
**Authorities Budget Office
Review of Compensation Practices
Genesee County Industrial Development Agency
January 18, 2011**



The Authorities Budget Office (ABO) is authorized by Section 6 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and to assist these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public.

This report reviewed and evaluated the compensation practices of the Genesee County Industrial Development Agency (GCIDA). It does not address whether the GCIDA, the President and CEO (executive director), or other staff were successful in promoting economic development, expanding jobs, increasing investments and growing the tax base within Genesee County, other than the extent to which those achievements satisfy the criteria delineated in the GCIDA strategic plan and bonus payment practices. Further, this review does not address GCIDA operations other than salary and bonus payment practices.

Compensation Program

The GCIDA was authorized pursuant to Chapter 895-e of General Municipal Law and is governed by a seven member board of directors who are appointed by the county legislature. The board appoints officers and employees, prescribes their qualifications, and fixes their compensation, which is paid from agency funds. Compensation is not to be contingent on the level of financial assistance provided by the agency. The GCIDA currently employs nine staff, and is headed by the executive director. Total salary reported by GCIDA for these employees in 2009 exceeded \$430,000.

Since 2004 the GCIDA has provided bonus payments to staff if specific organizational goals are met. The size of this bonus compensation pool is determined, at year-end, at the discretion of an informal sub-group of the board, based on the overall performance of the GCIDA. Within that compensation amount, individual bonuses payable to the executive director and other staff are determined by the board or are awarded at the discretion of the executive director. The bonus payments provided to each staff member for each year since 2004 is as follows:

Position	Bonus Payments Made in January				
	2005 *	2006	2007	2008	2009
President & CEO	\$20,000	\$20,000	\$25,000	\$60,000	\$60,000
VP of Business Development	\$10,000	\$12,500	\$13,000	\$5,500	\$7,500
VP of Product Management	\$7,000	\$8,000	\$8,400	\$12,000	\$6,500
VP of Finance & Operations	\$7,000	\$8,000	\$6,000	\$10,000	\$6,500
VP of Marketing & Communications	vacant	vacant	vacant	\$4,000	\$6,500
Operations Assistant	\$500	\$1,500	\$1,718	\$2,500	\$3,000
Facilities Manager	\$5,000	\$4,000	0	0	vacant
Custodian	\$500	\$500	0	0	0
IT Manager	0	\$500	0	0	0
Manager of Real Estate Development	0	0	0	0	\$500
Independent Consultant	--	--	--	--	\$500
Totals	\$50,000	\$55,000	\$54,118	\$94,000	\$91,000

*2005 information as reported by the IDA to a request from NYS Assemblyman; not based on payroll data.

The GCIDA receives revenue from a variety of sources, including administrative fees charged to project applicants, annual contributions from Genesee County, and income from grants. Genesee County's annual contribution is over \$275,000 and the total contribution over the five year period 2005 through 2009 exceeded \$1.3 million.

Process for Awarding Bonuses

We requested from the GCIDA documents and records that illustrate and support the agency's compensation policies and practices. In response to this request, GCIDA provided employment agreements for the executive director and the Vice President of Business Development (vice president). Board members indicated that these are the only two employees who are subject to employment agreements. Other staff work without contracts. The executive director's employment agreement for 2006 through 2008 established a base salary of \$130,000, with annual increases of 3.5 percent. His employment agreement for 2009 through 2011 calls for annual increases to be determined by the board, but in no case shall it be lower than the minimum percentage increase provided to Genesee County employees. For 2009, his salary was set at \$153,000, with a three percent increase in 2010. In addition to a bonus, the executive director was originally provided with membership in a country club of his choice, and a \$900 monthly allowance for automobile use. These benefits were dropped in the 2009 through 2011 employment agreement, and replaced with a life insurance policy and a deferred compensation plan.

The employment agreement for the vice president provides for a base salary of \$76,500, with annual increases of 3.5 percent. In addition to the potential bonus payment, the vice president is provided a \$400 monthly allowance for automobile use.

Three board members have volunteered to serve on an unofficial and not formally created compensation sub-group. In December of each year, this sub-group meets to determine if the performance goals established for the GCIDA have been met and creation of a bonus pool is warranted. The agency performance criteria was initially established by GCIDA in 2003 as part of its five year strategic plan, and consists of specific, measurable standards regarding the number of projects supported, the amount of capital investment made by supported businesses, and the number of jobs committed to be created by these businesses. These performance goals reflect the actual results obtained by the GCIDA over the prior five years, adjusted to reflect the GCIDA's increased expectations and to provide an incentive for growth. For example, for 1997 through 2002, a total of 75 projects were supported by GCIDA. This performance was increased by 33 percent, to establish a performance goal for the next five years of supporting 100 projects, or an average of 20 per year. Similarly, the performance goal for capital investment was set at \$35 million per year, and the performance goal for job creation was set at 250 per year.

