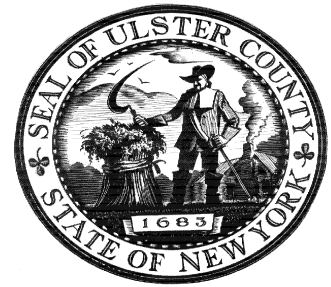


# ULSTER COUNTY COMPTROLLER'S OFFICE

Elliott Auerbach, Comptroller



May 29, 2018

Programmatic Review of the  
Ulster County Economic Development Alliance, Inc.

## Executive Summary

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The Ulster County Economic Development Alliance, Inc. (“UCEDA” or “Corporation”) is a local development corporation (“LDC”) operating in Ulster County, New York. Rebranded in 2014 with its current name, mission, and governance structure, UCEDA was formerly known as the Ulster County Development Corporation (“UCDC”).

UCEDA is incorporated under Section 1411 of New York’s Not-for-Profit Corporation Law, which allows counties, cities, towns, and villages to organize LDCs for a variety of charitable and/or public reasons. These purposes are expansive, including but not limited to: alleviating unemployment, increasing employment opportunities, offering job training or instruction programs, soliciting new businesses, aiding the development or retention of existing industries, and “lessening the burdens of government and acting in the public interest.”

As an LDC, UCEDA is granted significant authority to effectuate broad programming related to economic development in Ulster County. We have outlined the sections of our report with regard to UCEDA’s major programmatic initiatives and operations as follows: **(I)** Marketing, Education, and Support; **(II)** Ready2Go; **(III)** Marketing of Surplus Properties; **(IV)** Ellenville Million; **(V)** Revolving Loan Fund; and **(VI)** Corporate Governance and Structure.

While the sum of UCEDA’s activities and expenses may generally align with far-reaching goals of fostering economic development within our region, our review suggests that room for improvement and transparency exists in several areas. The following recaps our observations and findings:

### **I. Marketing, Education, and Support:**

- a. UCEDA’s contract with the County allows for its operations to be overfunded in excess of actual expenses;
- b. Contractual terms for invoices are in conflict and/or not being followed; and
- c. Invoicing practices are generally deficient, do not contain adequate supporting details, and result in untimely submissions

### **II. Ready2Go:**

- a. Work orders are not sufficiently itemized and lack details related to specific costs;
- b. Inadequate contractual provisions and program monitoring may allow for conflicts of interest; and
- c. The program should be formally closed and/or reimagined due to shifting goals and repurposing of funding away from original intentions

### **III. Marketing of Surplus Properties:**

- a. County property that is still in use was incorrectly designated as surplus and transferred to UCEDA; and
- b. Process by which offers for property are accepted is not fully transparent and may not lead to best value for sale

### **IV. Ellenville Million:**

- a. Inefficient project monitoring may have led to delayed project commencement, resulting in majority of funding not being spent since program’s inception in 2015

### **V. Revolving Loan Fund:**

- a. Late fees were reasonably assessed

## **VI. Corporate Governance and Structure:**

- a. Very little diversity and questionable independence among the Board of Directors, UCEDA staff, and Ulster County government; and
- b. Lack of transparency regarding UCEDA's financial arrangement with administrative staff from Ulster County

### **General Review Objectives**

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The general objectives of our programmatic review were:

- To analyze the specific mission of UCEDA and the purposes for which it was formed, determining if all activities and/or expenses of UCEDA are consistent with those stated intentions;
- To examine UCEDA's corporate governance structure, including its relation to municipal governments and other local authorities; and
- To measure UCEDA's progress in meeting self-listed performance goals related to supporting and/or increasing the visibility of economic development in Ulster County.

We extend our gratitude to UCEDA for their professional courtesy and responses to our informational requests throughout the entirety of the review process.



# I.    **MARKETING, EDUCATION, AND SUPPORT**

## **MES: Background**

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Since 2014, Ulster County has contracted with UCEDA each year for an array of marketing, education, support, and program administration services (referred to as “MES” for the purposes of this report).<sup>1</sup>

*Marketing* efforts include a general social media presence, as well as the roll out of an annual marketing plan for Ulster County in order to highlight the area and appeal to new businesses. An overview of marketing accomplishments encompass the production of an Ulster County Economic Development Guide and the launch of a new UlsterForBusiness website.

*Educational* activities include hosting, attending, and presenting conferences, webinars, and meetings, which target and connect Ulster County’s businesses, municipalities, and nonprofits. Among the synopsis of events and accomplishments provided by UCEDA were hosting Hudson Valley Tech Meetups, the Catskills Conf, and Building Ulster County Together Breakfasts; speaking at various Chamber of Commerces, classes, and community group events; and offering seminars and networking events to regional entrepreneurs, craft food and beverage producers, and others.

*Support* services involve providing public and private stakeholders with “access to needed resources and [ancillary] services related to marketing and education.” As examples, UCEDA has conducted grant writing workshops and assisted with NYS Consolidated Funding Applications.

*Program administration* relates to operational “support of County programs, including but not limited to the Revolving Loan Fund, Shovel Ready, and Ready2Go programs.” The following chart shows the historical contract amounts for MES services from 2014 through 2018:



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<sup>1</sup> *See gen* Agreement for Professional Services between the County of Ulster and Ulster County Economic Development Alliance, Inc. (first dated February 2016), outlining “certain economic development services” to be provided to the County by UCEDA.

## MES: Review Objectives

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The objectives of our review were:

- To analyze the contract(s) between Ulster County and UCEDA for marketing, education, support, and program administration services, ensuring that contractual terms and conditions are followed; and
- To analyze the records related to the contract(s), determining if all activities and/or expenses are reported accurately and in the best interest to the taxpayer.

## MES: Review Summary & Recommendations

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During our review of marketing, education, and support initiatives, we noted the following findings and observations:

### 1. Finding – Overfunding of Operational Expenses

The 2016 and 2017 contracts between Ulster County and UCEDA included “not-to-exceed” amounts of \$150,000 and \$170,000, respectively. Due to quarterly invoicing requirements (discussed at greater length as part of the second finding below), UCEDA has automatically received payments of \$37,500 (for 2016) and \$42,500 (for 2017) every three months regardless of services actually performed. These recurring, uniform payments have allowed UCEDA to be overpaid in excess of actual expenditures. As a result of deficient invoicing practices, our Office can only reconcile UCEDA’s expenses to the extent shown in the chart below:

UCEDA Operating Expense Reconciliation		
	2016	2017
Total UCEDA Operating Expenses	\$ 429,324	\$ 295,824
Non-MES Expenses		
Ellenville Million Initiative	\$ (218,870)	\$ (166,835)
Ready2Go Program	(87,092)	-
Provision for Loan Recoveries	<u>9,330</u>	<u>17,475</u>
Total Non-MES Expenses	<u>(296,632)</u>	<u>(149,360)</u>
Maximum MES Operating Expenses*	<u>\$ 132,692</u>	<u>\$ 146,464</u>

\*Includes Contractual Expenses, Professional Fees, Dues and Subscriptions, Insurance, Marketing and Advertising, Office Expenses, and Miscellaneous Expenses per UCEDA’s 2016 and 2017 Financial Statements (and reports of Independent Auditors).

