

NFC Development Corporation

Project Approval and Monitoring

MAY 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

NFC Development Corporation

Audit Objective

Determine whether NFC Development Corporation (Corporation) officials awarded projects in accordance with established guidelines and ensured businesses' compliance with agreements.

Key Findings

Corporation officials awarded projects in accordance with established guidelines, but once funds were disbursed, officials generally did not follow up with businesses to ensure they complied with their agreements.

We examined 19 project agreements and found:

- Officials did not verify or confirm the 18 businesses that agreed to create or retain a total of 96 positions actually did so.
- Three of the eight loans reviewed had delinquent payments totaling \$39,000.

In addition, the Board did not receive project status reports and it did not meet as required.

Key Recommendations

- Develop written policies and procedures outlining the actions to be taken when loans are delinquent and other terms of the agreements are not met.
- Establish written procedures to monitor businesses to ensure they are creating and retaining jobs in compliance with the terms of the agreements.

Corporation officials generally agreed with our recommendations and indicated they are taking corrective action.

Background

The Corporation was established in the City of Niagara Falls (City) in 1980 by the City Common Council and is considered a local development corporation. The Corporation is governed by a 17-member Board of Directors (Board), which includes the City Mayor, City Common Council, Niagara Falls Urban Renewal Agency Board of Directors and up to nine other Directors. The Board is responsible for the general management and control of the Corporation's financial and operational affairs.

The Board-appointed Executive Director (Director) is responsible for the day-to-day operations and initial reviews of applications. The current Director was appointed in March 2020, and the previous interim Director was appointed in May 2019. The Corporation's General Counsel (Counsel) also participates in reviewing applications and prepares the agreements.

Quick Facts

2020 Operating Loss	(\$478,909)
2020 Year-End Cash Balance	\$663,645
Outstanding Loans	\$520,000
Grants Disbursed 2018-2020	\$276,163

Audit Period

January 1, 2018 – December 3, 2020

Project Approval and Monitoring

Local development corporations (LDCs) are private, not-for-profit corporations often created by, or for the benefit of, local governments for economic development or other public purposes. LDCs are used to finance local government operations and projects. LDCs may be created pursuant to New York State Not-For-Profit Corporation Law, Section 1411 for various reasons including to promote and enhance employment opportunities.

The Corporation's mission is to provide programs relieving and reducing unemployment, bettering and maintaining job opportunities, and providing aid to attract new business or retain business and industry within the City. The Corporation has a variety of loan and grant programs available to provide qualified businesses in the City assistance in opening a new business or planning expansion for existing businesses.

The Corporation is funded primarily through the appropriation of casino revenues by the City from the 2002 compact between the State and the Seneca Nation of Indians (Nation). However, due to an ongoing dispute regarding the Nation's financial obligation, the City has not received these payments since 2017.¹ Because the City is not receiving these revenues, it is unclear how future grants and loans will be funded.

How Should Officials Award Projects and Disburse Funds?

According to Corporation officials, in order to obtain a loan or grant from the Corporation, an interested business must complete an application and provide required documents outlined on a project checklist, including a business plan, tax returns and credit score, among other items. After ensuring the business provided all the necessary documents, the Director prepares an executive summary which is provided to the Counsel to review for any potential legal issues. The application then must first be approved by the Board's five-member loan committee, before receiving final approval by the full Board.

After the approval process is complete, the Counsel prepares the necessary paperwork. Depending on the type of award, this may include an agreement, promissory note, mortgage and personal guarantee. The agreement outlines conditions including the project the funds will be used for, the total amount awarded, a date the funds are to be fully disbursed by, how many jobs are to be created or retained and, for loans, the term of the loan, the interest rate and monthly payment.

To receive the funds, the business submits a project expense report with receipts to the Director for review. If approved, the Director forwards the report

The Corporation's mission is to provide programs relieving and reducing unemployment, bettering and maintaining job opportunities, and providing aid to attract new business or retain business and industry within the City.

¹ Additional information can be found in our audit of the City of Niagara Falls – 2017M-170 *Financial Condition* September 2017.

to the Counsel to compare the expenses and amount to be disbursed with the agreement to verify the disbursement is appropriate. The Counsel forwards the request for disbursement to the Corporation's Treasurer to prepare the check. The check is to be signed by the Mayor (also acting as Board Chairman) and the Treasurer. The check is given to the Director, who provides it to the business along with a disbursement summary report that includes total award amount, previous disbursements, current disbursement amount and remaining balance.

