

#1 (Rev.1/93) SINGLE PAGE COMMUNICATION TO THE COMMON COUNCIL

TO: THE COMMON COUNCIL: DATE: July 6, 2005

FROM: DEPARTMENT: Audit and Control

DIVISION: Audit

SUBJECT: [:Audit Division Review of Buffalo.
[:Economic Development Corp
[:(BERC) Pension System
[:

PRIOR COUNCIL REFERENCE: (IF ANY) [:

TEXT: (TYPE SINGLE SPACE BELOW)

AUDIT FINDINGS

- The lack of employee contributions is the exception to the rule in the case of corporations.
- The percentage contribution of the employer (BERC) is outside of the parameters used by corporations.
- The City has constraints as a result of its status under the Buffalo Fiscal Stability Authority (BFSA), including a wage freeze. This entity falls within the purview of the BFSA by its dependence on the City's block grant funds. This Board-approved (versus contractual requirement) pension contribution may be reviewed in more detail by the BFSA.
- The employees could be covered under the New York State Retirement if they were employees of BURA.
- BURA is not considered a Community Development Corporation as BERC is. There are programs under HUD regulations for such community non-profits.

AUDIT RECOMMENDATIONS

1. Request the BERC Board to review its Pension Plan in terms of viability in these tight financial times.
2. An employee contribution should be considered, especially as a requirement for an employer match. Most IDAs require an employee contribution. The employer normally matches \$0.50 for every \$1.00 contributed up to a limit (e.g. 6%).
3. Request the BERC Board to review the vesting period so that it is more in line with other plans (currently three years to vest).

We recommend moving to the plan that the other IDAs have. Even those plans are richer than the normal 4% employer contribution in most companies.

4. We recommend that the Common Council consider review the BERC administrative budget and set a limit on the pension expense.

TYPE DEPARTMENT HEAD NAME: ANDREW SANFILIPPO

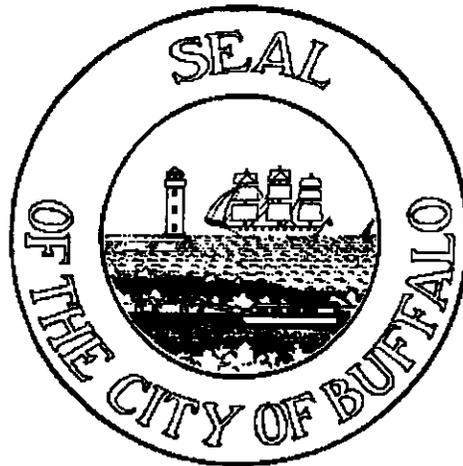
TYPE TITLE: COMPTROLLER

SIGNATURE OF DEPARTMENT HEAD

A handwritten signature in black ink, appearing to read "Andrew Sanfilippo", written over a horizontal line.

CITY OF BUFFALO

**Audit Division Review of Buffalo Economic Development Corp.
(BERC) Pension System**



For the Year 2005

City of Buffalo

DEPARTMENT OF
AUDIT AND CONTROL
COMPTROLLER'S OFFICE
1230 City Hall
Buffalo, NY 14202

ANDREW A. SANFILIPPO
COMPTROLLER

FRANK BELLIOTTI
CITY AUDITOR

May 3, 2005

**The Honorable
Common Council of the City of Buffalo**

We have performed an examination of various documents relating to the corporation known as BERC to evaluate the nature of the Pension System employed by the corporation.

Our examination was made in accordance with standards established by the Institute of Internal Auditors and, accordingly, included such procedures as we considered necessary under the circumstances.



ANDREW A. SANFILIPPO
COMPTROLLER

DESCRIPTION & HISTORY OF THE BERC AND ITS PENSION SYSTEM

The Buffalo Economic Development Corp. (BERC) originated under other names as a corporation of the City since the early 1980s. It is a nonprofit local development corporation formed to facilitate economic development and growth within the City of Buffalo.

It is involved in development on behalf of the City for activities such as small business lending, real estate management and development and other development activities. It used government grants in this effort including the Housing and Urban Development (HUD) Community Development Block Grant (CDBG), the HUD 108 Loan Program and others. The largest portion of funding is derived from the CDBG allocation provided through the City and the Buffalo Urban Renewal Agency (BURA).

