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FOR IMMEDIATE RELEASE

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Today, the Legislative Performance Audit Committee released a performance audit of 3 grant programs administered by the Department of Economic Development (DED): the Nebraska Affordable Housing Trust Fund, the Civic and Community Center Financing Fund, and the Community Development Block Grant program.

The audit found that the Nebraska Affordable Housing Trust Fund had an excess balance of over 11 million dollars due to a lack of an adequate tracking system. It also found that the program was not in compliance with certain reporting requirements and a requirement that all grantees provide a minimum 10 percent match.

Regarding the Civic and Community Center Financing Fund, the audit found that DED is meeting legislative intent that projects be funded in smaller communities and communities throughout the state. However, it noted that DED was incorrectly applying the statutory criteria for evaluating project grants and engineering/technical studies and not maintaining sufficient documentation of reasons for projects that were not selected for grants.

There were no audit findings relating to the Community Development Block Grant program because the Audit Office provided only descriptive information about certain aspects of that program.

Senator John Kuehn, Chairman of the Legislative Performance Audit Committee said, “The Committee is concerned with the audit findings but believes DED is working to address them. Regarding the overage amount in the Nebraska Affordable Housing Trust Fund, the Committee recommended that DED develop both a system for tracking the balance in the Nebraska Affordable Housing Trust Fund and a plan for reducing the current overage, which must be approved by the Legislature. In fact, DED has been working with the Legislature on a bill that would use the overage to invest in rural workforce housing.”

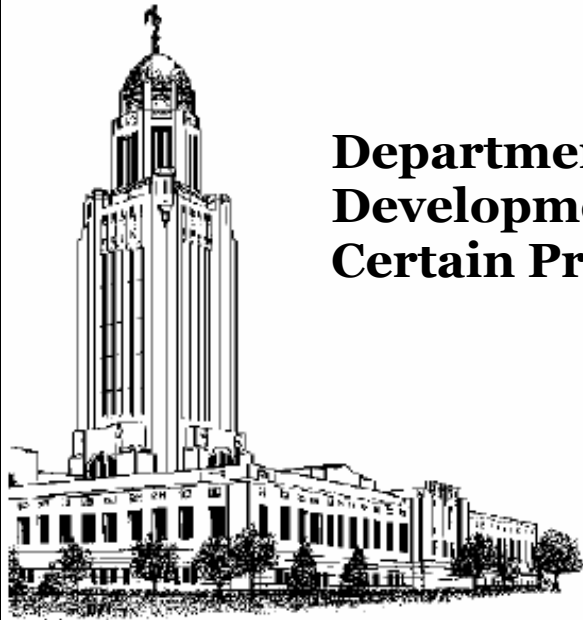
“The Committee also expects DED to come into compliance with statutory requirements for these programs or work with us to change them,” he continued.

In its response to the draft audit report, Department of Economic Development said it is in the process of implementing improved procedures and internal controls to prevent future accumulation of excess balance in the Nebraska Affordable Housing Trust Fund.

Additionally, to improve government transparency, accountability, and efficiency, DED has recently begun reorganizing to allow for the hiring of a new Chief Legal Officer, Chief Financial Officer, Budget Officer and Internal Auditor.

Under the Performance Audit Act, DED will now develop a plan for addressing the Committee's recommendations. Per statute, the plan must be provided to the Committee in May.

The report is available on the Legislative Performance Audit Office's website:
nebraskalegislature.gov/reports/audit.php



**Department of Economic
Development: An Overview of
Certain Programs**

**Performance Audit Committee
Nebraska Legislature**

March 2017

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Table of Contents

I. Committee Recommendations

II. Legislative Audit Office Report

**III. Agency Response and Fiscal Analyst's
Opinion**

I. Committee Recommendations

Audit Summary and Committee Recommendations

Audit Summary

The Department of Economic Development (DED) administers a number of programs related to housing and community development. The Nebraska Affordable Housing Trust Fund supports communities with affordable housing projects for low income individuals through financial assistance to both public and private organizations. The Civic and Community Center Financing Fund fosters community maintenance and growth by providing grants to communities for civic, community, and recreation center projects owned by the community. The Community Development Block Grant Program is a federal program that provides states and certain cities with funds to provide decent housing, suitable living environments, and economic opportunities for people with low and moderate incomes.

Section I of the audit report discusses the Nebraska Affordable Housing Trust Fund application and award process, how DED determines the fund balance, and the way it reports program information to the Legislature. In general, the Legislative Audit Committee was most concerned with the amount of money in the fund and how DED calculates that amount. During the audit, DED discovered the balance was more than \$11 million above the current commitments for grants. We also found issues with statutory compliance in the way DED administers and reports on the program.

Section II examines the Civic and Community Center Financing Fund. The Committee's main interest in this program was the application process, particularly in the geographic distribution of awards and how award decisions are reached. We found that the program is meeting legislative intent in terms of providing grants to programs throughout the state. At the same time, however, we found that DED is not fully complying with the law in the way it applies the program criteria to both project and engineering study applications and that it did not have adequate records for the auditors to verify the reported rationale behind application decisions.

Section III describes the Community Development Block Grant Program. This section is a high-level overview of the program, with a specific emphasis on housing programs targeting small and rural communities.

DED reviewed the draft audit report and, in general, agreed with the Findings and draft Recommendations. The agency's written comments about the draft audit report and the Legislative Auditor's summary of that response are contained in last section of this report.

Committee Recommendations

Nebraska Affordable Housing Trust Fund

Finding: During this audit, the Department of Economic Development found that the Nebraska Affordable Housing Trust Fund account balance was more than \$11 million above what was committed for grants, which the agency acknowledged was much higher than needed as a protection against revenue fluctuations. (pg. 5)

Recommendation 1: DED needs to develop a system of tracking the balance in the trust fund so that excessive overages do not accumulate.

Recommendation 2: DED needs to develop a plan for reducing the current overage. DED shall obtain approval from the Legislature prior to implementation.

Finding: In its annual reports to the Legislature, the Department of Economic Development does not report all of the statutorily required information. (pg. 6)

Finding: In its annual reports to the Legislature, the Department of Economic Development does not report the number of grants funded by calendar year, as is required by law. (pg. 7)

Recommendation 3: DED needs to ensure that it is meeting statutory reporting requirements. If there are reasons those requirements should be changed, it should work with the Legislature to change them.

Finding: In its annual reports to the Legislature, the Department of Economic Development does not update grant amounts reported for previous years if those amounts have changed since the initial award. (pg. 7)

Recommendation 4: At the completion of each grant project, DED should include in its annual report: the amount awarded, the total amount actually spent, and the difference that will be returned to the fund, if any. The Committee understands that grantee expended amounts are not known until each contract is concluded. Total amounts actually spent should be reported by DED in the first annual report after the grant project is completed.

Additional Finding Made After Issuance of Draft Report: DED has not required all grantees to provide matching funds as required by law and as discussed on page 4 of the audit report. For projects that did not provide matching funds, the state may have paid more than it would have if a match had been provided.

Discussion: This finding resulted from an issue raised in DED's written comments in response to the draft audit report. It was not an issue that was a subject of the original audit.

Recommendation 5: DED should require matching funds from all grantees as required

by law.

Recommendation 6: DED should direct staff who are not administering NAHTF—such as the agency’s internal auditor and legal counsel—to review all of the statutory and regulatory requirements for this program and to report back to the Audit Committee on the results of that review.

Civic and Community Center Financing Fund

Finding: The Department of Economic Development is applying the same criteria to project grants and engineering/technical studies, in conflict with statutory requirements that set different criteria for each. By applying criteria differently than the Legislature intended, there is a risk that the projects receiving grants may not reflect the Legislature’s intent. *(pg. 11)*

Recommendation 7: DED should follow the criteria as created in statute. If the statutory criteria for technical/engineering studies do not allow DED to determine which proposals are worthy of funding, they should work with the Legislature to create statutory criteria that better reflect priorities for the program. If DED feels a higher match preference is an important way to determine financial readiness, it should request that the Legislature amend the statute to apply the requirement to all applicants.