Officials Approved Projects and Disbursed Funds in Accordance with Corporation Guidelines

The Director maintains a file for each business in his office which includes the application, agreement and receipts for each project. In addition, other relevant documents such as newspaper articles regarding the business and correspondence sent when delinquencies occur are also retained.

We reviewed these files for the 19 businesses in our sample² and found that the application and all appropriate supporting documents were obtained. The files also included evidence that the loan committee and the Board had approved these projects. In addition, we reviewed these files to determine whether they had expense reports and receipts to support the amounts disbursed to each business. We found that the files included all appropriate receipts and that the expenses were within the project's scope.

How Should Officials Ensure Compliance With Agreements?

The Board is responsible for establishing a process to monitor and evaluate the performance of businesses receiving financial assistance to determine whether they are meeting the goals established in their agreements, such as creating and retaining jobs. The agreements state that if terms are not met, the agreement will be terminated and the business shall reimburse the Corporation for all costs and expenses. The Board should clearly define expectations and have a process in place to recapture funds if the terms of the agreement are not met.

The Director should obtain performance information from businesses, such as employment levels, and verify the accuracy of that information to determine whether agreements were met and the community is receiving intended benefits. The Director should regularly update the Board with this information. Each grant and loan has a signed agreement which includes various points that are to be complied with. This includes a date when funds are to be fully disbursed by, how many jobs are to be created and retained, how long the business needs to remain open and, for loans, information on repayment (e.g., interest rates, term and payment schedule).

² See Appendix C for sampling methodology.

Officials Did Not Ensure Compliance With Agreements

We found that Corporation officials did not generally follow up with businesses once funds were disbursed. In addition, the Corporation does not have a process in place to enforce the recapture of funds if the terms of the agreement are not met. The 19 businesses we reviewed were to create and/or retain 96 jobs within the City. Two of these businesses self-reported they created 18 positions, but officials did not confirm the jobs were created. In addition, for the remaining 17 businesses, officials had no evidence supporting these businesses created/retained the 82 jobs outlined in their agreements (see Appendix A).

In addition, loan agreements the Corporation entered with businesses require monthly payments. Although Corporation officials sent monthly invoices, we found that three of the eight businesses did not comply with the terms of their loan agreement; their loan payments were in arrears (Figure 1).

Figure 1: Summary of Delinquent Loans

Type of Business	Loan Amount	Final Loan Disbursement	Payments as of December 2020	Delinquent as of December 2020
Restaurant	\$30,000	October 2015	\$869	\$26,713
Retail Food	\$25,000	January 2012	\$17,870	\$8,017
Restaurant	\$100,000	April 2009	\$97,333	\$4,272
Total Delinquent Payments				\$39,002

- The \$30,000 loan had a term of 84 months, an interest rate of 5 percent and a monthly payment of \$424. The business only made one payment of \$869 in December 2015. Corporation officials attempted to contact the business about the delinquency with letters sent in April 2016, February 2017 and November 2017 with no response. In March 2017, the Board was informed that the business was one year behind in payments. We found additional discussion in the January 9, 2019 Board minutes, but no evidence of additional action. This business is no longer operating.
- The \$25,000 loan had a term of 60 months, an interest rate of 5 percent and a monthly payment of \$402. The business had a number of missed and late payments as well as payments that resulted in insufficient funds charges. The last payment was made in March 2017. Although Corporation officials sent letters to the business about the delinquency beginning in April 2016, Board minutes indicated the Board did not discuss the delinquency until January 2019 and there was no indication of further action taken as of the end of our fieldwork. This business was still in operation as of December 2020.
- The \$100,000 loan had a term of 180 months, an interest rate of 3 percent and a monthly payment of \$690 for the first 84 months and an interest rate

Of the 19 businesses we reviewed, 17 had no evidence supporting job creation and retention requirements as outlined in the agreements.

of 5 percent and a monthly payment of \$745 for the remainder of the term. Although the \$100,000 loan is in delinquency, it appears the business has made an effort to make payments. At the time of our audit, the last payment was in December 2020. Corporation officials should continue to monitor the repayment of this loan.

The Treasurer provides a monthly project status report to the Director and the Counsel which includes loans that are delinquent, loans that are current on payments and the amount disbursed for each grant. However, the Board is not provided with this report and, while the bylaws indicate the Board should meet bimonthly, in 2019 the Board met five times and in 2020 the Board met four times. Officials told us they have difficulty getting a quorum of the Board to meet. In addition, one meeting in March 2020 was canceled due to the COVID-19 pandemic. Not informing the Board of the businesses' activities, status of payments and businesses not meeting other terms of the agreements does not allow the Board to properly monitor and take necessary action in a timely manner.

