



Lockport Housing Authority Executive Director's Compensation

Report of Examination

Period Covered:

January 1, 2014 — September 29, 2015

2015M-329



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2016

Dear Authority Officials:

A top priority of the Office of the State Comptroller is to help authority officials manage their authorities efficiently and effectively and, by so doing, provide accountability for dollars spent to support authority operations. The Comptroller oversees the fiscal affairs of authorities statewide, as well as authorities' 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 authority operations and Board governance. Audits also can identify strategies to reduce authority costs and to strengthen controls intended to safeguard authority assets.

Following is a report of our audit of the Lockport Housing Authority, entitled Executive Director's Compensation. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution.

This audit's results and recommendations are resources for authority officials to use in effectively managing operations and in meeting the expectations of taxpayers. 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*

Introduction

Background

The Lockport Housing Authority (Authority) is located in the City of Lockport in Niagara County. The Authority was established pursuant to the New York State Public Housing Law (PHL) to provide low rent housing for qualified individuals in accordance with relevant provisions of the PHL and the rules and regulations prescribed by the United States Department of Housing and Urban Development (HUD). The Authority operates six properties in the City of Lockport: Spires, Willow Gardens, Autumn Gardens, Beacon Heights, David Woody and Gabriel Drive Apartments, providing a total of 352 housing units. The Authority can also issue vouchers for 188 additional units under the Section 8 program, which provide qualified applicants housing in privately owned property.

The Authority is governed by a seven-member Board of Commissioners (Board).¹ According to the bylaws, the officers of the Authority are the Board Chairman, Vice Chairman and Secretary. The Board appoints an Executive Director to supervise the Authority's day-to-day activities. The Secretary is responsible for keeping a record of the Board's proceedings and recording all Board votes in the official minute book. The Board adopted a personnel policy² that addresses wages, work hours, holidays, vacations, sick leave and other fringe benefits covering five employees, including the Executive Director.

For fiscal year ending March 31, 2015, the Authority's revenues totaled approximately \$3.5 million and expenditures totaled approximately \$3.8 million. In addition to tenant rental income, the Authority receives grants and subsidies from the federal government.

Objective

The objective of our audit was to determine if the Executive Director's compensation was properly authorized. Our audit addressed the following related question:

- Was the Executive Director compensated in accordance with the adopted personnel policy and was his compensation approved by the City Council?

Scope and Methodology

We reviewed the Executive Director's compensation for the period January 1, 2014 through September 29, 2015.

¹ Five Commissioners are appointed by the Mayor of the City of Lockport and two Commissioners are tenant representatives elected by tenants of the Authority.

² The policy is entitled "Management Association Policy of the City of Lockport Housing Authority."

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

**Comments of
Authority Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Authority officials and their comments, which appear in Appendix A, have been considered in preparing this report. Authority officials agreed with some of our recommendations and indicated they planned to initiate corrective action for those recommendations. Appendix B includes our comments on the Authority's response letter.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days.

Executive Director's Compensation

The Board should adopt written policies that provide clear guidance regarding compensation and leave time granted to the Executive Director and ensure that he is paid as authorized. The Board is responsible for establishing the Executive Director's compensation, subject to the approval of the Lockport City Council (Council).³

For the 2014-15 fiscal year, the Executive Director's compensation consisted of a base salary,⁴ a provision for longevity, a payment for unused leave and a monthly automobile allowance. Except for the automobile allowance, the Executive Director was compensated in accordance with adopted policy. However, in late 2012 and 2015, the Authority asked the Council to approve annual percentage increases to Authority salaries, not specific compensation amounts, which were subsequently approved.

