
Each LDC board member's current employment and professional background	Yes, but three members were missing links to their bios
List of Committees and Committee Members	Yes
Executive Management Team - including professional background and qualifications	Yes, but no professional background or qualifications
Authority Performance Measures	No
Annual Performance Evaluation indicating status of Performance Measures	No
Authority Schedule of Debt (including conduit debt)	Yes, included in audit
Management's Assessment of the Authority's Internal Control Structure and Procedures - including a description of operating and financial risks and any policies to mitigate risk	No
Board meeting schedule	Yes
Board meeting notice	Yes
Board agendas	Yes
Board packets	No
Board meeting minutes	Yes
Board meeting webcasting and video recordings	Yes
Board resolutions	No
Committee meeting schedule	No
Committee meeting notice	No
Committee meeting agendas	No
Committee meeting packets	No
Committee meeting minutes	No
Committee meeting webcasting and video recordings	No
Annual Budget Report and details of 4-year financial plan	Yes
Annual Independent Certified Financial Audit	Yes, separately included in CCIDA audit
Independent Auditor's Report on Internal Controls over Financial Reporting	Yes
Independent audit management letter	Yes
List of grants provided - including grant recipient's name and address, the purpose of the grant, date awarded, and amount awarded	N/A

List of loans provided - including borrower's name and address, loan purpose, date awarded, amount issued, term of the loan, repayment status, principal repaid and amount outstanding as of the end of the fiscal year	N/A
List of bonds issued - including bond recipient's name, amount of bonds issued, purpose of bonds, and current amount outstanding as of the end of the fiscal year	Yes, included in audit
Property Acquisition Policies	No
Property Disposition Policies	No
List of Real Property owned by the Authority	Yes
Personal Property Transactions	Yes
Real Property Transactions	Yes
Policies for the procurement of all goods and services	No
Annual Procurement Report	No
Authority's Procurement Officer	No
Investment Policies	No
Annual Investment Report - including the investment audit results and management letter, record of investment income, list of fees paid for investment services, and explanation of any amendments to the Investment Policy	No
Fee Schedules (if applicable) of any service or administrative fees charged	Yes
Current Year Official Statements or similar bond documents	Yes

*Review conducted by the Authorities Budget Office between May 18, 2022 and August 24, 2022.

Appendix D: CCIDA Recommendations

1. The board should ensure it operates as the separate and distinct local authority it was created to be.
2. The board should maintain separate bank accounts and accounting records from other local authorities.
3. The board should separately adopt accounting policies and procedures and monitor the financial and management controls.
4. The board should ensure adequate documentation for any payments for services provided.
5. The board should discontinue the use of discretionary funds for inappropriate expenditures, including, but not limited to, sponsorships, donations, employee memberships, dinners, flowers, gifts, and cell phone stipends for non-authority staff.
6. The board should review and amend its procurement guidelines to ensure there is adequate board oversight over the procurement process.
7. The board should approve policies governing the proper use of CCIDA discretionary funds.
8. The board should adopt a credit card policy and develop adequate internal controls to ensure credit card purchases are adequately reviewed, documented, and supported for approved and necessary CCIDA expenses. Such policy should also ensure adequate segregation of duties.
9. The board should discontinue the use of automatic payment deductions from its bank account for its credit card balance.
10. The board should discontinue the practice of allowing a separate local authority to use its credit cards for purchases.
11. The board should ensure it is not paying sales tax for purchases.
12. The board should ensure only the benefits to which the board approved within its employment contract with the CFO are provided. Any benefits not approved or authorized should be remitted back to CCIDA.
13. The board should discontinue the practice of hiring and contracting with individuals to do work for other local authorities.
14. The board should only use County employees after obtaining consent from the County and establishing an agreement for any costs, in accordance with GML. Further, use of such employees should only be for CCIDA operations.
15. The board should ensure that it is receiving its proportional share of any office space sub-leased to Chautauqua County or other entities.
16. The board should not abdicate its role to management for providing preliminary authorization to a project being considered for financial assistance.

17. The board should ensure it is following its By-laws and Code of Ethics and filing annual financial disclosure statements with the County Board of Ethics.
18. The board should ensure it is following its established Conflicts of Interest Policy, including requiring members to disclose any perceived or actual conflicts of interest in writing as part of the meeting minutes.
19. Board members should refrain from participation in any decision or discussion where they have a perceived or actual conflict of interest.
20. The board should only use executive sessions for those purposes outlined in Section 105 of Public Officer Law, current case law, and Committee on Open Government advisory opinions to ensure that reasons for executive session include the specific statutory exemption and adequately identify the subject to be discussed.
21. The board should ensure all meetings of its established committees are open to the public.
22. The board should ensure all meeting minutes clearly and sufficiently describe the business transacted during all board and committee meetings.
23. The board should ensure board resolutions are included with the meeting minutes, as required by their By-laws.
24. The board should seek separate trainings on the requirements of the Open Meetings Law from the Committee on Open Government.
25. The board should implement internal controls in place to ensure PILOT agreements clearly present PILOT terms for the calculation of payments.
26. The board should ensure management is calculating PILOTs according to the terms approved.
27. The board should ensure PILOT bills are sent timely to project owners.
28. The board should ensure PILOTs are received and forwarded to the taxing jurisdictions by the required due date in the PILOT agreement.
29. The board should ensure that all PILOTs received are forwarded to the taxing jurisdictions within 30 days as required by GML 874 (3).
30. The board should ensure that penalties and interest are paid to taxing jurisdictions as required by GML 874 (5).
31. The board should establish adequate procedures to review and verify that all data annually reported in PARIS is complete and accurate prior to certifying the data. This should include, but not be limited to, ensuring all procurement transactions, staff and compensation, and active projects are accurately reported.
32. The boards should review the website review and take the appropriate action so that all information required information is available online and easily accessible to the public.

