



AUDIT OF ULSTER COUNTY CARES I GRANT PROGRAM

**Office of the
Ulster County Comptroller
March S. Gallagher**





ULSTER COUNTY OFFICE OF THE COMPTROLLER

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Executive Summary:

The audit of the Ulster County Small Business CARES grant program found that eligibility determinations deviated from contractual requirements and expenditures did not align with legislative intent. Findings of the audit include grants made to ineligible recipients, grant funds spent on items that were not in line with legislative intent, a potentially fraudulent award causing a \$15,000 loss to County taxpayers, and a failure to fulfill IRS informational return filing requirements. Addressing these issues is crucial for transparency, accountability, and the effective allocation of funds to support Ulster County businesses and protect taxpayer resources. We acknowledge the recent change in leadership within the Office of Economic Development and feel it's important to clarify that the findings of this audit are not associated with the new administration.

Background

In response to the global pandemic, the federal government enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") which provided economic stimulus. New York State used CARES Act funding to aid local governments through the Community Development Block Grant program administered by the New York State Office of Community Renewal ("NYS OCR"). In September 2021, the Ulster County Legislature passed Resolution 390, granting authorization to the Ulster County Executive to enter a contract with the NYS OCR, securing Federal funding for a program aimed at supporting small businesses in the generation and retention of jobs accessible to income-eligible individuals. Following this, Resolution 391 formalized a contract between the County and the Ulster County Economic Development Alliance ("UCEDA"), assigning responsibility for overseeing all facets of the program operation to the UCEDA. As the UCEDA has no staff on payroll, the implementation of the program was carried out by staff from the Ulster County Department of Economic Development.

The program aimed to offer financial support directly to businesses responding to or affected by the COVID-19 Pandemic. It allowed for the reimbursement of a diverse range of expenses, such as rent, payroll, equipment, and other operational costs.

Objectives

The objectives of this audit were to:

- Evaluate the adequacy and effectiveness of the disbursement process implemented by the UCEDA in accordance with federal funding guidelines.
- Assess the accuracy and completeness of documentation related to disbursement transactions.
- Determine the extent of compliance with relevant regulations, policies, and procedures governing the disbursement of CARES I.

Scope

The audit encompassed the entire implementation of the CARES I grant program, including the development of the program structure, marketing the program to eligible businesses, the application submission and review process within the Office of Economic Development, NYS OCR's evaluation of job creation and retention efforts, fund distribution, and the retrieval of improperly disbursed funds from a grant recipient, followed by reimbursement paid back to NYS OCR. Our review included interviews with UCEDA and Economic Development staff, review of program materials circulated within the County and to potential participants, review of email and other communications between staff and applicants, and review of applications and supporting eligibility documentation submitted.

The Ulster County Comptroller's August 2023 [Audit of the Ulster County CARES 2 Grant Program](#) showed significant shortcomings in Ulster County's administration of that program. That audit report included findings pertaining to eligibility criteria, application processes, and fund distribution. These findings also apply to the current audit, highlighting areas for improvement and the need for enhanced transparency in future County grantmaking endeavors. The following findings from the CARES 2 audit are relevant to the CARES audit as well:

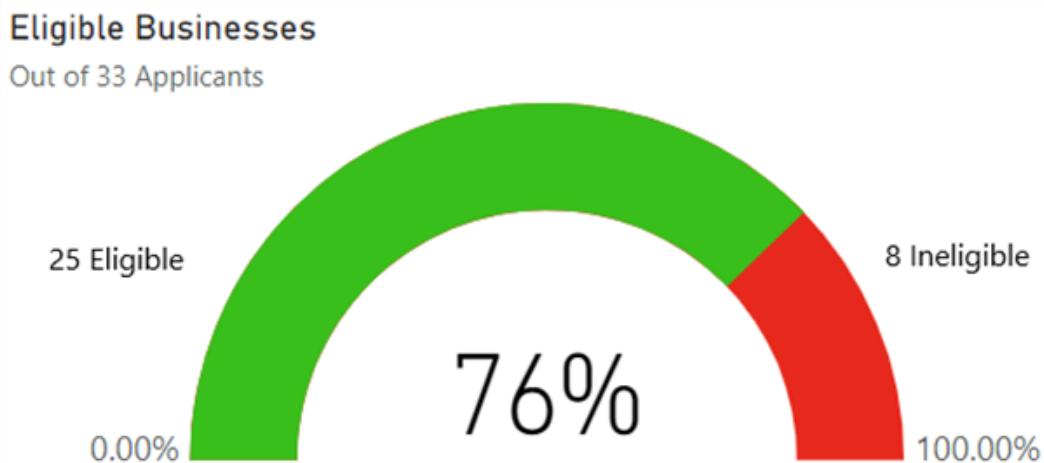
- Unclear Contractual Language. The contract between the UCEDA and Ulster County for both CARES grant programs stated that "the subrecipient shall use the Annual Gross Income reflected on the applicant's NYS tax returns to determine income." Annual Gross Income is not a line that exists on a NYS Resident Income Tax Return (Form IT-201), and no further definition was provided. To conduct this audit, "Adjusted Gross Income" was used as the threshold to determine grant eligibility.
- Contractual Requirements were ignored in the administration of both grant programs. Grant awards were announced and paid to companies that were not eligible to receive a grant under the contract between Ulster County and the UCEDA. This finding is discussed in more detail below.

