

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

Operational Review

St. Lawrence County IDA LDC

November 28, 2016

OR-2016-01

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Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, 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 St. Lawrence County Industrial Development Agency Local Development Corporation was performed between April and August of 2016 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 determine whether the LDC board provides effective oversight of its operations.

Background Information:

The St. Lawrence County Industrial Development Agency Local Development Corporation (LDC) was formed in 1986 to stimulate the growth of private sector employment in St. Lawrence County. The LDC is responsible for administering several loan funds that have been established by various public sources. As of March 2016 the LDC has a total of 37 loans with an original value of \$8.5 million that are active and being administered by the LDC. The LDC is governed by a seven member board of directors who also serve as board members for three other related entities (St. Lawrence County Industrial Development Agency, St. Lawrence County Industrial Development Agency Civic Development Corporation, and St. Lawrence County Local Development Corporation). The LDC has seven staff, only two of which are employed by the LDC. The other five staff are employed by the St. Lawrence County Industrial Development Agency (IDA). The LDC's primary source of revenue consists of withdrawals from the various funds it manages to cover costs of administering the funds. Excluding these withdrawals, the LDC received \$190,431 in 2014 and \$229,439 in 2015, consisting primarily of interest income from loans. The LDC pays the IDA \$200,000 annually to offset the costs of services provided by IDA employees, while other operating costs totaled \$121,512 for 2014 and \$119,821 for 2015, consisting primarily of payroll related costs.

Results:

Our review found that the LDC board needs to improve its transparency and accountability regarding its operations and transactions. We found that the board approved several loans to the IDA without appropriately disclosing that its board members were also board members of the IDA. Further, the board approved these loans even though the projects did not meet the criteria established for the loan funds and the board did not indicate that it was waiving the criteria. The loans provided to the IDA also received repayment terms that were more favorable than the standard repayment terms and again the board did not disclose its decision to depart from the standard terms. For example, the LDC board approved a \$700,000 loan to the IDA from one loan program, exceeding the funding cap of \$400,000, even though the project did not identify any private sector jobs to be created. The board also allowed the IDA to repay the loan over 30 years, rather than the 10 year maximum, and only charged an interest rate of 0.5 percent, rather than the 2.65 percent minimum established for the program. Similarly, the LDC board approved loans for other businesses whose projects did not meet the criteria established for the loan programs without disclosing the reasons for departing from the criteria.

We also found that the board does not review loan applications as a basis for approving loans and does not review the loan agreements that serve as the basis for repaying loans. Of the 37 active loans, we noted 16 loans where the number of jobs expected to be created or retained by the business were different between the application, the board resolution and the loan agreement. LDC officials were unable to account for the differences for eight of the projects, and attribute the remaining differences to the differences in converting part time positions to full time equivalent (FTE) positions or to the board resolutions not including the number of jobs to be retained although the retained jobs are presented in the applications and loan agreements.

The LDC board does not manage the LDC and the three related organizations as separate and distinct independent entities. Instead, the board manages the four independent entities as though they were a single operation. In the past, a single board meeting was held to discuss all operations and activities of the four entities, although the LDC has discontinued this practice. However, the LDC sometimes meets concurrently with an unrelated board and conducts LDC business during this meeting. In addition, the LDC shares staff and provides significant financial assistance to the three other related entities although it has not

established any written agreements or guidelines regarding the services to be provided or how the costs will be shared among the four organizations.

Introduction and Background

The St. Lawrence County Industrial Development Authority Local Development Corporation (LDC) was established in 1986 pursuant to Section 1411 of the Not-for-Profit Corporation Law. Corporations are established under Section 1411 for the purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographic area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burden of government and acting in the public interest. The LDC accomplishes this primarily through the administration of various loan funds, as well as coordinating with three other related entities: the St. Lawrence County Industrial Development Agency (IDA), the St. Lawrence County Industrial Development Agency Civic Development Corporation (CDC), and the St. Lawrence County Local Development Corporation. The LDC is comprised of seven board members. These same seven individuals also comprise the boards of the three other related entities. In December 2015, the St. Lawrence County Local Development Corporation board passed a resolution to dissolve and have its functions transferred to the LDC in order to minimize duplication in the missions and reduce costs. While the St. Lawrence County Local Development Corporation board has not met since then, the dissolution has not yet occurred.

The LDC officials indicate that the St. Lawrence County Local Development Corporation was formally dissolved in August. However, it appears that only the plan of dissolution for the entity was approved in August 2016. According to the Attorney General's guidance on dissolving not-for-profit corporations, approving the plan of dissolution is only a part of the process. The dissolution is not final until the Certificate of Dissolution is filed with the New York State Department of State. As of October 19, 2016 the Department of State reports the St. Lawrence County Local Development Corporation as an active corporation.

The mission of the LDC is to stimulate the growth of private sector employment in St. Lawrence County by providing financial assistance and job training programs to new and expanding industries. The LDC works to achieve its mission by administering the Greater Massena Economic Development Fund (Greater Massena Fund), the St. Lawrence County Revolving Loan Fund (Revolving Loan Fund), and the St. Lawrence River Valley Redevelopment Agency Fund (River Valley Fund). In addition, the LDC has recently taken over responsibility for administering the Microenterprise Fund from the St. Lawrence County Local Development Corporation.

The \$1 million Greater Massena Fund was created by the New York Power Authority to induce business enterprises to establish, maintain, or expand plants, facilities or operations in the Town of Massena and St. Lawrence County. The Greater Massena Fund has a board consisting of five members who are separate

from the LDC board but includes the LDC's Chief Executive Officer. The Greater Massena Economic Development Board and the LDC entered into an agreement in 2000 for the LDC to administer the fund, and the LDC is responsible for recommending loans for approval to the Greater Massena Economic Development Board.

The Revolving Loan Fund was initially established by the County to stimulate the growth of private sector employment, and transferred to the LDC in 1986 to administer. As part of its agreement with the County, the LDC board is solely responsible for reviewing and approving loans from this fund.

The \$16 million River Valley Fund was created by the New York Power Authority to provide financing to economic development activities and programs throughout the County. The St. Lawrence River Valley Redevelopment Agency (RVRA) was formed in 2010 as a partnership of St. Lawrence County and the towns of Lisbon, Louisville, Massena, and Waddington and is comprised of a five member board that is separate from the LDC board. The LDC is responsible for approving and recommending loans to the RVRA for approval.

The LDC has seven staff, only two of which are employees of the LDC. These two individuals are primarily responsible for assisting businesses in developing business creation and expansion plans and employment and training programs, as well as being responsible for assisting St. Lawrence County with federal funding and workforce development programs. The remaining five staff include the Chief Executive Officer and the Chief Financial Officer and are employed by the IDA. They are primarily responsible for overall management and administration of the four related entities, marketing and managing the various loan funds, and managing and maintaining properties owned by the IDA. Managing the loan funds consists of marketing the funds, receiving and evaluating applications for assistance, recommending board action on each application, monitoring funded projects, and managing loan repayments. There are no written agreements between the four related entities regarding the services provided by staff to each of the entities.

The LDC's primary source of revenue consists of withdrawals from the various funds it manages to cover the costs of administering the funds. For example, the agreement to administer the River Valley Fund provides for the LDC to receive \$300,000 annually for administration, in addition to paying for other costs directly associated with the River Valley Fund. The agreement to administer the Greater Massena Fund allows for the LDC to withdraw \$7,200 annually. Excluding these withdrawals, the LDC's total support and revenue was \$190,431 for 2014 and \$229,439 for 2015, consisting primarily of interest income from loans. The LDC pays the IDA \$200,000 annually as an administrative fee. Other operating costs incurred by the LDC totaled \$121,513 for 2014 and \$119,821 for 2015, consisting primarily of payroll related costs.

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 determine whether the LDC board provides effective oversight of operations.

Compliance Review Scope and Methodology

Our compliance review was conducted between April and August 2016. The review assessed LDC operations for the period January 1, 2014 through June 30, 2016. We extended our initial scope to include documents related to the approval of loans that were active at the time of our review, some of which were approved as early as 2004. To perform our review we relied on the following documentation and data sources:

- LDC financial records
- Loan applications, loan agreements and related documents
- Policies and procedures indicative of good governance practices
- Annual reports required by the Public Authorities Law
- Board meeting minutes and board meeting packets

In addition to reviewing documents and records, we attended a board meeting, interviewed LDC officials and select board members and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve authority operations and strengthen board governance and oversight of the authority. We shared a draft of our report with LDC officials for review and comment, and their responses have been incorporated throughout this report, where appropriate. Their response has also been appended to this report. LDC officials generally disagree with our conclusions and recommendations.

Review Results

The Board Needs to Improve its Transparency and Accountability

Public Authorities Law requires board members to perform their duties in good faith and with the degree of diligence, care and skill which an ordinarily prudent person would use in similar circumstances. The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. Board members are to make informed, independent decisions that appropriately use the authority's assets within the purpose and intent of those assets. However, we found that the board needs to improve its fiduciary oversight of the LDC since it relies excessively on management's representations and does not base its decisions upon independent review of its documents and records. As a result, we found that the board approved loans to the IDA that did not conform to the loan guidelines, did not adequately disclose its relationship to the IDA, and also approved loans to businesses for projects that did not meet loan program job requirements. In addition, the board places too much reliance on management without adequate oversight and does not manage the LDC as an independent entity. LDC officials indicated that, while the board does not review project applications, it requires an independent underwriter's report which provides additional information on which to base decisions regarding loan approvals.

