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Operational Review
Capitalize Albany Corporation
September 20, 2013

OR-2013-01

Table of Contents

Topics	Page Number
Executive Summary	ES
Introduction and Background	1
Compliance Review Objectives	3
Compliance Review Scope and Methodology	3
Review Results	5
Relationship with Economic Development Agencies	5
Subsidies of Economic Development Activities	6
Property Acquisitions from the City of Albany	7
Property Tax Exemptions	9
Loan Awards and Repayments	9
Loan Awards	9
Loan Repayments and Late Fees	11
CAC Governance Structure	12
Recommendations	13
Capitalize Albany Corporation Comments	14
Authorities Budget Office Comments	20

Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of the 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. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Capitalize Albany Corporation was performed between January and June of 2013 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to evaluate the effectiveness of the operations of the Capitalize Albany Corporation, as well as evaluate the management and operating practices of the Corporation.

Background Information:

Capitalize Albany Corporation (CAC), formerly known as the Albany Local Development Corporation, was formed in 1979 under Section 402 of Not-For-Profit Corporation Law. In 2011, CAC was recognized as a local authority subject to Public Authorities Law. CAC is governed by a fifteen member board elected by the membership. No board members are appointed by City officials. CAC collaborates with the City of Albany Department of Development and Planning (Albany DDP), as well as other economic development entities, to further the City's economic development mission. CAC operations are performed by seven CAC employees and five Albany DDP employees. The Commissioner of Albany DDP serves as the President of CAC. In addition, CAC staff administer the Albany Industrial Development Agency (Albany IDA) and the Albany Capital Resource Corporation (Albany CRC.) CAC provides financial assistance in the form of loans and grants from four different funding programs, as well as from its own funds. CAC owns seventeen properties, nine of which are leased. For 2012, CAC had \$1.8 million in revenue and \$1.6 million in expenses.

Results:

We found that CAC was originally formed with a corporate and governance structure independent of the City of Albany. While the appointment of directors is not made by City officials, the actions of CAC closely align with the economic development

goals of the City of Albany. CAC's operations are integrated with those of the Albany DDP, the Albany IDA, the Albany CRC, and the Albany Community Development Agency (Albany CDA). CAC officials indicate that CAC has purposely developed partnerships with these entities to better coordinate operations and resources and implement the City's overall economic development vision. We found that this relationship results in CAC subsidizing over \$160,000 annually for the operations of these entities, incurring costs that are more appropriate for the City, and executing transactions that provide financial relief to city government.

The original mission of CAC was to encourage private sector economic development and job creation. However, CAC has acquired a number of properties for reasons that appear unrelated to its mission. CAC currently owns 17 properties, only two of which are used for private sector economic development purposes. Eight properties are leased to the City or other public entities, such as the Albany Parking Authority and Albany CDA for other than economic development purposes, or used by CAC for its own purposes. Of the remaining seven properties, one was acquired from an individual and is vacant. The other six were purchased from the City of Albany for future development but have remained vacant for over ten years.

Additionally, it appears that the City is providing preferential treatment to CAC regarding the taxable status of CAC properties. CAC acquired properties in 2002 and 2003 of which two were leased to for-profit entities. As a result, the leased portion of the properties should be taxable. CAC did not submit required property tax exemption application forms to the City Assessor, yet the City classified these properties as tax exempt.

We determined that CAC could improve its loan award and monitoring practices. It should ensure that all loans comply with established funding criteria, and that late fees are charged, as stipulated in the loan agreements, when borrowers are consistently delinquent in making loan payments.

Introduction and Background

The Capitalize Albany Corporation (CAC), formerly known as Albany Local Development Corporation, was formed in 1979 under Section 402 of Not-For-Profit Corporation Law. CAC was created to facilitate the creation and retention of jobs, business and industry within the City of Albany, primarily through loans and grants it awards from four different funding programs, as well as from its own funds. However, CAC's process for meeting its mission has evolved beyond job creation to include revitalizing neighborhoods, removing blight, and expanding housing options in the City of Albany. The impetus for this change comes from the recommendations of the Re-Capitalize Albany report (2007), which was commissioned by the Mayor of Albany.