BERC is a 501 (c)(4) organization exempt from Federal income taxes under Section 501(a) of the Internal Revenue Code.

The most current financial information on BERC is available in their Annual Single Audit Report for the fiscal period ending May 31, 2004 from their Independent auditors, Lumsden & McCormick, LLP, dated February 25, 2005. The report contains information on the loan receivable and notes payable, the grants received and any reportable conditions.

The reportable conditions included the following (there were no material weaknesses identified):

Internal control over financial reporting:

“key general ledger accounts for the fiscal year ending May 31, 2004 were not reconciled and corrected monthly until November 2004.”

Internal control over major programs:

“OMB Circular A-133 requires that the Single Audit Reporting package be submitted to the federal Clearinghouse within nine months of an entity” fiscal year end. The Corporation” reporting package for May31, 2004 was due February 28, 2005 and was not in compliance with applicable regulations.”

The financial statements under Notes to the financial statement #8 Pension Plan reads as follows:

“The Corporation maintains a defined contribution pension plan covering substantially all employees. The Corporation contributes a percentage of eligible compensation to the plan annually. Total pension expense for the years ended May31, 2004 and 2003 was \$138,090 and \$262,595.”

It is our understanding in discussion with officials at BERC that the plan covers all employees after a three-year vesting period. The Corporation contributes 11.7% of all wages and salaries to the plan, and in addition it also contributes an additional 4.3% for all wages and salaries of employees over the \$20,000. As an example, an employee earning \$40,000 would have \$5,540 or 13.85% contributed by the Corporation to the pension plan. There is no contribution required by the employee.

Since this is a preliminary report on the plan, we will have information on the validity of this information as well as the specific type of plan, opportunities to contribute for employees and the benefits when we receive a copy of the pension agreement, as requested on April 12, 2005. We will forward that to the Council upon receipt from the President of the Corporation.

The Corporation is by its nature not eligible for New York State Retirement for its employees. The Buffalo Urban Renewal Agency (BURA) is, under state law, a part of the New York State Retirement System.

The Pension Plan has changed over time. For example, there were provisions to vest employees at a reduced percentage before total vesting. In addition, the percentage of wages and salaries has also changed. The overall percentage was 12% in the past and the excess over \$20,000 in wages and salaries had an 18% contribution rate.

The Mayor, who is the Chairman, appoints the Board members. There is one Council member appointed. The number of directors has changed at time sin its history.

The Pension Plan form and the administration of the plan are determined by a vote of the directors.

The Comptroller's audit authority under the Charter of the City is explained in this excerpt:

“The **Comptroller** shall have the power to conduct financial and performance audits of all agencies and other entities a majority of whose members are appointed by city officials or that derive at least fifty percent of their revenue, including the provision of goods, services, facilities or utilities, from the city or from allocations under the authority of the city.

As a condition of the payment of any funds by or under the authority of the city, such agency or entity shall be required to agree to accept such audits.

As a condition of any agreement for the payment of funds by or under the authority of the city to any agency or entity on a grant or for goods or services, such agency or entity shall agree to accept audit by the **Comptroller** of the performance of the terms of such agreement. “

AUDIT OBJECTIVES

1. To determine the objectivity and reasonableness of the pension plan as currently in force at the BERC.
2. Compare corporations (profit and non-profit) plans to the BERC model
3. Compare other development agencies' plans with theirs
4. Review trends in the field of 401K plans.
5. Review similar functions performed in corporations, agencies and in the City departments.

AUDIT METHODOLOGY

We have reviewed various sites, and surveyed local companies for their pension information.

Any detailed study of pension plans should reference ERISA, but this is beyond our determined scope

Employee Retirement Income Security Act — ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.

ERISA requires plans to provide participants with plan information including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.

SUMMARY OF PENSION AUDIT RESEARCH

- Studies revealed that the eligibility (or vesting) would occur within the first year in over 90% of the companies reviewed. Copies of the studies available.
- Seventy-five percent of the companies match the employee contributions
- The average company contribution was 4.1% of payroll. The most common type of match is \$0.50 per \$1.00 up to the first 6% of pay. Participation in plans has been declining in the past few years and is lower in the lower salary ranges.
- The other Industrial Development Agencies or IDAs have 401K pensions that have an employee contribution requirement. In other words, if the employee contributes 0.00, then the IDA contributes nothing. If the employee contributes 3% of wages, then the IDA contributes 7%.