The board needs to improve the transparency of its decisions and operations. Since the same individuals serve on both the LDC and the IDA boards, any loans or other transactions between the two entities present a perceived conflict of interest. The LDC board approved two different loans to the IDA totaling \$2 million (a loan of \$1.4 million for one project comprised of \$700,000 from the River Valley Fund and \$700,000 from the Revolving Loan Fund, and a \$600,000 loan for a second project from the Greater Massena Fund.) Since the board of the LDC is approving transactions with another entity, the IDA, of which they are also board members, these transactions represent perceived conflicts. In accordance with guidance provided by the New York State Attorney General for nonprofit corporations, the LDC has an obligation to make a record of the existence of the conflict and how it was addressed. However, there is no public record as part of the loan approvals that disclose that any conflict exists or that the same individuals are board members of the entities that both approved and received the loans or describe how the conflict was addressed.

LDC officials responded that the loans to the IDA do not constitute a conflict of interest, and that there is adequate disclosure of the relationship between the LDC and the IDA. They stated that this relationship is obvious, given the names of the two entities, due to public notices of board meetings being sent together, the board member listings being provided on the web pages of both organizations, and that they share an integrated website. They also indicate that there is no conflict because the board members do not have a financial, familial or personal interest

in the loans. LDC officials stated that a conflict of interest is a situation in which the financial, familial, or personal interests of a board member or employee come into actual or perceived conflict with their responsibilities with the authority. The LDC made the point that its board members do not have in either case a “financial, familial, or personal interest” in the loans to the IDA.

However, LDC officials should understand that in addition to personal interests, a conflict of interest also may exist when a board member or employee may be influenced to act in a manner that does not represent the best interests of the authority. Conflicts also exist in circumstances that may or appear to make it difficult for the board member or employee to exercise independent judgment and properly exercise his or her official duties. This explanation is contained in the recommended practice regarding conflict of interest policies for public authorities developed by the ABO and publicly available on the ABO’s web site. In light of this, the ABO is concerned that the LDC fails to realize that providing loans to another entity which its board members are also members, represents a perceived conflict of interest and that the LDC should appropriately disclose the conflict and how it is addressed.

The board needs to better document the reasons and extent of departures for loans that do not meet the established loan criteria. The criteria established by the board for the Revolving Loan Fund stipulates that the fund is intended to provide financing to private sector businesses to establish, maintain or expand operations in the County, and that financing for eligible projects is limited to 30 percent of the total project costs, or a maximum of \$400,000. The applicant’s hiring plan is also required to demonstrate the creation or retention of at least one job for every \$15,000 loaned. The criteria also stipulates that interest rates will be half of the prime rate plus one percent (recently about 2.65 percent) and that loans are to be repaid within 10 years. There may be circumstances where the LDC board feels justified in departing from the established loan program guidelines. In those circumstances, it needs to clearly document the reasons and the extent of those departures.

However, we identified three loans that did not meet the established criteria, and there was no record to indicate why the board decided to depart from the criteria. The loan to the IDA was to construct a building which was to be used partially for the IDA’s and LDC’s administrative offices and partially to be available to attract potential businesses. Since the IDA is a public entity, the criteria of financing being provided to a private sector business was not met. Further, the project did not identify any job creation expectations as the full occupancy of the building was unknown. Yet the board provided the IDA with a \$700,000 loan from the Revolving Loan Fund, which exceeded the funding cap of \$400,000. Further, the board provided repayment provisions that exceeded the Revolving Loan Fund criteria: the board allowed the IDA to repay the loan over 30 years (rather than the 10 year maximum) and only applied an interest rate of 0.5 percent (rather than 2.65 percent).

We also found two other loans approved by the board from the Revolving Loan Fund that did not meet the \$15,000 per job creation threshold. In December 2007, the LDC approved \$400,000 from the Revolving Loan Fund for Curran Renewable Energy. This project proposed creating 23 jobs, which resulted in funding of \$17,391 per job. (The LDC also approved a \$200,000 loan from the Greater Massena Fund as part of this project.) In addition, in July 2012 the LDC approved \$300,000 from the Revolving Loan Fund for Slic Network Solutions. This project proposed creating and retaining a total of 10 jobs which resulted in funding of \$30,000 per job created and retained.

LDC officials indicated that the LDC has the power and authority to make loans, as well as the discretion to approve loans and set the rates and terms for those loans. They also indicated that the board has the ability to make lending decisions which depart from the self-created criteria at any time. While we do not disagree that the LDC has the authority to grant loans and to waive specific provisions of the established criteria, these deviations from the established practice should be documented and substantiated. However, other than a change in the interest rate to be charged for the loan to the IDA, there is no record that the board discussed the project, determined that it did not meet the established loan criteria or voted to waive the criteria for this project. This is especially troubling since the loan was given to the IDA, representing a perceived conflict of interest, and it received preferential loan treatment. There was also no record that the board determined that the Curran Renewal Energy or the Slic Network Solutions projects would not meet the job creation thresholds and decided to waive the requirement for the projects.

The board should improve accountability by reviewing documents prepared by staff and ensuring that the information is consistent with board resolutions. Public Authorities Law states that boards are responsible for providing direct oversight of the authority's chief executive and other management in the effective and ethical management of the authority, and to understand and monitor the implementation of management controls and operational decisions. However, our review found the board places too much reliance on management regarding the accuracy of loan documents in approving projects for loans.

If a business seeks financial assistance from the LDC for a project, it is required to submit an application to the LDC. Although LDC staff administer several different loan programs with different funding criteria and also administer financial assistance provided by the IDA, only a single application form is required. LDC staff work with the business owner to identify project costs, the anticipated results of the projects such as the number of jobs to be created and retained, and to determine the appropriate type of financial assistance. The LDC also requires that an independent underwriter's report be prepared for each project, and reviews this report to determine whether the loan should be approved. Once the underwriter's report is accepted and the appropriate financial source is determined, then the resolution to appropriate the loan is advanced and acted upon by the board. The board will pass a separate resolution for each funding source approved. When this

approval includes one of the loans administered by the LDC, LDC staff then enter an agreement with the business which stipulates the loan repayment terms and conditions. Even though separate loans could be approved for a single project from the various funds administered by the LDC, only a single loan agreement is entered.

LDC officials indicated that combining multiple lending sources administered by the same organization reduces bureaucracy and makes the lending process more efficient. However, this position fails to consider that the sources of financial assistance are not all administered by the same organization. Instead, the Greater Massena Fund, Revolving Loan Fund and River Valley Fund are administered by the LDC, while low-interest bond financings are administered by the IDA and the CDC and tax exemptions and abatements are administered by the IDA. The LDC's current practice is to use a single application for all of these financial assistance programs.

However, our review often found differences between the information contained in the applications, board resolutions and loan agreements. For example, the number of jobs to be created or retained as proposed by the businesses in the applications would often differ from the number of jobs to be created or retained that were approved in the board resolutions, as well as the numbers stipulated in the loan agreements. Of the 37 loans we reviewed, 16 had differences among the various documents, as indicated in the following table.

			Jobs to be Created and Retained Per					
Applicant	Loan Amount	Date Issued	Application		Resolution		Loan Agreement	
			Full Time	Part Time	Full Time	Part Time	Full Time	Part Time
Ansen Corp	\$241,953	3/04/16	230	-	30	-	230	-
Atlantic Testing	\$400,000	10/17/07	84	-	88		*	
BlastBoss	\$67,633	6/17/14	5	3	6	-	6.5	-
Clifton-Fine Healthcare	\$150,000	5/10/11	89	-	90	-	*	
Curran Renewable Energy	\$400,000 Revolving Loan Fund				23	-	23	
	\$200,000 GMEDF				14	-	14	
	\$600,000	12/12/07	23	-	37	-	37	-
Curran Renewable Energy	\$100,000	12/31/12	100	-	100	-	0	0
Curran Renewable Energy	\$1,500,000	3/18/16	33	-	-	-	30	-
Gilbert Greens Country Club	\$50,000	4/02/12	6	-	3	-	3	-
Hackett's WiseBuys	\$235,000	2/01/04	108	-	90	-	60	-
High Peaks Winery	\$36,500 GMEDF				2.5	-		
	\$36,500 River Valley Fund				2.5	-		
	\$73,000	5/02/14	1	3	5	-	2.5	-
Hozmerica	\$17,500	7/21/15	6	6	1	1	6.5	5
North Country Dairy	\$800,000	12/02/11	80	-	-	-	55	-
Riverside Iron, LLC	\$200,000	6/27/14	11	4	12	-	12	-
Slic - Line of Credit Loan	\$300,000	7/26/12	10	-	10	-	-	-
St. Lawrence Brewing	\$75,000	2/01/13	9	-	5	-	5	-
Structural Wood	\$150,000 GMEDF				17	-		
	\$150,000 River Valley Fund				17	-		
	\$300,000	12/20/11	32	-	34	-	17	-

"-" Indicates there was no job information in the document.

*There were no loan agreements maintained by the LDC for these projects.

These discrepancies exist in part because the board does not receive or review the applications submitted by the businesses when determining whether to approve financing. In addition, the board does not review or approve the loan agreements that are entered with the businesses after the board approves a loan. As such, it is unable to verify that the terms and conditions are consistent with the provisions approved by the board.

LDC officials were unable to account for the differences for eight of the projects (Atlantic Testing, Clifton-Fine Healthcare, three Curran Renewable Energy projects, North Country Dairy, Slic – Line of Credit Loan, and Structural Wood.) LDC officials attribute the remaining differences to the variations in converting part time positions to full time equivalent (FTE) positions or to the board resolutions not including the number of jobs to be retained by the business, while the retained jobs are included in the applications and loan agreements. LDC officials indicated that they have revised the application several times over the years in an attempt to develop a standard basis for measuring full time and part time positions, and have established a standard conversion factor that is used in applications submitted since 2016.