After conservatively accounting for “Non-MES Expenses,” the “Maximum MES Operating Expenses” represent the highest cost of operations and initiatives under the MES contracts for 2016 and 2017. The value of each MES contract exceeds these amounts as demonstrated by the following:

<b>Marketing, Education, and Support Initiatives (MES)</b>		
	<b>2016</b>	<b>2017</b>
MES Contract with Ulster County	\$ 150,000	\$ 170,000
Marketing support from UCIDA	<u>5,000</u>	<u>5,000</u>
Total (MES) Support	155,000	175,000
Maximum MES Operating Expenses*	<u>(132,692)</u>	<u>(146,464)</u>
<b>Amount Over Funded</b>	<b>\$ 22,308</b>	<b>\$ 28,536</b>
<b>Combined Over Funded Amount</b>		<b><u>\$ 50,844</u></b>

\*Includes Contractual Expenses, Professional Fees, Dues and Subscriptions, Insurance, Marketing and Advertising, Office Expenses, and Miscellaneous Expenses per UCEDA's 2016 and 2017 Financial Statements (and reports of Independent Auditors).

As indicated above, MES initiatives were overfunded by at least \$22,308 (in 2016) and \$28,536 (in 2017). The "Combined Overfunded Amount" for both years was at least \$50,844, reflecting the difference between funding received for MES services and apparent operating expenses actually incurred as part of the contract(s). As invoices do not truly break down quarterly costs, we can only state the minimum overfunded amount after accounting for known revenues and expenses. However, these overfunded amounts would increase if a cost included in the "Maximum MES Operating Expenses" was not actually applicable to the MES contracts.

**Recommendation** – We noted that the 2018 contract was reduced to \$125,000, which may be more appropriate considering the annual operating expenses of UCEDA. However, the fact that MES contracts stipulate that UCEDA receives payments from the County for "services performed," any amount of funding above what is ultimately required for operations should be returned to the County's general fund and not be accumulated by UCEDA year-after-year. If the County wishes to continue with flat-rate, quarterly billing practices then the County should guard against overpayments by requiring in future agreements that UCEDA repay any amounts received in excess of total operating expenses related to the contract. This added layer of security would protect taxpayer dollars from being wastefully expensed at the County level when they were not ultimately utilized through a subsidiary program during the same year.

**2. Finding – Deficient Invoicing; Contractual Terms are in Conflict and/or not Being Followed**

Besides different funding levels, the 2016 and 2017 contracts between Ulster County and UCEDA both included identical provisions for deliverables and "Schedule B: Fees, Expenses, and Submissions for Payment." As reference, select Schedule B clauses from the 2017 MES contract are provided here:

**SCHEDULE B  
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT**

1. UCEDA's fee for services shall not exceed the amount of **ONE HUNDRED SEVENTY THOUSAND AND 00/100 (\$170,000.00) DOLLARS** for the Term of this Agreement.
2. UCEDA shall invoice the County's Planning Department on a quarterly basis for Services performed at a rate of **FORTY-TWO THOUSAND, FIVE HUNDRED AND 00/100 (\$42,500.00) DOLLARS** per quarter.
3. UCEDA shall submit to the County original invoices for payment.
4. UCEDA shall submit its invoices by the tenth (10th) day of each quarter, for the Services performed during the previous quarter.
5. UCEDA's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the County, to verify the claim.

Due to the wording of the contract(s), there is a conflict as to whether UCEDA should receive one-fourth of the contract amount on a quarterly basis regardless of services performed or if UCEDA should be billing the County for actual expenses incurred that are related to the contract. As described in the previous finding, this conflict has allowed UCEDA to receive greater County dollars than it actually expensed.

Moreover, invoices from UCEDA to the County include a brief “synopsis of events and/or achievements,” but do not adequately itemize costs. Invoices simply bill one quarter of the respective contract amount on a quarterly basis. These “synopses” are vague, lacking virtually any specificity to determine the true costs of services performed or products delivered. For example, many invoices include speaking engagements without any indication as to related costs. Without more information (e.g. an itemized list of travel reimbursements), the question remains as to how speeches or presentations could substantially contribute to tens of thousands of dollars worth of quarterly expenses. Further, without corresponding detail, it is impossible to determine whether associated costs (e.g. travel reimbursements) may have been duplicated by another County department or program.

Lastly, only one out of eight quarterly invoices from 2016-2017 was submitted timely to the County in accordance with Schedule B requirements.

**Recommendation** – Overall adherence to contractual terms and transparency in billing are quite deficient. Invoices to the County should, at minimum, contain sufficient details to adequately identify costs related to services and be timely submitted in accordance with contractual schedules. Additionally, contractual terms should be revised to add clarity and more concretely tie actual expenses to quarterly billings by UCEDA in order to preclude overfunding the Corporation.

## **MES: Review Scope & Methodology**

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Our review of this program involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. We obtained all invoices related to the marketing and advertising expense listing we received from UCEDA, analyzed meeting minutes to note Board approvals of expenses, and obtained check images of payments made to ensure they matched invoiced amounts. We reviewed terms and outcomes of the contracts between UCEDA and Ulster County for 2016 and 2017 along with UCEDA's audited financial statements from 2016 and 2017.

Upon noticing discrepancies in the contracted amounts and expenses of UCEDA, we expanded our review period for the MES contracts through December 31, 2017, in order to examine total operating expenses compared to contract and invoice amounts.

## **MES: Review Conclusion**

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Based on our review, we are strongly concerned with the way the overall MES contract is structured regarding billing practices and the tremendous deficiencies in detail to the invoicing process. Accordingly, Ulster County and UCEDA should address the manner in which invoices, and thus the Corporation, are paid so that overpayments are avoided and taxpayers' financial interests are safeguarded.



## II. READY2GO

### Ready2Go: Background

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This program is a collaboration among Ulster County, UCEDA, Central Hudson, and the Ulster County Industrial Development Agency (“UCIDA”). Ready2Go aims to bring in new businesses and grow those already present within the County by accelerating and streamlining the site plan approval process for owners and developers of commercial or industrial properties. Larger sites that are suitable for manufacturing efforts are preferred. A committee of stakeholders is created, engineering and legal consultants are hired, and objectives are determined for a given property/project. This initiative is capitalized as follows: 50% of the property owner’s dollars are matched with program monies, and the “program takes a mortgage on the property for the Ready2Go portion of the funding [that] will be reimbursed at the time the property is either developed or sold.”<sup>2</sup> As of January 1, 2016, Central Hudson and UCIDA contributed \$148,000 and \$50,000, respectively, with interest earned on the initial investment also being eligible for Ready2Go projects. UCEDA indicated to our Office that a remaining contribution of \$1,097.52 from Leading Edge Developers – who were successful Ready2Go applicants and self-funded a 2012 project – was returned to the business in December 2017.

In 2016, UCIDA withdrew its full \$50,000 contribution due to lack of applicants to the program, and UCEDA adopted a resolution repurposing the remaining Central Hudson monies – “effectively closing the Ready2Go fund.”<sup>3</sup> Although the UCEDA authorizing resolution stated that \$17,500 of those dollars had previously been utilized, no Central Hudson funds were expensed prior to the repurposing, resulting in an actual remainder of \$148,000 (i.e. the original contribution).