Appendix E: CREDC Recommendations

33. The board should ensure it operates as the separate and distinct local authority it was created to be.
34. The board should maintain separate bank accounts and accounting records from other local authorities.
35. The board should separately adopt accounting policies and procedures and monitor the financial and management controls.
36. The board should ensure adequate documentation for any payments for services provided.

Appendix F: CRC Recommendations

1. The board should ensure it operates as the separate and distinct local authority it was created to be.
2. The board should maintain separate bank accounts and accounting records from other local authorities.
3. The board should separately adopt accounting policies and procedures and monitor the financial and management controls.
4. The board should ensure adequate documentation for any payments for services provided.
5. The board should establish adequate procedures to review and verify that all data annually reported in PARIS is complete and accurate prior to certifying the data. This should include, but not be limited to, ensuring all procurement transactions, staff and compensation, and active projects are accurately reported.
6. The boards should review the website review and take the appropriate action so that all information required information is available online and easily accessible to the public.

Appendix G: Authorities' Response to Draft Report



County of Chautauqua Industrial Development Agency

July 7, 2023

New York State Authorities Budget Office
P O Box 2076
Albany, NY 12220-0076
Attention: [REDACTED]

RE: Response to New York State Authorities Budget Office
Draft Operational Review (the "Draft ABO Review")
County of Chautauqua Industrial Development Agency and other local authorities
OR-2022-01

Dear [REDACTED]:

This correspondence is in response to (i) the Draft New York State Authorities Budget Office ("ABO") Operational Review (OR-2022-01) of the County of Chautauqua Industrial Development Agency (the "IDA"), Chautauqua Region Economic Development Corporation ("CREDC"), and Chautauqua County Capital Resource Corporation (the "CRC" and with the CREDC, the "Affiliates") as so received by the IDA on May 4, 2023, and (ii) the ABO "exit interview" held at the IDA's offices on June 27, 2023.

In general, a plain reading of the controlling statute defining the "powers and duties" of the ABO within Section 6(1)(a) of the New York State Public authorities Law specifically states that it "shall conduct reviews . . . to assess compliance with the provisions of this act and other applicable provisions of law" (emphasis added). Thus, in the context of an "operational review", the ABO should clearly distinguish whether the IDA and its Affiliates are in compliance with the law in contrast to the various ABO statements, conclusions and recommendations related to "good governance" or "best practices". In addition, in certain instances the wording, the presentation of the facts, and the conclusions drawn unfairly raises the specter of impropriety when the IDA and its Affiliates were merely following prior ABO guidance, or a simple error occurred, or the ABO ignored or neglected to include board management procedures and outcomes when the result of same may merely only contradict a belief, or an opinion, of the ABO, as opposed to the law itself.

We note the Draft ABO Review covered a period of time, from January 1, 2019 through December 31, 2021, which was unarguably the most challenging time that any of us have faced in at least a generation - the COVID 19 pandemic. The COVID-19 pandemic disrupted and jeopardized the health, welfare, and business continuity of every facet of our lives, and the IDA was no different. While our lives were turned upside down, the staff of the IDA and its Affiliates worked diligently from remote locations and sometimes in person, for many weeks/months, to do everything in their power and capacity to keep County of Chautauqua (the "County") businesses, and their employees, safe and afloat.

Within weeks of the onslaught of the effects of the COVID-19 pandemic, the IDA, the Affiliates, local

foundations, rotary clubs, and others cobbled together funding to provide grants to assist dozens of businesses to purchase PPE and materials to protect workers and customers. The IDA reached out to the Federal Economic Development Administration (the “EDA”) and was granted permission to develop a dedicated working capital loan program, which assisted 24 businesses with \$10,000 low-interest loans. The EDA invited the IDA to request funding that resulted from passage of the CARES ACT, based on its past outstanding performance, and the IDA was awarded more than \$10 Million to initiate a low-interest loan program to assist businesses of all sectors. In an unprecedented fashion, this funding was allocated within 18 months to approximately 60 businesses county-wide.

Also, during the period of time reviewed in the Draft ABO Review, the IDA worked diligently and intentionally to create the Chautauqua County Partnership for Economic Growth (“CCPEG”), a public-private collaborative housed under CREDC charged with assisting municipalities and other economic stakeholders to access state funding to undertake projects that address economic development, community development, workforce development, housing, and quality of life. It was awarded more than \$1 Million from the Ralph Wilson Jr. Foundation, which is being leveraged with local foundation funding.

