Office of the New York State Comptroller

Division of Local Government
& School Accountability

County of Oswego Industrial Development Agency

Revolving Loan Programs

Report of Examination

Period Covered:

August 1, 2012 — May 31, 2014

2014M-356

Thomas P. DiNapoli

Table of Contents

		Page
AUTHORITY LETTER		1
EXECUTIVE SUMMARY		2
INTRODUCTION		4
	Background	4
	Objective	4
	Scope and Methodology	5
	Comments of Agency Officials	5
AUTHORITY TO LOAN		6
	Recommendations	8
MONITORING LOANS		9
	Recommendations	12
APPENDIX A	Response From Agency Officials	13
APPENDIX B	OSC Comments on the Agency's Response	20
APPENDIX C	Audit Methodology and Standards	23
APPENDIX D	How to Obtain Additional Copies of the Report	25
APPENDIX E	Local Regional Office Listing	26

State of New York
Office of the State Comptroller

**Division of Local Government
and School Accountability**

April 2015

Dear Agency Officials:

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

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

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

Respectfully submitted,

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

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

The County of Oswego Industrial Development Agency (COIDA) was created in 1973 by the New York State Legislature for the purpose of promoting, developing, encouraging and assisting in acquiring and constructing certain types of facilities, thereby advancing job opportunities, health, general prosperity and the economic welfare of the people of the State. The benefits available to companies that receive financial assistance from COIDA include mortgage, sales and real property tax exemptions and financing from industrial development agency (IDA) bonds. Many of the projects that benefit from COIDA assistance include agreements to make annual payments in lieu of taxes (PILOTs)[1] to help offset the loss of revenues from the tax exemptions provided. COIDA also has a revolving economic development fund program offering low interest loans to area businesses and tax-exempt organizations. As of May 31, 2014, COIDA had 113 outstanding loans totaling approximately $11.7 million and had $7.7 million in cash on hand, of which $4.2 million was restricted for future loans.

COIDA comprises a seven-member Board of Directors, which is appointed by the Oswego County (County) Legislature and is responsible for the general management and control of COIDA's financial and operational affairs. Operation Oswego County (OOC), a not-for-profit development organization, performs the administrative and accounting services for COIDA pursuant to a written agreement. A representative from OOC serves as the chief executive officer and another as the chief financial officer for COIDA.[2]

Scope and Objective

The objective of our audit was to evaluate COIDA's revolving loan fund programs for the period August 1, 2012 through May 31, 2014. We extended our audit scope to review job data reported by companies as of July 31, 2014. Our audit addressed the following related questions:

- Did COIDA have the legal authority to make loans from its revolving loan programs?
- Did COIDA design and implement systems to evaluate job data and project performance of companies that received loans from its revolving loan programs?

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[1] PILOTs are amounts paid to the IDA or the affected tax jurisdictions that are equal to the amount, or a portion of the amount, of the taxes which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of the IDA's involvement. An affected tax jurisdiction is a municipality or school district in which an IDA project is located (General Municipal Law, Section 854).

[2] The relationship between COIDA and OOC and representatives of OOC is not within the scope of this audit.

Audit Results

COIDA provides loans from revolving loan funds to eligible borrowers to finance a portion of the cost of approved projects. The repayments of principal and interest from companies are used to make loans to future borrowers. While the IDA statute expressly authorizes an IDA to issue its own bonds and notes to provide financial assistance for IDA projects, it has been the Office of the State Comptroller's long standing view that such legislation does not authorize an IDA to establish a revolving loan program using its own funds, including money that would have been otherwise paid to the County as a portion of a PILOT. Nonetheless, COIDA had 90 loans outstanding as of May 31, 2014, totaling nearly $9.6 million, which were financed with COIDA's own funds.

In order to receive loans, companies represent that they will retain or create a certain number of jobs. COIDA did not design and implement systems to evaluate job data and the overall performance of companies that received loans from the revolving loan programs. We found no formal process to compare current and projected jobs at the time of application to the reported number of jobs actually created and retained, in order to determine whether the loan program is successfully resulting in job creation and retention.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Agency officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

Introduction

Background

Industrial Development Agencies (IDAs) are independent public benefit corporations created to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining or equipping certain types of facilities. The overall goal of IDAs is to advance the job opportunities, health, general prosperity and economic welfare of the people of the State. The powers and duties of IDAs are generally set forth in General Municipal Law (GML). Typically, projects that receive IDA financial assistance involve the acquisition, construction or major renovations of buildings and equipment and generate short-term and long-term employment in jobs related to construction and operations.

The County of Oswego IDA (COIDA) was created in 1973 by the New York State Legislature. COIDA comprises a seven-member Board of Directors (Board), which is appointed by the Oswego County (County) Legislature and is responsible for the general management and control of COIDA's financial and operational affairs. Operation Oswego County (OOC), a not-for-profit development organization, performs the administrative and accounting services for COIDA pursuant to a written agreement. A representative from OOC serves as the chief executive officer (CEO) and another as the chief financial officer (CFO) for COIDA.[3]

The benefits available to companies that receive financial assistance from COIDA include exemptions from mortgage, real property and sales taxes and financing from IDA bonds. Many of the projects that benefit from COIDA assistance include agreements to make annual payments in lieu of taxes (PILOTs) to help offset the loss of revenues from the tax exemptions provided. COIDA generally enters into a lease or lease-back agreement for the property owned or leased by the business, which facilitates the provision of such benefits as the property is considered tax-exempt under the IDA statute. COIDA also has a revolving economic development fund (EDF) program offering low interest loans to area businesses and tax-exempt organizations. As of May 31, 2014, COIDA had 113 loans outstanding totaling approximately \$11.7 million and had \$7.7 million in cash on hand, of which \$4.2 million was restricted for future loans.