The purpose behind reallocating these monies was to allow Central Hudson and UCEDA to foster a project to create access to natural gas service for thirteen properties along Kings Highway within the Town of Saugerties. Under this new agreement, UCEDA would contribute up to 25% of the total costs or \$95,000 (whichever was less) from the remaining Central Hudson funds to the Town of Saugerties, as the applicant for the gas line project. Any Central Hudson dollars remaining after the project’s completion would be made available to other, mutually agreeable projects for one year thereafter or would ultimately be returned to Central Hudson.

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<sup>2</sup> See “Ulster County Ready2Go Program: A Collaborative Approach to Streamlining the Planning Process,” a brochure by the Ulster County Office of Economic Development. Available at [http://ulstercountyny.gov/sites/default/files/Ready2Go%20Brochure\\_7.23.15%20NEW\\_0\\_0.pdf](http://ulstercountyny.gov/sites/default/files/Ready2Go%20Brochure_7.23.15%20NEW_0_0.pdf)

<sup>3</sup> See Financial Statements (and reports of Independent Auditors) for Ulster County Economic Development Alliance, Inc. (A Blended Component Unit of Ulster County, New York) (December 31, 2016 and 2015) at 10. Available at <http://ulstercountyny.gov/sites/default/files/UCEDA%20FS%20Final%20Signed%202016.pdf>

A breakdown of Ready2Go funding as of January 1, 2016 through July 31, 2017 is summarized as follows:

	1/1/2016	Fund Activity	7/31/2017
Central Hudson Contribution	\$ 148,000.00	\$ (87,092.00)	\$ 60,908.00
UCIDA Contribution	50,000.00	(50,000.00)	-
Leading Edge Developers	1,097.52	-	1,097.52
Bank Interest	1,203.96	126.39	1,330.35
<b>Total</b>	<b>\$ 200,301.48</b>	<b>\$ (136,965.61)</b>	<b>\$ 63,335.87</b>

### Ready2Go: Review Objectives

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The objectives of our review were:

- To analyze goals and outcomes of the Ready2Go program as part of the audit period; and
- To review invoices and other documentation related to the program for completeness, accuracy, and transparency.

### Ready2Go: Review Summary & Recommendations

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As part of reviewing Ready2Go during the audit period, we noted that the only activity was related to the aforementioned Kings Highway Corridor Natural Gas Extension Project, which involved a repurposing of Central Hudson’s contribution amount and allowed UCEDA to act as “fiscal agent” for the endeavor. The following findings and observations were made:

#### 1. Finding – Deficient Documentation

In relation to UCEDA’s oversight of the project as fiscal agent, the Town of Saugerties Agreement stated that “any payment request that is submitted without sufficient itemization will not be authorized.”<sup>4</sup> Accordingly, we determined that the work order lacks sufficient itemization. A December 2016 work order summary from Central Hudson simply listed three invoice totals, one figure for materials and supplies, and one figure for payroll related expenses for a total of \$348,369. No additional documentation was provided regarding a detail of work performed under each invoice, a list of material and supplies purchased at cost, or the salary/hours allocated to the project. On the work order summary, a contribution breakdown of the project’s revenue sources incorrectly listed UCEDA as contributing \$93,000; UCEDA actually contributed \$87,092, which is 25% of the total project costs as stipulated in the agreement.

**Recommendation** – UCEDA stated that it “could have imposed additional invoicing requirements per the contract but chose not to[.]” We strongly recommend that all future projects – especially those requiring modifications to existing program funding – be subject

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<sup>4</sup> See Agreement By and Between the Ulster County Economic Development Alliance and the Town of Saugerties for Infrastructure Enhancement (dated November 17, 2016). Article 5 (Payment).

to heightened reporting requirements that are enforced, including detailed invoices that break down the specific costs of each invoice, the materials and supplies purchased, and the allocation of salaries and man hours performing said project.

## 2. Observation – Contract Specifications Leading to Potential Conflicts

We noted that the Town of Saugerties Agreement permitted Central Hudson to be “the entity with sole responsibility to implement and/or construct the project.”<sup>5</sup> Arising from this sweeping authority, and unbeknownst to UCEDA until receiving the invoice for payment, the contractor utilized for the project happened to own property that is located along the improved section of Kings Highway. As far as the outcome, this land was included within the scope of the project and improved by the property owner (aka the contractor) who was then paid to do said improvements through Ready2Go.

**Recommendation** – This conflict could have been averted if UCEDA had a role in selecting contractors for the project. According to UCEDA, it “was unaware that [the property owner] was the contractor on the project until the payment schedule was submitted by Central Hudson.” UCEDA should reevaluate its level of involvement in conjunction with, or even outside of, its duties as “fiscal agent.” Greater oversight will ensure that no actual or perceived conflicts of interest cloud future projects. At minimum, UCEDA should require provisions within future agreements that any potential conflicts of interest be disclosed prior to the approval of contractors or vendors.

## 3. Observation – Repurposing Monies Outside of Original Scope of Program

Subsequent to the audit period, \$60,908 in remaining Central Hudson contributions were returned to the company. This transaction would have left Ready2Go with less than \$2,000 in funding; however, Central Hudson never cashed the payment. Instead, the company and UCEDA sought a second modification to their original Economic Development Incentive Agreement to fund another gas line project with the remaining Central Hudson funds, which was made effective on March 21, 2018.<sup>6</sup> However, the newly modified agreement lists an incorrect balance of \$66,576 in Central Hudson funds; the origin and application of this extra \$5,668 is unclear.

The Ready2Go program was initially intended to streamline the site plan approval process for owners/developers of commercial and industrial properties. While it may be argued that the Kings Highway Corridor Natural Gas Extension Project may “[enhance] job creation and [retain] employment within Ulster County [...] by making funds available which will encourage municipalities within Ulster County to develop, enhance, and expand public

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<sup>5</sup> See id at Article 6 (Contractor Status).

<sup>6</sup> See Modification No. 2 to Economic Development Incentive Agreement Between Central Hudson Gas & Electric Corporation and Ulster County Economic Development Alliance, Inc. (March 21, 2018). Available at [http://ulstercountyny.gov/sites/default/files/09\\_f\\_ModificationNo\\_2\\_UCEDA\\_and\\_CENTRAL\\_HUDSON\\_03\\_21\\_2018.pdf](http://ulstercountyny.gov/sites/default/files/09_f_ModificationNo_2_UCEDA_and_CENTRAL_HUDSON_03_21_2018.pdf)

infrastructure,” the repurposing of these monies toward active development for a targeted business demographic seems like a marked departure from the program’s original purpose.<sup>7</sup>

**Recommendation** – According to UCEDA’s 2016 Financial Statements, the “approved repurposing [of] the Ready2Go funds and [return of] \$50,000 to the UCIDA effectively clos[ed] the Ready2Go fund.”<sup>8</sup> As the program had minimal funding remaining after this modification and had not robustly attracted owners and developers who were interested in streamlining site plan approvals, Ready2Go should be formally closed once this project is completed. If UCEDA feels its role is integral to the construction of various gas line projects or other developmental efforts within Ulster County, a new program should be implemented to realize those new goals.

### **Ready2Go: Review Scope & Methodology**

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Our review of this program involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. As the Kings Highway Corridor Natural Gas Extension was the only initiative administered during the audit period, we focused our review upon all aspects surrounding that project. We obtained all financial information related to Ready2Go itself, documentation of the authorizing resolution to repurpose the project, the contract document, and the “work order summary” from Central Hudson. We analyzed all of the above for accuracy and completeness to determine whether sufficient documentation was obtained to issue payment, as well as the extent and purpose of expenses. After UCEDA indicated to our Office that unused Central Hudson funds were being repurposed toward a new natural gas venture, we expanded our scope through the date of the resolution authorizing the project (March 21, 2018).