Finding 1 - Ineligible businesses received grants

Condition: 24.2% of grantees were ineligible, receiving 24.4% of the grant funds

Effect: We found that eight grant recipients were ineligible for a grant under the requirements set forth in the contract between Ulster County and the UCEDA but were forwarded to NYS OCR and received grant funding through the program. The companies were ineligible for the following reasons:

- Two companies were determined to be ineligible based on the Adjusted Gross Income ("AGI") shown on the personal income tax returns of the company's owners. The owners of these companies had AGI that exceeded the threshold to qualify as Low to Moderate Income ("LMI"). Total payments of \$51,646 were made to these companies.
- For three companies, we determined that not enough information was collected by the UCEDA to make an eligibility determination. Total payments of \$79,940 were made to these companies.
- Three companies were found to be ineligible for a grant award under the program based on the residency status of the owners of the company. The contract between Ulster County and the UCEDA specified that the "Program will provide small business assistance in the form of a grant for small business owners residing in Ulster County." According to the addresses of the owners as provided on their personal income tax returns, total disbursements of \$99,583 were made to businesses owned by individuals residing outside of Ulster County. One company was ineligible for both the AGI and residency reasons, that company was included in the AGI/LMI category.



Eight of the 33 awardees were ineligible. In total, the program disbursed \$947,075 to small businesses, of which \$231,169 went to ineligible businesses.

Cause: Although the Ulster County Department of Economic Development staff were under the assumption that NYS OCR was determining eligibility, communication between this office and NYS OCR verified that NYS OCR relied on the County locally to make eligibility determinations. State approvals primarily focused on meeting state and federal regulations, while the UCEDA board relied on the State's judgement for all eligibility determinations.

Criteria: Ulster County's Application to NYS OCR which was incorporated by reference into the contract between NYS OCR and Ulster County indicates that Ulster County and/or the UCEDA will determine eligibility:

- The program description section of the contract between Ulster County and the UCEDA states that "[t]he Firm's participation shall include: (i) ensuring that the project will be able to meet all Program milestones, (ii) ensuring that businesses assisted by this Program have either income eligible owners or employ 51% or more individuals of low-to-moderate income . . .".
- The Capacity section of the grant application noted that the use of UCEDA would facilitate formalizing a selection process to prioritize LMI businesses and retain all communications and justifications as to the selection.
- The budget narrative states that grant administration fees would enable verification of client eligibility.

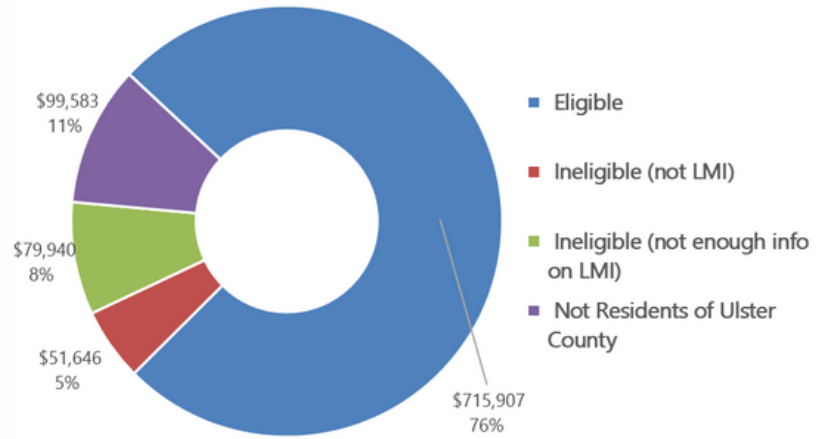
Schedule B of the contract between Ulster County and the UCEDA required that the applicant meet all program eligibility requirements. The appropriate process for evaluating these criteria would be reviewing the tax information of business owners for applicants with less than five full time employees or review the employee income certification forms for businesses with five or more than five full time employees.

