



# Niagara Falls Housing Authority Compensation-Related Payments to the Executive Director

Report of Examination

Period Covered:

January 1, 2010 — July 31, 2012

2012M-199



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

January 2013

Dear Housing Authority Officials:

A top priority of the Office of the State Comptroller is to help authority officials manage their authorities efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support authority operations. The Comptroller oversees the fiscal affairs of authorities statewide, as well as authorities' compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished through our audits, which identify opportunities for improving authority operations and Board governance. Audits also can identify strategies to reduce authority costs and to strengthen controls intended to safeguard authority assets.

Following is a report of our audit of the Niagara Falls Housing Authority, entitled Compensation-Related Payments to the Executive Director. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution.

This audit's results and recommendations are resources for Housing Authority officials to use in effectively managing operations and in meeting the expectations of taxpayers. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*

# Introduction

## Background

The Niagara Falls Housing Authority (Authority) is a municipal housing authority created under the New York State Public Housing Law Section 415. The Authority Board (Board) consists of seven members. The Authority is a public corporation formed for the purpose of providing housing services in the City of Niagara Falls in accordance with the rules and regulations prescribed by the U.S. Department of Housing and Urban Development (HUD). The Authority's 2012-13 fiscal year budget was \$6.9 million, funded primarily with government operating grants and tenant rental income. The Authority operates five housing complexes located within the City of Niagara Falls with approximately 770 units, and currently serves approximately 1,100 residents.

The Board appoints an Executive Director who is responsible for the Authority's day-to-day operations. The Authority does not employ a Director of Finance but rather contracts with a consultant accountant who reviews financial activity and prepares monthly reports for the Board. The day-to-day financial operations, including initiating and reviewing payroll-related disbursements, are overseen by the accountant.

## Objective

The objective of our audit was to examine the Authority's process for compensation-related payments to the Executive Director. Our audit addressed the following related question:

- Were compensation-related payments made to the Executive Director accurate, supported, and appropriate?<sup>1</sup>

## Scope and Methodology

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Authority assets. To accomplish this, we conducted an audit survey of Authority operations. Based on those results, we determined that internal controls appeared to be adequate and limited risk existed for most of the areas reviewed. We also reviewed the payroll processes and procedures and found that, while overall the internal controls appeared adequate, risk existed in the area relating to payments to the Executive Director. We therefore examined the Authority's process and procedures over the Executive Director's compensation-related benefits payments for the period January 1, 2010 to July 31, 2012.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such

<sup>1</sup> Appropriate is defined as being in accordance with the Executive Director's employment contract and any relevant Authority policies.

standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of  
Authority Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Authority officials and their comments, which appear in Appendix A, have been considered in preparing this report. Authority officials disagreed with the findings and recommendations in our report. Appendix B includes our comments on the issues raised in the Authority's response letter.

The Board has the responsibility to initiate corrective action. Good management practice suggests that the Board should prepare a Corrective Action Plan (CAP) that addresses the recommendations in this report and forward the plan to our office within ninety days. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Authority to make this plan available for public review in the Board Secretary's office.

## Compensation-Related Payments

The Board is responsible for establishing compensation and benefits for Authority employees and for ensuring that payments are made as authorized. This includes formally authorizing all compensation and related benefits, including the accrual and usage of leave benefits provided to employees. Board-authorized individual employment contracts and written policies and procedures should provide clear guidance regarding employee compensation and benefits. The Executive Director's employment contract defines the terms of employment, compensation and related benefits.

We found that the Executive Director received \$6,400 in improper stipends and sold more unused vacation leave than her employment contract allowed. She also has improperly accrued more vacation leave than authorized and without Board approval. This occurred because the Board did not provide sufficient oversight of the Executive Director.

The Executive Director's employment contract covers the period<sup>2</sup> December 1, 2011 to November 30, 2014 with a current<sup>3</sup> base salary of \$105,798, to be paid in accordance with the Authority's customary payroll practices. She also is to receive a monthly stipend of \$500 for reimbursement of "expenses"<sup>4</sup> and additional annual compensation of \$5,000. Finally, at the sole discretion of the Board, she may receive annual bonus payments for "extraordinary accomplishments."

We reviewed all the payments made to the Executive Director from January 1, 2010 to July 31, 2012 to ensure that they were accurate, supported and complied with her employment contract and/or the Authority's personnel policy. We found that 70 payroll checks totaling \$290,460 were paid in accordance with her contract. However, we found certain other payments that were improperly paid, not supported with appropriate documentation, and/or did not comply with the terms of her employment contract.