### **Ready2Go: Review Conclusion**

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Based on our review of the program, UCEDA’s modification of activities and expenses appear to lack adequate documentation to properly analyze the project’s costs. Further, UCEDA should reconsider the actual intent of Ready2Go due to shifting focuses and outcomes; however, it is unclear why UCEDA needed to maintain a limited role in this project considering that Central Hudson was almost entirely responsible for it. Moreover, improvements are warranted to the administration of any modifications to Ready2Go projects and funds, including the assurance that sufficient evidence to substantiate payment is obtained when acting as a “fiscal agent,” added oversight is displayed so that conflicts of interest are detected in relation to outside contractors or vendors, and projects are undertaken with a clear focus on the program’s purpose in mind.

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<sup>7</sup> See *gen id* at Exhibit 1.

<sup>8</sup> See Financial Statements (December 31, 2016 and 2015) at 10.

### III. MARKETING OF SURPLUS PROPERTIES

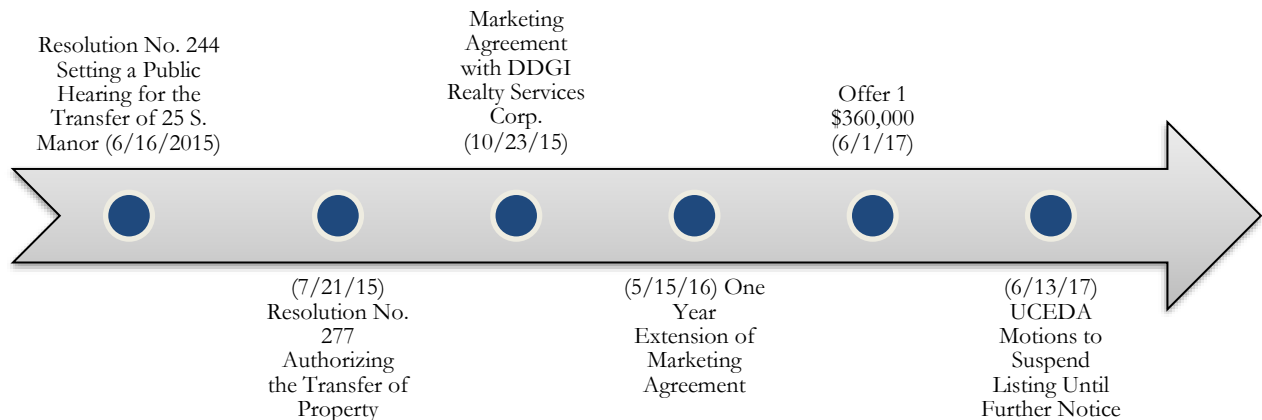
#### Marketing of Surplus Properties: Background

As part of its functions, UCEDA may obtain possession of surplus County properties “for purposes that include lessening the burdens of government and acting in the public interest.” The transfer of real property to UCEDA is completed through Legislative Resolution and only eligible once “the County Legislature has examined the property and determined that the County no longer needs [it] now or in the future for the operation of the County.” Once the transfer is complete, Section 1411(d) of the LDC Act allows for “the sale or lease [...] on such terms [...] agreed upon by the County and [UCEDA] without appraisal or public bidding.” While UCEDA may determine the form of sale and ultimate purchaser, “the net proceeds of [...] any eventual sale [will be] paid to the County.”

The following properties have been listed on UCEDA’s real property report with their estimated fair market values since 2015:

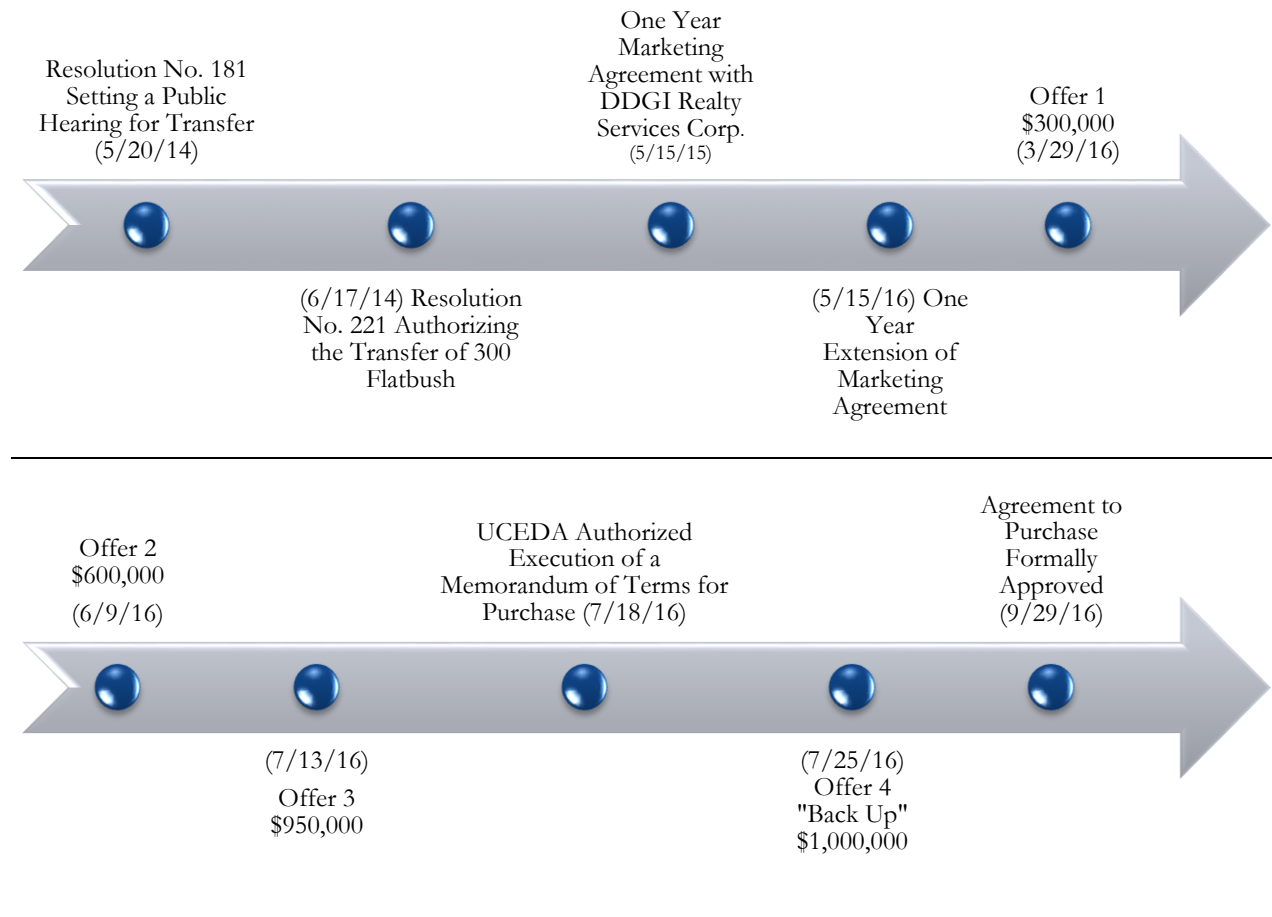
1. Address: 300 Flatbush Avenue, Kingston, NY 12401  
 Description: Office Building  
 Estimated Fair Market Value: \$ 1,235,000  
 Date of Acquisition: 6/10/2015
  