Objective

The objective of our audit was to evaluate COIDA's revolving loan fund programs. Our audit addressed the following related questions:

[3] The relationship between COIDA and OOC and representatives of OOC is not within the scope of this audit.

- Did COIDA have the legal authority to make loans from its revolving loan programs?

- Did COIDA design and implement systems to evaluate job data and project performance of companies that received loans from its revolving loan programs?

Scope and Methodology

We evaluated COIDA's authority to make loans and examined its job-monitoring practices for the period August 1, 2012 through May 31, 2014. We extended our audit scope to review job data reported by companies as of July 31, 2014.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Agency officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

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

Authority to Loan

IDAs are a vehicle by which the State facilitates economic development. An IDA is a corporate governmental agency constituted as a public benefit corporation and is created by State statute. It is a general rule that public benefit corporations, such as IDAs, have only those powers which are conferred expressly by the State Legislature or which are necessarily implied. An IDA is authorized to provide "financial assistance" for IDA projects. The term "financial assistance" is defined to mean the proceeds of IDA bonds, "straight-leases" or exemptions from taxes resulting from the project's status as an IDA project.

Financial assistance does not expressly encompass direct loans of the IDA's money. Moreover, while an IDA is expressly permitted to accept gifts, grants, loans and contributions from various sources and to use such money for its corporate purposes, GML contains no corresponding authority for IDAs to make loans of their own money.[4] Accordingly, we question whether COIDA is authorized to make direct loans of its own money. In contrast, it has been our view that IDAs may participate in federal loan programs and make loans using money originating from federal sources such as the U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture (USDA) consistent with the terms of the federal program.[5] As of May 31, 2014, the COIDA had 90 questionable outstanding loans totaling nearly $9.6 million of its own funds.

COIDA's EDF program was established to enhance the overall economic well-being within the County and to foster the creation and retention of job opportunities for the County's citizens. Under this program, COIDA makes direct loans to eligible borrowers to finance a portion of the cost of approved projects. Loan proceeds may be used by the borrower for the purchase of machinery and equipment, acquisition or construction of facilities, renovations or additions to facilities, inventory and working capital. The Board approves all such loans and the repayments of principal and interest from companies are used to make loans to future borrowers. Figure 1 shows the types of loans originating from the various funding sources and outstanding loan balances as of the end of our audit period:

[4] See Office of the State Comptroller (OSC) Opinions Nos. 99-4 and 82-360, Attorney General Formal Opinion No. 2014-F1 and Authorities Budget Office Policy Guidance No. 15-01; see also OSC Opinion No. 2011-1, cited in Attorney General Formal Opinion No. 2014-F1, concerning the authority for an IDA to do things "necessary or convenient" to carry out its purposes and exercise its powers under the GML.

[5] OSC Opinion Nos. 82-360 and 79-784; GML Section 858(11); see also Kradjian v City of Binghamton, 104 AD2d 16 appeal dismissed 64 NY2d 1039.

Figure 1: Direct Loan Types and Outstanding Balances as of May 31, 2014		
Loan Type	**Outstanding Balance**	**Number of Loans**
Loans Originating from COIDA Funds		
PILOT EDF	$8,202,586	83
General EDF	$1,395,681	7
Subtotal	$9,598,267	90
Loans Originating from Federal Grant Funds[a]		
HUD EDF and Micro Enterprise EDF	$1,739,110	20
USDA Intermediary Relending Program EDF	$314,962	3
Subtotal	$2,054,072	23
Total Outstanding Loans	**$11,652,339**	**113**

[a] Loans made by COIDA in which the funds originate from federal sources such as HUD and USDA are permissible if the loans are consistent with the terms of the federal program.

PILOT EDF – The County Legislature adopted a resolution in 1994 approving the use of a portion of the County's share of PILOT payments to establish COIDA's PILOT EDF.[6] The resolution provides that a portion of the County's share of PILOT funds will be retained by COIDA to be used "exclusively for lending to create and retain jobs in Oswego County." The resolution and guidelines also state that any "uncommitted funds"[7] in excess of $2.5 million on July 31 of each year will be transferred to the County, upon completion of an audit of the IDA.

The structure of this arrangement results in a portion of the County's PILOT from each project being allocated to and retained by the IDA, or distributed by the County to COIDA, to fund the PILOT EDF. It is apparent that, once retained by or distributed to COIDA, these PILOTs become COIDA funds. As noted, we question the legal authority of the COIDA to make direct loans from the PILOT EDF because the loans are made from COIDA's own funds.[8] We are aware that COIDA obtained opinions from its attorneys, concluding that the County's PILOT payments allocated or paid to the IDA are not subject to the constitutional prohibition against gifts and loans by, among others,

[6] COIDA initially received 50 percent of the County's share of PILOT payments, which was reduced to 10 percent in 2004.