During our review, LDC officials explained that the project employment goals stipulated in the application may be adjusted based on what the LDC feels is reasonable. For example, they stated that the job creation numbers for the St. Lawrence Brewery project were lower in the resolution than those identified in the application because the board determined the lower number was suitable. The LDC does not require the business to submit a revised application, but simply includes a revised number in the resolution approved by the board. To improve accountability, we believe that the LDC should discuss differences in job targets with the business applicants and reach agreement on a realistic target that should be stipulated in the agreement and consistently used in all other project documents.

Also, as indicated in the table, loan agreements were not available for all projects that received loans from the LDC. LDC officials explained that these projects also received financial assistance from other lending sources, and it was agreed that the other lending source would be considered the “primary lender”. As the “primary lender”, the other lending source assumes oversight and management of the entire project. This practice results in the LDC abdicating its responsibility to ensure its loans are used appropriately, repaid in accordance with requirements, and that appropriate results are obtained. LDC officials indicated that in the future they will ensure that job numbers are captured in lending documents or will use their own documents.

We also noted an instance where the terms of the loan agreement did not match the terms approved by the board. For example, the board resolution for First Class Aire, LLC provided for a \$103,000 loan to be repaid over 10 years. However, the final loan agreement allowed for a repayment term of 15 years. Again, the board was unaware of this discrepancy since it does not review the final loan agreement for each project. LDC officials acknowledged that this was an isolated error.

The board does not manage the LDC as an independent entity. The seven individuals who comprise the LDC board are the same individuals who comprise the boards of the IDA, the St. Lawrence County Local Development Corporation, and the CDC. However, rather than functioning as four separate and distinct entities, the board manages the four entities as if they were a single public entity.

This practice has resulted in the board failing to properly oversee LDC operations and to act in the best interest of the LDC. LDC officials responded that it is appropriate for the LDC to share services and to collaborate with other entities as part of a coordinated economic development approach. We do not disagree. Our concern is that, although four separate and distinct legal entities have been created for the purposes of economic development, the board treats these four entities as though they are a single entity. As such, the board is not ensuring that they are acting in the best interest of each individual entity. For example, the LDC approved the loan to the IDA although the purpose for the loan did not meet the established loan criteria, and could be viewed as not being in the best interest of the LDC.

Boards that consist of overlapping members should keep in mind that each board is separate and distinct and should therefore conduct separate and independent board meetings. The functions and activities of one board should be clearly identified, discussed and voted on and the meeting brought to a close before any other board meeting begins. However, prior to our review, the board routinely held its board meetings concurrently with the IDA, the St. Lawrence County Local Development Corporation, and the CDC board meetings. That is, the board would meet and conduct all business for all four entities without clearly indicating which issue was being addressed by the LDC board or which issue was being addressed by the IDA or other entity board. The board has subsequently discontinued this practice and has been conducting separate meetings for each entity and recording separate meeting minutes.

However we found that at times, the LDC board also met concurrently with the RVRA board, even though these two boards are completely independent and have no common members. LDC officials indicate that these joint meetings are appropriate, since both boards are responsible for approving the use of funds from the River Valley Fund. While we do not disagree that it would be appropriate for the RVRA board to meet with the LDC board to discuss potential projects for funding from the River Valley Fund, these meetings should be separate and distinct from the official LDC meetings to conduct its business, which include the discussion and approval of projects for funding in addition to the River Valley Fund. All separate and distinct decisions made by the board should be appropriately referenced in the proper board's meeting minutes.

The LDC provides the IDA with \$200,000 annually without adequately disclosing the purpose of the funds. As indicated, in accordance with the shared staffing approach, the same seven staff perform the work of the four entities. However, these individuals do not maintain records to differentiate the time spent working for each entity. As such, the salary costs of these staff are borne solely by the IDA and the LDC. There is no written agreement that exists between the IDA and the LDC which details the services provided to the LDC, yet the LDC provides \$200,000 each year to the IDA which the LDC classifies as an administrative fee. Further, the LDC receives no payment for any work done by the two LDC employees in support of the IDA, the St. Lawrence County Local Development Corporation or the CDC. Although the boards of these separate entities are

comprised of the same individuals, the board members have a responsibility to ensure that each entity is receiving appropriate benefits for the services provided. The LDC board has no assurance that the \$200,000 paid to the IDA is reasonable in regard to the services provided, and has not acted to ensure that the LDC is fairly reimbursed for the services it provides to the other entities.

LDC officials responded that having the LDC and the IDA work together is consistent with State law and makes good economic sense in so far as it minimizes bureaucratic duplication. While it may be appropriate for the entities to work together, this arrangement should be detailed in a formal agreement that stipulates the services provided by each entity and the associated costs to be paid for those services.

Similarly, LDC staff are responsible for marketing and managing the various financial assistance programs administered by the four entities. This financial assistance consists of low cost bonds issued by the IDA and the CDC, tax exemptions provided by the IDA, loans provided by the LDC, and Microenterprise loans previously provided by the St. Lawrence County Local Development Corporation. Marketing is not limited to the River Valley Fund administered by the LDC and IDA financial assistance. There is no allocation of the marketing costs among the four entities or among the programs being marketed. Instead, it appears that only the IDA and LDC pay for all marketing costs. The LDC withdraws funds from the River Valley Fund to pay for half of the total marketing costs. These withdrawals totaled \$39,158 for 2014 and \$36,189 for 2015. The LDC board should ensure it pays for marketing costs applicable only to its loan programs or is compensated for the marketing it performs for the other entities. Under its current practices, it appears the LDC board is relying on the River Valley Fund to absorb a disproportionate share of the costs of the three other entities providing economic development services in St. Lawrence County.

LDC officials responded that the law allows the LDC to make financial contributions to other not-for-profit organizations and that there should be no doubt that making funding arrangements for marketing the collective loan funds, other development incentives and the County's advantages generally is a choice that is afforded the LDC. They also indicate that the RVRA board has approved the use of the River Valley Fund for marketing expenses not tied or allocated to specific loan funds. However, we note that the agreement between the RVRA and the LDC stipulates that marketing activities reimbursed by the River Valley Fund are to be associated with marketing and distribution of the River Valley Fund. This agreement would appear to restrict use of the River Valley Fund to finance marketing of other financial assistance programs.

Recommendations

1. The board should ensure that economic development loan funds are used only for their intended purpose of establishing, maintaining or expanding businesses that provide private sector employment.
2. The board should be aware of, and take appropriate measures to address, situations that present a conflict or the appearance of a conflict of interest.
3. The board should not approve loans that do not comply with various funding requirements, including projects that do not expect to create private sector jobs. When the board determines that departures from requirements are appropriate, it should ensure that the determination is adequately and publicly disclosed.
4. The board should establish procedures that enable it to adequately oversee management and staff. These procedures should include:
 - Developing funding applications only for LDC financial assistance programs that are separate from IDA or CDC financial assistance programs.
 - Requiring separate applications for each loan fund that specify the project expectations and loan fund criteria.
 - Reviewing to determine that projects are recommended for funding only when all criteria for the designated loan fund is met.
 - Requiring loan applications be provided to the board for review prior to approving funding requests.
 - Requiring board review and approval of loan agreements with approved businesses.
5. The board should review project applications as a basis for making informed, independent decisions regarding whether loans should be approved.
6. The board should require that applications be revised by the business to reflect actual conditions and agreed to job creation expectations.
7. The board should require that it has an approved loan agreement with all businesses that receive loans from the LDC.
8. The board should ensure that it meets separately and independently from other entities, regardless if those entities are related to the LDC or not. Board meeting minutes should clearly indicate the decisions and actions taken by board members.
9. The board should establish procedures to capture and accurately measure the level of services provided by LDC staff to each of the economic development entities.

10. The board should establish service agreements with the related economic development entities to specify the services provided to each entity and the related costs to be borne by each entity.



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Industrial Development Agency

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**CHIEF FINANCIAL
OFFICER**
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September 30, 2016

Authorities Budget Office for the State of New York
Michael Farrar
Deputy Director, Compliance & Enforcement
P.O. Box 2076
Albany, New York 12220-0076

Dear Mr. Farrar:

This letter conveys the St. Lawrence County Industrial Development Agency Local Development Corporation's ("SLCIDA-LDC") written Response to the draft report forwarded to the SLCIDA-LDC by the Authorities Budget Office ("ABO") on September 9, 2016.

The SLCIDA-LDC explains its many disagreements with the ABO review findings of "fact" and interpretation in detail in the attached Response.

First, however, the SLCIDA-LDC must point out that the ABO's draft report is based on a major conceptual and analytic error, an error so fundamental that it colors almost every paragraph in the draft report. The ABO takes the position that the SLCIDA-LDC basically exists to administer some loan funds and to thereby stimulate private sector jobs in the County. Much of the draft report finds that the SLCIDA-LDC has done things that don't fit neatly into this arbitrarily narrow "box" and then criticizes the organization for doing things outside that "box" – even though they are compatible with the purposes and powers allowed by the Law. Apparently, these actions don't accord with the ABO's unsupported and unwarranted determinations of how an LDC should be organized and what is in its best interest and in the best interest of the public, resulting in numerous mischaracterizations of the actions of the SLCIDA-LDC and its board.