As indicated in the table, the size of the bonus pool has ranged from \$50,000 to \$94,000. In 2009, the board determined that no bonuses would be paid in January 2010. Officials indicated that this was due to the GCIDA's failure to meet the job creation performance goals for that year.

In addition to considering the agency performance goals, sub-group members also indicated that they consider the performance of individual employees in determining whether the bonus pool should be approved and payments awarded. As part of this process, each employee performs a self-assessment and completes a standardized evaluation that briefly describes the activities required of their position. The employees prepare a brief narrative indicating their accomplishments during the year, and rating their performance using standard categories (i.e., Outstanding, Highly Effective, Effective, Need Improvement, or Unsatisfactory.) This assessment is then reviewed by the employee's direct supervisor (the board Chair reviews the executive director's assessment), and revisions are made if necessary. If the reviewer agrees with the employee's assessment, it is approved. These self assessments take place in the absence of any individual performance goals being established at the start of the year.

Bonus Payment Amounts

The sub-group told us that it recommends the amount of bonus to be paid to the executive director. This generally comprises 35 to 60 percent of the total bonus pool. GCIDA did not provide us with any documentation that offered insight as to how the sub-group arrives at its recommendation, either the actual percentage of the bonus pool that is to be awarded to the executive director or the actual dollar value of the bonus payment. The sub-group may also suggest specific bonus amounts for the other GCIDA employees, but this determination is usually left to the discretion of the executive director. The sub-group's recommendations are discussed with the entire board, which formally approves the payments. Bonuses are paid in January.

Authorized Basis for Bonus Payments

Section 858(7) of General Municipal Law authorizes an industrial development agency (IDA) to appoint officers, agents and employees, prescribe their qualifications, and fix and pay their compensation, provided that compensation cannot be contingent on the granting of financial assistance to a project applicant by the agency. However, there are no provisions in General Municipal Law that specifically allow IDAs to implement bonus compensation plans. The only guidance regarding IDA bonus payments is the State Comptroller's Advisory Opinion (#2000-9), which states that additional compensation fixed as a reward for services already rendered and fully compensated, such as a bonus or a retroactive pay increase, generally constitutes a gratuity and an improper gift of public moneys. This opinion also stipulates that compensation can be presently earned but withheld until the completion of a period of service, as an inducement for continued competent and faithful service.

The Comptroller's Opinion stipulates that the governing board of an IDA, in fixing the executive director's total compensation, may establish a performance evaluation program under which specific performance criteria are set forth and disclosed to the executive director prior to the performance of services, with corresponding dollar amounts of additional compensation established for meeting the criteria. The board may determine at the end of each year whether the executive director has met the specified performance criteria and is eligible for all or a portion of the additional compensation. GCIDA officials responded that while there is no provision in General Municipal Law that allows bonus compensation plans; they are unaware of any provisions that prohibit it. They also indicated that the State Comptroller's Opinion is a ten year old non-binding advisory opinion that does not have the force and effect of law. We believe that the State Comptroller's Opinion serves as relevant guidance regarding the use of bonus plans by IDAs, since no subsequent opinion or legal interpretation has superseded it.

Appropriateness of GCIDA's Practice

We believe that the bonus payment practices of the GCIDA are inappropriate. Based on the information provided to us and our conversations with GCIDA staff and board members, prior to 2010 the GCIDA had not established any formal policy or basis for making bonus payments. Although the board awarded bonus payments to staff prior to 2010, these payments were made despite the absence of official policies authorizing such payments. Furthermore, the compensation sub-group had not been officially established as an authorized committee of the board. This sub-group had been given the authority to recommend how bonus payments should be disbursed, yet it does not record or make public its meeting minutes or the factors it considers when forming these recommendations. GCIDA officials responded that they have taken action to formalize their practices since, subsequent to our review,

the board adopted resolutions establishing the sub-group as a compensation committee and updating the performance criteria and procedures.

While the State Comptroller's Opinion 2000-9 provides guidance related to IDA bonus programs, this guidance is specific to individual performance criteria and awards. GCIDA's compensation program does not follow this guidance, since GCIDA has not established individual performance standards and measurements, and bonus payments are not made based on meeting those individual standards. Instead, GCIDA's approach is similar to profit sharing plans offered by private industry, where organizational profits are distributed among all employees. We could not identify any provisions of law that allow the GCIDA to implement this type of bonus payment practice.