[7] According to the CEO, uncommitted funds are defined as cash held in the bank, less the loans approved by the Board but not yet dispersed.

[8] Although not directly within the scope of this report, we have also expressed the view that a county is not authorized to establish a revolving loan fund with county money to make loans to private businesses for the purpose of fostering economic development and creating jobs or to contract with an IDA for the payment of county money to an IDA to fund a revolving loan fund from which loans to private entities would be made (OSC Opinion No. 82-296; see also OSC Opinion No. 86-22).

counties, to or in aid of private undertakings; the County has authority to agree to an "alternative allocation" of PILOTs; and COIDA has authority to use those PILOTs to make loans to private parties. Even assuming that there is no violation of the gift and loan constitutional prohibition, as noted, we question the authority of an IDA to make loans using its own money, whether derived from fees or PILOTs.[9]

General EDF – The CEO told us that, beginning in the late 1980s, the COIDA began loaning its own funds to companies using the revenues generated from application and administration fees charged to companies.[10] From these revenues, the COIDA established the general EDF. The purpose of these funds was to make loans to eligible businesses which are obligated to create and retain jobs. COIDA discontinued loaning from these funds in 2008 on the advice of its attorneys.

We also question the legal authority for COIDA to make loans using its own money from its general EDF. As of May 31, 2014, COIDA had seven outstanding loans totaling nearly $1.4 million from the general EDF. While COIDA has not made any new loans from the general EDF since 2008, it continues to collect monthly installment payments from its existing loans.

Recommendations

1. The Board should discontinue the practice of making loans from the PILOT EDF.

2. In the absence of remedial legislation, the Board should remit to the County the total cash on hand in the PILOT EDF and subsequent repayments it receives from companies for the PILOT EDF, or it should modify its agreement with the County to ensure that these funds are expended only for a purpose for which the County itself could use its money.

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9 Further, we have expressed the view that a municipality may make a gift of its money to an IDA, but only if the funds are used by the IDA for a purpose for which the municipality could use its own money (OSC Opinion No. 86-22), and we believe a municipality may not use its money to fund an IDA revolving loan fund which is used for other purposes (OSC Opinion No. 82-296). In our view, there is no distinction in this regard between PILOTs payable to the municipality and other funds of the municipality.

10 For PILOT and bonding transactions, COIDA imposes administrative fees as a percentage (less than 1 percent) of the project cost, the bonds issued or the amount refinanced. An application fee of $500 is charged at the time of application, and an annual $500 administrative fee is charged to cover reporting requirements to comply with State reporting regulations. For loans, an applicant pays an administrative fee (at least 1 percent of the amount financed, or $200, whichever is greater) and an application fee of $100. We express no view as to the propriety of the fees.

Monitoring Loans

The Board is responsible for monitoring and evaluating the performance of businesses receiving loans to determine whether they are meeting the goals included in their loan applications and to determine the overall effectiveness of the loan program. Without effective monitoring, COIDA officials cannot effectively identify and address job creation or job retention shortfalls, and the community will not be able to determine if the expected benefits of the loan programs have been achieved.[11]

COIDA officials did not design and implement systems to evaluate job data and the overall performance of companies that received loans from the revolving loan programs. Officials have no formal process to compare actual and projected jobs from the time of application to subsequently reported job totals in order to determine whether the loan program is successfully retaining or creating jobs. We compared the projected jobs included in a sample of 31 loan applications with the actual jobs reported by companies as of July 31, 2014 and found that companies created 50 percent of the jobs they originally projected they would create.

In order to apply for a loan from the COIDA, a company must first complete a loan application. Among other things, the application requires the company to complete an employment plan which identifies, by job title, the present number of jobs and applicable salaries and also the jobs to be created in each of the subsequent three years. In August of each year, COIDA sends a form to each company asking them to confirm the outstanding balance of the loan and to enter the current number of employees as of July 31 and the total gross payroll for July of that year. In addition to returning the completed form (annual job report), each company is required to annually submit its financial statements to COIDA.

COIDA does not have a consistent or formal process to compare projected jobs on loan applications to the annual job reports submitted by companies to determine if the companies have created or retained the jobs they projected when they applied for the loans. The CFO told us that he annually reviews financial statements for all companies, primarily to identify any “red flags” in their performance trends concerning profitability and sales. He told us he may review the initial projections of salaries in the application if he sees declines

[11] For purposes of this section of the report, we have assumed the legal propriety of the loans from revolving loan funds made using the IDA’s own funds, including PILOT EDF and general EDF.

in salaries from the financial statements for a particular company, but he does not review the annual job reports or compare them with the job projections in the loan applications. The Board Chair and other officials told us that, if a company is paying its required monthly loan amount, it is assumed the company is performing well financially and has created or maintained the jobs as projected in the application. The CFO provides to the Board a monthly report of companies which are delinquent in their loan payments.[12] The Board Chair told us that the Board compares projected jobs, per the applications, to actual jobs created or maintained for companies that are delinquent in their loan payments. However, these comparisons are not documented and there is no process in place to determine whether companies making timely loan repayments have successfully created or retained jobs.