The ABO's error first appears in the first sentence of the draft report's second paragraph: "The St. Lawrence County Industrial Development Agency Local Development Corporation (LDC) was formed in 1986 to stimulate the growth of private sector employment in St. Lawrence County." A few pages later the draft report says: "The LDC was formed for the purpose of creating and retaining jobs and reducing unemployment. The LDC accomplishes this primarily through the administration of various loan funds,..." These statements are accurate as far as they go, **but they should go much further.** The fact that the ABO does not go any further is in itself an indication that there are serious deficiencies in the ABO's perspective.

Note
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The SLCIDA-LDC's certificate of incorporation states that its purposes are "to relieve and reduce unemployment, to promote and provide for additional and maximum employment, to better and maintain job opportunities, to instruct or train individuals to improve or to develop their capabilities for jobs, to carry on scientific research for the purpose of aiding the community of St. Lawrence County, New York by attracting industry to the community, and to lessen the burdens of government and to act in the public interest, thus performing an essential government function." This statement of purpose, with some slight diction changes, mirrors section 1411 (a) in the New York Not-For-Profit Corporation Law (NPCL), which in turn also affords local development corporations the general powers described in sections 201 and 1411 of the NPCL.

The SLCIDA-LDC makes these citations because it has made a consistent effort for years to operate within the provisions of the NPCL. A fair reading of them makes it clear that SLCIDA-LDC's purposes and powers to assist in the work of economic development in St. Lawrence County are far more extensive than would be implied by the ABO's constricted summary of what constitutes the "reach" of the SLCIDA-LDC. The ABO draft report ignores the broad discretion that the Law affords to local not-for-profit corporations to improve the economies and quality of life in their respective communities.

While the Law allows significant freedom of action to LDCs to do things that are compatible with their corporate purposes, the ABO, for reasons that are unclear, has decided that it does not like the way the SLCIDA-LDC is organized and the way it has used its powers to participate in a coordinated -- and statutorily permissible -- program of economic development by collaborating closely with the St. Lawrence County Industrial Development Agency ("SLCIDA") in ways that fully capitalize on both organizations' purposes and powers under New York State Law.

The ABO draft report arbitrarily and capriciously accuses the SLCIDA-LDC board of failing in its fiduciary duty and with conflicts of interest because the SLCIDA-LDC cooperates closely with the SLCIDA to undertake a series of economic development activities. The ABO provides only the vaguest of statutory references in support of its disapproval of these arrangements. The ABO fails to recognize that the Law assigns to the SLCIDA-LDC significant discretion in determining whether such collaboration is in "best interests of the LDC and the public", not the ABO. The ABO also seems to be innocent of any recognition that such an arrangement minimizes administrative duplication and consequent costs and delays.

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The ABO alleges, for example, that there is something wrong with the SLCIDA-LDC: (1) lending money on favorable terms to the SLCIDA to build industrial buildings that will employ people; (2) making exceptions to loan fund guidelines to adapt the terms in loans to private businesses whose projects exhibit special characteristics beneficial to the larger community; (3) holding joint meetings with other development agencies with whom the SLCIDA-LDC has contractual and/or cooperating interests; and (4) allowing its staff to collaborate with IDA staff to execute mutual projects. The ABO alleges that such activities are not in the best interests of the public and the LDC itself. The ABO report offers no reasoned justification for such allegations.

In other words, the ABO doesn't like the way the SLCIDA-LDC is set up and does business but does not, and presumably cannot, cite any actual violations of New York State law. The SLCIDA-LDC contends that, provided it continues to be compliant with applicable law, **it is the organization that should make the decisions about what is in its best interests**, not the ABO.

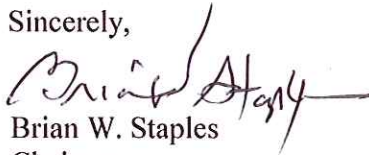
Your email of September 9th indicates that you will make "any necessary changes" to your draft review and will then provide us with a final report for a to-be-scheduled exit conference. As you will see in the attached response, we believe there is a significant amount of revision necessary to make the report factually and fundamentally correct.

As this letter makes clear, the St. Lawrence County Industrial Development Agency Local Development Corporation strongly disagrees with, and requests changes to, a number of the results presented throughout the draft review of the SLCIDA-LDC.

Most significantly, the draft review results allege that the "Board is Failing its Fiduciary Duty" and that "any loans or other transactions between the two entities [IDA and SLCIDA-LDC] present significant conflicts of interests." Both of these statements are factually incorrect, needlessly inflammatory and deeply offensive to conscientious board members. These statements demonstrate either a lack of understanding of the SLCIDA-LDC's structure, operations and activities or is a willful misrepresentation of the actions of the LDC's board. We request that both of these statements be completely withdrawn from the report.

In light of the significant questions, and to be candid, the flaws we see in this initial draft, we are concerned that one revised report followed by an exit conference will not be a sufficient enough process to reconcile the substantial issues between the initial draft and the attached response. As such, we request that you review our response and provide us with an amended draft report for our further review and comment before our exit conference is scheduled.

Sincerely,


Brian W. Staples
Chairman

SLCIDA-LDC Comment: The initial assertion of the ABO that the St. Lawrence County Industrial Development Agency Local Development Corporation (“SLCIDA-LDC”) was formed “to stimulate growth of private sector employment in St. Lawrence County” is an arbitrarily narrow interpretation made by the ABO. The narrowness of the ABO’s interpretation is reinforced by the language in the rest of the paragraph that is almost exclusively concentrated on loan funds. By focusing on such a narrow interpretation and by intentionally omitting a more appropriate and complete summary of the purposes, and legal powers, of this, or any, local development corporation, the ABO has set the stage to unfairly criticize the actions of the SLCIDA-LDC as well as its board and staff. The correct statement would be that the SLCIDA-LDC was formed (per its Certificate of Incorporation, which was provided to the ABO), *“to relieve and reduce unemployment, to promote and provide for additional and maximum employment, to better and maintain job opportunities, to instruct or train individuals to improve or to develop their capabilities for jobs, to carry on scientific research for the purpose of aiding the community of St. Lawrence County, New York by attracting industry to the community, and to lessen the burdens of government and to act in the public interest, thus performing an essential government function.”* The draft review also fails to point out that the SLCIDA-LDC was formed in 1986 by the St. Lawrence County Industrial Development Agency (“IDA”). That the ABO ignores this far more expansive language has implications that are relevant to criticisms by the ABO throughout the draft review.

Note
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SLCIDA-LDC Comment: The statement that the “LDC is failing in its fiduciary duty to act in the best interests of the LDC and the public” is not only inflammatory and offensive but it is incorrect. This statement demonstrates either a lack of understanding of the SLCIDA-LDC’s structure and operations or a willful misrepresentation of the actions of the LDC’s board. We request that this statement be completely withdrawn from the report.

The SLCIDA-LDC has made loans to the IDA. There is no demonstration that a loan from the SLCIDA-LDC to the IDA is in any way inappropriate or that it constitutes a conflict of interest. The SLCIDA-LDC has the ability to lend funds for projects (see NPC Law Section 202 (10), and the IDA has the ability to borrow money [see GML Section 858(11)]. The two organizations entering into a lender-borrower relationship is neither inappropriate nor does it contribute to any fiduciary failure.

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NPC Law Section 1411 states that the purposes of a local development corporation include the “...*public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest...*”

By providing financing, at advantageous terms, for the construction of a building in a newly-developed industrial park, the SLCIDA-LDC was in fact fulfilling these purposes. The construction of suitable facilities for future economic development and private industry employment generation is in fact in the best interests of the SLCIDA-LDC and the public. The community of Canton, where the building is located, has two colleges and is the seat of local county government. As a result, there is a significant portion of the property in the community not on the tax rolls. The development of the industrial park, an effort

initiated by an MOU in 2005 between the Town and Village of Canton, St. Lawrence County, NYSARC (the previous owner of the park property) and the St. Lawrence County IDA, was envisioned as a means to increase the tax base of the community through future economic development efforts. The construction of the building referenced, in part made possible by the SLCIDA-LDC's financing, is a first step in these efforts and was in the "independent judgment" of the board members of the SLCIDA-LDC in the best interests of the SLCIDA-LDC, its mission, and the public [PAL Section 2824-1(g)].

Further, the SLCIDA-LDC board has the authority and discretion to approve the provision of assistance for the construction and financing of such projects, even, if it chose, by granting the funds. It certainly has the power to make loans and to set the rates and terms for those loans for such projects. Loan criteria are established by the board as a guideline for implementation. The board has the ability to make lending decisions which depart from these self-created criteria at any time. In the case of each of these loans, the board made the decision, by written resolution, to approve the loans after reviewing the proposed projects, the use of the funds and the overall potential for economic development benefit in St. Lawrence County. In doing so, the SLCIDA- LDC did precisely what the ABO faults them for NOT doing – i.e., "perform[ing] their duties in good faith and with the degree of diligence, care and skill which an ordinarily prudent person would use in similar circumstances" – by evaluating the special circumstances that occasioned the loans and making a determination to vary the loans' terms so that projects would serve both the best interest of the SLCIDA-LDC and the public.

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SLCIDA-LDC Comment: The allegation that the board "provides inadequate oversight of management" is false, unfounded and unsupported. The board makes all funding decisions, sets the organization's budget and policy, and provides supervisory oversight of management. While the board may not currently review original loan applications or loan agreements, there is still a substantial board oversight and management of the lending process and operations of the SLCIDA-LDC. As was told to the ABO reviewers, the SLCIDA-LDC board long ago insisted that staff reviews of loan projects be supplemented by an independent evaluation done by an outside financial analyst. They did this, even though it adds additional expense and time to projects, because they are fully aware that the board needs to double-check staff's analyses and recommendations. The reviewers were informed of this practice and the underwriter's reports were made available to them, but the draft review unaccountably makes no mention of this step in the loan review process.