Finally, during the same period reviewed in the Draft ABO Review, the IDA provided financial assistance to 185 companies in support of a variety of industrial and commercial projects that have resulted in nearly \$1.1 Billion of new investment, 1,500 new jobs, 3,500 retained jobs, and \$4.5 Million in new real property tax revenues. Most importantly, these efforts improve, substantiate, and ensure a viable economic future for County residents, consistent with the statutory mission and purposes of the IDA.

More recently, in the past 18 months, five long-serving IDA Board Members have been replaced with new board members, which include the Chairman, Vice Chairman, Secretary, and Treasurer. This next generation of leadership will serve us well as we seek to improve our operations and has already committed to improving IDA operations, as detailed within this correspondence, and as will be exhibited over the next several months.

Contained herein, and as requested, are responses by the IDA and its Affiliates to the Draft ABO Review. We have already begun to implement the recommendations contained within the Draft ABO Review and will continue to do so in the immediate future as we seek to create a culture of excellence and improve our performance for the benefit of County residents and businesses.

CCIDA/Affiliate Response to Findings and Related ABO Recommendations

The IDA/Affiliates board members provided adequate oversight over management and monitored the financial and management controls of the agency. Public Authorities Law (“PAL”) §2824(1)(a) requires board members to have direct oversight of senior management in the administration of the IDA and its Affiliates and subdivision (b) requires board members to understand, review and monitor the implementation of the fundamental financial and management controls and operational decisions of the IDA and its Affiliates. We assert that board members provided direct oversight of senior management and that board members understand, reviewed, and monitored the implementation of the fundamental financial, managerial, and operational controls and decisions of the IDA and its Affiliates. The Draft ABO Review and conclusion that board members did not provide adequate oversight and did not adopt adequate policies and procedures and monitor the financial and management controls, as described, and discussed below, rests on ABO best practices and guidelines, and

ultimately lacks legal foundation and relies on the ABO's subjective opinion and administrative measuring sticks.

We address findings of the ABO, and the related recommendations, as follows:

I. Finding: Combined accounts and misallocated expenses

The ABO found that the IDA and its Affiliates share one operating checking account that is maintained by IDA staff, and that funds of the IDA, CRC, and CREDC are deposited and paid from the sole operating checking account, and as such, are combined. This finding is consistent with the ABO's December 10, 2008 guidance to the IDA and its Affiliates wherein the ABO stated that since CREDC is an affiliate or subsidiary of the IDA, which has included the CREDC's information in the reports it files through PARIS, that it is not necessary for CREDC "to file separately with the ABO and State Comptroller, as long as this information continues to be submitted with the reports" of the IDA. Since then, the IDA has included annual performance data for the CREDC and CRC in its PARIS Report as directed by the ABO. IDA fiscal transactions are recorded on journal entries separate from the CRC and CREDC and are audited on an annual basis. Due to the receipt of federal funds, a Single Audit is performed annually. There were no adverse findings during the ABO review period. The board members of the IDA and its Affiliates are provided with monthly balances for account and ledgers on all sources and uses of funds.

Recommendation: The boards should ensure each local authority operates as the separate and distinct local authority that they were created to be.

Response: The IDA and its Affiliates will establish such individual policies and operational procedures to ensure that each operates as a separate and distinct local authority.

Recommendation: The boards should maintain separate bank accounts and accounting records.

Response: The IDA and its Affiliates will, and have already begun the process of, establishing separate bank accounts and accounting records.

Recommendation: The boards should separately adopt accounting policies and procedures and monitor the financial and management controls.

Response: The IDA and its Affiliates have already requested its auditors to prepare and implement such separate accounting policies and procedures, and once implemented, the boards anticipate being able to monitor the financial and management controls for each such entity as requested by the ABO.

Recommendation: The boards should ensure adequate documentation for any payments for services provided.

Response: The IDA and its Affiliates agree with this recommendation and note that the COVID-19 pandemic adversely impacted their ability to account for certain expense identified by the ABO that experienced a payment lag and that lacked proper verification. As further detailed, below, the IDA and its Affiliates will establish policies and agreements to properly ensure that back-up documentation is provided for any payments for services provided by and between the IDA and its Affiliates.

II. Finding: Inappropriate and Questionable Discretionary Spending

The ABO has correctly confirmed that the IDA's Procurement Policy identifies the policies for purchases of commodities, equipment, goods, public works, and services, including when verbal or written quotes are required, when purchases are to be made at the discretion of management due to low dollar thresholds, and how contracts are to be awarded. The IDA and the ABO agree that the Procurement Policy does not specifically address, and the IDA asserts that the Procurement Policy need not address, certain categories of expenditures, referred to herein as "discretionary funds". The IDA's Procurement Policy specifically permits the CEO to determine if a particular procurement is not subject to the Procurement Policy. The IDA board approved of such "discretionary fund expenditures" on an annual basis, within broader identified categories as component parts of the board approved budget. These expenditures are then made as determined by the CEO consistent with the CEO's powers and authority, within the limits of the IDA's approved budget, and consistent with the IDA's mission. In contrast to the foregoing, and notwithstanding the ABO statement that discretionary funds may be used for appropriate purposes related to the IDA's mission, the ABO rigidly concludes that because these discretionary fund expenditures were not approved pursuant to a specific standalone discretionary funds policy, these same discretionary fund expenditures were inappropriate. The IDA asserts that the discretionary fund expenditures were approved within its overall budget and made related to its mission. Merely because the IDA lacks a specific ABO recommended "best practice" discretionary funds policy, that is not otherwise required by law, and that even if such a policy were in place it would have resulted in the same discretionary fund expenditures, is not a reasonable basis upon which to conclude that such expenditures were inappropriate.