Finding: We were unable to verify the Department of Economic Development’s reasons for not selecting Civic and Community Center Financing Fund applications for award because DED does not maintain records from the assessment teams. The absence of application scoring documentation makes it very difficult to know whether DED is applying grant criteria in accordance with the Legislature’s intent. *(pg. 13)*

Recommendation 8: DED should maintain records from the assessment teams to provide guidance to future assessment teams and to enable verification of the information they are reporting to the Legislature.

Finding: The Department of Economic Development is meeting legislative intent that projects be funded in smaller communities and communities throughout the state. In the absence of a statutory standard for "throughout the state" we examined whether projects were funded in all 3 congressional districts and found that they were. *(pg. 14)*

Community Development Block Grant

If the Committee wishes to proceed with a full audit related to the CDBG program in DED, the Office recommends that, due to the complexity and breadth of the program, this be a single audit of a narrow issue under state administration and not be combined with other DED programs.

II. Legislative Audit Office Report

Legislative Audit Office Report

**Department of Economic Development: An
Overview of Certain Programs**

March 2017

Prepared by
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TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION | 1 |
| SECTION I: The Nebraska Affordable Housing Trust Fund | 3 |
| SECTION III: The Civic and Community Center Financing Fund | 9 |
| SECTION III: The Community Development Block Grant Program | 17 |

INTRODUCTION

On January 25, 2016, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office to conduct an audit of the Nebraska Affordable Housing Trust Fund, the Civic and Community Center Financing Fund, and the Community Development Block Grant program administered by the Nebraska Department of Economic Development (DED).

In general, the Committee was interested in an explanation of the grant-award process and fund balance for each program. The Committee requested the following information regarding each specific program:

1. For the Nebraska Affordable Housing Trust Fund, describe the application and grant award process; the information reported to the Legislature in DED's annual report; and how it determines the amount of money in the trust fund.
2. For the Civic and Community Center Financing Fund, describe DED's process for awarding grants, including whether the agency's grant selection process complies with legislative intent, state law and administrative regulations; how the program funds have been distributed across the state; and how the balance in the fund is calculated.
3. For the Community Development Block Grant Program, provide an overview of the program, including a description of programs targeted for housing development in small and rural communities.

Section I through III of this report address each of the audit questions.

We conducted this performance audit in accordance with 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 objectives. We believe that the evidence obtained does provide a reasonable basis for our findings and conclusions based on our audit objectives. The methodologies used are described briefly at the beginning of each section.

We appreciate the cooperation and assistance of the Nebraska Department of Economic Development during the audit.

SECTION I: The Nebraska Affordable Housing Trust Fund

In this section, we describe the Nebraska Affordable Housing Trust Fund application and grant award process. We also report findings relating to how the Department of Economic Development (DED or department) determines the amount of money in the trust fund and the information provided to the Legislature in its annual report.

Background

The Nebraska Affordable Housing Trust Fund (NAHTF) was established in 1996 in response to concern about the effect of poor housing on the economic development of the state. Intended to assist low income individuals, the program finances loans, grants, subsidies, credit enhancements, technical assistance, and other assistance for community-based affordable housing projects. The fund may also be used for administrative costs of the program. It is primarily funded by a portion of the documentary stamp tax, a fee placed on certain real estate transactions.

The Nebraska Affordable Housing Act¹ requires that each of the three Nebraska congressional districts receive 30% of the available funds; the other 10% is not statutorily obligated but is used by DED to provide matching funds for the federal HOME Investment Partnership program² and grants for non-profit operating assistance. Funds may only be awarded to: governmental subdivisions; local housing authorities; community action agencies; community-based, neighborhood-based or reservation-based nonprofit organizations; and for-profit entities working with other eligible organizations. Only certain types of housing-related activities are eligible for grants. These are:

- new construction;
- matching funds for new construction;
- technical assistance;
- matching funds for operating costs;
- mortgage insurance guarantees;
- housing for low/very-low income persons;
- housing that increases accessibility to the elderly and disabled;
- projects of critical importance for the continued economic development of the community and where a shortage of affordable housing exists;
- infrastructure projects;
- down payment and closing costs;
- demolition of certain structures;
- certain housing education programs;
- programs that support homeless youth; and
- specific types of vocational training.

¹ Neb. Rev. Stat. §§ 58-701 to 711.

² The HOME Investment Partnership program grants federal funds to states and municipalities to create affordable housing for low-income people. The program requires state and local governments to match 25 cents to every program dollar received from the federal government.

Additionally, grant recipients are statutorily required to provide a financial match. The match amount is determined by DED, but it may never be less than 10%.

Application and Grant Award Process

The annual NAHTF application process begins with submissions in the spring; application guidelines are posted on the DED website. DED holds workshops about the process and applicants are encouraged to work with a housing program representative. Applicant organizations must submit a pre-application to show their interest in applying for a grant prior to submission of a full application.

Applications are evaluated by scoring teams of three or more people, usually a mix of DED employees with varying types of expertise. Scoring-team recommendations are sent to the Director of the Housing and Community Development Division and then to the DED Director for approval.

Projects are selected for grants based on criteria set in a Qualified Action Plan (QAP), which is required by law. The purpose of the QAP is to address the housing needs of the state as identified by communities, developers, non-profit organizations, and other members of the public. When determining which projects to fund based on the criteria, DED must give first priority to projects that serve the lowest income occupants for the longest period of time, as well as projects located in enterprise zones.³

Eligible activities are divided into three separate funding categories. Each funding category has a separate application pool and they are scored based on the criteria presented in Table 1.1 below. The total possible points for any application, regardless of the funding category, is 1000.

Table 1.1. Grant Funding Categories

| Funding Category | Selection Criteria |
|---|---|
| Homebuyer, Owner Occupied Rehabilitation, and Other Eligible Activities | <ul style="list-style-type: none"> • Demonstrates desired results (Need and Impact) • Probability of producing desired results (Collaboration, Leverage, Credit, and Readiness/Capacity) |
| Rental Housing | <ul style="list-style-type: none"> • Demonstrates desired results (Need and Impact) • Probability of producing desired results (Collaboration, Leverage, Credit, and Project Design/Capacity) |
| Non-Profit Operating Assistance | <ul style="list-style-type: none"> • Demonstrates desired results (Need and Impact) • Probability of producing desired results (Collaboration, Capacity, and Financial Capacity) |

Source: Prepared by Audit Office using information from DED, *Proposed NAFTA Qualified Allocation Plan (2016)*, p. 13-14.

³ An enterprise zone must meet two of the three following conditions: (1) the population in the area must have decreased by at least 10%; (2) the average rate of unemployment in the area is at least 200% of that for the state; or (3) for areas located in metropolitan, primary class, first class, second class village or tribal government area, the average poverty rate in the area exceeds 20% for the total federal census tract(s) or block group(s).

Award letters are mailed to grant recipients in the late summer or early fall and contracts are sent shortly thereafter. Most of the applications which receive a denial fail to score high enough using the selection criteria shown in Table 1.1. When determining awards, consideration is also given both to the available amount of money in each congressional district and the available amount of total funding.

Additionally, each contract has a number of special conditions that recipients must meet within three months before funds are disbursed. Release of funds is timed to coincide with the construction season; funds are released the spring after all special conditions are met. Contracts are generally written based on the assumption that projects will be completed within 18 months, or two construction seasons. DED may recapture funds not used within the timeframe specified by the contract. Recaptured funds must be credited back to the NAHTF.

Trust Fund Balance

Finding: During this audit, the Department of Economic Development found that the Nebraska Affordable Housing Trust Fund account balance was more than \$11 million above what was committed for grants, which DED acknowledged was much higher than needed as a protection against revenue fluctuations.

The NAHTF is primarily funded by a portion of the documentary stamp tax, which is \$.95 of every \$2.25 collected by the Register of Deeds for real estate and other types of transactions.⁴ Each year, DED estimates how much money will be available for affordable housing grants and for HOME investment match based on the economic conditions of the state. Forecasts of proposed revenue generated by the documentary stamp tax are conducted by DED staff in June and in December each year. In order to prevent over-allocation of trust fund money, DED uses a conservative estimate of \$600,000 per month; however, they usually receive closer to \$700,000 and in some months it can be as high as \$2,000,000.⁵ For 2016, DED determined that 10 million dollars would be available for award for NAHTF grants and HOME match, with an additional \$600,000 allocated for administrative expenses.