The adopted personnel policy refers to a salary schedule that lists compensation for Authority employees covered by the policy. The schedule was not attached to the policy, but we obtained it from the Authority accountant and determined that the Executive Director's base salary was paid in accordance with the salary schedule. There was no indication that the Council approved the specific terms of the Executive Director's compensation for the 2014-15 fiscal year, or that the Authority ever submitted specific compensation information to the Council for its approval. The Executive Director was also paid \$150 monthly⁵ for an automobile allowance, but this payment was not mentioned in the adopted policy, and there was no evidence to indicate that it was approved by the Board. Upon inquiry, the Executive Director told us he was entitled to this payment because the former executive director received it.

In January 2015, the Executive Director was paid \$2,200 for longevity in accordance with the adopted policy and \$6,853 representing the monetary value of unused vacation leave.⁶ We reviewed the personnel policy dated October 2011 and found that there was no provision that allowed the Executive Director to sell back his unused leave time. The Executive Director indicated that the Board approved this benefit at a

³ Public Housing Law, Section 32 (1)

⁴ \$76,996

⁵ \$1,800 per year

⁶ The Authority treated this lump sum payment as wages reportable to the New York State and Local Employees Retirement System (NYSLERS). However, according to Retirement system regulations, this type of lump sum payment should not be included in reportable wages. We notified the NYSLERS of this error.

subsequent Board meeting and provided us with the minutes from the December 2012 Board meeting. The minutes indicated that the Board approved an amendment to the policy and referenced an attachment. The attachment included the provision, exclusive to the Executive Director, that the Board authorized the payment for unused vacation and personal time at the end of the calendar year. However, there was no evidence that the Council approved this compensation paid to the Executive Director.

While the Executive Director was generally compensated in accordance with adopted policy, the Board did not periodically compare the Executive Director's compensation with what it had authorized or monitor the Executive Director's accrual and use of leave time. The Executive Director maintained his own leave time records and determined the payout amount for unused leave time. The Executive Director also prepares the minutes and has custody of the official record of the proceedings, including amendments to the personnel policy.

Allowing the Executive Director to prepare the minutes, and to have custody of those minutes particularly when his compensation and benefits are being deliberated and resolved, increases the risk that the Authority could make unauthorized payments. The Authority's bylaws require the Secretary to prepare the minutes of the Board's proceedings and keep the record in an official minute book. Furthermore, while the bylaws indicate that the Board may designate or appoint the Executive Director to assist the Secretary, there was no evidence found in the minutes to suggest that the Board took such action. The integrity of the minutes could be compromised if they are not properly prepared and secured.

Because the Board did not provide adequate controls over the Executive Director's compensation and leave records, there is a risk that errors or irregularities could occur and not be detected in a timely manner.

Recommendations

The Board should:

1. Annually submit authorized compensation amounts to the Council for approval.
2. Ensure that the Executive Director is compensated in accordance with Board and Council approved amounts.
3. Periodically compare the Executive Director's compensation and leave accrual use and balances with what has been properly authorized.

The Secretary should:

4. Record the official Board's proceedings in a minute book. To maintain the integrity of the minutes, the pages of the minute book should be numbered and the minute book and any attachments should be in the Secretary's custody and control.

APPENDIX A

RESPONSE FROM AUTHORITY OFFICIALS

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



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March 24, 2016

In response to the recommendations found in your Report of Examination, the City of Lockport Housing Authority's Board of Commissioners offers the following corrections, responses and comments:

Correction: On page # 4 in the first paragraph, the Report states that the total number of housing units operated by the Authority is 252. This is incorrect, as the Authority currently operates 352 housing units. Please modify the Report to reflect the correct information.

See
Note 1
Page 10

Recommendation # 1: The Board disagrees with the Report's conclusion that the Executive Director's auto allowance was not approved by the board. During the February 2010 Board meeting, the Board approved an auto allowance reimbursement for the Executive Director. Moreover, the Board notes that the auto allowance reimbursement resolution was passed during the previous Executive Director's tenure to be continued under the current Executive Director's tenure.