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Further, as will be explained later in this response in specific detail, explanations for what the ABO calls discrepancies within the loan applications, resolutions and agreements were provided in most cases, and further review indicates that a number of these discrepancies were caused by the ABO review team not distinguishing between full-time and part-time positions on the applications, something the SLCIDA- LDC does when creating loan resolutions and agreements. Other claimed instances of lapses in oversight occurred when a resolution stated the number of jobs to be created by a project, but not the number to be retained. The loan agreements, which are the final documents of record, did include this information. Clarification for each of the claimed discrepancies is included in the comments following the chart provided by the ABO in its draft review later in this Response. Upon reviewing this information, a more factual statement would be that approximately five discrepancies exist across the 37 loans, not 19. This greatly lessened number of discrepancies, we believe, should cause the ABO to reconsider its allegation that "inadequate oversight of management" is in fact an accurate statement.

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SLCIDA-LDC Comment: The SLCIDA-LDC does share services and has conducted joint meetings. However, the ABO report fails to support its assertions with any citations that demonstrate that any of these practices is incompatible with New York State law.

The SLCIDA-LDC contends, on the contrary, that since the IDA created the SLCIDA- LDC in 1986, it was, and has continued to be, quite explicit that the organizations will work together to deliver economic development services in St. Lawrence County. The SLCIDA-LDC further contends that doing so is consistent with State law and makes good economic sense in so far as it minimizes bureaucratic duplication.

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As was pointed out to the ABO reviewers during their visit, the SLCIDA and SLCIDA- LDC for years held consecutive, but separate, meetings. In the past few years they had, for purposes of efficiency, met simultaneously. As this practice was recently criticized by the OSC in a recent review of an IDA elsewhere in the State, the SLCIDA and SLCIDA-LDC had already decided to revert to the practice of meeting separately.

In the case of the St. Lawrence River Valley Redevelopment Agency, which has joint approval authority with the SLCIDA-LDC for its (the River Valley Agency) funds, it is not clear why a concurrent meeting would be inadvisable.

SLCIDA-LDC Comment: Repeating what was said in the previous comment, the SLCIDA-LDC contends that, since the SLCIDA created the SLCIDA-LDC in 1986, it was, and has continued to be, quite explicit that the organizations will work together to deliver economic development services in St. Lawrence County. The SLCIDA-LDC further contends that doing so is consistent with State law and makes good economic sense in so far as it minimizes bureaucratic duplication.

In the end, provided that the SLCIDA-LDC abides by the powers and purposes allowed to it by the Not-For-Profit Corporation Law – which it does – its members are the appropriate” body to decide what is in the best interests of the SLCIDA-LDC and how to manage the organization. If the SLCIDA-LDC board concludes, in keeping with its interpretation of applicable Law, that permitting its staff to work closely with IDA staff is in the SLCIDA-LDC’s best interests, then it is not aware of any legal impediment to engaging in this most sensible collaboration.

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SLCIDA-LDC Comment: As was pointed out to ABO reviewers numerous times, the SLCIDA-LDC’s payment to Massena Electric Department (MED) is provided on behalf of the RVRA for a number of services MED provides to the RVRA in addition to allocating low-cost power. These services, as spelled out in the Agreement between the RVRA and the MED, include:

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- A. Provide guidance on the uses and benefits of low cost hydro power.
- B. Provide a central point of contact for, and evaluation of, any revised power contract proposals.
- C. Administer the Power Contract with NYPA.
- D. Facilitate Strategic Partnerships and serve as representative on energy trade organizations.

E. Provide advice on energy related issues. If these matters require additional support they will be approved in advance by the RVRDA.

i. Outside counsel may be required beyond the scope of MED's expertise for some of these issues, and such costs shall be in addition to the costs set forth in Article III, with costs to be borne by the RVRDA.

ii. Outside counsel may be required beyond the scope of MED's expertise for certain technical issues, and such costs shall be in addition to the costs set forth in Article III, with costs to be borne by the RVRDA.

F. Support Economic Development and Marketing efforts.

G. Coordinate power incentive program rates and projections with project applicants.

Despite being provided this information, the reviewers continue to characterize the agreement between the St. Lawrence River Valley Redevelopment Agency and the Massena Electric Department as being solely for the allocation of power.

Subsumed under one or more of these headings: Mr. McMahon and his staff have, for example: made numerous presentations to the RVRA board on power pricing; assisted with negotiations with the NYPA to obtain additional low cost hydro-electric allocations; explained how the complexities of the electricity markets complicate providing power incentives in St. Lawrence County; evaluated the power needs of prospects; helped to target marketing materials to highlight the value of low cost power; and met with prospects to help market the power.

SLCIDA Comment: The correct statement would be that the SLCIDA-LDC was formed (per its Certificate of Incorporation, which was provided to the ABO, as well as per NPC Law Section 1411) *"to relieve and reduce unemployment, to promote and provide for additional and maximum employment, to better and maintain job opportunities, to instruct or train individuals to improve or to develop their capabilities for jobs, to carry on scientific research for the purpose of aiding the community of St. Lawrence County, New York by attracting industry to the community, and to lessen the burdens of government and to act in the public interest, thus performing an essential government function."* The draft review also fails to point out that the SLCIDA-LDC was formed in 1986 by the St. Lawrence County Industrial Development Agency.

Note
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Also, the formal dissolution of St. Lawrence County Local Development Corporation (not the same as the SLCIDA-LDC) was approved in August. In the ABO's 2015 and 2016 Annual Reports on Public Authorities in New York State, Acting Director Farrar said: "We need to better manage the proliferation of local authorities,..." This (the SLCIDA-LDC absorbing the SLC-LDC) is one example of the positive actions taken by the SLCIDA-LDC that were not mentioned or highlighted anywhere in the draft review.

Note
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SLCIDA-LDC Comment: The draft review states that it assessed SLCIDA-LDC operations for the period January 1, 2014 through June 30, 2016. It does not make clear that many of the statements and criticisms within the review are directed at projects and actions undertaken well before this time period. Many in fact, took place before the

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Authorities Budget Office was even created. By not highlighting these facts, the report is misleading and presents the claims as if they were confined to the past two years, and not spread out over the much greater, 14 year period which was actually covered in the review. As an example, 14 of the 19 loans the review cites (many incorrectly) for having discrepancies in their job numbers were made prior to the time period stated for the review.

Note
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SLCIDA-LDC Comment: The primary finding that the “Board is Failing its Fiduciary Duty” is based on a series of allegations by the ABO that are addressed individually below. Initially, however, we will point out that the claim that “the board is failing in its fiduciary duty to the LDC since it relies excessively on management’s representations and does not base its decisions upon independent review of its documents and records” is not correct. This allegation represents a complete disregard by the ABO of the SLCIDA-LDC board’s role in the lending process.

While the board may not review every document in a loan file, it does review the underwriter’s report, which is typically provided by a third party financial analyst (not by management) , as well as numerous other loan, project and reporting documents and records. The underwriter’s report provided for loan applications is a comprehensive document which includes:

- A project overview and summary
- A financial analysis of historical and projected income statements, cash flows and balance sheets
- A financial ratio analysis
- A credit history analysis of the applicant
- An analysis of the proposed collateral for a loan
- Recommendations for contingencies to be met by the applicant prior to approval.

Clearly this level of review meets or exceeds the requirement that public authority board members exercise the “care and skill which an ordinarily prudent person in like position would use under similar circumstances.” [PAL Section 2824-1(g)].

As was stated previously, these reports were provided to the ABO reviewers; why the report does not acknowledge this, and the comprehensiveness of the information contained in the reports, is not clear.

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On the erroneous foundation that the board members are excessively dependent on management the ABO then erects a structure of allegations that the board inappropriately approved loans to the IDA, didn’t disclose its close relationship with the IDA, and approved other loans that did not meet loan program job requirements.

The draft ABO review, after erroneously claiming that the board relies excessively on management’s representations, proceeds to cite a number actions taken by the SLCIDA-LDC board that the SLCIDA-LDC contends are within the bounds of the discretion allowed to it by Law. We will address each of these incorrect claims below, but in each case we assert that the actions are both correct exercises of the SLCIDA-

LDC's powers and made as a result of prudent board member involvement.

SLCIDA-LDC Comment: There is no demonstration that a loan from the SLCIDA-LDC to the IDA is in any way inappropriate or that it constitutes a conflict of interest. The SLCIDA-LDC has the ability to lend funds for projects (see NPC Law Section 202 (10), and the IDA has the ability to borrow money [see GML Section 858(11)] to accomplish its corporate purposes. The two organizations entering into a lender-borrower relationship to finance industrial facility construction is neither inappropriate nor is it evidence of any fiduciary failure.

Note
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The claim in the draft review that the board “did not adequately disclose its relationship to the IDA” is absurd. Beyond the obvious connection advertised by the names of the organizations (the *St. Lawrence County Industrial Development Agency* and the *St. Lawrence County Industrial Development Agency Local Development Corporation*), both organizations make numerous and abundant representations that there is a relationship between them. As is pointed out in the review, they have for years met simultaneously, their public notices are sent out together, the board member listings are provided on the web pages of both, they share an integrated website, and perhaps most clearly, the SLCIDA-LDC resolution approving the one of the loans in question (for the purpose of financing the first Canton Industrial Park building) states that the SLCIDA-LDC was formed by the SLCIDA as shown in this excerpt from the actual resolution (highlighting added for emphasis):

Note
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“ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

LOCAL DEVELOPMENT CORPORATION

Resolution No. 12-09-32

September 27, 2012

AUTHORIZING FUNDS THROUGH THE ST. LAWRENCE COUNTY IDA LOCAL DEVELOPMENT CORPORATION REVOLVING LOAN FUND AND THROUGH THE ST Lawrence River VALLEY REDEVELOPMENT AGENCY FOR LOAN FINANCING TO THE ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

WHEREAS, the St. Lawrence County Industrial Development Agency (the “SLCIDA”) is authorized under the New York General Municipal Law (constituting Title 1 and 2, Article 18a, Sections 850-888 and 914) to finance industrial projects: to sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any industrial project, and in the case of the sale of any industrial project, to accept a purchase money mortgage in connection therewith: and to lease, repurchase or otherwise convey, transfer or dispose of, and

WHEREAS, the SLCIDA has formed the St. Lawrence County Industrial Development Agency Local Development Corporation (the “SLCIDA-LDC”) for the purpose of administering a County-wide industrial development revolving loan fund, and...”