Since grants are awarded based on contracts which typically span over two to three construction seasons, the total amount of money in the trust fund includes both the amount to be awarded in the current year and the amount that remains committed under unfulfilled contracts. Reimbursements to grantees only occur once contract conditions have been met and remaining amounts committed under contract must be retained in the fund until this occurs. Carrying over these committed funds from year to year artificially

⁴ Pursuant to Neb. Rev. Stat. § 58-703, the NAHTF can also receive money from sources recommended by the housing advisory committee, legislative appropriations and transfers, and grants, private contributions, repayment of loans, and all other sources. However, DED staff were unaware of the trust fund receiving money from sources other than the documentary stamp tax and legislative appropriations.

⁵ Due to real estate transfers, usually in December when there has been an increase in the capital gains tax.

inflates the balance in the fund because not all of the money in the trust fund is available for award; it is also composed of funds committed under prior years' contracts which have yet-to-be-dispersed.

Because the NAHTF is comprised of both funds awarded in the current fiscal year and carryover funds from previous fiscal years, we asked DED staff to provide a breakdown of the balance in the trust fund for the fiscal years 2012-13 through 2015-16 so that we could show how the balance was calculated from year to year. Our intention was to provide the Legislature with supplementary information to the data provided by DED to the Legislative Fiscal Office regarding the fund balance for those years.

This information was first requested from DED on June 8, 2016. Over the next 11 weeks, DED provided the Audit Office with five versions of a spreadsheet showing the fund balance for those years, each one differing from the previous version. However, all versions showed that currently there is an excess balance in the NAHTF of over 11 million dollars. DED staff confirmed the existence of this overage in a meeting with audit staff.

DED staff emphasized that they try to be conservative in estimating how much money they will have to award because documentary stamp tax revenue fluctuates based on the number of real estate transactions in a given month. However, they acknowledged that they had not realized the excess balance had reached \$11 million, which was more than needed to protect against such fluctuations.

Annual Reporting Requirements

In the course of researching the information DED is required to annually report to the Legislature, the Audit Office identified three problems with the reports. These are: (1) certain data omissions; (2) errors in the number of grants awarded by year; and (3) errors in reporting of grant amounts. A discussion of each of these issues follows.

Omissions of Some Statutorily Required Information

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|--|
| <p>Finding: In its annual reports to the Legislature, the Department of Economic Development does not report all of the statutorily required information.</p> |
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State law requires certain grant information be included in an annual report to the Legislature. As shown in Table 1.2, we found that DED reports all of this information except: occupancy rate; expected rent; and the amount of revenue generated by each project and deposited into the fund.

Table 1.2. Annual Report Requirements

| Requirement | Audit Office Found in Annual Reports? |
|---|---|
| Number of applications funded in the previous calendar year | Yes |
| Number of applications funded in all previous calendar years | Yes |
| Names of organizations receiving funds | Yes |
| Project locations | Yes |
| Amount of funding provided to each project | Yes |
| Amount of funding leveraged as a result of each project | Yes |
| Number of housing units created and the occupancy rate for those units | Number of Housing Units – Yes Occupancy rate - No |
| Expected rent or monthly payment for those units | No |
| Projected number of new employees and the community investment for each project | Yes |
| Amount of revenue deposited into the NAHTF. | No |

Source: Prepared by Audit Office using information from Neb. Rev. Stat. § 58-711 and DED Annual Reports to the Legislature 1998-2015.

Discrepancies in the Number of Grant Applications and Grant Amounts Reported

Finding: In its annual reports to the Legislature, the Department of Economic Development does not report the number of grants funded by calendar year as is required by law.

Finding: In its annual reports to the Legislature, the Department of Economic Development does not update grant amounts reported for previous years if those amounts have changed since the initial award.

Between 1998 and 2015, DED awarded 524 NAHTF grants. On average, DED awarded 29 grants per year, but the actual number varied significantly—from a high of 61 (1999) to a low of nine (2011). According to DED staff, factors that affect the number of grants awarded are: the total amount of money available for grants in a given year; the number of applicants; and the amount of money awarded per project.

In both the number of projects and grant amounts reported from 2011 through 2015, Audit staff noted some discrepancies between what was reported in the annual reports

and what was provided to us by DED in separate spreadsheets. For example, DED's annual reports for 2014 and 2015 listed 23 grants awarded in each year. However, corrected information provided to the Audit Office showed 20 grants awarded in 2014 and 31 awarded in 2015. DED staff stated that the differences between the numbers given in the annual reports were primarily due to agency errors and "discrepancies between calendar year and program year."

Additionally, in information provided to the Audit Office, grant amounts were sometimes lower than stated in the annual reports. According to DED staff, the difference reflects the fact that some grantees do not use all of the money initially awarded. For example, a project that was awarded \$250,000 to build four housing units may only complete three units for a total of \$150,000. In the annual report, the grant amount would be reported as \$250,000, but in DED's close-out documentation, it would show \$150,000; the unused \$100,000 would return to the trust fund for award to future projects.

The Audit Office asked DED to explain each discrepancy identified, but DED was unable to do so. The Audit Office made several attempts to get the explanations but the information received from DED never fully answered the questions asked and, in some cases, contradicted earlier information given to the Office. Ultimately, DED acknowledged the problems the Audit Office identified in the way it is reporting data to the Legislature and provided the following statement:

Overall, the department, after re-evaluating its process for providing annual legislative audit information, will ensure that annual calendar year reporting accurately reflects all the NAHTF projects awarded. We will work with staff to ensure there is a better understanding of the expectations for data provided within this report and to better ensure that DED tracks information within our databases which will provide needed information on how funds are carried over from year to year through project completion.

SECTION II: The Civic and Community Center Financing Fund

In this section, we examine the Civic and Community Center Financing Fund, describe how the grant process works, how funds have been distributed across the state, and how the grant program is allocated money-from the Fund.

Program Description

The Civic and Community Center Financing Fund (CCCFF or the Fund) was established in 1999 to support the development of civic, community, and recreation centers throughout Nebraska, with emphasis on fostering maintenance or growth of communities.⁶ The CCCFF is administered by the Department of Economic Development (DED) and funded through transfers from two other community support funds: the Convention Center Support Fund and the Sports Arena Facility Support Fund. Municipalities can apply to DED to receive: 1) project grants, for construction or renovation of civic and recreation centers, demolition for or upgrade of community centers, conversion or rehabilitation of historic buildings, and 2) engineering/technical studies for those projects.

DED may only use the portion of CCCFF funds appropriated to it by the Legislature. The agency receives appropriations for the grant program and reasonable administrative costs, including a half-time employee. Additionally, a portion of the fund is transferred annually by the State Treasurer to the State Colleges Sports Facilities Cash Fund.

The CCCFF has undergone significant changes in the last five years. Two pieces of legislation, LB 297 (2011) and LB 153 (2013), were enacted to increase the program's effectiveness in assisting smaller communities.

LB 297 attempted to transition the CCCFF from funding tourism-focused projects, like convention centers, to community development projects, like civic centers, community centers, and libraries. It also allowed grants for historic building projects. LB 153 reemphasized the focus on community development by modifying the criteria used to evaluate projects and requiring DED to report to the Legislature about the Fund and all program applicants. The bill also provided for small, one-time engineering and technical studies grants to increase the likelihood that communities would have competitive applications.

The number of grants and the total amount awarded varies from year to year, depending on the revenue for the Fund, the amount appropriated by the Legislature, and the types of projects. As shown in Table 2.1, the number of projects funded in a given year has ranged from none (2006, 2007, and 2011) to 14 (2015).

⁶ Neb. Rev. Stat. § 13-2702.

Table 2.1. CCCFF Awards by Year

| Year | Number of Grants | Amount Awarded⁷ |
|-------------|-------------------------|-----------------------------------|
| 2004 | 1 | \$500,000 |
| 2005 | 7 | \$450,665 |
| 2006 | 0 | \$0 |
| 2007 | 0 | \$0 |
| 2008 | 11 | \$1,241,160 |
| 2009 | 7 | \$455,525 |
| 2010 | 6 | \$1,087,459 |
| 2011 | 0 | \$0 |
| 2012 | 1 | \$250,000 |
| 2013 | 4 | \$869,863 |
| 2014 | 13 | \$4,880,000 |
| 2015 | 14 | \$2,029,420 |

Source: Prepared by Audit Office using information from DED's website.