Recommendation: The board should discontinue the use of discretionary funds for inappropriate expenditures, including, but not limited to, sponsorships, donations, employee memberships, dinners, flowers, gifts, and cell phone stipends for non-authority staff.

Response: We understand that IDA monies may not be spent in support of private or personal interests or to the benefit of directors, management, or staff. The IDA and its Affiliates have engaged special legal counsel and will review and amend its Travel Policy and Procurement Policy and will also establish a new Discretionary Funds Policy all in an effort to appropriately ensure that all expenditures are made in support of the mission and purposes of the IDA and its Affiliates.

Recommendation: The board should review and amend its procurement guidelines to ensure there is adequate board oversight over the procurement process.

Response: The IDA and its Affiliates have engaged special legal counsel to review and amend its Travel Policy and Procurement Policy and will also establish a new Discretionary Funds Policy all in an effort to appropriately ensure that all expenditures are made in support of the mission and purposes of the IDA and its Affiliates.

Recommendation: The board should approve policies governing the proper use of IDA discretionary funds.

Response: The IDA and its Affiliates have engaged special legal counsel to review and amend its Travel Policy and Procurement Policy and will also establish a new Discretionary Funds Policy all in an effort

to appropriately ensure that all expenditures are made in support of the mission and purposes of the IDA and its Affiliates.

III. Finding: Undocumented, Improper and Inappropriate Credit Card Purchases

We maintain that all credit card expenditures were appropriately made to facilitate the mission and purposes of IDA and its Affiliates. Again, just because the ABO believes that food and beverage expenditures are inappropriate does not make such expenditures unlawful provided the IDA and its Affiliates made such expenditures consistent with their mission and purposes. We acknowledge that better controls will provide better accountability and transparency, and we have already implemented the required use of an interim written documentation form to support such expenditures, and will require that all invoices and receipts be matched to the credit card statements while we also simultaneously develop a credit card and internal controls policy.

Recommendation: The board should adopt a credit card policy and develop adequate internal controls to ensure credit card purchases are adequately reviewed, documented, and supported for approved and necessary IDA expenses. Such policy should also ensure adequate segregation of duties.

Response: The IDA and its Affiliates have engaged special legal counsel to establish a new Credit Card Policy and to assist with establishing a system of internal controls.

Recommendation: The board should discontinue the use of automatic payment deductions from its bank account for its credit card balance.

Response: As of June 1, 2023, the IDA and its Affiliates discontinued the use of automatic payment deductions from its bank account for credit card balances.

Recommendation: The board should discontinue the practice of allowing a separate local authority to use its credit cards for purchases.

Response: During the process of establishing separate bank accounts for the IDA and its Affiliates, the IDA will evaluate whether the CRC and CREDC require use of a credit card and if so, the practice of allowing a separate local authority to use the IDA's credit card will be eliminated and the Affiliates will then pursue issuance of their own respective credit cards.

Recommendation: The board should ensure it is not paying sales tax for purchases.

Response: The IDA and its Affiliates will implement a process to ensure that they are not paying sales tax for their purchases.

IV. Unauthorized and Inappropriate payments to CFO

General Municipal Law Section ("GML") 858(7) provides the IDA the ability to fix and pay compensation out of funds of the IDA. GML §858(7) does not proscribe the amount of base compensation to be paid or establish any restrictions or requirements on establishing such fixed amount. As confirmed by the ABO, the IDA board approved an employment contract with the CFO on December 9, 2016, and the resulting contract between the IDA and the CFO establishes a salary amount with yearly raises to be determined by the IDA's CEO (the "IDA December 2016 Resolution"). In that same IDA December 2016 Resolution, the IDA

also stated that the CFO's contract is to be, in all other respects "in substantially the same form and substance as the existing contract between the CCIDA and the CFO." At that point in time, the CFO's existing contract provided for a \$750 monthly car allowance. On December 21, 2016, Mr. Dixon received a letter from the IDA's CEO confirming the salary amount as provided for within the IDA December 2016 Resolution and also stating that Mr. Dixon's "car allowance will increase from \$750.00 to \$850.00 per month", thus memorializing and confirming that the CFO's contract remains substantially in the same form and substance as the existing contract as required by the IDA's December 2016 Resolution. As such, we dispute that the CFO's car allowance is unauthorized, and confirm the car allowance was made with the knowledge of the board because the board required, in the IDA December 16, 2016 Resolution that the CFO contract be in all other respects "in substantially the same form and substance as the existing contract between the CCIDA and CFO". In addition, the ABO concludes, and the IDA agrees that the CFO's employment contract does not provide for the car allowance. The IDA asserts that the contract is thus inconsistent with and contrary to the IDA December 16, 2016 Resolution, and that the contract will be amended by inserting the car allowance provision as so authorized by the IDA December 2016 Resolution.