How this obvious and clearly stated collaboration can be characterized as a conflict of interest or lack of disclosure is puzzling.

Furthermore, according to the ABO's recommended Conflict of Interest Policy, *"A conflict of interest is a situation in which the financial, familial, or personal interests of a board member or employee come into actual or perceived conflict with their responsibilities with the authority."* The SLCIDA-LDC's own policy is modeled on this recommended ABO policy and the SLCIDA-LDC board members do not in either case have "financial, familial, or personal interest" in the loans to the IDA. For further clarification, please see these excerpts from the St. Lawrence County Industrial Development Agency Local Development Corporation' Conflicts of Interest Policy and from ABO's Model Conflict of Interest Policy (highlighting added for emphasis):

CONFLICTS OF INTEREST POLICY

ST. LAWRENCE CO. INDUSTRIAL DEVELOPMENT AGENCY LOCAL DEVELOPMENT CORPORATION

Article 1. Background

The purpose of the conflicts of interest policy is to protect the interests of the St. Lawrence County Industrial Development Agency Local Development Corporation (hereinafter, the "Authority") **when it is contemplating entering into a transaction or arrangement that may benefit the private interests of an officer, director or employee of the Authority.** This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

Article 2. Definition

A conflict of interest will be deemed to exist whenever an individual is in the position to approve or influence Authority policies or actions which involve or could ultimately harm or benefit financially: (a) the individual; (b) any family member (spouse, domestic partner, grandparents, parents, children, grandchildren, great grandchildren, brothers or sisters (whether whole or half blood, or step relationship), and spouses of these individuals); or (c) any organization in which he or a family member is a director, trustee, officer, member, partner of more than 10% of the total (combined) voting power. **Service on the board of another not-for-profit corporation does not constitute a conflict of interest.**

Note 11

Authorities Budget Office MODEL CONFLICT OF INTEREST POLICY

Conflicts of Interest:

A conflict of interest is a situation in which the financial, familial, or personal interests of a director or employee come into actual or perceived conflict with their duties and responsibilities with the Authority.

The notion that "significant conflicts of interest" result from the lending scenarios described in the review fails to acknowledge that the SLCIDA-LDC is clearly and publicly known and disclosed to be an affiliated organization of the St. Lawrence County IDA; it was formed by the SLCIDA and is managed in coordination with the IDA in order to achieve cost and operational efficiencies and to minimize bureaucratic waste in the delivery of economic development services in St. Lawrence County. In light of the overlapping purposes and missions of the SLCIDA and the SLCIDA-LDC, any reasonable person can see that the project development activities and resulting board

oversight of the two are appropriate. Furthermore, such a collaboration is not to the SLCIDA-LDC's knowledge disallowed by any provision of State Law.

As the SLCIDA-LDC requested with regard to the ABO's allegation that the board members have failed in their fiduciary duties, the SLCIDA-LDC also requests that the ABO's allegation there is somehow a conflict of interest and lack of disclosure be completely withdrawn from the report.

SLCIDA-LDC Comment: As was cited earlier in this response, the SLCIDA-LDC board has made loans to SLCIDA and it does certainly have the authority and discretion to approve these loans and to set the rates and terms for those loans. There is no demonstration that a loan from the SLCIDA-LDC to the IDA is in any way inappropriate or that it constitutes a conflict of interest. The SLCIDA-LDC has the ability to lend funds for projects [see again NPC Law Section 202 (10)], and the IDA has the ability to borrow money [see GML Section 858(11)]. The two organizations entering into a lender-borrower relationship is neither inappropriate nor does it contribute to any fiduciary failure.

Note
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The question of whether the loans are inappropriate is a matter of whether the terms of the loans represent an unreasonable exercise of the SLCIDA-LDC's discretion. NPC Law Section 1411 states that the public purposes of a local development corporation include the *"...relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest...."*

Note
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By providing financing, at advantageous terms, for the construction of a building in a newly-developed industrial park, the SLCIDA-LDC was in fact fulfilling these purposes. The construction of suitable facilities for future economic development and private industry employment generation is in fact in the best interests of the SLCIDA-LDC and the public.

The community of Canton, where the building is located, has two colleges and is the seat of local county government. As a result, there is a significant portion of the property in the community not on the tax rolls. The development of the industrial park, an effort initiated by an MOU in 2005 between the Town and Village of Canton, St. Lawrence County, NYSARC (the previous owner of the park property) and the St. Lawrence County IDA, will ultimately increase the tax base of the community through future economic development efforts. The construction of the building referenced, in part made possible by the SLCIDA-LDC's financing, is a first step in these efforts and was in the "independent judgment" of the board members of the SLCIDA-LDC in the best interests of the SLCIDA-LDC, its mission, and the public [PAL Section 2824-1(g)].

Further, the SLCIDA-LDC board has the authority and discretion to approve the provision of assistance for the construction and financing of such projects, even, if it chose, by granting the funds. It certainly has the power to make loans and to set the

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rates and terms for those loans for such projects. Loan criteria are established by the board as a guideline for implementation. The board has the ability to make lending decisions which depart from these self-created criteria at any time. In the case of each of these loans, the board made an informed decision, by written resolution, to approve the loans after reviewing the proposed projects, the use of the funds and the overall potential for economic development benefit in St. Lawrence County.

SLCIDA-LDC Comment: The \$600,000 loan cited by the ABO being made to the SLCIDA was approved by the Greater Massena Economic Development Fund board, not the board of the SLCIDA-LDC. This project was a loan to the IDA to construct space to attract three out-of-State private industry firms which were suppliers to General Motors to move to Massena to support over 500 jobs at General Motors at that time (2002).

Note
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As stated, the “purpose of the Greater Massena Loan Fund is to provide low cost financing as an inducement for established firms to expand their operations, and the loan to the IDA does not meet this intention.” In light of the project’s goal to bring three vendor companies to Massena to support the General Motors jobs that were in place at the time, it is ludicrous to suggest that the loan did not meet the criteria. Regardless, as stated above, this loan was not even approved by the St. Lawrence County Industrial Development Agency Local Development Corporation and it is not clear why it is even referenced in the draft report.

SLCIDA-LDC Comment: The loans, which were both made well before the stated time period of the review, each included specific circumstances which justified the appropriate lending decisions made by the SLCIDA-LDC.

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In addition to the 23 jobs referenced in the review as being proposed to be created at Curran Renewable Energy, Seaway Timber Harvesting (STH), an affiliated company of Curran Renewable Energy (CRE), employed nearly 100 local people at the time the loan was made. STH’s owners created CRE largely to provide a market for the wood chips that STH had for years sold to paper mills, many of whom had gone out of business. The project, in short, made sense because it also would help retain the jobs at STH. The disregard for this all-important context in the review relating to the jobs at Seaway Timber demonstrates why economic development projects and activities are best handled at the local level, where decision makers understand the local economy and the specifics of a given project, and can take into consideration that the project in truth created/preserved these actual job numbers.

Note
12

The SLIC Network Solutions loan assisted the company in successfully undertaking a \$30,000,000 broadband expansion investment project, bringing high speed internet services to multiple communities in St. Lawrence County that previously were not served. Again, the review, in its sensationalistic tone, fails to recognize this critical context of the SLIC project, even though it was pointed out to the reviewers on multiple occasions. This project clearly met the SLCIDA-LDC’s purpose of “encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest” by assisting the company in deploying broadband services throughout the rural communities of St. Lawrence County.

As with the Curran loan, the SLIC loan again demonstrates that local decision makers understand the context of the projects and activities undertaken by the SLCIDA-LDC.

Both loans illustrate the error of the draft report's narrow assertion that the IDA-LDC was "...formed in 1986 to stimulate the growth of private sector employment in St. Lawrence County." While both loans did so stimulate the County's private sector employment growth, they also had broader impacts on the County. As mentioned earlier, a more factually correct way of summarizing the IDA-LDC's founding – quoted in its certificate of incorporation explicitly from the Section 1411(a) of the Not-for-Profit Corporation (NPC) Law – ends by adding to the extensive list of such a corporation's purposes that of "... lessening the burdens of government and acting in the public interest, ..." The SLCIDA-LDC is not aware of any provision of State law that removes from the SLCIDA-LDC and conveys to the ABO the responsibility of deciding what constitutes lessening the burdens of government and acting in the public interest of St. Lawrence County. Absent any other law to the contrary, it is within the SLCIDA-LDC's remit to include such factors as the support of Seaway Timber's jobs in the woods and the critical need for broadband services in the County in making its loan decisions.