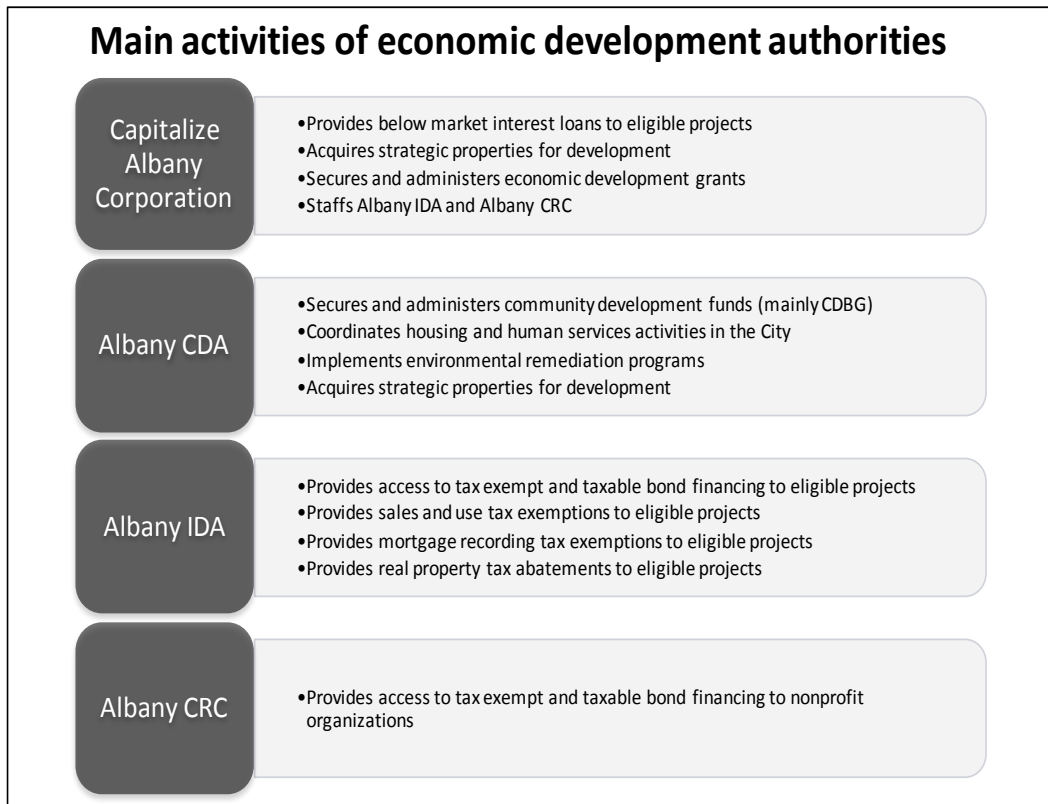
It is common for municipalities to form not-for-profit corporations to undertake activities that municipalities are restricted from doing. These entities have the power to construct and rehabilitate industrial or manufacturing facilities to be used by others; provide financial assistance for such; provide advice and technical assistance; borrow money and issue debt; and sell or lease real property. CAC was not created by the City; instead, CAC is a membership organization, governed by a fifteen member board that is elected by the members at an annual meeting. Although CAC's governance structure is independent from the City, its operations are closely integrated with the City. Due to its City affiliation and sponsorship, the Authorities Budget Office has identified CAC as a local authority.

CAC collaborates with the City of Albany Department of Development and Planning (Albany DDP), to further the City's economic development mission. The City of Albany has also established the Albany Community Development Agency (Albany CDA) to receive and administer Community Development Block Grant (CDBG) funds to revitalize low income neighborhoods and improve deteriorated conditions; the Albany Industrial Development Agency (Albany IDA) to provide financial assistance in the form of tax abatements and other incentives to encourage new business growth; and the Albany Capital Resource Corporation (Albany CRC) to provide low interest financing for nonprofit entities. While the Albany CDA is staffed with city employees, the Albany IDA and Albany CRC are staffed by CAC. The Albany IDA and the Albany CRC are governed by a seven member board appointed by the City's Common Council; both share the same board and Chairman. The Albany CDA also has a seven member Board that serves until the expiration of the Mayor's term. The Albany CDA Board is comprised of the Mayor, President of the City's Common Council, the Director of the Albany CDA, the City Treasurer, the City Clerk, the Commissioner of Administrative Services and the Corporation Counsel.

CAC is managed by a president, who is appointed by the board. Currently, this individual is also the Commissioner of the Albany DDP. CAC operations are performed by seven CAC employees and five Albany DDP employees. CAC

pays the City an annual fee of \$160,000 for work performed by the city employees. CAC receives a combined \$250,000 from the Albany IDA and Albany CRC to provide staffing services. CAC board members receive annual stipends of \$1,500 for serving on the board and an additional \$300 for every board meeting attended. For 2012, CAC paid \$44,000 in board stipends.

The illustration below describes the activities of Albany’s economic development authorities:



For 2012 CAC had \$1.8 million in revenue, \$560,000 of which comes from professional staffing and grant agreements with Albany IDA, Albany CRC and Albany CDA. Expenses totaled \$1.6 million, \$509,000 of which was for salaries and benefits. As of December 31, 2012 CAC had \$4.2 million of debt, which was issued by the Albany IDA, with the CAC serving as the conduit borrower of the debt. As of December 31, 2012 CAC had forty-six active loans with an outstanding balance of \$5 million. Six loans were issued in 2011 and 2012. CAC also provided \$462,500 in grants to four projects during 2011 and 2012. CAC owns seventeen properties, nine of which are leased to City agencies and private businesses. These leases generate close to \$357,000 annually in rental income. The other properties are vacant and being held for future use or development.

CAC acknowledged in 2011 that it was subject to the Public Authorities Law and has taken steps to comply with its provisions. CAC's board routinely discusses the reporting and governance requirements imposed by the law, as well as its progress in meeting those provisions. CAC's board has adopted several policies and implemented operational changes necessary to improve transparency and accountability. CAC has established charters for its audit and governance committees; and adopted a code of ethics and policies regarding property transactions and discretionary spending; submitted annual, budget and audit reports; established a website that provides public access to documents; established time and attendance, compensation and travel policies; developed a mission statement and performance measures; and formalized staffing arrangements with the other economic development entities. In addition, board members have acknowledged their fiduciary responsibilities to the corporation.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the 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 examine the relationships between the Capitalize Albany Corporation and the City of Albany and other economic development agencies and to evaluate the effectiveness of CAC's operations.