We compared the initial and estimated jobs to be created from company loan applications to 2014 annual job reports[13] for all companies to which loans were made from July 31, 2008 through July 31, 2011. Our sample consisted of 31 companies that received loans during this period totaling approximately $3.8 million. Figure 2 summarizes our comparison of projected and reported jobs. Even though COIDA experienced a 34 percent increase in jobs created, we found that the companies created only 50 percent of the jobs they originally projected they would create.[14]

Figure 2: Job Creation Performance Summary

	Number of Loans	Jobs Before Loan	Estimated Job Creation	Total Jobs Estimated	2014 Reported Jobs	Reported Jobs Over/(Under) Projection
Companies that Met or Exceeded Job Creation Goal	11	67	51	118	188	70
Companies that Did Not Meet Goals but Increased Jobs	8	76	117	193	145	(48)
Companies that Had No Change in Employment	5	48	15	63	48	(15)
Companies that Did Not Meet Goals and Reduced Jobs	7	150	54	204	77	(127)
Total	**31**	**341**	**237**	**578**	**458**	**(120)**

[12] As of May 31, 2014, there were 113 outstanding loans. In July 2014, nine of these were identified as delinquent loans.

[13] As discussed later in the report, some of the annual job reports submitted by companies were inaccurate. The CFO reached out to these companies and obtained updated employment counts.

[14] 458 reported jobs - 341 jobs before the loan equals 117 jobs (117/341 = 34 percent); 117 jobs /237 estimated jobs to be created = 50 percent

Four companies in our sample also received a subsequent loan from COIDA after July 31, 2011. Figure 3 identifies the original and subsequent loan amounts and summarizes our comparison of projected[15] and reported jobs for these four companies.

Figure 3: Subsequent Loan Performance Summary

Company	Original Loan Amount	Jobs Before Loan	Estimated Job Creation	Total Jobs Estimated	Reported Jobs at Second Loan[a]	Reported Jobs Over/ (Short) of Projection	Subsequent Loan Amount
Fulton Tool Company, Inc.	$99,500	17	3	20	19	(1)	$83,660
Wiltsie Construction Co., Inc.	$129,780	44	0	44	22	(22)	$43,200
Laser Transit, Ltd.	$370,000	44	28	72	36	(36)	$83,500
Barnett Forest Products, LLC	$90,000	0	7	7	6	(1)	$35,000
Total	**$689,280**	**105**	**38**	**143**	**83**	**(60)**	**$245,360**

[a] The annual job reports for July 2013 provided the most recent job data because the subsequent loans for the first two companies were made in August and December of 2013. The third company (Laser Transit, Ltd.) received a loan in December 2013 but did not submit the required job report for July 2013, so we used its July 2014 annual job report. The fourth company (Barnett Forest Products, LLC) received a loan in February 2012; therefore, we used the job data reported in the July 2011 job report.

None of the four companies that received a second loan from COIDA met the job creation or retention goals outlined in their initial loan applications, and two of the companies reduced staffing. The CFO told us he reviews the financial status of any company that applies for a subsequent loan, but there is no process in place to determine whether the company created or retained the jobs it had projected in its previous loan application. Therefore, the Board does not have measurable results of a company's past performance as it relates to job creation and retention when it decides whether to approve a subsequent loan. The Board Chair told us that, even though the Board does not have the job totals from annual job reports, the Board is aware of a company's financial position and general employment levels when evaluating whether to approve a subsequent loan.

In addition, COIDA does not review the number of jobs reported on the annual job forms for reasonableness. Our review of 2014 annual job forms raised questions as to the accuracy of the reported number of current employees on some of the forms. For example, four companies reported zero current employees, and another company reported one current employee when the job projections from its initial application included 34 current employees. The CFO contacted the companies that made errors when reporting the number of current jobs and provided COIDA with the correct job totals. Without accurate job

[15] Projected jobs from the application for the original loan

totals reported from companies, Board members and other COIDA officials are not able to perform meaningful comparisons of job creation and retention goals to jobs actually created and retained.

When entering into loan agreements, COIDA requires a company to sign a "Fund Use Agreement" which specifies the jobs to be created and contains a default clause which allows the Board to declare the loan immediately due and payable if the company materially defaults in any term, covenant or condition contained in the agreement. However, because the Board and COIDA officials are not adequately monitoring job performance, they do not identify companies that are not meeting their job creation goals and do not evaluate whether it would be appropriate to exercise the IDA's rights under the contract when a company does not create jobs as stipulated in the agreement. Additionally, the lack of monitoring makes it difficult for the Board to evaluate the overall effectiveness of the loan programs in accomplishing COIDAs primary goals of creating and retaining jobs.

Recommendations

COIDA officials should:

3. Monitor the job creation and retention performance of companies receiving loans in order to help determine if the loan programs are achieving their intended benefits.

4. Review the annual job reports for reasonableness and follow up with companies reporting questionable job data.

The Board should:

5. Review and document the past job performance of companies, including the results of job creation, when evaluating their subsequent loan applications and consider taking action pursuant to its rights under the loan documents if a company falls significantly short of its job creation goals.