In addition, the CFO's purchase of gasoline with the IDA's credit card allowed the CFO to travel for IDA/Affiliates business using his personal vehicle to carry out the IDA's mission and purposes. Further, the CFO's reimbursement for membership at a local country club and related expenditures was for business development purposes consistent with the IDA's mission, and was undertaken at the specific request, direction, and knowledge of the IDA's former CEO. These expenditures are not CFO employee benefits and are no different than other business development expenditures utilized by the IDA at other sporting and restaurant facilities as all such expenditures support the mission and purpose of such an entity. However, the IDA and its Affiliates welcome constructive comments to improve management practices and procedures, and as such, the IDA and its Affiliates will look to establish policies that only authorize IDA reimbursements if the expenditures support the mission and purposes of the IDA and its Affiliates.

Recommendation: The board should ensure only the benefits to which the board approved within its employment contract with the CFO are provided. Any benefits not approved or authorized should be remitted back to IDA.

Response: The IDA will ensure that only the benefits to which the board approved within its employment contract with the CFO are provided. The IDA and its Affiliates have engaged special legal counsel and will review and amend its Travel Policy and will also establish a new Discretionary Funds Policy all in an effort to appropriately ensure that all expenditures are made in support of the mission and purposes of the IDA and its Affiliates.

V. CEO Hiring Staff for CREDC Operations

The IDA resolved on April 26, 2022, to provide administrative support services to the CRC and effective as of January 1, 2022, the IDA and the CRC entered into an Administrative Services Agreement under which the IDA provides services to the CRC to otherwise carry out the purposes of the CRC, and in return, the CRC compensates the IDA as provided for within the agreement. The IDA recognizes that a similar administrative services agreement should be established by and between the IDA and the CREDC as a means by which to ensure the IDA can permissibly provide services to the CREDC. We also respectfully request that individual names disclosed in this section of the Draft ABO Review be removed.

Recommendation: The board should discontinue the practice of hiring and contracting with individuals to do work for other local authorities.

Response: Any contracting for work undertaken by the IDA on behalf of the CRC will be reviewed, approved and undertaken through an administrative services agreement. The IDA and its Affiliates have retained special legal counsel to assist in the review of its current staffing relationships with its Affiliates and will enter into appropriate administrative services agreement with the CREDC as may be required.

VI. Potential Inappropriate Use of County Employees.

GML 858(6) provides that an industrial development agency has the power to use municipal employees with the municipality's consent and with the IDA paying the municipality its agreed proportion of the compensation or costs of the employees. Chautauqua County's Administrative Code, which pursuant to the Chautauqua County Charter has the force and effect of a local law, explicitly states that the County's Department of Planning and Development (CCDPD) may periodically provide assistance to the IDA, CREDC, and CRC, as needed. Such assistance is in furtherance of CCDPD's mission set forth in the Administrative Code to improve the community, economy, and quality of life in Chautauqua County. The County's legislated policy pursuant to its Administrative Code to render assistance in its discretion to the IDA, CREDC, and CRC, including at no cost to these organizations, is made pursuant to the County's home rule power to provide for the safety, health, and well-being of the County's citizens and their property.

Recommendation: The board should only use County employees after obtaining consent from the County and establishing an agreement for any costs, in accordance with GML. Further, use of such employees should only be for IDA operations.

Response: The IDA and its Affiliates have retained special legal counsel and will consult with the County Attorney's office to analyze and consider entering into formal agreements with the County for use of County staff in order to appropriately document the scope and extent of such assistance provided by the County, and to further provide for any reimbursement of costs that may be required in the discretion of the County.

VII. CCIDA Subsidizing Office Space for the County

The IDA's mission is to support Economic Development. Co-locating the County's Planning Department and IDA leads to operational efficiencies for constituents, encourages synergies and cooperation for economic and community development programs and initiatives, and supports the IDA's mission and purposes.

Recommendation: The board should ensure that it is receiving its proportional share of any office space sub-leased to Chautauqua County or other entities.

Response: The IDA will implement and utilize the provisions and procedures contained within its Property Disposition Policy on a going-forward basis with respect to subleasing office space to the County or other entities.

VIII. Board Abdicating Initial Project Review Process

The IDA strongly refutes this ABO finding and confirms that this finding highlights another instance of the ABO inserting its opinion of what it believes to be a best governance practice over that of the IDA board