Recommendation: The County should enhance communication channels among the Legislature, Executive departments, County component units such as the UCEDA, and State Offices. This is crucial to guarantee that the resolution's intent for awarding grant funding is properly executed. This improvement may involve establishing a clear understanding of who is responsible for activities such as eligibility determinations outlined in contracts.

Finding 2 - Use of funds deviated from legislative priorities

Condition: Many of the grant recipients use of grant funding did not align with the legislative intent of the program. This ranges from Airbnb setups receiving grant funding to supporting businesses not owned by Ulster County residents. After reviewing invoices submitted to the UCEDA for reimbursement, we found that grant funds were used to purchase the following items:

CARES I Funds Disbursement by Business Eligibility



Effect: The Ulster County Legislature sought grant funds to support established local small businesses facing challenges in maintaining operations during the pandemic. As the CARES grant program, funded through NYS CDBG was implemented, it allowed for broader guidelines that made startup businesses and those businesses owned by people residing outside of the County eligible for assistance. Four business owners who were awarded funds provided tax returns showing that they live outside Ulster County.

Ulster County has encountered notable housing shortages in recent years, partly attributable to a rise in short-term rentals. The Legislature has been grappling with the challenge of accommodating these trends within our community while also addressing the needs of constituents who are facing difficulties in securing housing. At least one business was awarded \$34,750 to upgrade their short-term rental.

Cause: The grant funding passed through NYS OCR, utilizing CDBG/HUD funds, which adhere to both state and federal rules and guidelines. These regulations were more lenient than the provisions of the UCEDA's contract with Ulster County. The Legislature did not specifically exclude businesses such as short-term rentals that may have impacts on the housing market that are contrary to legislative priorities.

Criteria: The initial submission to NYS OCR describing the purpose of the program, and the agreement between Ulster County and the UCEDA emphasize the significance of financially supporting businesses owned by residents of Ulster County. Furthermore, during committee meetings in 2021, the Legislature expressed concerns about the program but indicated a delegation to the administration to address their concerns, underscoring their awareness of the necessity to support small businesses in Ulster County.

Recommendation: To address the issue of recipients not aligning with legislative intent in funding distribution, we recommend clarifying legislative goals, strengthening grant agreements, enhancing monitoring by possibly establishing oversight committees that include the Legislature, and exploring legal remedies when necessary. These measures collectively ensure transparency, accountability, and alignment with the intended purpose of the funding to support Ulster County resident businesses.

Finding 3 - Ulster County taxpayers reimbursed the state for a potentially fraudulent award

Condition: Ulster County taxpayers became responsible for a \$15,000 reimbursement to NYS OCR in connection with an ineligible payment made through the CARES grant program.

Effect: One grant recipient, who was actively pursued by the UCEDA for grant funding and eventually secured \$15,000, failed to adhere to State follow-up compliance requirements. Despite numerous attempts by the Office of Economic Development staff to reach out, the individual did not provide the necessary information.

Cause: The basis for this individual's funding approval remains unclear, as they failed to provide sufficient documentation to verify compliance with the LMI requirements to be eligible. When asked to provide an income tax return to prove eligibility, the grant recipient's agent stated that they had not met the filing requirement threshold to necessitate an income tax return, but the grant award was made despite this. The agent working on behalf of the business was employed by Galileo Technology Group. On September 10, 2021, the principal of Galileo Technology Group, Vincent Cozzolino, was sentenced to five years' probation and payment of \$1 million in restitution for his conviction of Corrupting the Government in the third degree, a class D felony. The UCEDA continued to conduct business with Galileo Group acting as the agent for the business after the widely publicized felony conviction of Cozzolino.