Compliance Review Scope and Methodology

Our operational review was conducted between January and June 2013, and covered CAC operations from January 2011 to June 2013. To perform our review we relied on the following documentation and data sources:

- Contractual agreements between CAC, the City and various agencies
- Board meeting minutes and board materials
- Project review and approval processes
- Revenues, expenditures and outstanding bond obligations
- Independent financial audits and other reports
- Annual and Budget Reports required by the Act
- Policies and procedures required under the Act, Public Authorities Law, General Municipal Law, and Public Officers Law
- Loan agreements and accounting reports of loan payments
- Property inventory, property transactions and related documents

In addition, we interviewed CAC management, attended CAC board meetings, and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of the operations of CAC and economic development in the city of Albany. The results

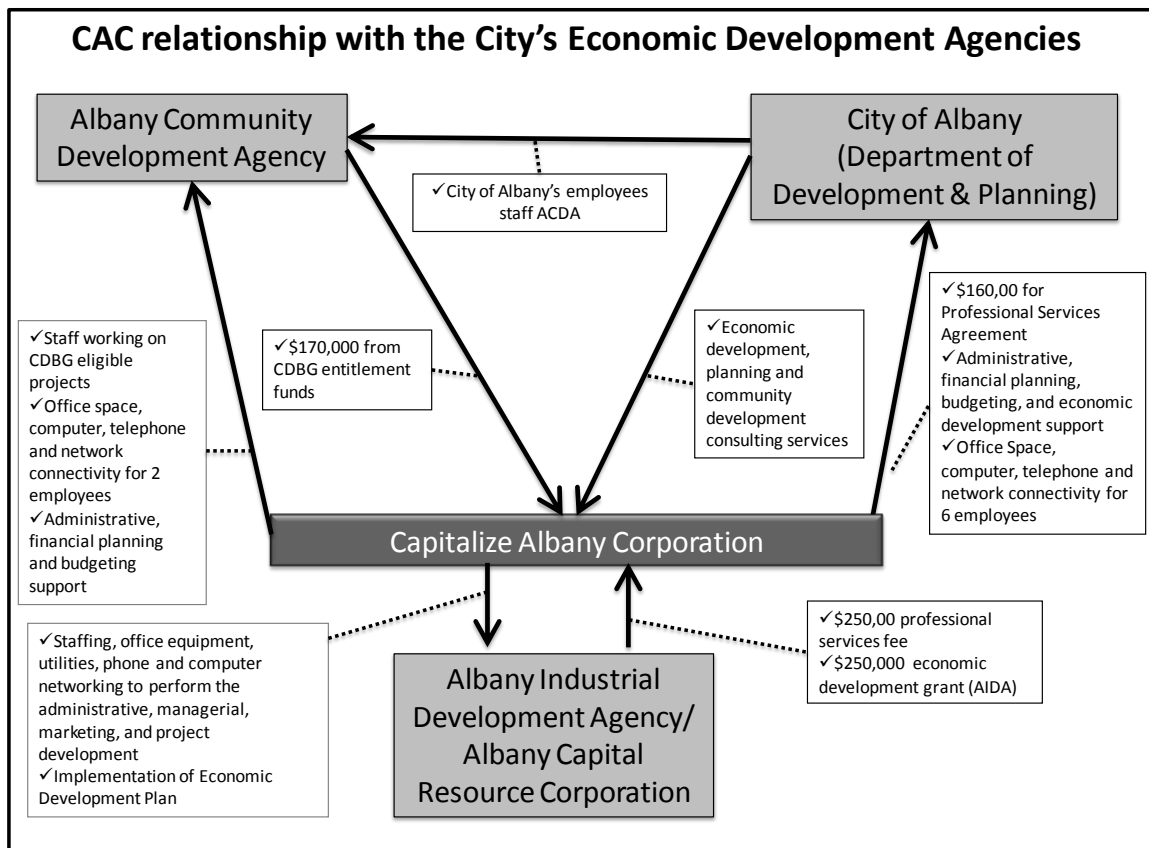
and recommendations of our review were discussed with appropriate officials, and these responses are reflected in this report where appropriate. CAC's response to our draft report is also appended to this report.

Review Results

Relationship with Economic Development Agencies

CAC's bylaws establish CAC as an independent entity from the City of Albany and other City authorities. No board members are nominated or appointed by City officials. Board members are elected by CAC's members at an annual meeting. Yet, CAC's operations are integrated with the operations of the Albany DDP. CAC has its own staff and is assisted by Albany DDP staff. The President of CAC is also the Commissioner of Albany DDP. As a result, the City of Albany and CAC share an economic development vision which appears to be driven by the City.

Statutory constraints compel municipalities to form multiple entities to undertake various economic development services. These services consist of low-interest financing through grants, loans or tax-exempt debt issuances, and sales, use and property tax exemptions. No single entity has the authority to provide this full range of assistance. CAC coordinates the activities of the Albany IDA, Albany CDA and Albany CRC under the provisions of contracts between the organizations. The illustration below summarizes the relationship between CAC and other economic development entities:



Both CAC and the City apply for economic development grants. Decisions on grant funds awarded by the CAC are made by the CAC board. Staff manage a loan portfolio and review and make recommendations on loan applications. Albany DDP staff assist CAC to coordinate project development and handle zoning, permitting, community outreach, and local approvals, as well as provide expertise in specific development skills and tasks. CAC employees staff the Albany IDA and the Albany CRC. CAC officials indicate that these partnerships enable CAC, the City, and the City's other economic development agencies to coordinate operations and resources to accomplish common economic development objectives. This arrangement has created an environment that facilitates CAC subsidizing the City's development services. CAC management indicate that CAC has intentionally developed partnerships with these entities as they efficiently contribute to the success of CAC's mission.