that has specific knowledge of the IDA's statutory application review processes. It is simply not productive for the ABO to summarily second guess a Board's decision to establish a more rigorous application review process, especially when the ABO is not involved with the County's economic and community development projects, practices, and mission. Here, the ABO, while conceding that the IDA board resolved to establish a "Transactions Committee", failed to see in the same authorizing resolution that the IDA's "final decision-making on any project shall at all times remain with members of the Agency" and that the Transaction Committee shall be "advisory only". Pursuant to the IDA's February 28, 2017 Resolution, the Transactions Committee was created "to consider on a preliminary basis projects presented to the Agency and to provide preliminary authorization to the Agency to further negotiate the terms of the financial assistance packages and to initiate the SEQR, UTEP deviation and/or public notice(s) processes...". Simply put, the Transactions Committee is utilized to provide enhanced vetting of applications and to initiate required administrative procedures. Transaction Committee resolutions merely consists of determinations to proceed with processing an application, setting a public hearing date, initiating pre-requisite compliance procedures with respect to SEQR, and to otherwise fulfill preliminary requirements in the process of ultimately presenting a completed application to the IDA board for approval. All the aforementioned processes satisfy statutorily required provisions that must be undertaken prior to IDA board consideration of an application. There is no statutory requirement that initiation of these steps be pre-approved by the IDA board. Final consideration and review of the application by the IDA board takes into account the administrative actions of the Transactions Committee, being the pre-requisite actions required to be taken prior to the IDA making a final determination on an application, as well as the application itself, the public hearing comments, the cost-benefit analysis, environmental review, whether a project will retain and/or create new jobs, and whether a project will be completed in a timely fashion, amongst many other statutory considerations. In every instance, final consideration and review was and is undertaken solely by the IDA board.

The ABO conclusion that an "action by the Transaction Committee to allow for the project to be scheduled for a public hearing is more than advisory in nature" is merely an opinion. There is no statutory requirement that a board approve of scheduling a public hearing prior to the scheduling of that hearing. The only statutory requirement with respect to scheduling a public hearing is found in Section 859-a(2) of the GML, which requires that, for projects receiving financial assistance in excess of \$100,000, the IDA "must hold a public hearing" prior to providing any financial assistance.

By way of example, the ABO refers to the Transaction Committee May 7, 2019 determination made with respect to the Stannard Group Project, notes the application included a request for a deviation from the IDA's standard IDA PILOT provisions and finds that the Transaction Committee's resolution to accept the deviation request and schedule a public hearing prior to the IDA's board May 28, 2019 approval of the project usurped the board's authority. Note just like a public hearing requirement, in the event an applicant for financial assistance proposes financial assistance that deviates from the IDA's Uniform Tax Exemption Policy, Section 874(4)(b) of the GML requires that the agency set forth in writing the reasons for the deviation from such policy and notify the affected taxing jurisdictions of the proposed deviation. Here, the Transaction Committee merely authorized both the scheduling of a public hearing and the submission of the required proposed deviation notice to the taxing jurisdictions, being statutory procedures to be undertaken prior to the IDA's consideration of the financial assistance. The deviation notice letters were submitted to the taxing jurisdictions on May 9, 2019, prior to the IDA's May 28, 2019 approval of the project, consistent with the requirements of the GML. Because these actions are statutorily required administrative actions, they are not actions that usurp a board's discretion or otherwise evidence an abdication of a board's authority.

In sum, consistent with the law, the IDA's board, and only the IDA's board *always* adopts the statutorily required project approvals, and no such abdication of this role to the Transaction Committee has ever been made. Any conclusion to the contrary is false, misleading, and harmful to the IDA and the residents of the County for which it serves. See Exhibit A, containing a letter from the IDA's general counsel, which provides a further refutation of this ABO finding.

Recommendation: The board should not abdicate its role to management for providing preliminary authorization to a project being considered for financial assistance.

Response: Agreed. The board has not and will not abdicate its role to management for providing preliminary authorization to a project being considered for financial assistance.

IX. Board Not Filing Required Financial Disclosures

As of May 16, 2023, all IDA board members were asked to complete the required annual financial disclosure statement. As of May 31, 2023, all but one board member has complied. We will continue to follow up, and will take appropriate actions in the event the non-responding board member continues to be non-responsive.

Recommendation: The board should ensure it is following its By-Laws and Code of Ethics and filing annual financial disclosure statements with the County Board of Ethics.

Response: The IDA will establish administrative procedures to ensure annual financial disclosure statements are completed by members and employees, and are filed with the Chautauqua County Board of Ethics.

X. Board Not Following its Conflicts of Interest Policy for Disclosure and Recusal

The IDA and its Affiliates take very seriously their requirements to comply with its Ethics Code and its Conflicts of Interest Policy. The IDA has retained special legal counsel to prepare and amend the foregoing policies, and will, upon the advice of its special legal counsel, remind all board members of their responsibilities and the processes and procedures detailed within the Ethics Code and the Conflicts of Interest Policy. To ensure that all future board members are advised of their duties and responsibilities under these policies, these policies will be immediately distributed to and reviewed with new board members upon his or her appointment. Further, IDA staff and general counsel will take a more active role to enforce these policies in the event a member is otherwise not acting in compliance.

Recommendation: The board should ensure it is following its established Conflicts of Interest Policy, including requiring members to disclose any perceived or actual conflicts of interest in writing as part of the meeting minutes.

Response: The IDA has requested special legal counsel to review and amend its Conflicts of Interest Policy and its Ethics Code, and will review such revised policies with all board members at the meeting prior to re-adoption of same. This will ensure that board members are familiar with these policies. The IDA will also request that its Secretary properly records conflicts within meeting minutes. The IDA will also work with

counsel to ensure that all conflict disclosures are properly and timely made and that upon receipt of same, that the Conflicts of Interest Policy is thereafter implemented and followed. In this manner, the IDA will ensure that board members that have identified a perceived or actual conflict of interest refrain from discussion on the matter.