2. Address: 25 South Manor Avenue, Kingston, NY 12401  
 Description: Office Building  
 Estimated Fair Market Value: \$ 418,000  
 Date of Acquisition: 6/10/2015
  
3. Address: Linderman Avenue Extension, Kingston, NY 12401  
 Description: Vacant Lot/ Undeveloped Land  
 Estimated Fair Market Value: \$ 50,000  
 Date of Acquisition: 12/9/2015

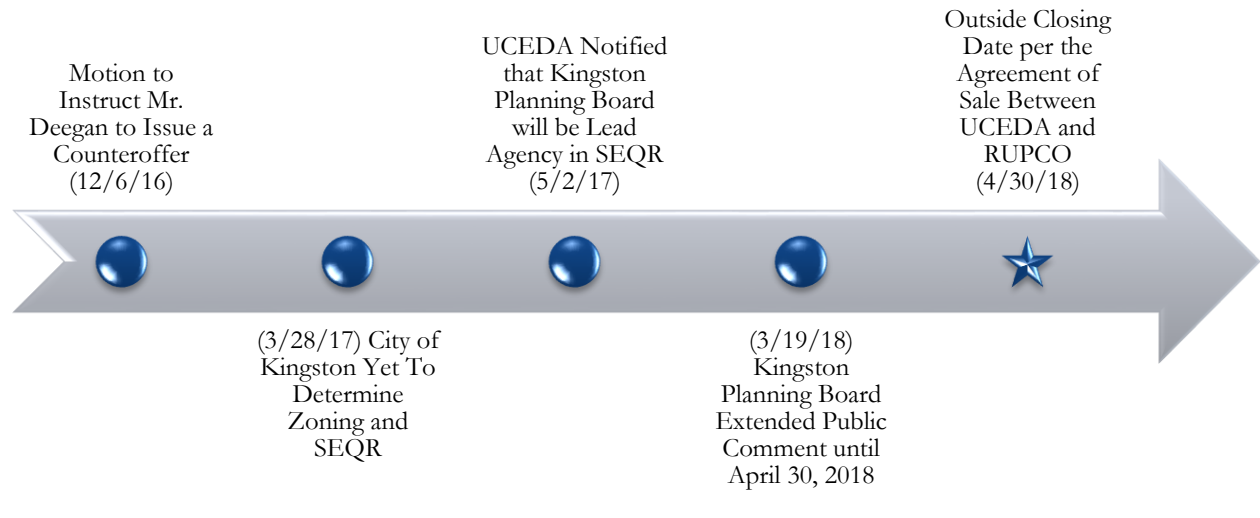
We noted the following sequence of events in relation to **25 South Manor Avenue, Kingston, NY:**



Upon reviewing the process and outcomes behind the conveyance of this property, we noted that this site has served – at the time of transfer and currently – as the location of the Ulster County Information Services Department. After marketing this property since October 2015, UCEDA received a \$360,000 offer in June 2017, which was 86% of estimated fair market value. At the subsequent board meeting on June 13, 2017, the UCEDA Board was apprised “that it appear[ed] the County [would] not be prepared to vacate the premises within the next two years [and] it [would be] senseless to continue to market it.” A motion was then adopted to suspend the listing until further notice.

We noted the following sequence of events in relation to **300 Flatbush Avenue, Kingston, NY**:





UCEDA began marketing this property in May 2015 and received its first offer in March 2016 for 24% of estimated fair market value. UCEDA received its second offer in June 2016 for 49% of estimated fair market value. A third offer was made in July 2016 for 77% of estimated fair market value, which was discussed in Executive Session at the following UCEDA Board meeting. At the same meeting, a motion was made “to direct [Joseph Deegan of Sperry Van Ness Deegan Collins Commercial Realtors to] discuss amendments to the Memo of Terms with [the third offeror].” On July 18, 2016, UCEDA entered Executive Session to discuss the offers and subsequently motioned to authorize the memorandum of terms for purchase of real property by the third offeror without yet receiving one from the Deegan group. Sperry Van Ness Deegan Collins Commercial Realtors submitted a “backup” offer on behalf of their client on July 25, 2016, for 81% of the estimated fair market value, which was \$50,000 greater than the next highest offer. However, it was relegated to a “backup offer” due to the prior acceptance of the third offer.

Subsequent to the audit period, it was announced on April 24, 2018, that RUPCO had “completed the purchase of the property, [but] still need[ed] site plan approval from the city Planning Board before proceeding with its plan[s]” for affordable housing.<sup>9</sup>

### **Marketing of Surplus Properties: Review Objectives**

The objectives of our review were:

- To analyze the procedures and purposes related to the marketing and transfer of surplus properties from Ulster County to UCEDA, determining whether activity is consistent with governing agreements and policies; and
- To examine the criteria used to determine whether offers to purchase properties are acceptable and in the best interest to the public.

<sup>9</sup> See “RUPCO Completes Purchase of Former Alms House in Kingston, Still Needs Final Approval for Apartments at Site,” by Ariel Zangla of the Daily Freeman (April 24, 2018).



## Marketing of Surplus Properties: Review Summary & Recommendations

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During our review of the marketing of surplus properties, we noted the following findings, observations, and recommendations:

### 1. Finding – Inadequate Review of Necessity During Transfer Process

Given the active and ongoing usage of the 25 South Manor site by a County department, the property should not have been conveyed to UCEDA. The process by which this conveyance of property was made did not contain a suitable review mechanism to ensure that the property was not being used “now or in the future” in accordance with the authorizing Legislative Resolution. In 2017, two years after the transfer occurred, UCEDA acknowledged that the property would not be vacated until at least June 2019. UCEDA stated that shifting priorities as far as other capital projects and construction efforts ultimately affected decisions to relocate the department.

**Recommendation** – It is unclear how the County and UCEDA reached its conclusion that the property was no longer in use. Therefore, UCEDA and the County Legislature should develop formal policies or procedures to ensure that property deemed as surplus is indeed vacant and not being utilized at the time of transfer. This due diligence would likely prevent “senseless” marketing of property. Also, based on the stated timeline of two years before the department can feasibly move, UCEDA and the Legislature should consider whether the property should be transferred back to Ulster County.

### 2. Observation – Acceptance of Offers Lack Transparency, May Not Represent Best Value

Although permissible by law, evaluations and in-depth discussions of all offers during Executive Sessions of the Board of Directors do not embody a transparent process that allows for external analysis. We were unable to assess what criteria is utilized to determine if offers are in the best interest to the taxpayer. Additionally, UCEDA’s use of “backup offers” for when a closing date is not attainable creates uncertainty for how that offer will be considered when taking into account UCEDA’s statement that a property would otherwise return to market if an actual closing did not occur.

Also, we learned from a 2016 news article by the local media that a “\$975,000 [bid] from a Singapore investment firm” was offered on the Flatbush Avenue property but relegated to backup because the RUPCO bid had already been accepted.<sup>10</sup> Despite our request for all offers for marketed properties, we were not provided with any source documentation that allowed us to verify this bid was made.