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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

COUNTY OF OSWEGO INDUSTRIAL DEVELOPMENT AGENCY

44 West Bridge St., Oswego, NY 13126

Phone: (315) 343-1545 • Fax: (315) 343-1546

February 27, 2015

Rebecca Wilcox, Chief Examiner
State of New York
Office of the State Comptroller
State Office Building, Room 409
333 East Washington Street
Syracuse, New York 13202-1428

Re: County of Oswego IDA
NYS Comptroller Report of Examination 2014 M-356

Dear Ms. Wilcox:

The County of Oswego Industrial Development Agency (the Agency) has reviewed the Draft Report of Examination of the Agency Revolving Loan Programs prepared by the Office of the State Comptroller (OSC).

We appreciate the OSC's recognition in the draft report that Oswego County established the PILOT Economic Development Fund (PILOT EDF), a revolving loan fund, "to enhance the overall economic well-being within the County and foster the creation and retention of job opportunities for the County's citizens." As discussed in more detail below, the PILOT EDF has achieved these goals. Since its inception, projects receiving loans under the PILOT EDF have resulted in the creation or retention of over 2,400 jobs in the County. Businesses that have been assisted with a PILOT EDF loan currently employ over 4,500 in the County. PILOT EDF loans have contributed to diversifying the County's real property tax base and employment opportunities in the County by lending to projects in all sectors including retail, hospitality and services, agriculture and forestry, manufacturing, healthcare, commercial, recycling, transportation and logistics, wholesale and warehousing, recreation and tourism. More than 83% of the PILOT EDF loans were to small businesses. PILOT EDF loans have been made for projects in every urban and rural community in the County. The portion of the County's payment in lieu of taxes (PILOT) allocated to the PILOT EDF has leveraged private lending and investment in the County in an amount that exceeds $220 million. The Agency commends the County for its commitment and innovation and is proud to administer the PILOT EDF in Oswego County.

We note that the draft OSC Report incorrectly describes OOC. OOC is a not-for-profit corporation that provides accounting and administrative services pursuant to a professional services contract with the Agency.

See Note 1 Page 20

Authority to Loan

The PILOT EDF was first established in 1986 by County resolution. In August 1994, the County Legislature reauthorized the PILOT EDF by Resolution 124 (the County Resolution) which was adopted to address an IDA Act amendment adding paragraph (15) to Section 858. Paragraph 15 provides for affected tax jurisdictions such as the County to agree to an alternate allocation of PILOT. As noted in the Bill Memorandum, the addition of paragraph 15 was part of a comprehensive revision of the IDA Act intended to strengthen the role of IDAs in creating jobs and contributing to an improved economy and to increase the accountability of an industrial development agency (IDA) to the local government which that IDA was created to benefit.

The County Resolution restricts the use of the County PILOT allocation solely to the PILOT EDF and requires reporting to the legislature when each loan is made and the regular reporting of the performance of PILOT EDF loans, thereby ensuring advancement of the County's economic development purposes and fulfillment of the accountability demanded by County inhabitants and the State.

The Agency is committed to transparency in the administration of the PILOT EDF. The Agency conducts a public hearing for each loan in excess of $100,000 (and when the loan and other financial assistance, if any, exceed $100,000) consistent with Section 859-a of the IDA Act and approves loans in open session. In addition to regular reporting to the County, the Agency has reported the PILOT EDF cash balances, activity and loans on its annual audited financial statements filed with OSC every year since 1989.

Respectfully, it is our position that the draft OSC Report erroneously concludes that the portion of the County PILOT allocated to the PILOT EDF constitutes the Agency's own funds and further that the criticism of the County set forth in the draft OSC Report is not based on the correct application of New York law, case law or OSC's own opinions.

See Note 2 Page 20

First, the report erroneously implies that IDAs may participate in only Federal loan programs. However, Section 858(11) of the IDA Act expressly provides that an IDA has the power to accept gifts, grants, loans, or contributions from the United States, the State of New York, <u>any municipality</u>, public or private corporations or any other legal entity and to use any such gifts, grants, loans or contributions for any of the IDA's corporate purposes.

See Note 3 Page 20

The County Resolution allocates a portion of the County PILOT to the Agency to be used "exclusively for lending" and expressly requires that the PILOT allocations not be commingled with other Agency or third party funds, the funds be independently accounted for and uncommitted allocations be transferred back to the County. In accordance with generally accepted accounting principles, the PILOT EDF is reflected on the Agency's financial statements as restricted cash in the same manner as the federal revolving loan funds.

Similar to the federal revolving loan funds, the Agency does not have any indicia of ownership over the PILOT allocations. Rather the Agency is obligated either to use the allocation in accordance with the County Resolution or transfer it back to the County. For example, in 2003-04, the Agency transferred $1 million back to the County. The Agency administers the PILOT allocation from the County and uses the allocated funds in accordance with the County Resolution for its corporate purposes, all as authorized by the IDA Act. Therefore, as a legal, accounting and factual matter, the portion of County PILOT allocated to the PILOT EDF is not the Agency's own funds, contrary to the statements in the draft OSC Report.