Recommendation: Board members should refrain from participation in any decision or discussion where they have a perceived or actual conflict of interest.

Response: See response above.

XI. Open Meetings Law

The IDA takes very seriously adherence to Section 7 of the Public Officers Law, commonly known as the Open Meetings Law (“OML”). We understand the need to be transparent, and desire to be transparent as a means by which to highlight the good work we do for the benefit of the County and its residents, and to ensure we retain public trust and confidence, while at the same time, affording companies and individuals the protections of “executive session” as permitted by Section 105 of the OML. The IDA has already implemented procedures requiring its general counsel, during an IDA public meeting, to provide the statutorily permissible reasons to enter into executive session to the Chair to ensure the Chair appropriately cites the specific statutory exemption, adequately identifies the subject matter for holding executive session, and to ensure the minutes reflect the foregoing. Draft minutes will be reviewed by IDA general counsel to ensure minutes do not otherwise inadvertently omit proper disclosure and motions when the board resolves to enter into executive session.

Further, the IDA acknowledges Section 102(2) of the New York Public Officers Law and the various Committee on Open Government opinions that any committee, subcommittee, or similar body of the board consisting of two or more board members (of that governing board or of a public body) is a “public body” subject to the OML, and thus subject to the open meetings law. The IDA does not agree that meetings of its Transaction Committee, which, in its present form, include only one member of the IDA board, are subject to open meetings, and further asserts that actions of the Transaction Committee are merely statutorily required administrative actions, and are not actions required to be made only by the IDA board of directors in open session.

Notwithstanding the foregoing, the IDA will ensure it conducts meetings of its committees and subcommittees in accordance with the OML. Lastly, the IDA staff and its general counsel will proactively review board meeting minutes to ensure insertion and inclusion of board meeting details and resolutions.

Recommendation: The board should only use executive sessions for those purposes outlined in Section 105 of Public Officer Law, current case law, and Committee on Open Government advisory opinions to ensure that reasons for executive session include the specific statutory exemption and adequately identify the subject to be discussed.

Response: The IDA agrees and will continue to operate in accordance with Section 105 of the OML and related authorities.

Recommendation: The board should ensure all meetings of its established committees are open to the public.

Response: The IDA will ensure meetings of its public body are subject to the OML.

Recommendation: The board should ensure all meeting minutes clearly and sufficiently describe the business transacted during all board and committee meetings.

Response: Agreed. IDA staff and general counsel will review draft board meeting minutes to more clearly describe the business transacted during IDA board and committee meetings.

Recommendation: The board should ensure board resolutions are included with the meeting minutes, as required by their By-laws.

Response: Agreed. IDA staff and general counsel will review draft board meeting minutes to ensure board resolutions are therein included.

Recommendation: The board should seek separate trainings on the requirements of the Open Meetings Law from the Committee on Open Government.

Response: The IDA board will confer with legal counsel on the requirements of OML and will work with its Governance Committee to implement training and procedures to ensure OML compliance.

XII. PILOT Administration

The IDA takes very seriously its PILOT billing, collection, and remittance responsibilities. The IDA does not dispute that in two instances, PILOT bills were overbilled by \$122 and under charged by \$1,944, and that there were some billing timing delays and delays with respect to submitting PILOT monies to the taxing jurisdictions; however, during the ABO review period, the IDA was seriously challenged by the COVID-19 pandemic with respect to undertaking its PILOT responsibilities.

Recommendation: The board should implement internal controls to ensure PILOT agreements clearly present PILOT terms for the calculation of payments.

Response: Agreed. The IDA will adopt an internal controls policy which includes guidance related to PILOT calculations, collections, and disbursements.

Recommendation: The board should ensure management is calculating PILOTs according to the terms approved.

Response: As stated above, the IDA will adopt an internal controls policy which includes guidance related to PILOT calculations.

Recommendation: The board should ensure PILOT bills are sent timely to project owners.

Response: As stated above, the IDA will adopt an internal controls policy which includes guidance related to the timing of PILOT billings. Note that some PILOT Agreements do not require actual PILOT

invoices be provided to project owners, such that it is incumbent on the project owner to remit payment as stated in the PILOT Agreement.

Recommendation: The board should ensure PILOTs are received and forwarded to the taxing jurisdictions by the required due date in the PILOT agreement.

Response: We note that delays in forwarding PILOT Payments to the respective taxing jurisdictions, as identified in the draft ABO report, occurred during the height of the COVID-19 pandemic wherein staff were working remotely. Notwithstanding the foregoing, and as stated above, the IDA will adopt an internal controls policy which includes guidance related to PILOT payment remittance to taxing jurisdictions.

Recommendation: The board should ensure that all PILOTs received are forwarded to the taxing jurisdictions within 30 days as required by GML 874 (3).

Response: As stated above, the IDA will adopt an internal controls policy which includes guidance related to PILOT payment remittance to taxing jurisdictions.

Recommendation: The board should ensure that penalties and interest are paid to taxing jurisdictions as required by GML 874 (5).

Response: The IDA agrees with the foregoing, and will confer with legal counsel with respect to same.