Committed and Uncommitted Funds

The Audit Committee was interested in how the committed and uncommitted dollars in the fund are determined.

Because DED may only use the portion of the fund appropriated to it by the Legislature, two appropriations are made for the grant program in each budget cycle. The first is an appropriation to fund the next grant cycle. The second is a re-appropriation of funds that have been committed, but not yet disbursed to grant recipients. According to DED, because CCCFF projects can take three to four years to complete and half the money is not awarded until after the projects are completed, a significant amount of the fund remains committed to those projects and must be re-appropriated. This means that there always appears to be more money in the Fund than is available for new grant awards.

The Application Process

Participants apply for grants in two steps: the pre-application and the full application. The pre-application is one page and is due by May 1st. According to DED, the purpose of the pre-application is to eliminate projects or communities that are ineligible. The eligible pre-applicants are invited to submit full applications, which are due June 15th.

Certain factors can make a project or community ineligible to receive a CCCFF grant. First, depending on the size of the municipality, either the project or the entire community is ineligible for CCCFF funds if they have ever received funding from Sports Arena Facility

⁷ Award data throughout this report reflects the awards as announced, which may differ from the amounts actually used. For example, in both 2014 and 2015 a community elected to cancel contracts, which reduced the amounts actually used in those years by \$375,000 and \$5,000, respectively.

Financing Assistance Act or the Convention Center Facility Financing Assistance Act, as they provide funding for the CCCFF. Second, a municipality is only allowed one CCCFF grant for a project and one grant for an engineering or technical study every five years (that is, they can have both within five years, but no more than one of each).

When applications are received, DED assembles an assessment team of at least four individuals, usually three from within the agency and one from the Nebraska Historical Society. The team evaluates projects using nine criteria. The criteria are made available in the application and on the DED website, along with tips for how applicants can best explain the ways their project meets the requirements.

Three of the nine criteria—project location, project ownership, and project operation—are threshold criteria; they must be met for an application to be eligible. Applicants may be awarded 10 points for each of the other six criteria, for a total of 60 points. After each member of the assessment team scores the projects, the team meets to discuss applications with the highest overall scores. Following the team meeting, the highest scoring applications are sent to the Housing and Community Development Division Director and the Executive Director for approval.

Grant Criteria

Finding: The Department of Economic Development is applying the same criteria to project grants and engineering/technical studies, in conflict with statutory requirements that set different criteria for each. By applying criteria differently than the Legislature intended, there is a risk that the projects receiving grants may not reflect the Legislature's intent.

The Civic and Community Center Financing Act requires that both project grants and engineering and technical studies have a 50% match and be for a projects located in the community applying for the grant. However, the law contains different criteria for evaluating project grants and evaluating engineering or technical studies.

The law requires project grants be evaluated for retention impact, new resident impact, visitor impact, readiness, and project planning. In contrast, the statute has only one measure for engineering/technical studies—a preference for studies with a higher level of local match. As shown in Table 2.2, DED currently applies all of the criteria for both types of projects to all applications regardless of whether a community is requesting funding for a project or for an engineering or technical study.

Table 2.2. Department of Economic Development Criteria for Grants

| Criteria | Criteria Description |
|------------------------------------|---|
| Project Location | A project shall be located in the municipality that applies for the grant. |
| Project Ownership | A project shall be owned by the municipality that applies for the grant. |
| Project Operation | A project shall be operated by the municipality that applies for the grant, directly or under contract. |
| Retention impact | The likelihood of the project: <ul style="list-style-type: none"> • retaining existing residents in the community where the project is located • developing, sustaining, and fostering community connections • enhancing the potential for economic growth in a manner that will sustain the quality of life and promote long-term economic development |
| New Resident Impact | The likelihood of the project attracting new residents to the community where the project is located. |
| Visitor Impact | The likelihood of the project: <ul style="list-style-type: none"> • enhancing or creating an attraction that would increase the potential of visitors to the community where the project is located from inside <i>and</i> outside the state |
| Financial Support | Assistance from the fund must be matched: <ul style="list-style-type: none"> • Assistance must be matched at least equally from local sources • At least fifty percent of the local match must be in cash. • Projects with a higher level of local matching funds shall be preferred over those with a lower level of matching funds • Neither the local match nor the items listed for grant assistance should include amounts already expended prior to the date of application for a grant |
| Readiness and Local Public Support | The applicant's fiscal and economic capacity to: <ul style="list-style-type: none"> • finance the local share • ability to proceed and implement its plan • operate the facility |
| Project Planning | Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning. |

Source: Prepared by Audit Office using information provided by DED.

Evaluation of Applications

Finding: We were unable to verify the Department of Economic Development's reasons for not selecting Civic and Community Center Financing Fund applications for award because DED does not maintain records from the assessment teams. The absence of application scoring documentation makes it very difficult to know whether DED is applying grant criteria in accordance with the Legislature's intent.

Thirty-three applications were not selected for awards in 2014 and 2015. DED reported that, of those 33, 17 did not receive a grant because of a single reason and 16 did not a grant for multiple reasons. According to DED, the most frequent reasons applications were not funded were that other applicants scored higher in new resident impact, retention impact, and/or visitor impact. Table 2.3 shows the reasons DED reported for non-award of the 33 applications. (There are more than 33 reasons because some applications had more than one reason.)

Table 2.3. 2014 and 2015 Non-Award Applications

| Reported Reason | Applications |
|------------------------------------|--------------|
| New Resident Impact | 14 |
| Retention Impact | 12 |
| Visitor Impact | 10 |
| Financial Support | 9 |
| Project Planning | 6 |
| Readiness and Local Public Support | 6 |
| Ineligible | 3 |
| Application Issue | 1 |
| Overall Impact | 1 |

Source: Prepared by Audit Office using information from DED Annual Status Reports, June 30, 2015 and June 24, 2016.

We were unable to verify the reasons DED reported for non-award because the agency does not maintain records from the assessment teams. The only document DED could provide containing application scores was a 2015 memo to the director with the recommendations for approval. Even in this document, however, scores were only given for communities receiving awards, not those whose applications were rejected. Because we could not review records from the application evaluation process, we cannot effectively evaluate whether DED is actually assessing applications in a manner consistent with the law and legislative intent.

Statewide Grant Distribution

The Audit Committee was interested in whether smaller cities were receiving of CCCFF grant funds in accordance with legislative intent. They were also interested in where CCCFF projects were located across the state. Legislative intent language in the Act states that Act’s purpose is to support projects “throughout Nebraska,” but there is no specific standard regarding how projects need to be distributed in the state to meet that intent. In the absence of a statutory standard, we defined “throughout Nebraska” to mean that grant funded projects exist in all three of the state’s congressional districts.

Finding: The Department of Economic Development is meeting legislative intent that projects be funded in smaller communities and communities throughout the state. In the absence of a statutory standard for "throughout the state" we examined whether projects were funded in all 3 congressional districts and found that they were.

Congressional Districts

Between 2004 and 2015, the majority of projects funded were in the third congressional district, which encompasses the largest geographical portion of the state. Twice as many projects were located in that district than in the first district, which covers a portion of Eastern Nebraska, including Lincoln. Only one project was funded in the second district, which includes Omaha and surrounding communities. The breakdown is shown in Table 2.4.

Table 2.4: 2004-2015 Awards by Congressional District

| Congressional District | Awards |
|------------------------|-----------|
| 1 | 21 |
| 2 | 1 |
| 3 | 43 |
| Total | 65 |

Source: Prepared by Audit Office using information provided by DED and census.gov.

Cities by Community Size

As shown in Table 2.5, the Civic and Community Center Financing Act sets limits on grant amounts based on population size. The Act contains different limits contingent upon the amount of money in the fund.⁸

⁸ Neb. Rev. Stat. § 13-2705.