In short, the report has arbitrarily and capriciously restricted the SLCIDA-LDC's authorization under the NPC Law. The reviewers, without any apparent warrant in law or common sense, have posited that the organization that prepared the loan guidelines has no discretion to adapt them to the varying circumstances. Taking this position leads to the inevitable *reductio ad absurdum* that the board can do no more than apply the rules it itself created, which in turn assigns to the SLCIDA-LDC a rote and automated role devoid of any independent judgement and situational flexibility. The SLCIDA-LDC contends that such a role is clearly not what the State intended when it created the NPC Law.

Note
5

SLCIDA-LDC Comment: This is an astonishing assertion, not to mention being unfounded and unsupported. The board makes all funding decisions, sets the organization's budget and policy, and provides supervisory oversight of the executive management. While the board may not currently review original applications or loan agreements, there is still substantial board oversight and management of the lending process and operations of the SLCIDA-LDC. As already mentioned earlier, the board long ago insisted that staff reviews of loan projects be supplemented by an independent evaluation done by an outside financial analyst. They did this, even though it adds additional expense and time to projects, because they are fully aware that the board needs to double-check staff's analyses and recommendations. The reviewers were informed of this practice and the underwriter's reports were made available to them, but the draft report unaccountably makes no mention of this step in the loan review process.

Note
1

SLCIDA-LDC Comment: Combining multiple lending sources administered by the same organization is a common sense approach that reduces bureaucracy and makes the lending process more efficient. In a time when elimination of government waste is such a priority, it is puzzling to understand why the review would suggest needlessly duplicating loan documents and adding legal and other costs to the loan closing

Note
13

process.

SLCIDA-LDC Comment: Explanations for what the ABO calls discrepancies were provided in most cases, and further review indicates that a number of these discrepancies were caused by the ABO review team not distinguishing between full-time and part-time positions on the applications, something the SLCIDA-LDC does when creating loan resolutions and agreements. Other claimed instances occurred when a resolution stated the number of jobs to be created by a project, but not the number to be retained. The loan agreements, which are the SLCIDA-LDC's final document of record, did include this information.

Note
4

Note
6

Clarification for each of the claimed discrepancies is included in the comments following this chart. Upon reviewing these corrections, a more factual statement would be that approximately five discrepancies exist across the 37 loans, not 19.

SLCIDA-LDC Comment: Clarification on claimed discrepancies:

Ansen – The application referenced 20 jobs being retained as a result of the project, though the company employed 200 in the County, and 30 to be created. The resolution referenced the 30 to be created; minutes of the meeting reference Ansen as having 200 existing employees. The loan agreement captures the 200 retained jobs and the 30 to be created from the resolution, resulting in no discrepancies.

Note
1

Atlantic Testing - The ABO correctly references that this loan was packaged with a lead lender's financing and no job requirements were included in the final loan agreement. The SLCIDA-LDC will either use a separate agreement or will ensure job numbers are used in packaged loan agreements going forward.

BlastBoss - The ABO references eight jobs from the application. This includes both full and part time positions. The resolution and loan agreement convert the positions to Full-Time Equivalents ("FTE").

Note
1

Clifton-Fine Healthcare - The ABO correctly references that this loan was packaged with a lead lender's financing and no job requirements were included in the final loan agreement. The SLCIDA-LDC will either use a separate agreement or will ensure job numbers are used in packaged loan agreements going forward.

Curran Renewable Energy \$600,000 - The ABO combines the 23 jobs in an SLCIDA-LDC resolution with 14 from the GMEDF resolution to arrive at 37. In the Loan Agreement column the ABO does not include the 23 from the SLCIDA-LDC Loan Agreement, using just the 14 from the GMEDF loan agreement. If it had, there would be no discrepancy in the ABO's calculations.

Note
1

Curran Renewable Energy \$100,000 - This project was part of a warehouse and plant upgrade in support of other projects which already had job components built in. In the future the SLCIDA-LDC will ensure job numbers are included with each specific project.

Curran Renewable Energy \$1,500,000 - At the meeting approving this loan it was

determined that the company's actual job level was 30. This was not referenced in the meeting minutes but the board and staff were aware of the updated number.

Gilbert Greens Country Club - This is another instance of the ABO counting part time positions in the application as full time. When converted to full-time equivalent status the actual number is three and there are no discrepancies.

Note
1

Hackett's WiseBuys - Again, there is no accounting on the part of the ABO for part time workers. Also, the resolution contemplated the company opening up to three stores in St. Lawrence County as part of their project. The resolution references 90 jobs (not 46). Two stores were ultimately opened (2 of 3), hence the Loan Agreement figure of 60 (2/3 of 90). This is not a discrepancy.

Note
1

High Peaks Winery - Again, the ABO counted three part time positions as full time, the SLCIDA-LDC converts these positions to full time equivalents. The resolution actually says retain one FT, and creates 1.5 FTE; the loan agreement says the same thing. There are no discrepancies.

Note
1

Hoosier Magnetics - The application did have 29 jobs. The underwriter's review (which is received and reviewed by the board) states "29* *At full production- temporary lay-off brought number down to approximately 19". The company had 29 employees at the time of application, but after application, and before board review, had undergone a layoff reducing the employment level to 19. At \$15,000/job, 19 was still a sufficient employment level to justify the loan as an employment retention project and the resolution and loan agreements were both based on 19 jobs. This is a documented change in the job situation at the project location during the application process, not a discrepancy.

Note
7

Hozmerica - Actual application number is nine FTEs, the same as in the Loan Agreement. The resolution lists the jobs to be created, not the retained jobs. The loan agreement correctly includes both the 1.5 jobs to be created and the 7.5 existing FTE positions to be retained.

Note
1

Nicholville Telephone - This and the \$411,073 SLIC loan (see below) were part of the same project. The ABO reviewers did not add the number of jobs on the application materials correctly, arriving at 43 jobs, not 55. There were no discrepancies.

Note
7

North Country Dairy - The application for funding stated 80 jobs, as pointed out by the ABO; no job totals were specified in the resolution. 55 was utilized as the job figure in the loan agreement, and should have been referenced in the resolution.

Riverside Iron, LLC - Some of the 15 jobs in the application were listed as "part time and other", a conservative figure of 12 was used for the resolution and the loan agreements; this is another issue of calculation, not a discrepancy.

Note
1

SLIC Line of Credit - This was a short-term financing project where the jobs were already included in other projects the SLCIDA-LDC had with the company.

SLIC Network Solutions - See Nicholville Telephone above.

Note
7

St. Lawrence Brewing - Though the application stated that the company, a startup operation, believed they would create 9 jobs, the resolution approved by the board and the loan agreement required only 5 jobs. This is not a discrepancy; it is a case of the board reviewing the project and determining the job creation level which it felt was suitable for the loan.

Structural Wood - The application included some positions which were seasonal in nature; as with part time employees the SLCIDA-LDC calculated the annual FTE impact of the seasonal workers and determined that 15 employees was the appropriate number of retained annual FTEs, with two additional FTE positions to be created. This was the number included in the resolution (17, not 19 as reported in the in the ABO chart) and the board considered that to be a more accurate annual FTE total. This was also the figure used in the loan agreements. Again, this is not a discrepancy.

Note
1

It should be noted that the ABO reviewers are not alone in having challenges in calculating job numbers. Companies increasingly employ a variety of full, part, seasonal and sometimes temporary workers. Recognizing this, and to better capture information related to retained and proposed jobs to be created, the SLCIDA-LDC has updated its loan applications numerous times over the years. The current job creation section in the SLCIDA-LDC's loan application specifically spells out the full, part, temporary and season status of the jobs to be retained and created. This effort of continuous improvement, clearly evidenced by the loan applications review by the ABO, is another example of a positive activity that could have been highlighted in the draft report but was left unmentioned.

SLCIDA-LDC Comment: While the actual number of discrepancies is far lower than presented by the draft review (and should be corrected in any final report issued), the SLCIDA-LDC can still make progress in ensuring that explanations of any discrepancies among the documents of future loans are more clearly documented. With such a drastically reduced number of discrepancies, the SLCIDA-LDC requests the ABO revisit its assertion that a lack of review by the SLCIDA-LDC board is responsible for what are in reality the ABO's incorrect numbers.

SLCIDA-LDC Comment: This description is a gross and unjust over-simplification of the process, fed in part by the ABO's own incorrect calculation of the job numbers on many of the applications, and incorrectly attributes a cavalier and indifferent attitude on the part of SLCIDA-LDC staff. This insulting characterization is absolutely not correct.

Note
14

As was explained to the reviewers, in those circumstances where job numbers change from the point of application to the signing of loan agreements, it is not the result of an arbitrary or disorganized approach, rather it is reflective of a process designed to achieve the most accurate job retention and creation figures possible for each project. This includes converting part time jobs to full-time equivalency status, something the ABO did not do in their analysis.

While there are modifications to the process that can be done to improve both job number consistency, this section would be more accurately stated:

“LDC officials work with applicants to ensure project job numbers, at the outset of the application, at the time of the closing for the loan, and throughout the loan monitoring process, are indicative of the actual number of full-time equivalent employees of the applicant and are in line with the guidelines of the loan programs. There are occasions where this leads to discrepancies between loan application, resolution and agreement figures. The LDC needs to create a process which provides more consistency and clarity in the job retention and creation figures throughout the lending process.”

We recommend that the ABO adopt this language in its final report.

SLCIDA-LDC Comment: The SLCIDA-LDC -- sometimes to manage risks, sometimes to bring additional resources to a project by leveraging its own participation -- does partner with other loan funds in the region. This has led to a limited number of circumstances in which job retention and creation numbers are not directly captured by loan documents of the SLCIDA-LDC. In those cases where it is not the lead lender, in the future the SLCIDA-LDC can either work with the lead to ensure that the job numbers are being captured in the lending documents, or will utilize its own documents.