The Comptroller's Opinion also indicates that additional compensation payments would not be considered a gift if the compensation is presently earned but withheld until the completion of a period of service, as an inducement to continued competent and faithful service. The GCIDA's program does not meet this provision. Instead, the GCIDA determines the value of the bonus pool, and whether any bonus will be provided, at the end of the year – not at the beginning as discussed in the State Comptroller's Opinion.

GCIDA officials responded that, in spite of the guidance provided in the State Comptroller's Opinion, the board believes that it is best to determine the value of the potential bonus payments at the end of the year when the amount of available funds is known. GCIDA officials also indicated that their practices are in accordance with the recommendation of the Comptroller's Opinion, since the methodology created to incentivize performance was known to all employees in advance of the performance period. We could find no evidence to support this statement. Other than the two staff who have employment agreements there was nothing in writing stipulating that other staff are either eligible for bonuses or how they would qualify for a bonus.

Deviations from Established Practices

We identified several instances where the practices board members and staff say are routinely followed were not followed. For example, sub-group members told us that the sub-group meets in December of each year, reviews staff and agency performance, and recommends the total amount for the bonus pool. At its December meeting the full board approves bonus payments to be paid to staff in the first pay period in January. However, in December 2006 there was no discussion of the amount of the bonus pool or approval of bonus payments reflected in the board meeting minutes. Over \$54,000 in bonus payments were distributed to GCIDA staff in January 2007, yet these payments were not approved by the board until it met in February 2007.

In December 2008, the board approved a total of \$91,000 in bonus payments. We reviewed payroll records, and determined that the executive director received

\$60,000, and that six of the remaining nine employees received a total of \$30,500, for total bonus payments of \$90,500. The executive director explained to us that the GCIDA had hired a consultant in July 2008 to coordinate the development and implementation of student and teacher education programs throughout a four county area. This consultant was to be paid \$330 per day, with a maximum payment of \$60,000 over the twelve months covered by the contract. There is no provision in the contract for a bonus payment even should these services exceed expectations. To the contrary, one of the contract terms specifies that the consultant is not to be considered an employee, and is not entitled to any employment rights or benefits. Yet, the executive director told us that he made an executive decision to award \$500 in additional compensation to the consultant, based on the executive director's assessment of the consultant's performance during 2008. Although we make no judgment as to whether such an expenditure of public funds is legal, we are referring this to local law enforcement officials for further review.

The performance goals established by GCIDA to evaluate the overall performance of the organization consist of the number of projects supported, the capital investment made by supported businesses, and the number of jobs committed to be created by these businesses. During our review, GCIDA board members told us that since the GCIDA did not meet its job creation goals in 2009, no bonus payments were approved by the board. Such a decision is consistent with the GCIDA's performance objectives and is commendable. In the past, however, the board has not been so consistent when making bonus decisions. For example, in 2008 GCIDA did not meet its job creation goals, and in 2005 GCIDA met neither its job creation goals nor its capital investment goals. Yet the GCIDA board approved \$91,000 in bonus payments for 2008 and \$55,000 in bonus payments for 2005.

In its response to our draft report, GCIDA officials did not comment on or address these deviations in its practices. Instead, GCIDA officials justified its bonus practices as proper and comparable to bonus incentive plans in use by private industry. The response also emphasized that GCIDA's bonus practices have produced significant results. GCIDA officials continue to show a lack of understanding that the GCIDA is a public entity, and not a private industry.

Executive Director Salary

The GCIDA executive director's salary has increased from \$82,950 in 2004 to \$153,000 in 2009, with significant increases occurring at the beginning of the two employment agreements, as indicated below.

	2004	2005	2006	2007	2008	2009
Stipulated Salary	\$82,950	\$86,268	\$130,000	\$134,550	\$139,259	\$153,000

As indicated previously, employment agreements were executed in 2006 and in 2009. These agreements stipulated that the executive director was to act as the President and Chief Executive Officer of both the GCIDA and its real estate and development affiliate, the Genesee Gateway Local Development Corporation. The

executive director is to lead and manage the two agencies' programs, initiatives and operations, as well as exercise overall governance on behalf of the board. The agreements also indicated that it was the intention of the board to adjust the executive director's compensation so it was reflective of the market value in the region.

The members of GCIDA's sub-group told us that to determine a fair and competitive salary structure for the executive director position they considered salary data from various salary survey reports and other industry benchmarks. They further indicated that they considered the economic development activities conducted by the GCIDA to be comparable to the economic development activities conducted by private economic development entities. As a result, they needed to establish a salary level that was competitive with private entities.