See Note 4 Page 20

Second, footnote 8 to the draft OSC Report questions the authority of the County to allocate PILOT to the Agency. The footnote refers to OSC opinions from 1982 and 1986. We note that the OSC Opinion 86-22 (referenced in the footnotes) appears on its face to be based on an analysis of the constitutional gift restriction that applies to municipal monies. Based on advice of counsel, we believe the County's share of PILOT is not "municipal" money of the County. Further, we understand that OSC has opined in unreported opinions that a county may contract with an IDA to pay cash to it in exchange for a public service rendered to an area of the county (Op. 78-952) and municipalities may invest in county IDA bonds (Op. 72-984).

See Note 5 Page 21

We believe that providing for the economic well-being of County inhabitants, diversifying the real property tax base and promoting job creation and retention are all public purposes of New York counties. Consistent with these purposes, counties have purchased IDA bonds issued to finance an IDA's construction of speculation buildings. Since a bond is evidence of indebtedness, the purchase by a county of an IDA bond to finance a speculation building is a loan to the IDA.

In fulfillment of these purposes, counties (as well as cities and school districts) have agreed to an alternate allocation of PILOT in several instances including for use by an IDA of PILOT allocations to pay debt service on revenue bonds issued to finance the expansion of a shopping center, for use by an IDA to pay debt service on revenue bonds issued to finance the construction of baseball stadiums and for use by an IDA as an administrative fee to use in developing industrial parks. We understand that New York courts (and in the case of the shopping center PILOT allocation, OSC) have reviewed and upheld some of these transactions.

See Note 6 Page 21

The value and importance of a revolving loan fund is that it recycles dollars to be used over and over again when companies pay their debt obligations to the fund. Repayment fuels the fund's capacity to make other loans to businesses. In the case of the PILOT EDF, every $1 used to capitalize the fund, produces another $2.28 in growth capitalization to benefit businesses across Oswego County. This unique aspect of the PILOT EDF, in the long run, has enduring long term benefits for the economy, business development and stabilization in the County.

Accordingly, we respectfully request that the OSC revise the draft OSC report to accurately reflect that the allocated PILOTs are not the Agency's "own funds" and to delete footnote 8.

See Note 7 Page 21

Monitoring Loans

We appreciate the recommendations in the draft OSC Report to improve on the tracking of job impacts associated with the loan programs.

We disagree with OSC's view that job creation is the single measure of successful economic development. Consistent with the IDA Act, we take a broader view of the purposes of an IDA and the benefits of financial assistance including EDF loans. The benefit of financial assistance including loans from revolving loan funds is properly measured by many objective and subjective criteria that amount to far more than just job creation. These criteria include the following: (1) job retention, (2) minimizing the potential for job reduction, (3) enhancing the competitive position of the County, an industry and a project operator, (4) expansion of production capacity, (5) aiding diversification, (6) expanding trade potential, (7) growing market share, (8) enhancing use of technology and improving efficiency, (9) minimizing environmental impacts and promoting regional planning, (10) advancing research and development opportunities, (11) improving efficiencies in energy utilization, (12) enhancing workforce development and apprentice programs for local tradesman, (13) increasing the local tax base, (14) providing essential services or businesses generally lacking in the area, (15) maximizing the leveraging of private sector financing and investment, (16) redeveloping brownfield sites, (17) placing back into productive use vacant and abandoned structures, (18) helping restore and revitalize downtowns and business districts, (19) promoting utilization of natural resources, (20) advancing tourism and recreational opportunities, (21) supporting the healthcare system, (22) supporting the educational system, (23) assisting businesses that are veteran, minority and or woman owned, (24) assisting non-profit organizations, (25) creating long- and short-term construction jobs, and (26) helping to improve the overall quality of life.

See Note 8 Page 21

We also believe that OSC's selection of data from July 2008 through July 2011 does not represent a fair or comprehensive basis to evaluate job creation or retention. Actual historical data reveals much different results. The history of the PILOT EDF loan program, as an example, shows that 52% of projects assisted have recognized job gains and 27% of projects have remained stable, thus 79% of projects have shown a positive trend. Even for the 21% of projects for which a loss of jobs was reported, we believe that without a loan from the PILOT EDF, these companies would have lost more jobs or even closed.

See Note 9 Page 21

To address the data reflected in Figure 2 of the draft OSC Report: Job Creation Performance Summary, the data is selectively presented to highlight a negative picture. Of the 31 companies included in the sample, 35% met or exceeded their job creation goal, 26% did not meet their goals but increased jobs, and 16% had no change in employment. Overall, 61% of the sampled companies had an increase in jobs and combining that with the 16% that remained stable, 77% had a favorable outcome relative to their impact on the Oswego County economy.

See Note 10 Page 22

The time period used for the sample (July 2008-July 2011) was also a period when the County, NYS and the region were suffering from a failing economy. During this period, according to the Department of Labor, employment losses were pervasive: Oswego County (-10.5%), Syracuse MSA (-8.4%) and NYS (-1.8%). During this time, the companies included in the sample test recognized an overall net gain in jobs of 34%. This can partially be attributed to the loans provided by the PILOT EDF.