See
Note 2
Page 10

The Board also disagrees with the Report's contention that the Executive Director's auto allowance reimbursement requires approval by the Lockport City Council. The auto allowance reimbursement was approved by this Board and is in the nature of reimbursement of the Executive Director's travel expense for travel related to Housing Authority business conducted each month. The auto allowance reimbursement paid to the Executive Director is not compensation that requires the approval of the local legislative body.

See
Note 3
Page 10

The Board also disagrees with the Report's recommendation that the Lockport City Council must approve any payment to the Executive Director for his unused vacation time reimbursement each year. This payment is not compensation but is payment for unused time that the Director is entitled to receive under his employment contract. In this regard, the Board approved the number of hours for which the Executive Director was entitled to payment for unused vacation time by resolution at the December 17, 2015 meeting. The Board does not believe further action need be taken concerning this matter.

See
Note 4
Page 10

Recommendation #2: The Board approved the compensation for all management employees of the Authority, for the period from April 1, 2014 through March 31, 2018, by resolution on December 17, 2015 (Resolution # 12-54-15). Contrary to the Report's conclusion, the compensation schedule for all management employees of the Authority, for the period of April 1, 2014 through March 31, 2018 was also approved by the Lockport City Council on December 16, 2015 (Resolution #121615.9). Accordingly, the Board has ensured that the Executive Director (and all other management employees of the Authority) are compensated in accordance with resolutions adopted by the Board and City Council.

Recommendation #3: The Board agrees that it will periodically compare the Executive Director's compensation and leave accrual use and balances with what has been properly authorized.

Recommendation #4: The Board agrees that it will authorize the Executive Director to assist the Secretary in preparation of the meeting minutes, but will instruct the Board's Secretary to retain the minute book under his/her custody and control, and will number the pages accordingly.

City of Lockport Housing Authority
Board of Commissioners

Gerald DeFlippo
Chairman

APPENDIX B

OSC COMMENTS ON THE AUTHORITY'S RESPONSE

Note 1

We revised the report to reflect the correct number of housing units.

Note 2

We note that the authorization of the auto allowance occurred before the current Executive Director took office in April 2010. If the Board intends to make this benefit available to the office of Executive Director, it should re-authorize this benefit on an annual basis or include this benefit in the Management Association Policy.

Note 3

At the exit discussion, the Executive Director indicated that the auto allowance was a reimbursement. However, he provided no documentation of his actual and necessary automobile expenses. As such, this benefit could be considered compensation, absent documentation of actual and necessary automobile expenses.

Note 4

Authority officials did not provide a separate employment contract between the Authority and the Executive Director. The “employment contract” referred to in the Authority’s response letter is the Management Association Policy.⁷ In any event, PHL Section 32(1) provides that a housing authority, subject to the approval of the city common council, fixes the “compensation” of the officers and employees of the authority. We have expressed the view that the term “compensation,” as used in PHL Section 32(1) is broader than “salary,” and encompasses both salary and fringe benefits common to the public sector (OSC Opn No. 88-64; <http://osc.state.ny.us/legal/1988/op88-64.htm>). The cited prior opinion concerned health and dental benefits. We also concluded in that opinion that because health and dental benefits are part of an employee’s “compensation,” the provision of those benefits is subject to the approval of the governing board of the municipality under PHL Section 32(1). The payment of the monetary value of unused vacation leave, whether provided pursuant to an “employment contract” or otherwise, falls into the same category of fringe benefit as health and dental insurance, and is similarly subject to approval by the common council.

Note 5

The Authority’s letter to the Common Council requesting the approval of compensation, dated December 14, 2015, did not list specific salary amounts. The December 16, 2015 Common Council resolution approved percentage increases, not specific salary amounts.

⁷ The policy is entitled “Management Association Policy of the City of Lockport Housing Authority.”

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

- We reviewed the Authority's adopted personnel policy and bylaws.
- We reviewed the minutes of the Board's official proceedings from 2012 through 2015.
- We reviewed payrolls and retirement reporting records for the 2014-15 fiscal year.
- We interviewed Authority officials about compensation and leave accruals.

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

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