Table 2.5: CCCFF Grant Amount Limitations

| City Population | Grant Limit | |
|------------------------------------|---------------------|--------------------------|
| | Normal Fund Balance | If Fund Balance is High* |
| Primary Class (100,001 to 299,999) | \$1.5 million | \$2.25 million |
| 40,000, but less than 100,000 | \$750,000 | \$1,125,000 |
| 20,000, but less than 40,000 | \$500,000 | \$750,000 |
| 10,000, but less than 20,000 | \$400,000 | \$600,000 |
| Less than 10,000 | \$250,000 | \$375,000 |

Source: Prepared by Audit Office using information from Neb. Rev. Stat. § 13-2705

*These limits apply if the fund balance reaches \$2.5 million and remain in place until the balance falls below \$1 million.

Table 2.6 shows the cities that received grants between 2004 and 2015, by community size. Some of the state’s largest cities, including Lincoln and Omaha, are ineligible for grants by law or because they have received funding from other sources that cause them to be ineligible, as discussed previously.

Since 2004,⁹ more than 70% of the projects funded have been in communities with less than 5,000 people. These projects received just over 50% of the dollars awarded.

Twenty-five percent of the projects were in cities with populations between 5,000 and 40,000, while the remaining 3% were in cities of more than 40,000 people. These projects received 35% and 15% of funds, respectively.

Table 2.6: 2004-2015 Awards by Community Size

| Population | Projects Funded | % of Total Projects |
|---------------------------|------------------------|----------------------|
| < 5,000 | 47 | 72% |
| Between 5,000 and 10,000 | 7 | 11% |
| Between 10,000 and 40,000 | 9 | 14% |
| > 40,000 | 2 | 3% |
| Total | 65 | |
| Population | Dollars Awarded | % of Dollars Awarded |
| < 5,000 | \$5,956,091.58 | 51% |
| Between 5,000 and 10,000 | \$1,470,000.00 | 12% |
| Between 10,000 and 40,000 | \$2,713,000.00 | 23% |
| > 40,000 | \$1,625,000.00 | 14% |
| Total | \$11,764,091.58 | |

Source: Prepared by Audit Office using information provided by DED.

⁹ The data we used begins in 2004 and is current for the 2015 award year.

SECTION III: The Community Development Block Grant Program

In this section, we discuss the Community Development Block Grant Program, which is administered in part by the federal government, and in part by state governments. We briefly describe the program and report on the size of communities that have received housing grants, which was the Audit Committee's main concern. This section does not describe all program activities because we did not audit the whole program.

As stated in the Department of Economic Development's (DED's) response to the draft performance audit report, the Community Development Block Grant Program provides funding for other activities in addition to housing. However, the scope of this review and the concerns brought forward pertained directly to housing. For more information on the other activities that the Community Development Block Grant Program funds, please see page Attachment A of DED's response.

Background

The Community Development Block Grant (CDBG) is a federally administered program within the U.S. Department of Housing and Urban Development (HUD). Since 1974, the CDBG has "provide[d] communities with resources to address a wide range of unique community development needs."¹⁰ The CDBG Program is federally funded and annual grants are provided to 1,209 units of local government and states based on a formula. The program's primary objective is to "develop viable urban communities by providing decent housing, suitable living environments, and expanding economic opportunities, principally for low- and moderate-income (LMI) persons".¹¹

Within the CDBG, Nebraska's communities are identified as either entitlement communities or non-entitlement communities. Entitlement communities, which are higher population areas, work directly with the federal government to obtain CDBG funds. Currently, Nebraska has four entitlement communities: Omaha, Lincoln, Bellevue, and Grand Island.

In this section, we focus on the non-entitlement areas, which receive program funds through DED. DED has three major responsibilities relating to the administration of CDBG in non-entitlement areas: formulating community development objectives; deciding how to distribute funds among communities in non-entitlement areas; and ensuring that recipient communities comply with applicable state and federal laws and requirements. Local governments that receive grants are responsible for considering community needs, preparing applications, and monitoring authorized projects.

¹⁰U.S. Department of Housing and Urban Development, "Community Development Block Grant Program – CDBG," http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (accessed January 9, 2017).

¹¹ Nebraska Department of Economic Development, CDBG Administration Manual, July 2015, Chapter 1.

Grant Process

HUD establishes broad priorities for the use of CDBG grants but DED has some discretion in deciding the categories of activities that will be emphasized for funding within each priority. DED may emphasize different categories from year to year. The 2016 HUD priorities and DED categories are shown in Table 3.1.

Table 3.1. 2016 State Administered CDBG Funding Allocations

| Funding Activity | Description |
|--|---|
| State Administration Expenses and Technical Assistance | \$100,000 plus no more than 3% of annual allocation |
| HUD Priorities | Categories |
| Community Development | Comprehensive Development; Public Works; Water/Waste Water; Planning; and Downtown Revitalization |
| Economic Development | Economic Development; and Tourism Development |
| Housing | Owner Occupied Rehabilitation |

Source: CDBG Flow Chart provided by DED.

Activities funded with CDBG resources must also meet one of the following national objectives:

- Benefit low- and moderate-income persons;
- Prevent or eliminate slums or blight; or
- Fulfill community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

Additionally, at least 70% of the annual funding must be used for activities that benefit low- and moderate-income persons.¹²

Nebraska's CDBG annual grant cycle runs on a fiscal year basis. However, individual categories, as shown in Table 4.1, have separate application cycles.

HUD requires that annual allocations to the state be awarded to grantees within a 15-month time frame. All activities, except administration and housing management, require grantees to provide some match or leverage to the grant amount from public or private cash, loans, or program income from prior awards.

¹² Based on aggregate funds received during a three year period.

Size of Communities Receiving Grants for Housing Needs

The Audit Committee was concerned about whether large communities have received CDBG allocations for housing needs at the expense of smaller communities. DED reports show, however, that between 2011 and 2014, smaller communities received slightly *more* housing-related CDBG funds than larger communities.

Housing-related grants are allocated primarily from two priorities: Community Development and Housing. Between 2011 and 2014, DED awarded CDBG grants totaling more than \$15 million from these priorities for housing to low- and moderate-income individuals. Of that amount, communities with populations of less than 20,000 received about \$8 million, or 53% of the total, and communities with populations between 20,000 and 49,999 received about \$7.2 million or 47% of the total awarded. This breakdown is shown in Table 3.2.

Table 3.2. 2011-2014 CDBG Housing Funding Amounts

| Population Size | HUD Priorities* | Amount |
|------------------|-----------------------------------|---------------------|
| Less than 20,000 | Housing and Community Development | \$8,010,457 (53%) |
| 20,000 to 49,999 | Housing and Community Development | \$7,187,668 (47%) |
| Total | | \$15,198,125 (100%) |

Source: Prepared by Audit Office using information from DED, *Consolidated Annual Performance Evaluation Reports*, 2011 through 2014.

*The priorities listed include the categories within each that specifically address housing needs in LMI populations.

However, within the Community Development¹³ priority, larger communities received more than smaller communities did. Between 2011 and 2014, communities with populations between 20,000 and 49,999 were awarded just over \$6.8 million from the Community Development priority, and communities with populations between 5,000 and 19,999 were awarded just \$59,000. DED staff suggested that the Committee's concern about the program's overall spending may have arisen due to the spending in this one category.

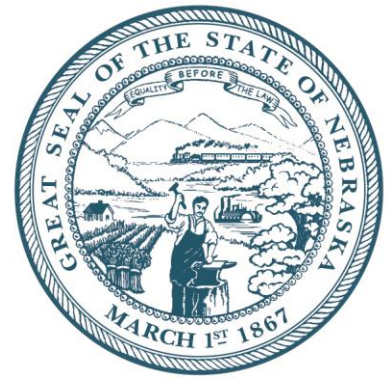
According to DED, the splitting of categories that fund housing within the Community Development priority by population was intended to increase funding in communities with less than 20,000 residents. In practice, however, the agency found that some smaller communities could not get funding because they did not have the required resources, such as matching funds or services available that larger communities generally have. As of 2016, DED has combined the LMI housing-specific categories within the Community Development priority into one, and DED staff believe that the new structure will help all eligible cities. DED told Audit Office staff that they will reevaluate if it does not work.