**Recommendation** – A formal, written procedure regarding the evaluation of offers on surplus properties should be developed. While we acknowledge that Executive Sessions may play a role in deliberations, the completion of objective grading criteria should be shared with the public in order to inform taxpayers and policymakers as to the basic rationale

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<sup>10</sup> See “More Transparency Needed in Public Development Deals,” by Geddy Sveikauskas of Hudson Valley One (August 25, 2016).



behind decisions to accept offers. Further, UCEDA should revisit its Property Disposition Policy to consider establishing a more concrete, baseline requirement that all offers must meet a minimum percentage of the property's estimated fair market value to even be considered. While the aforementioned policy contains a clause precluding "disposal of property for less than fair market value," we were not provided the requisite "written determination that there [was] no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer." As such, these written determinations should be created and made readily available in order to fully evaluate any below-market transfer, or conversely, an absolute monetary threshold should be adopted.

Moreover, UCEDA and the County may also benefit from establishing a certain "offer fielding period," which would allow additional offers to be accepted for a set amount of time (e.g. 15 or 30 days) after receiving one, which may potentially prevent some instances where a higher offer cannot be accepted because another offer was quickly approved.

### **Marketing of Surplus Properties: Review Scope & Methodology**

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Our review of this program involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. Due to recent activity pertaining to the sale of 300 Flatbush Avenue, we expanded our scope related to this property to include its outside closing date of 4/30/18. We obtained UCEDA's real property reports as of 12/31/15 and 12/31/16 and researched related Legislative Resolutions and Board minutes. The real property reports contained the same information as to the three properties and their estimated fair market values from year-to-year. We requested all offers that were received for two properties during the audit period. We did not receive nor were we readily able to identify information and documents related to the transfer of, as well as any marketing efforts for, the Linderman Avenue Extension property; we can only confirm that no purchase offers were fielded during our audit period. As no formal evaluation criteria was shared, we were unable to analyze the ultimate means by which offers for properties are accepted.

### **Marketing of Surplus Properties: Review Conclusion**

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Based on our review, UCEDA's marketing of surplus property has yielded mixed results as far as actual sales, pending the final – albeit lengthy – resolution to the Flatbush Avenue property. Room for improvement exists, including a more diligent review of the necessity of properties during the transfer process from Ulster County to UCEDA, as well as greater transparency for evaluating criteria and accepting offers. Efficiencies may be had in conveying properties to a local development corporation for sale as opposed to the County doing the work itself; however, the process must demonstrate its objectivity, due diligence, transparency, and overall economic value to the taxpayer.

## IV. ELLENVILLE MILLION

### Ellenville Million: Background

UCEDA contracted with Ulster County to administer and oversee the Ellenville Million program, which was designed to enhance the economic prosperity of the Village of Ellenville and the Town of Wawarsing based on recommendations from the Ellenville Million Committee. In turn, UCEDA contracts with all entities implementing projects and is reimbursed by the County for incurred, approved expenses.<sup>11</sup> UCEDA may advance payments up to 20% of a project's costs based on the submission and approval of a Statement of Need, shall hold the final 20% payment for each project as retainage, and will only release this amount upon full completion and submission of a project closeout report.<sup>12</sup> The project closeout report documents the accomplishments of the project and includes an accounting of all funds used.

The initial term of UCEDA's agreement with Ulster County for administration of the Ellenville Million program was from September 1, 2015 through August 31, 2017. As monies had not been fully expensed and shifting needs became apparent, a contract amendment in 2017 modified and extended terms until August 31, 2019. Under the initial agreement, UCEDA reviewed and approved plans and budgets for each of the nine initial project areas. In July 2017, funding amounts were reallocated and two additional project areas were created via Resolution No. 295 of the Ulster County Legislature. Project areas and their respective allocations are displayed below:

Ellenville Million Project Area		Original Allocation	Increase/ (Decrease)	July 2017 Allocation
1	Water and Sewer Infrastructure Improvements	\$ 150,000	\$ (105,000)	\$ 45,000
2	"Soft Landing" Fund for Developers and New Businesses	175,000	(50,000)	125,000
3	Tourism and Marketing Campaign	100,000	51,500	151,500
4	Improvements to Outdoor Recreational Opportunities	150,000	24,600	174,600
5	Historic Preservation Projects at the Shadowland Theater	75,000	-	75,000
6	Capital Preservation and Improvement Projects at the Hunt Memorial Building	100,000	-	100,000
7	Main Street Improvement Project	25,000	25,000	50,000
8	Project Management, Grant Writing, and/or Similar Services	75,000	(26,100)	48,900
9	Improve Access to High Speed Broadband	150,000	(75,000)	75,000
10	Vocational Training	-	50,000	50,000
11	Provide Grant Writing Services for Local Businesses	-	105,000	105,000
<b>Total</b>		<b>\$ 1,000,000</b>	<b>\$ -</b>	<b>\$1,000,000</b>

<sup>11</sup> See Agreement for Professional Services Between the County of Ulster and Ulster County Economic Development Alliance, Inc. (first dated August 2015), outlining "certain economic development services which shall include the administration and oversight of the Ellenville Million Program."

<sup>12</sup> See id.

## Ellenville Million: Review Objectives

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The objectives of our review were:

- To analyze the records related to the Ellenville Million program, determining whether tested activities and/or expenses further economic development in Ulster County;
- To examine Ellenville Million's budget performance and determine if projects are being completed timely and reported accurately in relation to contractual terms; and
- To analyze UCEDA's oversight role related to the Ellenville Million program, ensuring that proper authorization to pay vendors is recorded and invoice backup matches/details amounts authorized.

## Ellenville Million: Review Summary & Recommendations

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During the review of Ellenville Million activity, we noted significant modifications to the originally intended project areas and the extension of the overall contractual term. We made the following observation:

### 1. Observation – Protracted Spenddown and Project Monitoring

The original contract and authorizing resolution between Ulster County and UCEDA designated specific project areas and associated budgets. In 2017, with one month left on the original 24-month contract, terms were extended for an additional 24 months. Through the contract's first 23 months (representing 96% of the original term), UCEDA had only expensed 26% of the \$1 million allocated to the program. Per financial statements covering 12/31/17, only 38.5% of these dollars had been expensed. However, statements from UCEDA before the June 6<sup>th</sup> and July 12, 2017 meeting of the Ulster County Legislature's Economic Development, Tourism, Housing, Planning & Transit Committee indicated that between \$465,000 and \$470,000 had been spent/committed among broadband, soft landing, water, and sewer initiatives. The initiatives and dollar figures behind those statements do not align with the information we analyzed from UCEDA's contract spenddown list and annual financial statements.

**Recommendation** – By implementing heightened monitoring of expenses by UCEDA, the reallocation of project funds may have occurred sooner, initiatives may have been completed more timely, the extension of the contract may not have been necessary, and/or the status of outcomes would be more accurately represented. Priorities may shift or otherwise evolve given the broad nature of the program; however, UCEDA should develop benchmarks for progress for each project area along with an inspection mechanism to ensure that Ellenville Million goals are properly funded and milestones are being met in a timely fashion.