Subsidies of Economic Development Activities

Prior to 2012, CAC paid the City of Albany for the salaries and benefits of the five Albany DDP employees who perform work on behalf of CAC. Although these employees did not work full time for CAC, CAC paid for all personal service costs associated with the employees (the Commissioner and four staff). In 2011, this totaled \$309,000. CAC absorbed these costs fully in the absence of a written agreement with the City of Albany.

Beginning in 2012, CAC and the City of Albany negotiated a professional services agreement that requires CAC to pay \$160,000 to the City for the economic development, planning, and community development consulting services provided to CAC by Albany DDP staff. This amount was determined based on the percentage of time each individual spent working on CAC activities.

CAC also appears to subsidize or assume other City costs. The agreement requires that CAC provide Albany DDP staff with office space, telephone, computer, network and internet connectivity as well as administrative, financial planning, budgeting and procurement support. We determined that for 2011 and 2012, CAC spent an average of \$117,000 for computer equipment and services, property maintenance, renovations and other office functions. Based on the number of Albany DDP staff working in CAC's administrative office, we estimate that about \$40,000 is incurred on behalf of Albany DDP staff. The City does not reimburse CAC for any of these services. Further, CAC officials estimate that approximately five percent of their time is spent providing professional services in support of Albany DDP activities. CAC receives no compensation for this cost, which we estimate to exceed \$35,000. Therefore, while CAC is paying the City \$160,000 for the services provided by Albany DDP employees, it is failing to receive over \$75,000 for the services it provides to the City of Albany. This is likely a conservative estimate since it does not include the cost of office space provided by CAC. There is no documentation that these costs are factored into

the value of the agreement between CAC and the City. CAC officials responded that these figures do not correlate to the expenditures cited in their financial statements, which are presented on an accrual basis. We acknowledge that the value of these services may differ under different methods of financial reporting, but we believe the finding that CAC is subsidizing City development costs is accurate.

We also found that CAC pays for items that benefit the City of Albany, but provide no direct benefit to CAC. During 2011 and 2012, CAC paid over \$26,000 for membership fees to the New York State Conference of Mayors, and over \$10,000 for membership fees to the United States Conference of Mayors. The two organizations represent the interests of city and village mayors, provide training, and facilitate networking among mayors and government officials. We believe these membership fees should be paid by the City of Albany and are an inappropriate CAC expense.

CAC staff also work with the Albany CDA on Community Development Block Grant (CDBG) projects. CAC has a written agreement with the Albany CDA which grants \$170,000 to CAC in return for the services provided by CAC staff on CDBG projects. CAC officials determined that between June 2011 and May 2012, the period covered by the agreement, CAC incurred more than \$210,000 in salary costs attributable to CDBG eligible projects. This was \$40,000 more than covered by the grant from the Albany CDA. CAC officials indicated that the agreement reflects a grantor-grantee relationship, and is not intended to recover the full costs of services provided. Additionally, two Albany CDA employees work in CAC's office at 21 Lodge Street. CAC provides office space, telephone, computer, network and internet connectivity to these employees without any compensation from Albany CDA. We estimate the value of these services to be approximately \$17,000, not including rent.

CAC also has an agreement to provide staffing and administrative support to the Albany IDA and Albany CRC for a total of \$250,000. Although the agreement stipulates that CAC is to maintain time records to support the services provided to Albany IDA and Albany CRC, CAC officials told us that while they do not maintain such records, they believe that the actual value of the services provided exceeds \$250,000.

CAC management indicated that the Board has thoroughly considered the terms and conditions of each of these contractual relationships and determined that it is in CAC's best interests to form these partnerships, including the expenditure of CAC resources in furtherance of these partnerships.

Property Acquisitions from the City of Albany

CAC holds title to 17 properties. Nine of the ten properties acquired from entities other than the City of Albany are occupied; seven are leased to public

organizations, one is leased to a private developer and one houses CAC's office. In contrast, six of the seven properties acquired from the City of Albany are currently vacant. The occupied property is leased to a restaurant.

The six currently vacant properties were acquired with no planned use other than to be held for future development. These purchases provided over \$500,000 of fiscal relief to the City of Albany.

In 2002, CAC purchased five properties adjacent to the Palace Theatre from the City of Albany for \$285,000, with a plan to hold these vacant parcels for future expansion of the theatre. Within two years CAC determined that the market value of those properties was \$25,000; the property values were accordingly adjusted on CAC's balance sheet. CAC management state that holding strategic parcels adjacent to the theatre is squarely within CAC's mission. The sixth vacant property is a parcel of land that was acquired in 2003 for \$225,000. This parcel has limited development potential due to infrastructure issues below ground. CAC officials indicated that they have actively sought other uses for this property, such as a location for a potential farmer's market, but no viable option has been identified. In effect, CAC paid the city \$510,000 for six properties that were not critical to any existing redevelopment plan.

More recently, in December 2011 CAC paid the City \$500,000 for an option on another property located on Central Avenue. CAC has five years to close on the purchase. The property requires an environmental remediation of the site. Prior to initiating the purchase, CAC solicited proposals from developers. CAC received only two responses, both from nonprofit organizations with plans that CAC determined were not feasible. Yet, CAC agreed to pay for the property despite the limited interest in developing the site and the existence of environmental contamination. If CAC declines to exercise its option the City of Albany retains the \$500,000 deposit. In addition, CAC also provided the Albany CDA with a \$500,000 loan in December 2011 to acquire property owned by the City.

Based on material presented to CAC board members, it appears that the City of Albany requested that CAC purchase these two properties before the end of 2011. The City had included \$1 million of anticipated revenue from these two transactions in its 2011 budget.