AUDIT FINDINGS

- The lack of employee contributions is the exception to the rule in the case of corporations.
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- The employees could be covered under the New York State Retirement System if they were employees of BURA. BURA is not considered a Community Development Corporation as BERC is. There are programs under HUD regulations for such community non-profits.

AUDIT RECOMMENDATIONS

1. Request the BERC Board to review its Pension Plan in terms of viability in these tight financial times.
2. An employee contribution should be considered, especially as a requirement for an employer match. Most IDAs require an employee contribution. The employer normally matches \$0.50 for every \$1.00 contributed up to a limit (e.g. 6%).
3. We recommend that the Common Council review the BERC administrative budget and set a limit on the pension expense, a controllable cost.
4. We recommend that BERC employees whose functions and revenue stream (e.g. rental revenue from incubators) could be performed in BURA. They could then move to BURA's payroll and become eligible for retirement under New York State rules.
5. We recommend that the Board follow-up on audit requests not complied with by the management of BERC.



CITY OF BUFFALO

DEPARTMENT OF
AUDIT AND CONTROL

COMPTROLLER'S OFFICE
1230 CITY HALL
BUFFALO NY 14202

ANDREW A. SANFILIPPO

FRANK BELLIOTTI
COMPTROLLER
CITY AUDITOR

FOLLOW-UP LETTER SENT 4/28/05

April 12, 2005

Timothy Wanamaker, Executive Director
Community Development
President of Buffalo Economic Renaissance Corporation
Room 930 City Hall
Buffalo, NY

Dear Mr. Wanamaker:

Re: Request BERC Pension Information & Loan Allocation Status

We are formally requesting the pertinent agreement for the pension system as approved by the Board of Directors. We are aware from the annual report and some Council resolutions that the pension rates are 11.7% for the first \$20,000 and 16% for salaries above that amount. Conversely, the formula could read as 11.7% on all wages and salaries as well as an additional 4.3% for amounts over \$20,000. The vesting period is three years.

We seek to have the document that validates this information, which we believe to be correct.

In addition the Council has asked and we are now requesting information on the open loan block grant accounts. The FCA system provides a report that displays loan allocations and contracts against those balances as well as disbursements made. We have been informed that a report similar to this is supplied to the Council members on a periodic basis. We would appreciate receiving the latest to assist in determining if there are in fact large dollar amounts uncommitted. If there is another level of committed funds, but paperwork is not completed, then this schedule may need to be amended.

We are aware that the HUD regulations require agencies to expend funds within three days of receipt. This may be a contributing factor in determining what is uncommitted.

If there are any questions, we will be available for a discussion or clarification.

Thanks in advance.

Respectfully,
Frank A. Belliotti City Auditor

Cc A. SanFilippo

B. Davis, Council Finance Chair

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COMPTROLLER'S OFFICE
1230 CITY HALL
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ANDREW A. SANFILIPPO
COMPTROLLER

FRANK BELLIOTTI
CITY AUDITOR

April 15, 2005

Timothy Wanamker, President BERC
Room 930 City Hall
Buffalo, NY 14202

Dear Mr. Wanamaker:

Re: Audit Request -Payroll Information on BERC Employees

As part of a review of the Buffalo Economic Renaissance Corporation (BERC), we are requesting some payroll information at this time.

The following categories would need to be included (*) in the list. The W-2 file from 2004 year end would suffice for most, but not all of the information requested.

The social security number should not be included on the file that would provide in Access or Excel format. The list of codes is as follows:

DEPARTMENT
LASTNAME
FIRSTNAME
MI
ADDRESSLINE1
CITY
STATE
ZIP
JOB TITLE
SSN # (*)
EMPLOYEEENO
STATUS
UNION
ORIG HIRE DATE
SEX
RACE
ANNUAL SALARY
HOURLY
ACTIVE CODE
W-2 GROSS WAGES

Let us know if there are any specific questions on this request.

Respectfully,
Frank A. Belliotti City Auditor/Deputy
Comptroller

Cc A. SanFilippo