We do not believe this is either a valid argument or a valid comparison. The GCIDA is a public benefit corporation, created in General Municipal Law to provide a public purpose. While it has its own board of directors, it is a public body. It manages public funds. It is not a private corporation responsible to stockholders. Additionally, the GCIDA, like other governmental agencies, is a participant in the New York State retirement system, which is a significant benefit not available to private sector employees. It is widely recognized that the guaranteed retirement benefits of public employees compensate to some extent for the difference in salary between public and private employees. Finally, the executive director's most recent employment contract indicates that future salary increases are to be tied to the increases provided to other Genesee County employees. Accordingly, it is equally valid to assume that the responsibilities and compensation package of the GCIDA executive director should be more comparable to those of other IDA executive directors than to the chief executive officers of private corporations.

To that end, we reviewed 2009 executive director salary data reported by all IDAs to the ABO. Not only is the salary of the GCIDA executive director significantly higher than salaries earned by the executive directors of IDAs in surrounding counties, but the GCIDA executive director is the highest paid executive director among the county level IDAs in the State.

IDA	2009 Executive Director Salary
Niagara	\$56,418
Orleans	\$58,000
Wyoming	\$65,500
Livingston *	\$90,224
Monroe *	\$105,177
Erie	\$133,911
Genesee	\$153,000

*Livingston and Monroe IDAs report that the executive directors are not employees of the IDA, but are county

employees. Salary data is reported by See Through NY, obtained from NYS Comptroller's Office.

Since the GCIDA is a public benefit corporation, we also examined the GCIDA executive director's salary in the context of the county's employee salary structure. We found that the GCIDA executive director is paid over \$34,000 more than the highest paid employee in Genesee County.

Title	2009 Salary
CEO/President of GCIDA	\$153,000
Genesee County District Attorney	\$118,187
Vice President for Finance and Operations, Genesee Community College	\$110,430
County Attorney	\$100,275
County Manager	\$99,712
Medical Director, Genesee County Nursing Home	\$99,604
Senior Assistant District Attorney	\$91,629

In response to our draft report, GCIDA officials argued that a comparison of their compensation practices to the county's salary structure is irrelevant. The GCIDA justified its practices, both in regard to bonus payments and salary structure, by referring to private industry standards and principals, and pointing out that GCIDA has its own private revenue source, and that payments are made with private funds. We are disheartened by this attitude and perspective. The GCIDA relies extensively on Genesee County for financial support. For the five-year period 2004 through 2009, the GCIDA received more than \$1.3 million in operating funds from Genesee County, almost 20 percent of its total operating revenues. Salary and compensation are part of the GCIDAs operating budget. So, directly or indirectly the taxpayers of Genesee County contribute to the cost of supporting the GCIDA. The GCIDA is a public authority, established under Article 18-A of General Municipal Law. It is a governmental agency that performs a public governmental function. As such, GCIDA's board has a fiduciary responsibility to ensure that GCIDA funds are used appropriately and efficiently. As a public entity, the funds of the GCIDA once received are public funds regardless of the source, not to be spent without concern for adequate oversight, control and the public interest.

Conclusions and Recommendations

1. Prior to 2010, the GCIDA had no formal policies in place regarding bonus payments, but still had a practice of awarding bonuses to its employees. Any bonus program must be clearly defined in the adopted policies and procedures of the agency. The bonus payment practices followed by the GCIDA also do not comply with guidance provided in State Comptroller's Opinion 2000-9 regarding provisions for additional compensation. The GCIDA's current practices must be terminated and its bonus program suspended until such time as its policies conform to this guidance.
2. We recommend that all bonus payments provided to GCIDA employees during the period when it had no formal policies be recovered.
3. Bonuses may not be paid to individual employees based on the collective performance of the organization. Bonuses may only be paid in accordance with a performance evaluation program that pre-establishes clear and measurable goals that the qualifying employee must meet. The GCIDA bonus payment program should be based on individual performance standards that are specific and clearly differentiated from the normal job duties of the employees, and specify the amount of bonus payments to be received for meeting those identified standards prior to the services being provided. This program should be formally documented and described and formally approved and adopted by the board.
4. The bonus payment provided to the consultant in January 2009 is not provided for under the terms of the consultant agreement and is inappropriate. As a result, the board of the GCIDA should act to recover this \$500 payment.
5. All bonus payments to be awarded should be formally presented and approved by the board prior to making payment by a compensation committee properly established in the by-laws of the GCIDA.
6. The board should re-evaluate the appropriateness of the executive director's compensation package, given that he receives the highest salary of any county IDA executive director, and the total compensation he received in 2009, including the bonus, was nearly \$100,000 more than any other public employee in Genesee County.