### Other Payments

To ensure the Executive Director receives the compensation and benefits the Board intends and to avoid misinterpretation, the Board should clearly define what such payments represent through unambiguous language in the employment agreement. We found

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<sup>2</sup> Extended from an employment contract covering the period December 1, 2007 through November 30, 2011

<sup>3</sup> As of the end of fieldwork

<sup>4</sup> The contract did not define the type of expenses this stipend was intended to reimburse.

that the employment agreement between the Authority and the Executive Director was not clear pertaining to stipends and additional compensation to be received.

Reimbursement for Expenses Stipends – The contract allows for a monthly stipend of \$500 to the Executive Director as “reimbursement for expenses.” For the period January 1, 2010 to July 31, 2012 the Executive Director received over \$16,000 for these stipends. However, the contract is not clear whether the Board intended these stipends to reimburse the Executive Director’s personal expenses or business expenses. The Executive Director told us that the stipend was for the use of her personal automobile. Authority officials could not provide any documentation to support this assertion.

Mileage Stipends – We also found that the Executive Director was paid a monthly mileage stipend of \$200, which is not addressed in her employment contract. For the audit period these stipends totaled \$6,400. The Executive Director stated that, although the mileage stipend was not in her contract, it has always been standard practice to pay a mileage stipend to the Executive Director.

Additional Compensation – The Executive Director was paid “additional compensation” of \$5,000 per year, totaling \$15,000 for the audit period. The contract is not clear with respect to the basis for determining the “additional compensation” to be paid, what differentiates this amount from the base salary, or what, if any, additional duties she was to perform in order to earn the “additional compensation.”

Bonus Payments – Although the employment contract provides for, at the sole discretion of the Board, bonus payments for “extraordinary accomplishments,” we found that, from January 1, 2010 to July 31, 2012, the Executive Director did not receive any such payments.

## **Vacation Leave Days**

The Executive Director receives vacation, sick and personal business days, pursuant to her employment contract and the Authority’s personnel policy. She accrues 30 vacation days annually. In the event the Executive Director does not use all vacation time to which she is entitled each year, she is eligible to receive payment in lieu of vacation leave for up to 10 days. The Board adopted a resolution in 2011 that allowed employees to be compensated for up to 15 days of unused vacation days as deemed necessary and appropriate by the Executive Director. Vacation leave for the Executive Director may not be accumulated from one year to the next, except with proper Board approval. The Executive Director is authorized to carry over unused vacation leave up to a maximum of five days annually, in line with the personnel policy and with the approval of the Board.

Vacation Days Balances – We found that as of July 31, 2012 the Executive Director’s leave accrual records reflected a vacation leave balance of over 1,670 hours or 239 days. Our review of vacation leave for 2010 noted that the Executive Director accrued 30 vacation leave days, cashed out 10 days and carried forward the remaining 20 days, which was 15 days<sup>5</sup> over the maximum allowed per the personnel policy, without appropriate Board approval. Moreover, this activity reflects no actual usage of vacation leave for the entire 2010 calendar year.

At a current hourly compensation rate of approximately \$60, the Executive Director’s accumulated vacation leave balance has a value of over \$100,000. If the Board had ensured the Executive Director complied with the policy and approved the carryover of only the maximum allowed of five days annually, with her 29 years of service, the most she could have accumulated would be 145 days, rather than the 239 day reported balance. The Executive Director stated that the Board was aware that she was not able to use all of her vacation leave due to workload demands, which resulted in the balance being carried forward. We interviewed the Board President who stated he was aware of the Executive Director’s practice of carrying over unused vacation leave days. However, we found no evidence of Board approval for leave day carryovers as required by her contract. By allowing such improper practices to occur without taking corrective action, the Board failed in its oversight by implicitly condoning a behavior that violated the internal control procedures and disregarded related approval processes.

Sale of Vacation Days – As noted previously, in 2010, the Executive Director sold back 10 vacation leave days and received a payment of \$4,069, in accordance with her employment contract. However, we found that in 2011 the Executive Director cashed out more days than allowed by the terms of her contract. She received payment for 30 days in May 2011 (\$12,574) and for 15 days in October 2011 (\$6,287).

When asked about these payments, the Executive Director only provided a Board resolution from October 2011 that authorized Authority staff to sell up to 15 days of vacation leave. The Executive Director also indicated that her employment contract provides that she receive the same benefits as the staff. Authority officials subsequently provided a Board resolution dated May 2011 that approved the sale of six weeks (i.e., 30 days) of leave specifically for the 2011-12 fiscal year. Due to the manner in which vacation leave days have

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<sup>5</sup> The carryover balance of 15 days was computed as 30 days annual accrual, less 10 days cashed out, less five days maximum carryover allowed per the personnel policy.

been accrued and these transactions were handled – one resolution not specifically listing the Executive Director and the other resolution being provided at the exit discussion – we question the legitimacy of payments for unused leave that exceed the relevant provisions in her employment contract.