XIII. PARIS Reporting

In general, to the extent the IDA and its Affiliate's data was improperly inserted into the PARIS reporting system, the IDA and its Affiliates desire to correct same and improve its data insertion on a going-forward basis.

Recommendation: The board should establish adequate procedures to review and verify that all data annually reported in PARIS is complete and accurate prior to certifying the data. This should include, but not be limited to, ensuring all procurement transactions, staff and compensation, and active projects are accurately reported.

Response: The IDA and its Affiliates intend to procure professional consultant services to assist with annual compliance and PARIS reporting requirements.

XIV. Website Transparency

In general, to the extent the IDA's and its Affiliates' website does not comply with ABO best practices, the IDA and its Affiliates desire to correct same and improve its website on a going forward basis.

Recommendation: The boards should review the website and take the appropriate action so that all required information is available online and easily accessible to the public.

Response: The IDA and its Affiliates intend to procure professional consultant services to update the IDA/Affiliates websites to ensure that it follows ABO Policy Guidance 22-01.

XV. CREDC Recommendations

1. The board should ensure it operates as the separate and distinct local authority it was created to be.

Response: Agreed. See Section I above.

2. The board should maintain separate bank accounts and accounting records from other local authorities.

Response: Agreed. See Section I above.

3. The board should separately adopt accounting policies and procedures and monitor the financial and management controls.

Response: Agreed. See Section I above.

4. The board should ensure adequate documentation for any payments for services provided.

Response: Agreed. See Sections I, II, and III above.

XVI. CRC Recommendations

1. The board should ensure it operates as the separate and distinct local authority it was created to be.

Response: Agreed. See Section I above.

2. The board should maintain separate bank accounts and accounting records from other local authorities.

Response: Agreed. See Section I above.

3. The board should separately adopt accounting policies and procedures and monitor the financial and management controls.

Response: Agreed. See Section I above.

4. The board should ensure adequate documentation for any payments for services provided.

Response: Agreed. See Section I, II, and III above.

5. The board should establish adequate procedures to review and verify that all data annually reported in PARIS is complete and accurate prior to certifying the data. This should include, but not be limited to, ensuring all procurement transactions, staff and compensation, and active projects are accurately reported.

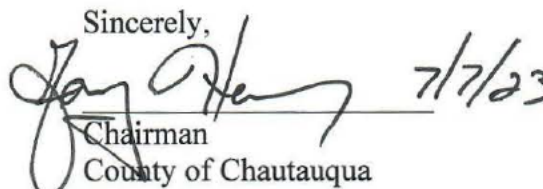
Response: Agreed. See Section XIII above.

6. The boards should review the website review and take the appropriate action so that all information required information is available online and easily accessible to the public.

Response: Agreed. See Section XIV above.

We appreciate the opportunity to submit this response to the Draft ABO Review. Consistent with the ABO's Policy Guidance as so related to the Draft ABO Review, we recognize the ABO's role under the New York State Public Authorities Law in assisting the IDA and its Affiliates to empower its leadership to better promote effective management, improve accountability and oversight, encourage transparent and full disclosure, and to establish a culture of ethical behavior and personal responsibility, all in an effort to promote high quality performance consistent with the mission and purposes of the IDA.

Sincerely,


Chairman
County of Chautauqua
Industrial Development Agency

Enclosure

Exhibit A



Phillips Lytle LLP

County of Chautauqua Industrial Development Agency
201 West Third Street, Suite 115
Jamestown, NY 14701
Attention: Richard E. Dixon
Chief Financial Officer

May 16, 2023

Re: County of Chautauqua Industrial Development Agency ("IDA")
Transactions Committee ("Committee")

Dear Rich:

You have asked us to review and comment on the IDA's use of the Committee to screen Applications for Financial Assistance ("Applications").

First, we note that the IDA Board passed a Resolution authorizing the Committee to screen Applications. Thus, nothing done by staff in utilizing the Committee process has been done without Board approval.

Second, the use of the Committee is the exception, not the rule. In the vast majority of instances, the IDA staff brings Applications to the full Board for initial approval. It is only where some exigency exists that staff utilizes the Committee. Thus, the IDA is aiding an applicant's timing while performing the IDA's mission of economic development. Failure to do so would typically imperil the subject transaction for one reason or another.

Third, we note that a number of other IDAs across the State utilize a similar process (often with less Board involvement than here).

Lastly, and most importantly, utilizing the Committee is entirely consistent with the General Municipal Law ("GML"). GML Section 859-a requires that if the financial assistance exceeds \$100,000, the IDA "must adopt a resolution describing the project and the financial assistance that the agency is contemplating with respect to such project" (emphasis added). The GML is very clear: only one Resolution is required in order to approve financial assistance. That Resolution must be after the due diligence



May 16, 2023

Recipients
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(e.g. SEQRA, public hearing) is performed. There is simply no requirement for a second Resolution.

In this regard, the actions of the IDA in utilizing the Committee is entirely appropriate.

Very truly yours,

Phillips Lytle LLP

A handwritten signature in black ink that reads "Milan K. Tyler". The signature is written in a cursive, flowing style.

By

Milan K. Tyler

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