## Ellenville Million: Review Scope & Methodology

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Our review of this program involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. We obtained a contract spenddown list as of July 31, 2017, which indicated the following Ellenville Million expenses:

Water & Sewer Improvements	\$ 30,000
Tourism & Marketing	100,000
Hunt Memorial Building	100,000
Main Street Improvements	6,250
Project Management	<u>22,900</u>
Total	<u>\$259,150</u>

We specifically reviewed the preservation of the Hunt Memorial Building, as well as the tourism and marketing campaign because these two project areas saw the most significant spending. We obtained all invoices related to the two projects, analyzed meeting minutes to note approvals of expenses, and obtained check images of payments made to ensure they matched invoiced amounts.

## Ellenville Million: Review Conclusion

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Based on our review, actual activities and expenses of the Ellenville Million may generally align with the spirit of the program, but it is disconcerting that about 74% of funding was not expensed through July 31, 2017 since inception. In order to maximize its economic benefits, the program may need additional oversight of projects to ensure that they are reaching milestones at the rates intended and contractual terms do not need to be extended once more.

## V. REVOLVING LOAN FUND

### Revolving Loan Fund: Background

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UCEDA offers low-cost, flexible financing through a variety of funding sources, including Community Development Block Grants, the Housing and Urban Development Section 108 Loan Guarantee Program, the USDA Intermediary Relending Program Loan Fund, and the Telecommunications Fund (that provides matching dollars under the USDA Intermediary Relending Program Loan Fund). Available monies are utilized to provide loans to local businesses for the general purposes of economic development and job creation. UCEDA in part acts as a conduit for applicants, helping guide them to the most applicable source of funding. Loan recipients pay an application fee, closing costs, and attorney fees in exchange for a fixed rate, low-interest loan. As recipients repay their amounts due, the fund is replenished with the added ability to issue new loans.

### Revolving Loan Fund: Review Objectives

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The objectives of our review were:

- To analyze the procedures and purposes of the Revolving Loan Fund, determining whether current practices are in the best interest to the County; and
- To review all agreements and documents related to the repayment of loans, ensuring proper oversight, management, and documentation.

### Revolving Loan Fund: Review Summary & Recommendations

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#### 1. Observation – Late Payments

During our review of this program, we noted that all tested loan repayments were made for the period in question. However, one loan recipient continuously submitted late payments that required the assessment of late fees – all of which were paid in full. We recalculated the late fees, determining they were properly assessed in accordance with loan documents.

Late Payments Made			
	Loan 1	Loan 2	Total
Late Payments	0	15	15
Total Payments	19	19	38
Percentage	0%	79%	39%

**Recommendation** – We asked UCEDA whether any discussions were had with the delinquent payor as to general ability or difficulty to pay. UCEDA’s response indicated they communicate with all loan recipients, and the recipient in question (Loan 2, shown in the above chart) has begun “the process of refinancing its loan with the UCEDA to ensure ongoing compliance with loan terms.” Accordingly, we recommend that UCEDA document communications in writing that take place regarding any loan holder’s difficulty or inability to make timely regular loan payments.

## **Revolving Loan Fund: Review Scope & Methodology**

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Our review of this program involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. We selected a sample of two out of eleven existing loans within the Revolving Loan Fund, obtaining applications, loan agreements and repayment schedules, and all repayment information.

We tested payments for the two loans to ensure that: repayments were being made timely; amounts matched or exceeded the repayment schedule; the deposit slips and deposited amounts matched the repayments; and deposits were made timely in relation to the receipt of repayments.

We also reviewed five applications received during the audit period. The objective was to ensure that UCEDA properly approved or disallowed loan agreements and the repayment of loans was consistent with the repayment schedules.

## **Revolving Loan Fund: Review Conclusion**

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Based on our review, the UCEDA Revolving Loan Fund's activities and expenses align with the specific mission and performance goals related to supporting and/or increasing the visibility of economic development in Ulster County. We noted late fees were consistently assessed on one of the revolving loans, but suggest that UCEDA maintain written documentation for all follow-up communications regarding timeliness of payment or difficulty to pay for those who are consistently assessed late fees.

## VI. CORPORATE GOVERNANCE AND STRUCTURE

### Corporate Governance and Structure: Background

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In advancing those various powers bestowed upon LDCs, Section 1411(c) of New York’s Not-for-Profit Corporation Law grants UCEDA with a multitude of capabilities to effectuate economic development initiatives, including but not limited to: taking possession of, maintaining, selling, and/or improving certain industrial properties; advising, guiding, or otherwise assisting entities with activities related to development; and offering financial obligations to worthy applicants. Keeping this authority and function fully in mind, UCEDA’s mission statement is to help support:

the promotion of Ulster County as the premier location to expand and grow business for the creation of wealth, fostering strong, sustainable, diverse economic opportunities for Ulster County and its communities. UCEDA works to support retention and growth of businesses. UCEDA provides financial support, marketing, facilitation of capacity building and infrastructure programs and collaboration with community, regional, state, and municipal partners and leaders.<sup>13</sup>

As stated in its Certificate of Incorporation and bylaws, UCEDA is overseen by a seven person Board of Directors, and its sole member is the County of Ulster (“acting by and through the chief executive officer of the County, the County Executive, ex officio”).<sup>14</sup> Two of the Board of Directors must be the Chair and Ranking Member of the Economic Development and Tourism Committee of the Ulster County Legislature, and the remaining five Directors are appointed by the sole member during the annual meeting.<sup>15</sup> Board offices consist of a Chair, Vice Chair, Secretary, and Treasurer; all Directors serve without compensation.<sup>16</sup>

UCEDA’s administrative and support staff is pooled from various Ulster County departments and offices, including the Department of Finance, County Attorney, Office of the County Executive, and Office of Economic Development (under the Planning Department). UCEDA “does not have its own employees and recognizes no payroll expenses”; however, “donated services [of administrative and support staff are not] reflected in [its] financial statements.”<sup>17</sup> The Corporation is also composed of three subcommittees that offer recommendations and assistance to the Board of Directors: Audit and Finance, Governance, and Revolving Loan Fund.

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<sup>13</sup> See UCEDA’s “2016 Adopted Mission Statement and Goals” (as amended April 26, 2016). Available at <http://ulstercountyny.gov/sites/default/files/2016%20ADOPTED%20MISSION%20STATEMENT%20AND%20GOALS.pdf>

<sup>14</sup> See UCEDA’s “Amended and Restated By-Laws of Ulster County Economic Development Alliance, Inc.” (adopted December 5, 2017) (Article II – Membership, Article III – Board of Directors). Available at <http://ulstercountyny.gov/sites/default/files/Bylaws%20Adopted%20on%20December%205%2C%202017.pdf>

<sup>15</sup> See id.

<sup>16</sup> See id.

<sup>17</sup> See Financial Statements (December 31, 2016 and 2015) at 20.