The Board failed to ensure that controls and processes were followed by the Executive Director relating to her compensation-related and leave benefit payments. The lack of oversight by the Board resulted in her improperly accumulating more vacation leave than allowed by the personnel policy and/or her contract and without Board approval as required. Unless the Board increases its oversight of the Executive Director, the Authority is at risk of paying her for benefits she is not entitled to receive.

## **Recommendations**

1. The Board should clearly define in the Executive Director’s employment contract all compensation and benefits to be received.
2. The Board should ensure that the Executive Director is adhering to Authority policies and control procedures for compensation-related payments and leave benefit accrual and usage.
3. The Board should improve oversight of the Executive Director by ensuring that all payments to her are periodically reviewed or audited.
4. The Board should recover any improper payments made to the Executive Director.

## **APPENDIX A**

### **RESPONSE FROM AUTHORITY OFFICIALS**

The Authority officials' response to this audit can be found on the following pages.



# Niagara Falls Housing Authority

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Stephanie W. Cowart, Executive Director

*Celebrating the Hope, Passion and Legacy...*

December 17, 2012

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Mr. Robert E. Meller  
Chief Examiner of Local Government and  
School Accountability  
State of New York  
Office of the State Comptroller  
295 Main Street, Suite 1032  
Buffalo, NY 14203-2510

Dear Mr. Meller:

The Niagara Falls Housing Authority Board of Commissioners wishes to express its sincerest gratitude for the New York State Comptroller's examination that was conducted in the summer of 2012. We unequivocally agree with the finding that there was no fiscal mismanagement or inappropriate use of public funds. Further, all payments made to the Executive Director were accurate, supported, appropriate, and approved by the Board.

See  
Note 1  
Page 15

The Board strenuously disagrees with the Comptroller's opinion that the Executive Director "*routinely overrode controls*" with regards to her own compensation and benefits. As will be further delineated below, the Comptroller's office has provided not one actual occurrence of the Executive Director overriding the controls established by the Board.

See  
Note 2  
Page 15

The Comptroller also fails to take into consideration that during the period of time audited, the Authority was engaged in multiple large scale expansions and capital projects. Specifically, the Authority has been engaged in an \$80 million development project that has added hundreds of new homes and corresponding infrastructure. Further, during this time, it was determined that the site on which the expansion was being completed was contaminated. Additionally, due to the financial collapse in the banking system nationally, the Authority was forced to find alternate revenue streams while the project was underway. These issues, and more, required the daily attention of the Executive Director.

It must be stressed, that from January 1, 2010 through July 31, 2012, the Authority was not simply conducting business as usual. We were not merely operating our day to day business operations. This Authority was engaged in the largest development project that Niagara Falls has experienced in many years.

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Using the foregoing as a more complete background to the Niagara Falls Housing Authority's operations, this Board desires to address each of the issues raised by the Comptroller as follows:

### **Payroll Advances**

The Board agrees that payroll advances are improper and no employee should receive a paycheck that he/she did not earn. The Authority does not allow any employee, including the Executive Director, to be paid before his/her wages are actually earned. Importantly, the Board does agree with the Comptroller that an employee's vacation and sick time are accrued or earned when they are incurred.

See  
Note 2  
Page 15

However, the Board does permit employees to receive a "Paycheck Advance" if, and only if, they have sufficient earned time in their bank to offset this payment. Thus, if the employee has not earned time and saved it in his/her bank (sick bank or vacation bank), then he/she does not qualify for this benefit. This benefit is also a contractual benefit with the Authority's unionized workers. As such, and according to the Executive Director's employment contract, she is permitted to receive a Paycheck Advance if she has sufficient earned time in the bank.

The Executive Director, at the time she received Paycheck Advances, had earned and saved sufficient time in her bank to qualify for this benefit. The Executive Director also followed the proper protocol to receive the Paycheck advance. At no time did the Executive Director "override controls" to receive this benefit. She followed the proper protocol to receive a benefit that all other Authority employees are contractually entitled to receive. Further, as conceded by the Comptroller, the Executive Director had earned all of her paycheck advances. Thus, there was no fiscal mismanagement or inappropriate use of public funds.