Criteria: The contract between Ulster County and NYS OCR specifies that the recipient is responsible for the subcontractors and that subcontractors "shall...comply with all applicable Federal, State and Local laws" which requires the business to meet HUD's National Objective and demonstrate evidence of job creation.

Recommendation: We recommend that Ulster County authorities initiate a thorough investigation into the circumstances surrounding the inappropriate grant allocation leading to the \$15,000 reimbursement obligation to New York State. This investigation should aim to identify the root causes of the misallocation, ascertain any potential misconduct, and hold accountable those responsible. The County should review the potential for converting grants into secured loans with Uniform Commercial Code filings covering equipment and other tangible purchases. Such an inquiry is crucial for maintaining public trust, ensuring transparency, and taking decisive corrective action to deter similar occurrences in the future. Further, the County should have a policy in place that prevents dealings with companies involved in government corruption schemes, such as Cozzolino's GTG.

Finding 4 - The UCEDA did not issue or file appropriate tax forms

Condition: The UCEDA did not file the required 1099-G information returns with the IRS. As of the date of the first draft of this report, January 11, 2024, we have not observed the completion of this task by the UCEDA.

Effect: Payers of taxable grants are generally required to provide form 1099-G to grant recipients by the end of the January following the year that the disbursement was made. The deadline to provide copies of the forms to the IRS is the following February. Nearly all the CARES grant awards were paid in 2022, making the deadline for submitting the forms to the IRS February 28, 2023. Failure to file these forms could trigger a penalty of \$290 per form for the 2022 payments. If the IRS determines intentional disregard, the penalty increases to \$580 per form. Currently we calculate the total penalty for UCEDA to be \$9,280 for filing after August of 2023. Should IRS choose to treat this as a case of intentional disregard, the penalty would be \$18,560.¹ Enforcement of these rules is at the discretion of the IRS.

Charges for Each Information Return or Payee Statement

Year Due	Up to 30 Days Late	31 Days Late Through August 1	After August 1 or Not Filed	Intentional Disregard
2024	\$60	\$120	\$310	\$630
2023	\$50	\$110	\$290	\$580
2022	\$50	\$110	\$280	\$570
2021	\$50	\$110	\$280	\$560
2020	\$50	\$110	\$270	\$550
2019	\$50	\$100	\$270	\$540
2018	\$50	\$100	\$260	\$530
2017	\$50	\$100	\$260	\$530
2016	\$50	\$100	\$260	\$520
2011 - 2015	\$30	\$60	\$100	\$250

Cause: During the administration of the Cares grant program through UCEDA, both the organization's board and management were not aware of the filing requirements. The board of the UCEDA depended entirely on the assistance of staff from Ulster County's Office of Economic Development and the Department of Finance to ensure the fulfillment of all financial and legal commitments.

Criteria: The IRS has stated that if governmental entities utilize CARES Act funds to create a grant initiative for business support, the funds received by businesses are not exempt from gross income under the Internal Revenue Code and may consequently be subject to taxation. As a result of the taxability of the grants, the UCEDA is required to file 1099-G forms and distribute them appropriately to the recipients.²

Recommendation: We advise UCEDA to issue invoices to the County for the specified contracted amounts designated for program administration and to develop a procedure to determine whether this is needed each year. This will allow them to secure the necessary staff or expertise for consultation, ensuring the fulfillment of all requirements associated with programs like the CARES business grant.

[1] <https://www.irs.gov/payments/information-return-penalties#calculate>

[2] <https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions#:~:text=Yes.,Code%20and%20therefore%20is%20taxable>

Conclusion –

Much like the previous audit of the CARES II grant program, the CARES I audit has revealed significant deficiencies in eligibility determination and the program's overall alignment with Legislative intent. The findings underscore a lack of clarity in contractual language that aided in creating a program that deviated from its intended focus of supporting existing businesses owned by Ulster County residents, and instead channeled funds to ineligible businesses. Additionally, the inappropriate allocation of funds resulted in a reimbursement obligation to New York State. Rushing the award process and allowing a company with a potentially ineligible owner to take a grant has resulted in a loss for the County of \$15,000. Finally, the failure to complete required IRS filings poses potential financial penalties for the UCEDA and ultimately the Ulster County taxpayers.