CAC management indicated that the corporation has been historically involved in the environmental remediation and subsequent redevelopment of contaminated, blighted and underutilized sites. Management also indicated that such complicated sites require expert assistance to marshal resources, create partnerships and perform pre-development work necessary to facilitate their productive reuse and that CAC is best positioned to take on this role.

Property Tax Exemptions

Real Property Tax Law Section 420(a) states that property owned by a nonprofit corporation and used for its own purposes may be tax exempt. The law requires that the property owner submit an application to the local assessor describing the use of the property and requesting the property tax exemption. If no application is submitted, the local assessor must personally inspect the property to determine whether the property qualifies for a property tax exemption. The request for a property tax exemption must be renewed annually. If part or all of this property is used for a profit making purpose, New York State courts have ruled that such portion of the property is taxable.

In 2002 and 2003 CAC purchased several parcels in the City of Albany. CAC leases two of these properties to for-profit organizations. CAC did not submit an application for a property tax exemption for these properties, and did not provide any information regarding the taxable status or use of the properties to the local assessor. Yet, both properties are classified as tax exempt on the City tax rolls. We contacted the City Assessor who indicated that all CAC property is currently tax exempt because CAC is a quasi governmental entity and a component unit of the City.

Since these properties are leased to for-profit entities, they should be taxable. Based on the assessed value of these two properties and tax rates for 2011 and 2012, we determined that over \$8,000 in annual tax revenue is being forfeited by the City. Further, over \$18,000 in annual county and school district taxes are not being collected.

CAC management stated that a property's taxable status is determined by the City Assessor. They also indicated that CAC will continue to provide information to the City Assessor as requested to allow the assessor to determine the taxable status of CAC properties and ensure that all required real property tax forms are filed.

Loan Awards and Repayments

As of December 31, 2012 CAC had forty-six outstanding loans with a total of \$5 million owed. The earliest of these loans was made in 1981, and the most recent made in November 2012. CAC has determined that \$2.3 million of the amount owed is likely uncollectible. Of this amount, \$1.4 million is for three loans issued in 1981 and 1982.

Loan Awards

The standards CAC uses to evaluate and approve loans are applicable to loans provided after 1995. Loan applications are to address the economic impact of the project, the number of jobs to be created as a result of the project, and the

financial viability of the applicant. CAC is to obtain an underwriter's analysis for the loan, and staff are to review the information to evaluate whether the loan should be recommended for approval. We reviewed eight loans that were issued since 1995 and found that the established process was not followed for six loans that were approved for funding.

One loan applicant did not submit the standard application form. In a departure from normal procedure, the applicant submitted a business plan that provided only some of the required information. The applicant did not provide financial statements to evaluate the associated risks, and did not identify whether any jobs would be created. There was no indication that a staff analysis was done. Yet, the applicant was awarded a \$500,000 interest-free loan – the first interest free loan approved by CAC in more than 30 years. The five other loan applications did not indicate that any jobs would be created. Also for two of the six loans there was no indication that a CAC staff review or analysis was performed.

CAC approves loans from various funding sources, such as federal Urban Development Action Grant, CDBG or enterprise community programs, or its own unrestricted funds. These funding programs generally have specific criteria that must be met for an applicant to qualify for financing. Of the eight loans we reviewed, two did not comply with CAC's established funding criteria.

For example, enterprise community grant funds are to be used by applicants to acquire property or fixed assets, must be for projects within a designated area, and are expected to create at least one job for every \$35,000 of funds provided. One of the enterprise community loans we reviewed was for \$200,000, awarded in 2007, to repair and rehabilitate a historic property. This project did not require the acquisition of real property or fixed assets, nor did the project identify specific jobs to be created. CAC officials indicated that the purpose of this loan was to provide matching local funds, which would then be used as a basis for obtaining additional funding for the project. They also indicated that the project was eligible for enterprise community loans because it is located in the fund area.

For projects funded from its unrestricted funds CAC requires the loans be used for acquisition, construction or residential conversion of commercial buildings, and restricts the loan amount to 40 percent of total project costs. One of the CAC funded loans we reviewed was used to finance 85 percent of the total project amount. There was no information provided as to why the funding limit was not enforced. CAC management indicated that the project entailed the construction of a building as a component of a larger redevelopment project totaling \$7.6 million, and as such the loan provided represents 6.6 percent of total project costs. However, the project information presented to CAC's Board states that the larger project was already complete, and limited the request for funding to the construction of an additional building at a total cost of \$575,000. CAC was asked to loan \$500,000 (or 85 percent of the total cost of construction) with the remaining \$75,000 provided by the applicant.

We also noted that CAC made an enterprise community loan to the Albany CDA. The purpose of this loan appears to be inconsistent with the loan program criteria. As indicated, enterprise community loans are to be made to residents and/or business and are expected to create jobs. In 2011 CAC provided \$410,000 from the enterprise community loan fund as part of a \$500,000 loan to Albany CDA to purchase a property from the City. There is no indication that jobs will be created as part of the project. Nor is it clear that the Albany CDA is a qualified loan recipient. CAC management indicated that the board adopted a resolution in January 2000 that established criteria for the enterprise community loan fund. This resolution stated that to be eligible, a borrower must be within the enterprise community zone. They stated that since this project is within the zone, it is eligible. However, guidelines published in 2010 regarding eligible projects for these funds stipulate that funding is limited to prospective or existing businesses within the zone, loan recipients must demonstrate at least one job created or retained for every \$35,000 lent, and owners are required to contribute at least ten percent equity.