### **Other Payments**

The Board disagrees with the Comptroller's opinion that the Executive Director's employment contract is not clear. We believe that the employment contract is sufficiently detailed and is not ambiguous. It appears, based on the audit, that the Comptroller desires the employment agreement to more specifically describe the reasons why the Executive Director receives said stipends. Although the Board disagrees with this nuance raised by the Comptroller, it will endeavor to address this concern in future contract negotiations with the Executive Director.

### **Reimbursement for Expenses Stipends**

The employment agreement provides that the Executive Director shall be entitled to receive a monthly stipend for "Reimbursement for Expenses" in the amount of \$500.00. This language is clear and unequivocal. We do not believe that the contract is vague simply because it does not state the reason why the Executive Director receives this reimbursement. The Executive Director has received this amount each month according to her contract and has not been overpaid. Thus there has been no misappropriation or inappropriate use of public funds.

See  
Note 3  
Page 15

### **Mileage Stipend**

The Authority provides "Mileage Stipends" for specific employees. Prior to 1996, the Executive Director was entitled to a "company vehicle" provided by the Authority. However, in 1996, this practice was discontinued and the Executive Director was required to use his/her personal vehicle to

conduct the Authority's business. Beginning in 1996, the Authority reimbursed the Executive Director for mileage. This longstanding practice continues to date. The current Executive Director is required to use her personal vehicle to travel to the various Authority properties for inspection and other meetings. The "mileage stipend" is simply a monthly reimbursement for the Executive Director's usage of her personal vehicle to conduct the Authority's ordinary business. This reimbursement has been provided for through the Authority's annual budget since 1996 and is further provided for under the terms of the Executive Director's employment agreement. Thus there has been no misappropriation or inappropriate use of public funds.

### **Additional Compensation**

The Executive Director's contract also provides that she shall receive "Additional Compensation" in the amount of \$5,000.00 per year. This was a contractual benefit that was negotiated between the parties. Since the examination report was conducted over a period of three fiscal years, the Executive Director rightfully received three installments of her additional compensation.

### **Bonus Payments**

The Executive Director's contract also permits the Board to award to her a bonus. This was to provide a reward for extraordinary accomplishments by the executive director. Despite the fact that our Executive Director has consistently performed her duties in an exemplary manner, including the aforementioned \$80 million redevelopment of Center Court, this Board has not awarded any bonuses to her.

It should be noted that the Board has negotiated these stipends and the additional compensation with the Executive Director through her contract. This compensation could have been incorporated into the Executive Director's annual salary, but it would have increased the Authority's pension costs.

### **Vacation Day Balances**

According to the Executive Director's contract, she is entitled to carry five vacation days over per year as per the Personnel Policy. Further, the Executive Director may carry over vacation time with the approval of the Board. The Executive Director's contract also contemplates the fact that she accrued substantial vacation time prior to the agreement and that she was permitted to maintain said accrued time.

Importantly, the Board permitted the Executive Director to accrue her vacation time through her contract. Further, due to the multiple large scale ventures that the Authority was engaged in, as described above, it was necessary for the Executive Director to forego her vacation time.

The Board acknowledges that the Executive Director has accrued an unusually large amount of vacation time. However, the Board had complete knowledge that the Executive Director was not utilizing her earned vacation time and allowed her to do so because the Authority was engaged in a very lengthy project that needed the Executive Director's daily attention.

See  
Note 4  
Page 15

### **Sale of Vacation Days**

The examination report is incorrect with regards to the characterization of the sale of the Executive Director's accrued vacation time. The Executive Director was paid for 45 vacation days in 2011. This was provided for by two separate Board resolutions (6-11) and (7-11). The Authority provided both of these resolutions to the auditor during the initial field work.

See  
Note 5  
Page 15

The Board systematically authorized the Executive Director's sale of her contractually accrued vacation time. In fact, the Executive Director could not receive compensation for her vacation time without the approval of the Board. Thus there was no fiscal mismanagement or inappropriate use of public funds.

### **SUMMARY**

The Board objects to the Comptroller's statement that it "failed to ensure that controls and processes were followed by the Executive Director." The Comptroller offers this conclusory statement in the report, but provides no proof or actual allegation supporting it. There is ample evidence that the Board provided sufficient oversight to the Executive Director and the operations of the Authority. The Board permitted the Executive Director to accrue her vacation time and additionally explicitly resolved to pay her for her vacation time in 2011.

We further disagree that there was a "culture of allowing the Executive Director to disregard or override control procedures." The Comptroller does not provide a single example of the Executive Director overriding the control procedures of the Authority. However, this did not stop the Comptroller from making yet another conclusory statement regarding the same. The Executive Director received a paycheck advance as permitted to all employees of the Authority. She had ample earned time in her sick and vacation bank to allow her to receive this benefit. Further, she followed the proper protocols to receive these payments. At no time did she override any controls.