Ulster County Economic Development Alliance

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To: March Gallagher, Ulster County Comptroller; Charles Dinstuhl, Director of Internal Audit and Control

From: Amanda LaValle, CEO/President UCEDA, Deputy County Executive *ALL*

CC: Gregory Simpson, Chairperson UCEDA; Jen Metzger, Ulster County Executive; Christopher Jaros, CFO UCEDA; Roseann Daw, UC Commissioner of Finance; and, Kevin Lynch, Director UC Department of Economic Development

Re: Response to Draft Audit of the Ulster County "CARES I" Grant Program

Date: 02/28/2024

Thank you for this opportunity to respond to the draft audit findings for the "CARES I" program provided to us on 02/12/2024. We appreciate the time the Comptroller's office has spent on reviewing the program. As stated in the draft audit, the CARES I program was authorized by the Ulster County Legislature in 2021 in collaboration with the prior administration. Resolutions 390 and 391 were adopted by the Ulster County Legislature in 2021 formalizing the sub-recipient contract between the Department of Economic Development (DED) and the Ulster County Economic Development Alliance (UCEDA). Awards were made in late 2021 through early 2022 with 98.4% of disbursements taking place in 2022 and the remainder in Q1 of 2023.

We believe it is important to stress that the CARES I grant program successfully provided \$932,057.27 of funding to 32 businesses located in Ulster County who met the National and New York State objectives of job creation or retention in the immediate wake of the COVID-19 pandemic. It is also critical to note that the award set up; reimbursement request; and payment documentation; as well as two annual performance reports were submitted to and approved by New York State. All but one awarded business was able to document their use of grant funding in meeting those objectives.

Our initial review of the CARES I program focused on identifying any departures between Ulster County Department of Economic Development's sub-recipient contract with UCEDA and the program guidelines outlined by New York State.

Overall, we concur with the findings regarding the administration of the CARES I program and find that there were inconsistencies between the program design, sub-recipient contract language and its

implementation. Under New York State’s program guidelines, business eligibility was based on the business’ ability to meet one of two HUD National objectives—creation or retention of jobs—as well as based on business owner’s income, number of employees and/or a low to moderate income test for 51% of employees. These program eligibility pathways were not transposed properly into the sub-recipient contract between Ulster County Department of Economic Development and UCEDA. This inadvertently created specific eligibility pathways based solely on number of employees instead of allowing for the National objective to be taken into consideration per the New York State program guidelines.

UCEDA, as well as the Office of the County Executive, has undergone a change in leadership in the time since the program was developed and those errors were made. As a new administration, County Executive Metzger has prioritized addressing many of the Comptroller’s stated concerns regarding UCEDA. Significant changes have already been implemented and are ongoing which we believe will address the concerns regarding the organization.

Response to Findings

1- Ineligible Businesses Received Grants-

The CARES I grant program successfully awarded and disbursed \$932,075.59 of funding to Ulster County businesses who met the programmatic National and New York State objectives. We believe it is important to stress that all of the award set up, reimbursement request, and payment documentation related to the program, were reviewed and approved by New York State. In addition, 32 of 33 contracted awardees were able to document their use of grant funding in meeting those objectives.

The sub-recipient contract between Ulster County and UCEDA did not effectively capture the nuances of eligibility and pathways for grantees to accomplish the National and New York State objectives and requirements. In making eligibility determinations, former UCEDA staff overlooked that the guidance provided by New York State did not align with the sub-recipient contract language. As a result, several awarded businesses who met the National and State eligibility pathways did not meet the pathways as stated in the sub-recipient contract between Ulster County and UCEDA. Although we agree that additional County contractual language may have been overlooked in grant awards, we do not agree with the contention of these awards being ineligible since they met State and National objectives.

Note 1

2– Use of Funds Deviated from Legislative Priorities-

The sub-recipient contract and grant agreement with New York State did not exclude any particular business type from receiving an award. The program was publicized by the County as potentially including “a wide variety of business expenses, including rent, payroll, and equipment...” (CARES press release, 9/29/21).

We agree that as our awareness of the impacts Short Term Rentals (STRs) have on our local communities continues to grow, the inclusion of STRs as a reimbursable business type could be seen, in hindsight, ill-advised.

Additionally, in the draft audit it was noted that “the [UC] Legislature did not specifically exclude businesses that may have impacts contradictory to legislative priorities.” Furthermore, Resolutions 390 and 391 of 2021, authorizing the contracts, did not specify any additional legislative priorities or additional program intent. Operating and inventory expenses vary based on the type of business awarded. All expenses listed in the audit were not excluded in any Legislative resolution or contractual agreement.