Loan Repayments and Late Fees

CAC has established a standard process to monitor the repayment of loans. CAC management indicate that invoices are sent to each borrower on a monthly basis identifying the principal and interest amount due. This invoice also identifies any outstanding amounts due or late fees assessed.

We found that CAC does not consistently collect late fees from borrowers who do not make timely loan payments. We reviewed the payment history for eleven loans over a ten year period and identified five borrowers who were frequently late with their payments. Three of the five borrowers were an average of 37, 51, and 156 days late on their monthly payments respectively. However they paid only 26 percent of the total late fees owed.

For example, in 2000 CAC awarded a \$55,000 loan to a borrower to acquire a building and open a bed and breakfast. CAC awarded this borrower a second loan of \$15,000 in 2002, for a total loan amount of \$70,000. According to the loan agreement, payments not made within ten days of the due date may be subject to a four percent late fee. From September 2004 through April 2013 (104 months), the borrower was late making payment for 98 months (94 percent of the time.) For this period the borrower was an average of 156 days late. The borrower would routinely fail to make any payments for four to sixteen months, before paying the total amount owed. Although CAC discussed these payment issues several times with the borrower between 2004 and 2008, this payment pattern has continued. Since January 2009, late fees totaling over \$900 could have been assessed against this loan. CAC currently estimates that \$29,800 (43 percent) of this loan will never be repaid.

For another loan, CAC awarded a \$150,000 in 1995 for a business to purchase a building. According to the loan agreement, payments not made within ten days of the due date may be subject to a two percent late fee. From January 2004 through April 2013 (110 months), the borrower was late making payment for 69 months (63 percent of the time.) For this period the borrower was an average of 37 days late. The borrower only paid late fees for 19 of these months. Although the loan agreement stipulated a two percent late fee, CAC charged a four percent late fee for these 19 months. CAC officials could not explain why this higher late payment fee was charged. Even though the late fee was higher than specified in the loan agreement, CAC failed to recover over \$590 in late fees that could have been assessed on this loan.

CAC management stated that in accordance with the loan agreements, the imposition of late fees are at CAC's discretion and are not mandatory. They also added that CAC will continue to award loans and enforce repayment provisions in accordance with the relevant loan programs and documents.

CAC Governance Structure

CAC is governed by a fifteen member board elected by the general membership to three-year terms. Board members receive annual stipends of \$1,500 as well as \$300 for each board meeting attended. Prior to 2013, CAC's bylaws stipulated that board members were limited to serving two successive three-year terms (six consecutive years on the board) except if additional terms were allowed by a Board resolution to provide continuity. We found that eight directors have served on the CAC board for eight years or more. These eight directors constitute a majority of the 15 member board. In April 2013 CAC amended its bylaws to eliminate term limits.

Board members have a fiduciary duty to exercise independent judgment in the best interest of the CAC, its mission, and the public and must be accountable for their actions. While not specific to this review, we believe that in general, the longer an individual serves on a board, the easier it is to become immune from that accountability. Managed and predictable turnover can be an effective governance practice that brings fresh perspective and heightened engagement to board oversight. We believe that it would be beneficial for CAC to reinstate board member term limits.

Recommendations

1. The CAC board should ensure that its agreements with the City of Albany and the actions of CAC staff and City employees are in the financial and program interests of CAC and its mission. CAC should be fairly compensated for services provided to the City and other public authorities.
2. The CAC board should not approve paying for costs such as membership fees that benefit the City of Albany and not the CAC.
3. The CAC board should only approve the acquisition of real property when it advances the mission and objectives of CAC and a clearly defined economic development strategy.
4. The CAC board should make sure that property tax exemption and tax exemption renewal applications are submitted annually to the City Assessor as required by Real Property Tax Law Section 420(a).
5. The CAC board should ensure that property taxes assessed on its taxable properties are paid to the respective taxing jurisdiction.
6. The CAC board should review more closely the status of CAC issued loans and enforce all repayment provisions. Loans should only be provided for viable economic development projects that meet the funding criteria established for those loan programs.
7. The CAC membership should consider reinstating board member term limits to improve corporate accountability.



August 29, 2013

Mr. David Kidera
Director, Authorities Budget Office
P.O. Box 2076
Albany, NY 12220-0076

Dear Mr. Kidera,

In accordance with Public Authorities Law, the Authorities Budget Office (ABO) conducted an operational review of the Capitalize Albany Corporation (CAC) between January 2013 and June 2013 to evaluate the effectiveness of CAC's operations and the management and operating practices of CAC. Management and Staff of CAC have fully cooperated with the ABO during this review and are pleased to respond to the opinions expressed in the ABO draft report.

The mission of the Capitalize Albany Corporation is to facilitate economic development within the City of Albany. Capitalize Albany Corporation has remained true to this mission since its inception. CAC has a strong track record of adapting its strategies to meet shifting local and national trends in order to continue to meet its mission. For more than 30 years, Capitalize Albany Corporation has executed this mission resulting in strategic and transformational economic development initiatives and projects within the City of Albany. The projects and initiatives pursued by the partnerships formed by CAC identified in the ABO's report have created and retained thousands of jobs, generated millions of dollars in local revenue, supported local businesses, revitalized neighborhoods and created catalysts for future development. These efforts are identifiable throughout the City of Albany, summaries of which can be viewed at www.CapitalizeAlbany.com.

CAC's policies and procedures developed since 2011 support these efforts and comply with the requirements of the relevant sections of Public Authorities Law. In order to continue to evaluate and implement good governance practices, CAC has reviewed the ABO's operational assessment's results and recommendations and provided responses below:

REVIEW RESULT #1 – "CAC's Relationship with the City's economic development agencies"

RESPONSE: CAC has purposefully formed partnerships with entities when such partnerships contribute to the success of CAC's mission in a cost effective manner.