To address the data reflected in Figure 3 of the draft OSC Report: Subsequent Loan Performance Summary, the data is correct but incomplete and therefore insufficient to draw meaningful conclusions about the PILOT EDF. There were other overriding circumstances that were considered relevant to making a second loan to those businesses. Fulton Tool only missed its projected mark by one job. The Agency has had an exemplary history with the company in debt service repayment. The equipment loan was critical to new contract work for the company, therefore important to retaining jobs. Wiltsie Construction is a company linked to the construction industry whose employment fluctuates seasonally. The equipment that PILOT EDF helped finance allowed the company to secure and perform more work for clients. This loan helped the company be more competitive. Also, the company has had an excellent track record on making debt service payments. Laser Transit is a logistics and warehousing business located in a very rural section of Oswego County. The company's past history on repayments of debt has been solid. In the case of the second loan, it was equipment needed to provide service on handling large heavy coils (50,000 pounds) for Novelis Corporation that is involved in a $400 million expansion of its aluminum manufacturing plant in the Town of Scriba in Oswego County, a company that employs 1,000 in the County. Barnett Forest Products only missed its projection by one job. It is a small agri-business in the logging business that exports the vast majority of its products. The Agency's track record with the company has been excellent relative to prior loans. Agri-business is a targeted industry sector of the Agency and the Central New York Regional Economic Development Council (CNY REDC).

See Note 11 Page 22

All of the above-referenced subsequent loans were determined by the Board to meet the guidelines of the PILOT EDF and to be appropriate and necessary for advancing the objectives of the individual companies, the PILOT EDF and the County.

Pursuant to our internal loan policy, the Board analyzes on a monthly basis the status of all outstanding loans and action that is in place regarding any loan that is delinquent. Consistent with the recommendations in the draft OSC Report, the Agency will add data on jobs created or retained as a component of this analysis. In large part, the audit process collects the appropriate data which is used for the PARIS reporting of projects receiving financial assistance from PILOT agreements, bonds and straight lease transactions. However, the audit process is also used for loan confirmations and collects information on jobs and payroll as well.

Additionally, it must not be overlooked that job projections are simply an estimate, a guess based on circumstances at the time of application. Many extenuating circumstances can transpire in business and in some cases in a relative short period of time, for instance, lost contract, declining economy, problems with a production facility, unanticipated competition (perhaps internationally) among a host of other circumstances. It is, therefore, not unusual to experience a situation where companies may not reach their projected numbers. Notwithstanding, it is the overall performance of the revolving loan fund portfolio that is important, not a few selected cases that fell short of their projections relative to job growth.

Job creation is not the only reason to provide financial assistance to a company by an economic development organization such as an IDA. Fundamentally, the capacity to help businesses by participating in financing of critical, necessary and essential projects, is without question, a keystone to a successful economic development process.

Conclusion

In summary, the Agency expects to adopt recommendations in the report to the extent we determine that they are in the best interest of the residents, businesses and industries of Oswego County and will help us advance our mission and fulfill our public purposes.

Sincerely,

Carolyn A. Rush, Chair
County of Oswego Industrial Development Agency

Gary Toth, Vice Chair
County of Oswego Industrial Development Agency

APPENDIX B

OSC COMMENTS ON THE AGENCY'S RESPONSE

Note 1

We modified the report to acknowledge that OOC provides accounting and administrative services to COIDA pursuant to a written agreement.

Note 2

We disagree fundamentally with the IDA's characterization of the nature of the money used to fund the PILOT EDF. Moreover, upon review of the IDA's response, no portion of this report is based on an incorrect application of State law, including case law, and OSC's own advisory legal opinions.

Note 3

Our report states that IDAs may participate in federal loan programs. It does not state or imply that IDAs are categorically precluded from participating in any other loan programs, such as statutorily created State programs. With respect, specifically, to loans from municipalities, however, we have expressed the view that the authority in GML for an IDA to accept grants and loans from municipalities does not constitute corresponding authority for a municipality to make gifts or loans to an IDA (OSC Opinion No. 86-22). Further, although a local government may authorize a gift or loan to an IDA, it has long been our view that any such gift or loan must require that the money given or loaned be used by the IDA only for a municipal purpose for which the local government could use its own money. A revolving loan fund from which loans are made to private businesses is not such a purpose (OSC Opinion No. 82-296).

Note 4

The IDA has custody of PILOTs allocated to it and exercises discretionary control over such money by approving loans of the money and expending the money (albeit subject to ratification of loans by the County). These powers and duties are significant indicators of IDA ownership of the money. The fact that the IDA has agreed or consented to restrict or commit the money to specific purposes, to not commingle them with other IDA or "third party" money, to independently account for the money and to transfer "uncommitted" funds to the County does not convert the character of the money into something other than IDA funds.

Moreover, it is a fundamental principle that an IDA "lacks powers not granted to it by express or necessarily implicated legislative delegation" (OSC Opinion No. 2011-1). There is no authority in GML for the IDA to administer a revolving loan fund with money paid to the IDA by the County from PILOTs or with County PILOTs retained by the IDA in accordance with a resolution of the County Legislature (see OSC Opinion Nos. 82-360 and 82-296). We do not concur with the attempted analogy to federal programs undertaken pursuant to federal law. The courts have recognized that money originating as federal money and paid to local entities pursuant to a program created under federal statute may retain its character as federal money for certain loan programs. However, there is no similar authority under State law for money originating as County PILOTs, and allocated and retained by the IDA to be used by the IDA to fund a loan program. We have long expressed the view that a county may not establish a revolving loan fund with county money for economic development purposes or indirectly accomplish this by contract with an IDA.