What Do We Recommend?

The Board should:

1. Establish a written policy for oversight of individual agreements including:
 - Obtaining reporting from businesses on jobs created and retained as required by agreements and to recapture funds when necessary and ensure Corporation officials are monitoring compliance.
 - Requiring Corporation officials to provide the Board with regular updates on the status of projects, including delinquent loans.
2. Take appropriate action when loans become delinquent and consult with the Counsel on possible remedies for enforcement or if delinquent loans should be written off as uncollectible.
3. Meet as required in the bylaws and consult with the Counsel whether the bylaws' meeting frequency requirements should be revised to provide for improved Board monitoring efforts.

Corporation officials should:

4. Monitor businesses to ensure they are creating and retaining jobs in compliance with the individual agreements.
5. Provide the Board with regular updates on the status of projects including delinquent loans as required.

Appendix A: Summary of Projects Tested

Type of Business	Award Type Loan (L) Grant (G)	Award Amount	Required Job Creation (C) Retention (R)	Self-Reported * Jobs Created(C) Retained (R)	Award Purpose
Transportation	L	\$200,000	C 12	C 15	Construction
Laboratory	L	115,000	R 15		Purchase materials
Restaurant	L	100,000	C 3		Renovation
Pharmaceutical	G	100,000	C 18		Construction, IT, furniture & equipment
Transportation	G	80,000	C 5		Fixed asset capital
			R 3		Fixed asset capital
Apartments	L	40,000	0		Fixed asset capital
Restaurant	L	30,000	C 7		Renovation & equipment
Restaurant	L	25,000	C 1		Renovation
Retail Food	L	25,000	C 5		Renovation
Restaurant	L	15,000	C 1		Purchase equipment
Tent & Awning	L	10,000	C 2	C 3	Purchase equipment
Entertainment	G	10,000	C 1		Fixed asset capital
Restaurant	G	10,000	C 15		Fixed asset capital
Bakery	G	8,730	C 1		Fixed asset capital
Restaurant	G	7,217	C 1		Fixed asset capital
Barber Shop	G	7,169	C 2		Fixed asset capital
Insurance	G	5,848	C 2		Fixed asset capital
Barber Shop	G	4,444	C 1		Fixed asset capital
Barber Shop	G	2,756	C 1		Fixed asset capital
Total		\$796,164	96	18	

*If the business did not self-report the number of jobs they created or retained, the field was left blank.

Appendix B: Response From NFC Development Corporation Officials

N.F.C. Development Corp.

Office of the Chairman
745 Main Street
Niagara Falls, New York 14302
Telephone: (716) 286-4310

May 6, 2021

Office of the State Controller
Buffalo Regional Office
Attention: Jeffrey D. Mazula, Chief Examiner
295 Main Street, Suite 1032
Buffalo, New York 14203

RE: Report of Examination 2021M-11

Dear Mr. Mazula:

N.F.C. Development Corp. (“N.F.C.”) is in receipt of the above-referenced report. We have reviewed the report and are in the process of taking the following corrective actions in accordance with your office’s recommendations:

- 1) N.F.C. is in the process of establishing a written policy for oversight of grant/loan agreements with a focus on obtaining reporting from businesses on job creation and retention. We anticipate this policy will include annual and random checks as well as a final check when the retention period expires. Corporation officials will be tasked with providing reports to the Board on an ongoing basis.
- 2) N.F.C. was in the process of revising our loan and grant policies prior to your audit, and will continue that process throughout 2021. Since I have become Chairman, we have placed increased emphasis on grant/loan updates to the Board, and have regularly consulted with Counsel regarding delinquent loans. We will continue these efforts going forward and also enhance these efforts.
- 3) We have consulted with legal counsel to discuss the frequency of board meetings and the Board will have further discussions about the possibility of changing meeting frequency if lack of a quorum continues to impede the meeting schedule.

The corrective actions with respect to Recommendations 4 and 5 in your report are incorporated in #1 and #2 above, respectively. N.F.C. appreciates your recommendations and we will be in contact with your office to advise of our progress.

Sincerely,

ROBERT M. RESTAINO
Chairman

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Corporation officials and reviewed applications, agreements and Board minutes to gain an understanding of the approval and monitoring process.
- We identified 11 grants totaling \$276,164 that had funds disbursed during our scope period and eight loans totaling \$520,000 that were outstanding during our scope period. We reviewed the applications and supporting documentation for the 19 businesses identified, as well as disbursement statements, repayment history for the outstanding loans and additional information available.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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