As the ABO states in the report CAC was not created by the City of Albany (the City). CAC is a membership organization governed by an independent Board of Directors elected by the membership.

The Board of Directors drive CAC's mission and CAC possesses an independent governance structure. The CAC Board of Directors sets the course to pursue an integrated approach to economic development in order to maximize results, leverage resources and create efficiencies. CAC selects the relationships



and partnerships which it prudently believes is in the Corporation's best interests to successfully execute CAC's mission. These intentionally developed partnerships – with the City and other economic development entities within the City –efficiently contribute to the pursuit of CAC's mission.

The report identifies partnerships between CAC, the City of Albany Department of Development and Planning (DDP), the City of Albany Industrial Development Agency (CAIDA), the City of Albany Capital Resource Corporation (CACRC), and the City of Albany Community Development Agency (ACDA). As noted in the report, each of these relationships is governed by written agreements that are reviewed and acted upon by the CAC Board of Directors with the value of each contract determined to be beneficial to CAC. The CAC Board has repeatedly determined that it is in CAC's best interests to form partnerships with these specific Economic Development Agencies within the City, including the expenditure of CAC resources in furtherance of these partnerships.

The Board has thoroughly considered the terms and conditions of each of these contractual relationships and determined that CAC's mission achievement is benefited due to these partnerships. As the report finds, these relationships are not only in the best interest of Capitalize Albany Corporation and its mission, but also create efficiencies for its partners.

As indicated in the CAC audited financial statements dated December 31, 2012, CAC utilizes the accrual basis of accounting and applies all applicable Governmental Standards Board (GASB) pronouncements and applicable Financial Accounting Standards Board (FASB) Statement and Interpretations issued on or before November 30, 1989. The audit of the financial statements was conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. This audit complies with the provision of Public Authorities Law.

The conclusion presented in the report with respect to the ABO's determination of CAC's average annual costs for a variety of office and other operations functions was not determined utilizing the accrual basis of accounting. This average annual cost as calculated by the ABO is used as the basis for an analysis in the report resulting in several misstatements with respect to the written agreement between CAC and the City of Albany. As a result of this, the amounts stated in the report do not correlate to the expenses correctly reported in CAC's audited financial statements.

These contractual relationships are well-vetted by CAC's Board of Directors to further the Corporation's mission.

REVIEW RESULT #2 – CAC acquired property for no clear purpose other than fiscal relief to the City of Albany

ABO Note 1

RESPONSE: All CAC property acquisitions are for the documented purpose of furthering CAC’s corporate mission.

CAC acquired each of the cited properties in furtherance of its corporate mission as demonstrated by the Board resolutions approving these acquisitions. Property acquisition has been approved for purposes supporting economic development such as land-banking for future development, establishing eligibility for the application for grant funds, effectively marketing and development, and effectuating environmental remediation of contaminated sites.

In 2002, CAC acquired properties from the City adjacent to the Palace Theatre. These properties were purchased to hold for future expansion of the Theatre. The Palace attracts more than 150,000 patrons to Downtown Albany annually who in turn support the various businesses within Downtown. It employs over 80 people and most recently generated nearly \$1.2 million in program revenue, bringing more than 120 world-class entertainment, educational and cultural performances annually to the Capital City. It is a not-for-profit organization that attracts and works to organize cultural and entertainment events presenting affordable, diverse, quality, popular performing arts for people of all ages, ethnicity and means. As the Palace continues to pursue resources to fund future growth, CAC maintains that holding strategic parcels adjacent to the Palace is squarely within CAC’s mission. Since the properties were acquired, CAC has assisted in project development, including applications for grant funding and marketing the sites to the development community.

Capitalize Albany Corporation historically and regularly is involved in the environmental remediation and subsequent redevelopment of contaminated, blighted and underutilized sites like 526 Central Avenue and 25 Delaware Avenue. Complicated sites such as these require expert assistance to marshal the resources, create the partnerships and perform the pre-development work necessary to facilitate their productive reuse. Through its mission, Capitalize Albany Corporation is best positioned to take on this role. Properties that are acquired are reported at fair market value on CAC’s balance sheet.

REVIEW RESULT #3 – CAC is not paying taxes for properties used by for-profit entities

RESPONSE: CAC will continue to pay all required taxes.

The legal determination of a property’s “taxable status” is made by the City Assessor. CAC will continue to provide information to the City Assessor as requested to allow the Assessor to determine the taxable status of CAC properties and ensure that all required real property tax forms are filed. As the ABO states in the report, CAC’s properties have been determined to be tax-exempt by the City Assessor.

REVIEW RESULTS #4 – CAC does not consistently apply loan award and repayment provisions

RESPONSE: CAC will continue to award loans and enforce repayment provisions in accordance with the relevant loan programs and documents.

Capitalize Albany Corporation maintains a portfolio of 45 loans with an aggregate value exceeding \$5 million. All loans are reviewed and approved by the CAC Board of Directors in accordance with CAC lending policies and procedures.

In April 2010, the Board of the Capitalize Albany Corporation approved a \$500,000 loan to College of Saint Rose to finance the construction of a building as a component of the redevelopment of Hoffman Park into the Christian Plumeri Sports Complex. CAC's \$500,000 loan represents 6.6% of the approximately \$7.6 million full project. The building that was constructed allows for year-round use and provides for public usage of space within the building. This multi-million development yields economic benefits to the surrounding area including the increased presence of small businesses, making the host city a more attractive target for business investment, and business income derived from visitors associated with the travel, lodging, restaurants, retail, and other types of businesses in the area surrounding the Complex, thereby contributing to the achievement of CAC's mission.