¹³ The Community Development category has the broad goal of providing a stable platform for economic development. Funding for this category goes to specific goals, outlined in the Annual Action Plan; for 2015, they included: improving the quality of water and wastewater, financing infrastructure for communities with long-term development goals, aiding formal community development plans, aiding local planning efforts resulting in long-term development.

III. Agency Response and Fiscal Analyst's Opinion

Note about the Department of Economic Development's (DED's) responses to the draft report:

DED provided two responses to the draft performance audit report and both are included in this section. In the first, DED brought up a point of statutory interpretation that the Audit Office disagreed with. The Office requested additional information from DED but the agency ultimately agreed with the Office's interpretation. The agency's second response indicates the agency's revised position.



Pete Ricketts, Governor

March 1, 2017

Martha Carter, Legislative Auditor
11th Floor
State Capitol
P.O. Box 94604
Lincoln, NE 68509

Dear Ms. Carter,

Thank you for the opportunity to respond to the Legislative Audit Office's report on the Nebraska Affordable Housing Trust Fund, the Civic and Community Center Financing Fund, and the Community Development Block Grant program administered by the Nebraska Department of Economic Development (DED) received at DED on February 1, 2017. In an effort to improve government transparency, accountability and efficiency, DED has recently begun reorganizing, to allow for the hiring of a new Chief Legal Officer, Chief Financial Officer, Budget Officer and Internal Auditor. We appreciate the efforts of the Legislative Audit Office (LAO) in helping us identify areas of focus and improvement. To that end, what follows is DED's official response to the information and findings contained in the report:

Nebraska Affordable Housing Trust Fund (NAHTF)

Finding 1: During this audit, the Department of Economic Development found that the Nebraska Affordable Housing Trust Fund account balance was more than \$11 million above what was committed for grants, which DED acknowledged was much higher than needed as a protection against revenue fluctuations.

DED RESPONSE: The Department recognizes that a significant Trust Fund balance accumulated over many years, and thanks the Legislative Audit Office for its assistance as the agency worked to identify previous accounting discrepancies. Staff has reconciled DED systems with outstanding contracts, and is determining the appropriate next steps in utilizing these underspent NAHTF resources. To assist with these and other efforts, the Department is undergoing a reorganization, which allowed for the hiring of specialized staff, including a Chief Financial Officer, an Internal Auditor, and a new Budget Officer. Staff is in the process of implementing improved procedures and internal controls to prevent future underspend of this fund. The Department looks forward to

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working with the Legislature, and other interested parties, to provide additional affordable housing to Nebraskans throughout the state.

Finding 2: In its annual reports to the Legislature, the Department of Economic Development does not report all of the statutorily required information.

DED RESPONSE: The Department will work directly with housing staff to ensure they understand and properly report all the statutorily required information within the Annual Report.

Finding 3: In its annual reports to the Legislature, the Department of Economic Development does not report the number of grants funded by calendar year as required by law.

DED RESPONSE: The Department will work directly with housing staff to ensure they understand and properly report all the grants funded by calendar year within the Annual Report.

Finding 4: In its annual report to the Legislature, the Department of Economic Development does not update grant amounts reported for previous years if those amounts have changed since the initial award.

DED RESPONSE: In relation to the request for updating the Annual Reports, the information provided regarding Awards is specific to the amount of funds awarded to individual grantees during the year, and per the Qualified Allocation Plan that was in effect during the reporting year. The awards are created in order to ensure that the Department's statutory obligations are met regarding ensuring at least 30% of the proposed NAHTF allocation for the year is provided to the 3 Congressional Districts, and the remainder is distributed for both non-profit operating assistance and utilized for projects in order to meet the HOME match requirements.

After projects are initially awarded, activities are completed that result in expenditures for the projects. It is these eligible expenditures that are reimbursed with NAHTF resources. By project completion, which could be years after the initial award, each project will have a specific expended amount that may be different than the amount originally awarded. This does not change the original award, as that was provided during the specific year. The Department provides specific information regarding projects awarded in the Annual Report and not expenditures related to each of those projects. However, expenditure information is provided separately within the "State Government Cash and Revolving Funds" publication.

Moreover, the Department does not update its annual report with expended versus awarded amounts for any of its grant programs. In many cases, the difference between what has been awarded and what has been expended for a given grant project is not possible to ascertain within one year's time as grant projects may continue over many years. However, the Department would be happy to provide supplemental information to the Legislature at any time, if that would be useful.

Overall, the information provided within the Annual Report is award information based on a point in time. The Department is concerned that a change to award amounts to reflect expenditures could be misleading to the Legislature. For example, if a \$250,000 project was awarded in 2015, and

during completion of the project only \$225,000 had been expended, the Annual Report would reflect \$250,000 as that was the amount awarded. The amount expended, \$225,000, would be reflected in the State government cash and revolving funds publication. These factors are two different reporting elements. The Department will continue to provide the necessary Annual Report information based on the statutory requirements including award information based on current year reporting.

Additional Information regarding the Nebraska Affordable Housing Trust Fund

In addition, in relation to the Nebraska Affordable Housing Trust Fund information provided by the LAO, the Department would like to share a couple points of additional information. These include:

- In describing the “Application and Grant Award Process,” the LAO noted in the draft report that “...Additionally, grant recipients are statutorily required to provide a financial match. The match amount is determined by DED, but it may never be less than 10%.” See also Neb. Rev. Stat. §58.707.

A ten percent match requirement is only specific to “for-profit entities” working in conjunction with one of the other eligible organizations as identified within Neb. Rev. Stat. §58.707 that include: governmental subdivisions, local housing authorities, community action agencies, community-based or neighborhood-based or reservation-based nonprofit organizations. Therefore, every project does not require a minimum match of 10 percent. See also Neb. Rev. Stat. §58.707.

- In further describing the “Application and Grant Award Process,” the LAO noted that “...Release of funds is timed to coincide with the construction season; funds are released the spring after all special conditions are met. Contracts are generally written based on the assumption that projects will be completed within 18 months, or two construction seasons.” The time in which a grantee receives access to NAHTF funding by receiving a Release of Funds letter is not dependent on the construction season, but rather will depend on when the grantee can satisfy the Special Conditions for the Contract. Once all the Special Conditions are submitted and approved by the Department, the grantee can receive a Release of Funds letter. The idea of providing two construction seasons for project completion is a general rule of thumb in order to allow grantees to have adequate time to complete their projects knowing that seasonal weather can impact project development. The date of a project’s Award Letter, however, is related to the contract start date and not the date when the construction season starts.



Civic and Community Center Financing Fund (CCCFF)

Finding 5: The Department of Economic Development is applying the same criteria to project grants and engineering/technical studies, in conflict with statutory requirements that set different criteria for each. By applying criteria differently than the Legislature intended, there is a risk that the projects receiving grants may not reflect the Legislature's intent.

DED RESPONSE: Upon closer review of the statutes involved, the Department does not dispute the finding. The review criteria within the 2017 Application Guidelines has been updated to reflect that different criteria shall be used to evaluate and score applications for planning projects (13-2704.02) as compared to construction projects (13-2704.01). Of note, in program years 2016 and 2015, all applications for planning projects were awarded, as the authorizing statutes appear to encourage projects that have prior planning.

The Department notes that many applications submitted for consideration struggle to articulate retention impact, new resident impact, and visitor impact in any objective manner, resulting in a highly subjective narrative.

Finding 6: We were unable to verify the Department of Economic Development's reasons for rejecting Civic and Community Center Financing Fund applications because DED does not maintain records from the assessment teams. The absence of application scoring documentation makes it very difficult, if not impossible, to know whether DED is applying grant criteria in accordance with the Legislature's intent.

DED RESPONSE: The Department would like to provide additional information to explain the current scoring process. The Department does not "reject" applications, rather letters of non-select are provided to those communities submitting applications that do not score as highly as other applicants. This notice of non-selection letter includes a summary explanation for why their project was not selected, and includes information on areas where they did not score as highly. This summary information is also provided, as required, as a part of the Legislative annual report.