SLCIDA-LDC Comment: This was an isolated human error, not indicative of an overall system failure in the lending process.

Note
15

SLCIDA-LDC Comment: The SLCIDA-LDC does share services with other entities, and has conducted joint meetings with them. However, the ABO report fails to support its assertions with any citations that demonstrate that any of these practices is incompatible with New York State law or has resulted in any actual harm to the SLCIDA-LDC.

The SLCIDA-LDC contends, on the contrary, that since the IDA created the SLCIDA-LDC in 1986, it was, and has continued to be, quite explicit that the organizations will work together to deliver economic development services in St. Lawrence County. The SLCIDA-LDC further contends that doing so is consistent with State law and makes good economic sense in so far as it minimizes bureaucratic duplication.

The SLCIDA-LDC is organized, and has used its statutory powers to participate in a coordinated program of economic development by collaborating closely with the SLCIDA in ways that fully capitalize on both organizations' purposes and powers under New York State Law.

In failing to recognize that the law assigns to the SLCIDA-LDC significant discretion in determining whether such collaboration is in best interests of the SLCIDA-LDC, the ABO draws the incorrect conclusion that the SLCIDA-LDC board is failing to properly oversee the SLCIDA-LDC's operations. In so doing, the ABO also fails to acknowledge that such an arrangement minimizes administrative duplication and consequent costs and delays and is ultimately beneficial for the LDC.

SLCIDA-LDC Comment: The SLCIDA-LDC has conducted joint meetings. However, the ABO report fails to provide any citations that demonstrate that this is incompatible with New York State law. As has been stated, the SLCIDA-LDC contends that since the IDA created the SLCIDA-LDC in 1986, it was, and has continued to be, quite explicit that the organizations would work together to deliver economic development services in St. Lawrence County. The SLCIDA-LDC further contends that doing so is sanctioned by State law and makes good economic sense in so far as it minimizes bureaucratic duplication.

As was pointed out to the ABO reviewers during their visit, the SLCIDA and SLCIDALDC for years held consecutive, but separate, meetings. In the past few years they had, for purposes of efficiency, met simultaneously. As this practice was recently criticized by the OSC in a recent review of an IDA elsewhere in the State, the SLCIDA and SLCIDA-LDC had already decided to revert back to the practice of meeting separately.

In the case of the St. Lawrence River Valley Redevelopment Agency, which has joint approval authority with the SLCIDA-LDC for its (the River Valley Agency) funds, it is not clear why a concurrent meeting would be inadvisable.

It should be noted that the actions or activities of each board were clearly spelled out by the minutes of the meeting and in any resolutions that were passed by the various boards.

Finally, as a point of fact, though the SLCIDA-LDC does not currently have any active projects in the Gouverneur Industrial Park, it did participate in a project with Kinney Drugs, a firm with a facility in the Park and would be a likely participant in any future projects developed within the Park.

SLCIDA-LDC Comment: Rather than criticizing the SLCIDA-LDC's cooperation with the IDA, a case could be made that the ABO could be praising the arrangement because it both abides by applicable law and makes economic development in the County more efficient.

The SLCIDA-LDC contends that since the IDA created the SLCIDA-LDC in 1986, it was, and has continued to be, quite explicit that the organizations will work together to deliver economic development services in St. Lawrence County. The SLCIDA-LDC further contends that doing so is consistent with State law and makes good economic sense in so far as it minimizes bureaucratic duplication.

In the end, provided that the SLCIDA-LDC abides by the powers and purposes allowed to it by the Not-For-Profit Corporation Law – which it does – its members are the “appropriate” body to decide what is in the best interests of the SLCIDA-LDC and how to manage the organization. If the SLCIDA-LDC board concludes, in keeping with its interpretation of applicable Law, that permitting its staff to work closely with IDA staff is in the SLCIDA-LDC's best interests, then it is not aware of any legal impediment to engaging in this most sensible collaboration.

Note 2

SLCIDA-LDC Comment: SLCIDA-LDC staff are responsible for doing far more than “managing the various financial assistance programs”. And, there is nothing that requires them, or the SLCIDA-LDC itself, to confine their marketing efforts and expenses simply to marketing loan funds.

The SLCIDA-LDC has already made the argument several times in this Response that its purposes and powers allow it to engage in a wide variety of development activities and to do so in collaboration with other entities. Since section 202(a)(7) of the NPC Law permits make financial contributions to other not-for-profit organizations, there should be no doubt that making funding arrangements for marketing the collective loan funds, other development incentives and the County’s advantages generally is a choice that applicable law affords to the SLCIDA-LDC.

Finally, as the draft review notes, the SLCIDA-LDC, acting in concert with and for the RVRA, does indeed use RVRA funds to finance general marketing expenses that are not tied to or allocated to specific loan funds. This is done with the full approval of the RVRA and such expenditures are authorized by the agreement between the SLCIDA-LDC and the RVRA, as well as included the annual budget approved by the RVRA and incorporated into the SLCIDA-LDC’s consolidated budget.

SLCIDA-LDC Comment: As was pointed out to ABO reviewers numerous times, the SLCIDA-LDC’s payment to Massena Electric Department (MED) is provided on behalf of the RVRA for a number of services MED provides to the RVRA in addition to allocating low-cost power. These services, as spelled out in the Agreement between the RVRA and the MED, include:

Note 8

- A. Provide guidance on the uses and benefits of low cost hydro power.
- B. Provide a central point of contact for, and evaluation of, any revised power contract proposals.
- C. Administer the Power Contract with NYPA.
- D. Facilitate Strategic Partnerships and serve as representative on energy trade organizations.
- E. Provide advice on energy related issues. If these matters require additional support they will be approved in advance by the RVRDA.
 - i. Outside counsel may be required beyond the scope of MED’s expertise for some of these issues, and such costs shall be in addition to the costs set forth in Article III, with costs to be borne by the RVRDA.
 - ii. Outside counsel may be required beyond the scope of MED’s expertise for certain technical issues, and such costs shall be in addition to the costs set forth in Article III, with costs to be borne by the RVRDA.
- F. Support Economic Development and Marketing efforts.

G. Coordinate power incentive program rates and projections with project applicants.

Despite being provided this information, the reviewers continue to characterize the agreement between the St. Lawrence River Valley Redevelopment Agency and the Massena Electric Department as being solely for the allocation of power.

Subsumed under one or more of these headings: Mr. McMahon and his staff have, for example: made numerous presentations to the RVRA board on power pricing; assisted with negotiations with the NYPA to obtain additional low cost hydro-electric allocations; explained how the complexities of the electricity markets complicate providing power incentives in St. Lawrence County; evaluated the power needs of prospects; helped to target marketing materials to highlight the value of low cost power; and met with prospects to help market the power.

It was also pointed out that the superintendent of the Massena Electric Department, Andrew McMahon, is a board member of the SLCIDA-LDC and has indeed been absent from the past two votes where payments to the Massena Electric Department were authorized. As a point of clarification, there have been seven votes on the allocation by the SLCIDA-LDC to the Massena Electric Department on behalf of the St. Lawrence River Valley Redevelopment Agency, Mr. McMahon was there for 4 four of them, and abstained each time.

Authorities Budget Office Comments

1. The specific language in the report was revised based on the LDC's response to the draft report.
2. Our report does not criticize the LDC for collaborating with or sharing services with other economic development agencies. Instead, our report addresses the LDC's apparent treatment of several economic development entities as a single organization rather than independent entities, and the assumption of costs that are related to other entities.
3. LDC officials claim that the LDC was formed or created by the St. Lawrence County Industrial Development Agency. However, local development corporations are formed pursuant to Section 401 of Not-For-Profit Corporation Law, which stipulates that the entities can only be incorporated by natural persons at least 18 years of age. Since the IDA is not a natural person, it is incorrect to state that the LDC was formed or created by the IDA.
4. As indicated in the report, the loans to the IDA do not meet the criteria established for the loan programs.
5. The ABO does not disagree that the board has the ability to decide to deviate from the loan criteria, however these discussions and decisions should be done so formally as part of the public record. Since there was no such documentation, it is not clear whether the board did make such a determination and decision or whether the loan criteria was inadvertently violated.
6. The LDC indicates that the loan agreement is the final document of record for the loans. However as indicated in our report, the board does not review the loan agreements and as such, the board resolution is the only record that reflects what was approved by the board.
7. Based on the LDC's response to the draft report, some loans were removed as exceptions from the report and the report was modified accordingly.
8. These issues were removed from the report based on the LDC's response to the draft report.

9. As indicated in the report, the dissolution plan was approved in August 2016. The formal dissolution has yet to be completed.
10. Simply because it is perceived to be “common knowledge” that the two entities are related does not preclude the board from publicly disclosing the relationship during the discussion and approval of the loan.
11. The LDC’s policy indicates that a conflict is deemed to exist when an individual is in position to approve an action which could potentially benefit...any organization in which he is a director, trustee... This would appear to support a transaction where the LDC approves a loan to the IDA is included in the definition of a conflict.
12. LDC officials are presenting information that was obtained subsequent to the loan approval, and there is no record to indicate that these factors were considered at the time the loan was approved.
13. The LDC’s response is indicative of its apparent perspective and underlying cause to many of the issues raised in the report: it views the LDC, IDA and CRC as the same organization, rather than separate and distinct legal entities each with its own board of directors.
14. This description reflects comments made to ABO staff by LDC officials during the conduct of our review, and also an accurate representation of the LDC’s response to our draft report regarding the St. Lawrence Brewing project.
15. While the discrepancy between the loan agreement and the terms cited in the resolution may be due to human error, we believe that the error would likely have been detected had the board reviewed the loan agreement.