## Corporate Governance and Structure: Review Objectives

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The objective of our review was:

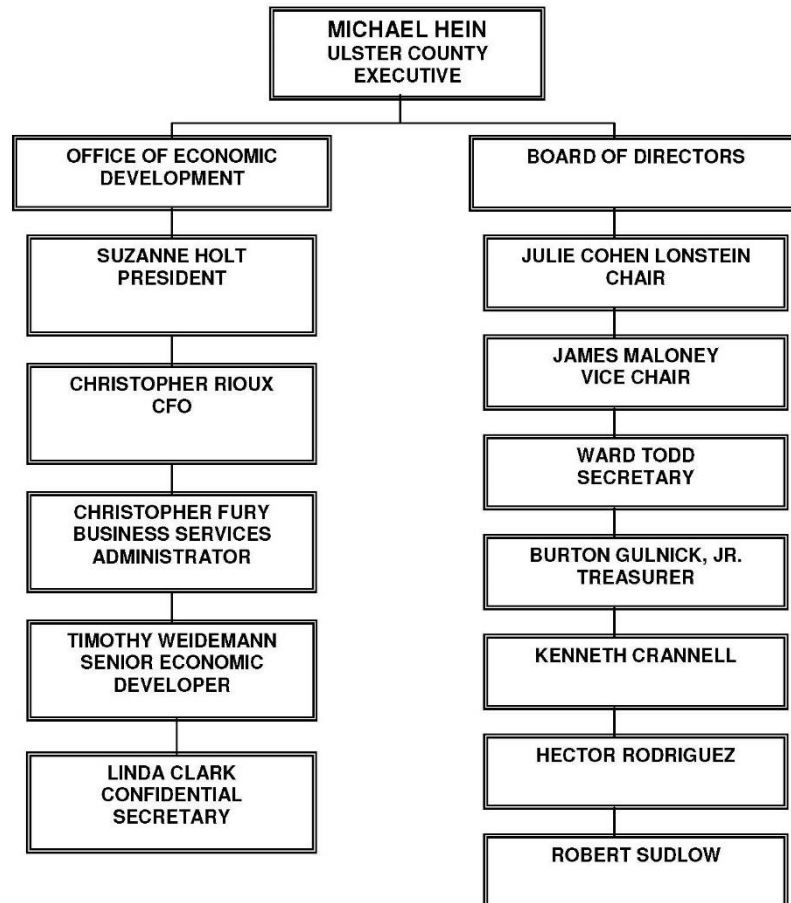
- To examine UCEDA’s corporate governance structure, including its relation to municipal governments and other local authorities.

## Corporate Governance and Structure: Review Summary and Recommendations

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### 1. Observation – Diversity of the Board and Administration

While the independence of the Directors is presumed to be technically permissible, the overall composition of the Board lacks diversity as far as individuals who do not have a formal relationship with Ulster County government. Of the current Directors, five of seven are either employed by the County and/or serve as elected officials as shown by UCEDA’s organizational chart:<sup>18</sup>



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<sup>18</sup> See UCEDA’s Functional Organization Chart. Available at <http://ulstercountyny.gov/sites/default/files/UCEDA%20ORG%20CHART.pdf>



To underscore this point, the NYS Authority Budget Office (“ABO”) provided the following policy guidance:

[a]s a best practice it is not recommended that a majority of appointed board members have a political or employment relationship to the government for whose purpose the public authority was created.<sup>19</sup>

Moreover, the entire administrative arm of UCEDA consists of staff from the Office of Economic Development, as well as several other entities under the auspices of the County Executive (who is also the sole member of the organization). Although UCEDA is not the only LDC to utilize municipal staff, the high extent to which it relies on employees of the County without documenting their workload and responsibilities (discussed in greater detail below) yields concern.

As LDCs may be used as vehicles to effectuate economic development wishes of a sitting Administration, they should not be used simply for efficiency or to sidestep many of the constraints that affect municipal governments. This aspect of independence is lacking, as the resounding majority of decisionmakers and support staff is directly answerable on a day-to-day basis to the sole member by virtue of employment.

**Recommendation** – UCEDA should consider revisiting its Bylaws to address the issues of diversity and independence previously stated. If the intent to utilize County resources and personnel remains then the Board should be modified accordingly to fully represent the interests (and thus personnel) outside of the County’s (and Executive’s) direct control. We commend the diligent work of the Board and staff and value their service, but we agree with the ABO that a majority of appointed board members should not have a direct relationship with the municipality to which the LDC is affiliated. Express input from more varied, non-County sources will only bring greater perspective for communal needs to the table while hedging against potential improprieties resulting from a sitting administration imposing its will upon an independent LDC.

## 2. Observation – Transparency of Financial Arrangement with Related Parties

As previously mentioned, UCEDA’s financial statements show no reflection of administrative staff’s services to the organization. Despite County personnel performing substantial duties for the Corporation, there are no records identifying their time spent working on UCEDA related matters. Although cost savings is touted as a reason to use County personnel, transparency suffers in regard to objectively allocating time and salaries.

**Recommendation** – If County personnel continue to be used to such a high degree in the day-to-day operations of UCEDA then their associated time and salaries should be reflected within the Corporation’s financial statements. Regardless of the extremely close working relationship between UCEDA and the County, staff is still performing duties in excess of their traditional roles. It is a bit of a misnomer to suggest that these services are “donated”

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<sup>19</sup> See Authority Budget Office Policy Guidance No. 07-01 (March 1, 2007), describing the independence of board members. Available at <https://www.abo.ny.gov/policyguidance/07-01BoardMemberIndependence.pdf>

to the Corporation, as these staffers must simultaneously balance their “County” and “UCEDA” responsibilities across a finite amount of hours in the work day. Although there may be a difference of opinion as to what responsibilities are distinct between UCEDA and the County, the simple fact is that the Corporation functions beyond and separately from Ulster County government. Therefore, distinguishing workloads between the two entities and having UCEDA reimburse a portion of these individual’s County salaries would add much needed transparency to the Corporation’s financial statements, as well as its activities.

For example, the City of Kingston Local Development Corporation utilizes staff members that are employees of the City’s Community Development Office. Accordingly, “50% of the staff’s salary is allocated by the City of Kingston to the LDC based on estimated time spent on the LDC’s activities.”<sup>20</sup> If the County wants to continue sharing personnel with UCEDA in order to save costs related to a full and separate staff then perhaps a variation of the Kingston model could be beneficial by better accounting for these expenses.

### **Corporate Governance and Structure: Review Scope & Methodology**

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This component of our review involved interviewing and requesting information from UCEDA personnel generally related to the audit period of January 1, 2016 through July 31, 2017. We obtained and analyzed policy guidance from the ABO, as well as UCEDA’s corporate bylaws, mission statement and goals, organizational charts, PARIS reports, compensation, reimbursement, and attendance policies, and financial statements for 2016-2017.

### **Corporate Governance and Structure: Review Conclusion**

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Based on our review, we strongly suggest that UCEDA work toward diversifying its Board through the supplementation and/or addition of non-County personnel and increasing accountability as far as meaningful disclosure of donated services and financial relationships with Ulster County staff.

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<sup>20</sup> See Financial Statements (and reports of Independent Auditors) for City of Kingston Local Development Corporation (year ended December 31, 2016) at 13. Available at [https://kingston-ny.gov/filestorage/8463/10432/10516/10524/10540/KLDC\\_FY2016\\_Financial\\_Statements.pdf](https://kingston-ny.gov/filestorage/8463/10432/10516/10524/10540/KLDC_FY2016_Financial_Statements.pdf)

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June 5, 2018

Elliott Auerbach  
Ulster County Comptroller  
P.O. Box 1800  
Kingston, NY 12402

Re: Response to Programmatic Review

Dear Comptroller Auerbach,

Thank you for the opportunity to respond to your programmatic review of the Ulster County Economic Development Alliance and for commending the work performed by the Board of Directors and staff who are involved in the administration and operations of this organization. We are pleased that your audit has confirmed no wrongdoing and everything is in order and we appreciate your recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Cohen Lonstein". The signature is stylized and extends to the right.

Julie Cohen Lonstein  
Chair of the Board