Resolution 2-2000 adopted by the CAC (then ALDC) Board on January 25, 2000 established that the existing lending policy of the ALDC is the policy for the Enterprise Community/Economic Development Zone Revolving Loan Fund. To be eligible, a borrower must be within the Enterprise Community Zone or the Economic Development Zone. The lending activity identified by the ABO in the report is eligible based upon the location of the projects.

The loans cited in the ABO report were presented to and approved by the Board of Directors. Rigorous analysis of pre-loan information was presented to the Board of Directors for their in-depth consideration. The Board's thorough deliberation on each of the referenced loans is evidenced by the minutes of the relevant meetings and approved resolutions for each loan. Additionally, each of the referenced loan files maintained by CAC contain executed commitment letters, promissory notes, and mortgages.

In accordance with the loan documents prepared by counsel, the imposition of late fees are at CAC's discretion and are not mandatory.

REVIEW RESULT #5 – CAC's Governance Structure

RESPONSE: CAC will continue to comply with its bylaws.

CAC's Board of Directors through the work of CAC's Governance Committee continually evaluates existing policies and governance practices to ensure that CAC remains at the forefront of good governance. As the ABO has indicated, in accordance with ABO Policy Guidance 10-01 the CAC Board of

Directors have acknowledged their fiduciary responsibilities and duty to CAC through the signing of the written Acknowledgement of Fiduciary Duties and Responsibilities as developed and issued by the ABO. This acknowledgement is accessible through the following link to the ABO’s website:
<http://www.abo.ny.gov/policyguidance/10-01FiduciaryDutyAcknowledgement.pdf>

Within the provisions in the acknowledgment is the provision that each director has a fiduciary obligation to perform his or her duties consistent with (among other items) CAC’s bylaws. CAC was in compliance with its bylaws, which previously stated that a person may serve additional three (3) year terms through the adoption of a Board resolution when it is determined that additional terms are necessary to provide continuity. Additionally, all Board members are elected by CAC membership.

ABO
Note 1

As provided under New York State case law and statutory law, corporations are included under the definition of “person”. The CAC bylaws use the term “person” to include corporations and other legal entities. CAC continues to remain in compliance with its bylaws.

ABO
Note 2

Following the above review, the ABO provided a series of eight (8) specific recommendations for consideration by the CAC. Capitalize Albany Corporation’s responses to these recommendations are as follows:

1. The CAC board should ensure that its agreements with the City of Albany and the actions of CAC staff and city employees are in the financial and program interests of CAC and its mission. CAC should be fairly compensated for services provided to the city and other public authorities. **Noted. CAC will continue to closely review its actions against its corporate mission.**
2. The CAC board should not approve paying for costs such as membership fees that benefit the City of Albany and not the CAC. **Noted. CAC will continue to use its resources for expenses related to its corporate mission.**
3. The CAC board should only approve the acquisition of real property when it advances the mission and objectives of CAC and a clearly defined economic development strategy. **Noted. CAC will continue to acquire real property when it advances CAC’s corporate mission.**
4. The CAC board should make sure that property tax exemption and tax exemption renewal applications are submitted annually to the City Assessor as required by Real Property Tax Law Section 420(a). **Noted. CAC will submit all required real property tax forms.**
5. The CAC board should ensure that property taxes assessed on its taxable properties are paid to the respective taxing jurisdiction. **Noted. CAC will continue to pay any property taxes assessed on CAC to the relevant taxing jurisdiction.**
6. The CAC board should review more closely the status of CAC issued loans and enforce all repayment provisions. Loans should only provided for viable economic development projects that meet the

funding criteria established for those loan programs. **Noted. CAC will continue make determinations as to how to best enforce its loans in light of each loan's terms and conditions.**

7. The CAC membership should consider reinstating board member term limits to improve corporate accountability. **Noted. CAC will evaluate the benefits and risks associated with both having Board term limits and not having Board term limits.**
8. The governance of the CAC should adhere to its bylaws, including ensuring that its membership policies are consistent with these bylaws. The designation or appointment of directors or members that is inconsistent with these bylaws could subject the actions of the board to legal challenge. **Noted. CAC will continue to adhere to its bylaws.**

ABO Note 2

As the report indicates, CAC complied with the requirements of Public Authorities Law as demonstrated by adoption of the policies required under the Public Authorities Accountability Act of 2005 (PAAA) and the Public Authorities Reform Act of 2009 (PARA) and the successful implementation of several operational modifications. These positive events cited by the ABO occurred after careful and thoughtful deliberation by the CAC Board of Directors resulting in the conclusion that these changes would enhance the strength of CAC's governance structure and contribute to the successful execution of CAC's mission.

CAC appreciates the effort and professionalism demonstrated by the staff of the ABO during this review. As evidenced by the ABO recommendations, CAC will continue to exercise prudent decision making in the ongoing successful execution of CAC's mission. The CAC Board will continue to evaluate and implement good governance practices.

Sincerely,



Michael J. Yevoli
President, Capitalize Albany Corporation

Cc: Michael Farrar,
Deputy Director, Authorities Budget Office -
Compliance & Enforcement

Authorities Budget Office Comments

1. The wording in the final report was revised to address CAC's response to the draft report.
2. The matters discussed in this portion of CAC's response have been removed from the final report.