3– Ulster County Taxpayers Had to Reimburse the State for a Potentially Fraudulent Award-

As detailed in this audit finding, a \$15,000 approved award to a business was recaptured by New York State due to lack of required, follow-up reporting documentation. The UCEDA (with 8/22/23 board approval) reimbursed the County—in full—from its operating account in September 2023.

Note 2

4– The County Did Not Issue or File Appropriate Tax Forms-

We appreciate your office informing staff that UCEDA should be providing 1099-G forms to the CARES recipients as the CARES grants may be considered taxable grant income. This requirement was not known to UCEDA staff, UC Department of Finance staff, nor was this information part of any program instructions or information provided by New York State. The 1099-G forms were provided to all awardees, who were responsive to our request for a W9 form, on January 31, 2024 prior to management’s receipt of the draft audit on 02/12/2024. In the future, if UCEDA or Economic Development is to administer a grant program, it is our intention to require grantees to provide their completed W9 forms during standard project set-up procedures and communicate that tax forms will be issued in adherence to appropriate IRS guidelines.

Note 3

Discussion and Programmatic Response

Based on our review of CARES I and consistent with the prior review of the administration of the CARES II program, we have concluded that the programs were tantamount in their contractual deficiencies with regard to programmatic requirements. As with the CARES II audit, it has been determined that the former President / CEO, who also served as the Director of Economic Development, was responsible for the contract discrepancies and its execution. Staff continue to take necessary steps to review both UCEDA and County processes and procedures, including those relating to program development and grant-making, to ensure sound and accountable decision-making and transparency. The UCEDA Board is in the process of procuring an outside financial and operations management consultant to review existing procedures and policies (available on the [website](#)) and provide guidance on procedures to solidify and expand internal controls. Recommendations of the consultant will be used to draft an internal compliance strategy for UCEDA. This strategy will be a comprehensive plan to ensure UCEDA adheres to all relevant laws, regulations, contractual requirements, and internal policies. We anticipate this strategy will focus on the promotion of ethical conduct, preventing conflicts of interest, safeguarding data, maintaining transparency, and assessing staff capacity and resourcing. If future grant programs are created, Economic Development and UCEDA will work closely with the County Attorney’s office to ensure proper language is included in all grant agreements to require awardees to comply with all funding source requirements.

Summary and Conclusion

UCEDA plays a valuable and unique role in County government as an economic development tool for the betterment of Ulster County. UCEDA's status as a public authority allows increased latitude to perform certain tasks related to its mission. Clarity of purpose, accuracy of execution, and a continual culture of impeccable transparency are critical not only to effective performance of this valuable role but to earning and retaining public trust in the organization.

We have initiated and are committed to developing and reestablishing procedures at UCEDA to address the issues examined in this audit as well as to addressing other transparency and accountability concerns. We understand that an effective compliance strategy is an ongoing process that requires commitment from all levels of both UCEDA and the County. We believe that by prioritizing compliance and ethics, UCEDA can rebuild trust with stakeholders and foster a culture of integrity. Again, we would like to thank the staff of the Comptroller's Office for their review and expertise in this review and look forward to our continuing communication in improving these processes.

Comptroller's Response to Management Comments

Note 1: The finding is that the awards did not meet the terms of the contract in which Ulster County placed additional criteria that went beyond the CDBG criteria based on the intent of the Ulster County Legislature in approving the contract.

Note 2: All UCEDA funds are Ulster County taxpayer funds as UCEDA is controlled by the County due to the makeup of its ownership structure and for financial reporting purposes is considered a blended component unit of the County, so its financial information is reported within Ulster County's financial statements.

Note: 3: We appreciate that based on our findings communicated prior to the final version of the audit, management took appropriate steps, and we further note that management has since filed 2022 and 2023 form 1099s to award recipients as recommended. Unfortunately, upon review of the forms 1099-G that were filed, we noticed that for the 2022 tax year, the UCEDA did not collect the information required to file the forms for four grant award recipients with grants totaling \$85,921. For the 2023 tax year, information was lacking for one award with a grant in the amount of \$8,250. We are pleased to see that management's response indicates that for future grant programs, efforts will be made to collect form W9 from awardees for future grant programs.