All applications for eligible projects are reviewed and scored by a committee consisting of Department staff as well as invited members of other vested State agencies. The review process includes an initial individual scoring of each application with the use of the review criteria. The individual scores are then compiled as an aggregate average prior to the committee review meeting. At the committee review meeting, the projects are categorized by type: planning or construction. Planning grant applications are reviewed first, construction second. The highest scoring applications based on individual scores are discussed in order of aggregate average score, discussion allows committee members to weigh in on an application that may have scored well individually, but not as well in aggregate average. Discussion can lead to a change of score individually, thus resulting in an updated aggregate average score. Discussion concludes at the consensus of the committee and the highest scoring applications are ultimately recommended to the Director. The result of the meeting is a memorandum to the Director listing the recommendations for award. The compiled final scoresheet is retained in Department files. These were provided for program years 2014-2016 via email as requested by the Committee as a part of the audit process.

The Department understands the need for the Legislative Audit team, and the public, to be able to consistently review the Department's reasoning, and evidence related to how the Department ranked and scored applications to create the "aggregate average" documentation. Going forward, a revised process will be implemented during this next CCCFF review, in which further documentation will be developed and

retained that will clearly provide evidence for the Department's recommendations. This information will be part of the overall documentation the Department retains in its records.

Finding 7: The Department of Economic Development is meeting legislative intent that projects be funded in smaller communities and communities throughout the state based on our definition that grants have been awarded in all geographic regions of the state.

DED RESPONSE: The Department will continue to distribute CCCFF awards throughout the state. (Please see maps of statewide CCCFF grant distribution included as exhibits at the end of this response.)

Community Development Block Grant (CDBG)

The Nebraska Department of Economic Development (DED) provides the following response to Section IV Community Development Block Grant (CDBG) Program, Legislative Audit Office Report issued January 2017. The response follows the major headings as laid out in Section IV. The statements, tables, and attachment (found at the end of this response) provide further explanation and clarification to the structure, program distribution and recipients of the State of Nebraska's CDBG Program. The CDBG grants awarded to communities are compared according to funding categories and population brackets.

Grant Process

Nebraska's CDBG Program includes a citizen participation process that provides input into the development of select categories for the three funding priorities. DED has discretion for giving eligible activities under the Housing and Community Development Act priority designation for CDBG funding each program year. Table 4.1 lists the three funding priorities with the corresponding categories, match/ leverage requirements, and funding cycles.



Table 4.1 Activities Funded by CDBG Grants

| Funding Priority | Category | | Match percentage | Match percentage | Application dates |
|-----------------------|-------------------------------|---|---|--------------------------------|---------------------|
| | 2016 | 2015/2014 | 2016 | 2015/2014 | 2015 |
| Community Development | Community Development (CD) | Comprehensive Revitalization (CR) (20,000-49,999 population) | (CD) Phase I 25 match/ 25 leverage | (CR) 1:1 leverage | August 2015 |
| | | Community Investment & Stabilization (CIS)* (5,000-less 20,000 population) <i>2014 final year CIS category</i> | (CD) Phase II 50 match/ 50 leverage | (CIS) 1:1 leverage 25 match | August 2015 |
| | Public Works | | 25 | 25 | July 2015 |
| | Water Wastewater | | 25 | 25 | May 2015 open cycle |
| | Planning | | 25 | 25 | April 2015 |
| | Downtown Revitalization | | 25 | 25 | May 2015 |
| Funding Priority | Category | | Match percentage | Match percentage | Application dates |
| | 2016 | 2015/2014 | 2016 | 2015/2014 | 2015 |
| Economic Development | Economic Development | | 50 min 100 max | 50 min 100 max | May 2015 open cycle |
| | Tourism Development | | 25 | 25 | May 2015 open cycle |
| Housing | Owner Occupied Rehabilitation | | 0 | 10 | May 2015 |

| | |
|---|--|
| State Administration and Technical Assistance | Admin & TA: 3% annual allocation , 3% program income receipted, plus \$100,000 annual allocation |
|---|--|

*2015 CIS category 3rd year discontinued prior to accepting applications for 3rd year CIS grantees.

The CDBG Program’s three priorities are Community Development, Economic Development, and Housing. Each priority includes categories that provide the applicant requirements for grant awards and the delivery of CDBG investments for eligible local government. The local governments through the CDBG Program also assist non-profits and for-profits. As illustrated in Table 4.1 Community Development also includes public works, water wastewater, planning, and downtown revitalization categories. The Economic Development priority includes economic development and tourism development. The Housing priority currently is the owner occupied rehabilitation category. Each category’s application cycle is either a set date, an open cycle, or a combination set/open cycle throughout the CDBG State of Nebraska’s program year, which matches the fiscal year. The match percentage is comparable for several categories at 25% CDBG funds or a 3:1 ratio. The Economic Development match is minimum 50% or a 1:1 ratio or greater. The Community Development Category varies from 25% to 50% with a 1:1 leverage ratio beyond the required match.

Activities funded with CDBG resources must also meet one of the following national objectives:

- Benefit low-and moderate-income persons;
- Prevent or eliminate slums or blight; or
- Fulfill community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

At least 70% the annual funding allocation for distribution to local units of government must be used for activities that benefit low-and moderate-income persons. The State operates under a 3-year period for meeting the 70% benefit test based on an approved community development plan, which is included in the annual plan.

Nebraska CDBG annual grant cycle runs on a fiscal year basis. However, individual categories, as shown in Table 4.1, have distinct application cycles.

HUD requires that annual allocations to the state be distributed, which is defined as awarded, within a 15-month time frame. All activities, except administration and housing management, require grantees to provide a combination proportional match or leverage amount to the grant amount from public or private cash, loans, or program income from prior awards. Refer to Table 4.1 for match/ leverage proportions by category.

Size of Communities Receiving Grants under the Community Development Category

The Legislative Audit report stated that the committee was concerned about whether large communities have received CDBG allocations at the expense of smaller communities. The audit report identified Community Development grants during the funding period 2011 and 2014 for those communities with populations between 20,000 and 49,999 and communities with population between 5,000 and 19,999.

DED provides Table 4.2 that displays the CDBG grant funds awarded by the Community Development priority for the six CDBG categories during the period 2011 through 2014. Refer to the attachment for a summary of the 2011 through 2014 CDBG awards, funding distribution, and percentages for the CDBG categories for each of the three priorities: Community Development, Economic Development, and Housing.

Table 4.2 Community Development Priority awards by category.

Population ranges: 0-less 5,000; 5,000-less 20,000, and 20,000-49,999.
2011 to 2014 (contract start date 07/01/2011 thru end date 06/31/2015)

| CD Priority | CR category | CIS category | PW category | WWW category | PP category | DTR category | CD Priority | percentage |
|-------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|------------|
| County | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$16,500.00 | \$0.00 | \$16,500.00 | 0.06% |
| 0-5k | \$0.00 | \$0.00 | \$5,131,304.43 | \$4,359,667.14 | \$1,019,817.58 | \$2,831,534.49 | \$13,342,323.64 | 51.17% |
| 5k-20k | \$0.00 | \$1,199,231.88 | \$1,417,533.82 | \$0.00 | \$28,724.00 | \$1,527,243.57 | \$4,172,733.27 | 16.00% |
| 20k+ | \$6,752,956.11 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$1,788,287.64 | \$8,541,243.75 | 32.76% |
| Totals | \$6,752,956.11 | \$1,199,231.88 | \$6,548,838.25 | \$4,359,667.14 | \$1,065,041.58 | \$6,147,065.70 | \$26,072,800.66 | 100.00% |

Table 4.3 lists the two categories referenced as Community Development based on population ranges: Comprehensive Revitalization (CR) 20,000 to 49,999 population and Comprehensive

Investment & Stabilization (CIS) 5,000 to less 20,000. The CDBG amount awarded 2011 through 2014 for CR grants larger communities \$6.75 million and CIS grants smaller communities \$1.19 million. In addition, this takes into consideration that the CIS category 2013/2014 was only available for 2 years for smaller communities, while the larger CR category communities participated since 2005/2015 for 11 years. The CIS category was discontinued after 2014 CIS category CDBG awards.