Note 5

OSC Opinion No. 86-22 concludes that a municipality, pursuant to local law, may make a gift or loan to an IDA or make a contractual payment to an IDA only for a purpose for which the municipality could expend its own money. A revolving loan fund for loans to private businesses to further economic development is not a purpose for which county money may be expended. Even assuming that the allocated and retained County PILOT money does not constitute "municipal" money or County money, and that an expenditure of this money would not contravene the gift and loan prohibition in Article VIII, Section 1 of the State Constitution, there is still no statutory authority for the IDA to use this money, however characterized, to fund a revolving loan fund. We also note that Opinion No. 86-22 superseded inconsistent prior opinions of OSC, including the 1978 and 1972 opinions referenced in the response.

Note 6

We acknowledge that GML authorizes municipalities to purchase IDA bonds or notes as investments and authorizes all affected tax jurisdictions to agree to an allocation of PILOTs in proportions other than those based on the amounts of taxes that would have been received by the jurisdictions. We also acknowledge that an IDA could expend the proceeds of those bonds or notes to finance IDA projects or could apply the "alternative allocation" of PILOTs to directly undertake IDA projects or possibly even to pay IDA debt service. However, that is not what occurred here. There was no purchase of IDA bonds or notes as investments by the County, and the retained PILOTs were not expended by the IDA to directly finance an IDA project or to pay debt service on bonds or notes issued to finance an IDA project. There is no indication that the State Legislature, by necessary implication, intended GML to provide authority for retained County PILOTs to be used to fund direct loans to private businesses (see OSC Opinion No. 82-360).

Note 7

Neither of the suggested changes is warranted. Also, see Note 5.

Note 8

We recognize that some loans may have community benefits other than job creation. While job creation is not the only measure of successful economic development, we note that employment goals are included in COIDA's cost-benefit analysis for a loan and are one of the determining factors in deciding whether or not to approve a loan. As such, COIDA should have a process to monitor the job results of those companies that project they will create or retain jobs so it can determine if the intended benefits of the loans have been achieved.

Note 9

COIDA officials told us they generally expect businesses to create the jobs projected in their loan applications within three to four years after receiving a loan. When evaluating the job creation performance of companies that received loans, we used the July 31, 2014 annual job reports because they provided the most recent data available on current jobs. We selected loans made by COIDA from July 2008 through July 2011 for analysis because companies that received loans during this period had between three and six years to create the jobs they projected. We discussed the sample selection with the Director during our audit fieldwork and he did not express any objections to the sample period at that time. We believe this sample represents a fair basis for evaluating the job creation results of the companies that received loans.

Note 10

Figure 2 shows a summary comparison of the projected jobs companies submitted in their loan applications to the number of current jobs the companies reported on their most recent annual job reports. We think this is a relevant and useful comparison and one that COIDA officials should be doing on their own in order to determine whether companies have successfully created the jobs they projected in their loan applications.

Note 11

The purpose of Figure 3 is to provide data showing the past job performance for a sample of companies that received more than one loan. We believe such information is relevant and useful and that COIDA should consider such past performance during the loan application review and approval process. It was not our intent to draw conclusions on the appropriateness of individual loans made by COIDA.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to evaluate whether COIDA had the legal authority to issue loans and to evaluate whether COIDA monitored the job creation of companies which received loans. To achieve our audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed Board members and OOC officials and reviewed COIDA's policies to gain a general understanding of the purpose of COIDA's activities and the benefits it offers to companies.

- We identified the various loan programs offered by COIDA and the respective funding sources from our review of grant award letters and agreements with federal agencies, sub-recipient agreements with the County, COIDA's resolutions and loan applications and our discussions with the CEO. We identified the total number and dollar amount of outstanding loans and available cash for future loans for each loan type from our review of detailed general ledger receivable accounts, loan collection records and physical loan documents.

- We assessed whether COIDA has the authority to make loans from its various lending programs from our review of the pertinent statutes, Opinions of the State Comptroller and a recent Opinion of the Attorney General. We also reviewed two opinions rendered by COIDA's attorneys.

- We identified the job creation requirements imposed by COIDA when making loans to companies from our review of loan applications and loan contracts and from our discussions with the CEO and Board members.

- We interviewed Board members and OOC officials to evaluate how they monitor the performance of a company and identify whether the company has achieved its goals as outlined in the initial loan application. We also reviewed loan agreements to verify whether penalties may be imposed for noncompliance with the terms of the loan agreement.

- We compared the present and estimated number of jobs to be created, from the companies initial applications, to the number of jobs currently reported (as of July 31, 2014) from annual job reports for 31 loans totaling $3,810,132. Our sample included all loans that were made from July 31, 2008 through July 31, 2011 and which had outstanding balances as of May 31, 2014. We selected the above date range for loans since the COIDA Chair told us that the Board would expect job creation from a company within three to four years after the loan was made, and the CEO told us he would expect job creation in about three years. Therefore, the companies to which loans were made during our date range would have at least three to four years to retain and produce the jobs as estimated in their loan applications.

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

APPENDIX D

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