See  
Note 2  
Page 15

Despite the forgoing, the Board is pleased that the Comptroller's risk assessment of the entire Housing Authority has raised only one issue. We disagree with some of the Comptroller's characterizations regarding this issue, but we agree that there has been no mismanagement or inappropriate use of public funds by this Authority.

See  
Note 1  
Page 15

### **Corrective Action Plan (CAP)**

The Board will utilize the audit, as intended by the Comptroller, as a management tool in the furtherance of its operations.

**Below please find our Corrective Action Plan (CAP):**

**1. The Board should clearly define in the Executive Director's employment contract all compensation and benefits to be received.**

- The Board believes that the Executive Director's employment contract is sufficiently detailed and not ambiguous. However, in future contract negotiations with the Executive Director, the Board will take into consideration the concerns raised by the Comptroller.

**2. The Board should discontinue payroll advances.**

- The Board does not permit payroll advances to any employees. The Board has a practice of permitting paycheck advances to employees that have already earned and saved sufficient time to indemnify the Authority. The Board recognizes no risk if this policy is continued.

**3. The Board should ensure that the Executive Director is held to the same standards as other employees with respect to adhering to Authority policies and control procedures for payments of compensation and benefit accrual and usage.**

- The Board must stress the fact that the Executive Director is different from the other employees of the Authority. Specifically, the Executive Director has a personal employment contract and is the only employee who answers directly to the Board. Further, virtually no other employee has been expected to forego the use of his/her personal vacation time as circumstances related to the Authority have required of the Executive Director during this time. However, this Board has already established policies and procedures addressing some of these concerns prior to the release of this examination report.

**4. The Board should improve oversight of the Executive Director by ensuring that all payments to her are periodically reviewed or audited.**

- The Executive Director did not receive any payments that were not authorized by the Board or that were not provided by her employment contract. Thus the Board's oversight has proven to be adequate.

**5. The Board should recover any improper payments made to the Executive Director.**

- All compensation and payments to the Executive Director were provided by either her employment contract or were specifically authorized by the Board. Thus there were no improper payments to the Executive Director.

Very truly yours,

***NIAGARA FALLS HOUSING AUTHORITY***

***KEVIN DOBBS***

Chairman, Board of Commissioners

## APPENDIX B

### OSC COMMENTS ON THE AUTHORITY'S RESPONSE

#### Note 1

The objective and scope of our audit is detailed in Appendix C of this report. While we determined that internal controls appeared adequate and limited risk existed in other areas not selected for audit, we caution Authority officials on concluding that there was no fiscal mismanagement and inappropriate use of public funds. Audits by their nature are limited to the scope, objective, and extent of testing that was performed.

#### Note 2

We modified the report based on information provided by Authority officials at the exit conference and in the Authority's response.

#### Note 3

We did not imply misappropriation or inappropriate use of public funds relating to the stipends. We recommend that the Board clearly define, in the contract, its intentions regarding the stipends the Executive Director is to receive and specify whether they are intended for business or personal expense reimbursements.

#### Note 4

The Executive Director's contract requires vacation days above the five day carryover to be approved by the Board. Authority officials did not provide any evidence to support their assertion that the Board took action to allow her to carry over unused vacation days due to projects that needed her daily attention.

#### Note 5

During field work Authority officials only presented us with one resolution authorizing the sale of up to 15 vacation days for all employees. They did not provide the resolution relating to only the Executive Director until the exit discussion. The report has been adjusted to reflect this new information.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to assess the financial operations of the Authority to determine whether the Authority was using resources for proper Authority purposes. To accomplish this, we performed an initial assessment of its processes and procedures so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: general governance, financial oversight and condition, cash receipts and disbursements, purchasing, payroll, and information technology.

During the initial assessment, we interviewed appropriate Authority officials, performed limited tests of transactions, and reviewed pertinent documents, such as Authority policies, procedures, by-laws, Board minutes, financial records and reports, and applicable HUD documents.

After reviewing the information gathered during our initial assessment, we then decided upon the reported objective and scope for the area with the greatest risk. We examined the Authority's processes over the Executive Director's compensation and related benefits payments. Our audit included various procedures to gather relevant evidence concerning our stated objective, as follows:

- We interviewed Authority officials to gain an understanding of the processes and operations, and reviewed relevant documents.
- We reviewed the minutes for Board approval of the Executive Director's vacation leave carryover.
- We reviewed the Executive Director's employment contract, time sheets, leave accruals and usage, as well as the personnel policy.
- We reviewed payroll records for accuracy of payments.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## APPENDIX D

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