Table 4.3 Community Development Priority category CR & CIS Funded by CDBG Grants

| Community Development Priority | CR category 2011/2014 | CIS category 2013/2014 | Community Development Priority | CR grants | CIS grants | Total grants |
|--------------------------------|-----------------------|------------------------|--------------------------------|-----------|------------|--------------|
| County | \$0.00 | \$0.00 | \$0.00 | 0 | 0 | 0 |
| 0-5k | \$0.00 | \$0.00 | \$0.00 | 0 | 0 | 0 |
| 5k-20k | \$0.00 | \$1,199,231.88 | \$1,199,231.88 | 0 | 12 | 12 |
| 20k+ | \$6,752,956.11 | \$0.00 | \$6,752,956.11 | 38 | 0 | 38 |
| Total | \$6,752,956.11 | \$1,199,231.88 | \$7,952,187.99 | 38 | 12 | 50 |

DED established a Comprehensive Revitalization category set-aside through the Community Development priority in 2005 for funding communities with populations of 20,000 to 49,999. However, from 2013 to 2015 the Department established another set-aside, the Comprehensive Investment and Stabilization (CIS) category within the Community Development priority for funding smaller communities with populations of 5,000 to 19,999. The CIS category was anticipated based on demand to increase funding opportunity in communities with less than 20,000 populations. The premise for structuring the CIS category was for eligible smaller local governments, populations 5,000 to less than 20,000, not to compete against communities with greater financial and staff resources.

Unfortunately from the first year's implementation of the CIS category for smaller communities, several difficulties happened for applicants and grantees. The CIS smaller communities overall encountered application submission difficulties for determining projects, and the communities that were funded also found it difficult to implement CDBG grant activities because of inadequate local match and leveraging support lacking for local improvements. Thus, in 2015 DED discontinued the 3rd year of funding for the CIS category. In 2016 DED combined the CR and CIS categories into a single 2016 Community Development category under the Community Development priority. The restructuring for CD category benefits eligible local governments between populations 5,000 to 49,999 because the communities with the ability to strategically plan for a comprehensive approach to community development should be more successful in meeting the objectives of the Community Development category. The smaller and larger communities, which have the resources, demonstrate the capacity for application development and implementation of CDBG grants overall. DED will evaluate the CDBG Program Community Development priority annually.

DED awarded 34 CDBG Housing priority owner-occupied housing rehabilitation grants for a total of more than \$7.6 million during 2011 to 2014. Communities with a population of 5,000 or less received more than \$5.2 million (67.8%) and communities between with populations between 5,000 and 20,000 received more than \$1.4 million (24%) for assisting low-and moderate income families by making improvements to their homes. CDBG housing funds awarded to communities between populations 5,000 to 49,999 received more than \$0.3 million \$375,476.00 (4.8%). The balance CDBG housing funds were awarded to counties.

A further description of housing development activities funded through the Community Development priority include CDBG investments for rental owned occupied rehabilitation, purchase residential units for housing rehabilitation for resale, downpayment assistance, and leadbased paint remediation/ abatement. All housing activities benefit low-and moderate income families.

Thank you again for this opportunity to respond and please contact me if there is any additional clarification DED can provide.

Kind regards,

A handwritten signature in black ink that reads "Courtney Dentlinger". The signature is written in a cursive, flowing style.

Courtney Dentlinger, Director
Nebraska Department of Economic Development

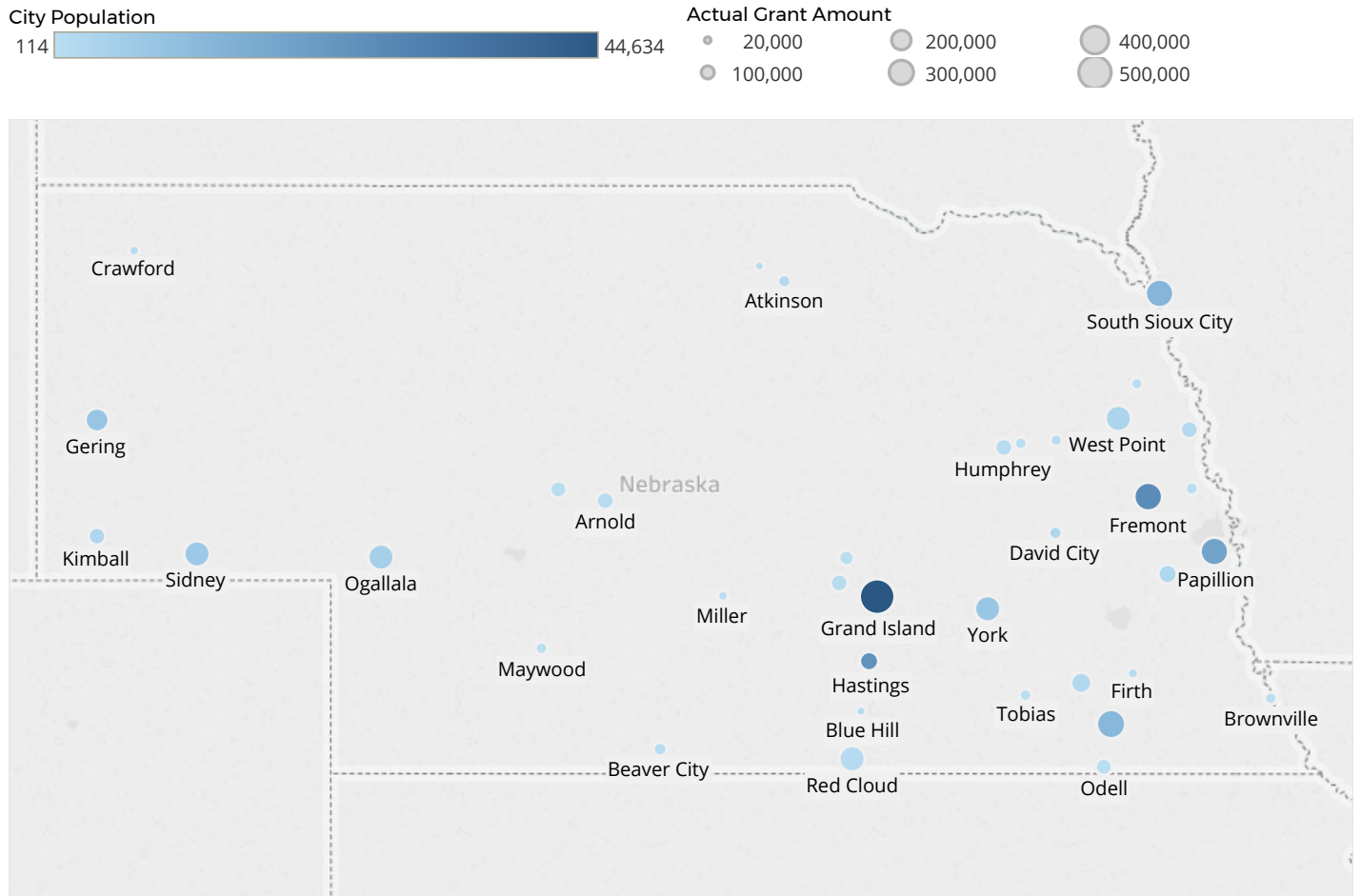


Attachments Follow On Subsequent Pages

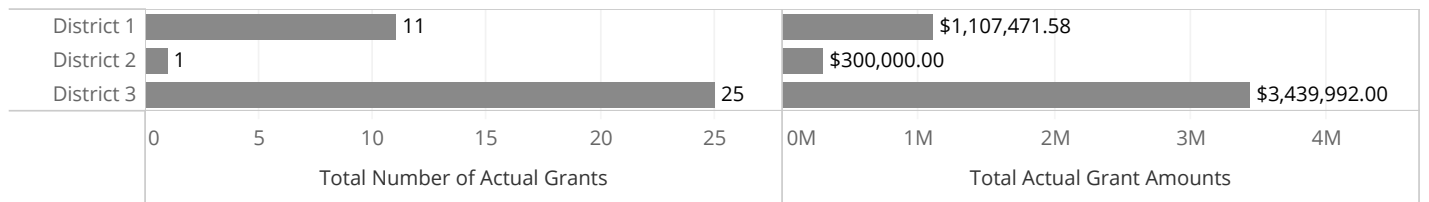


CCCFF Statewide Grant Distribution 2004-2013

Awards by City

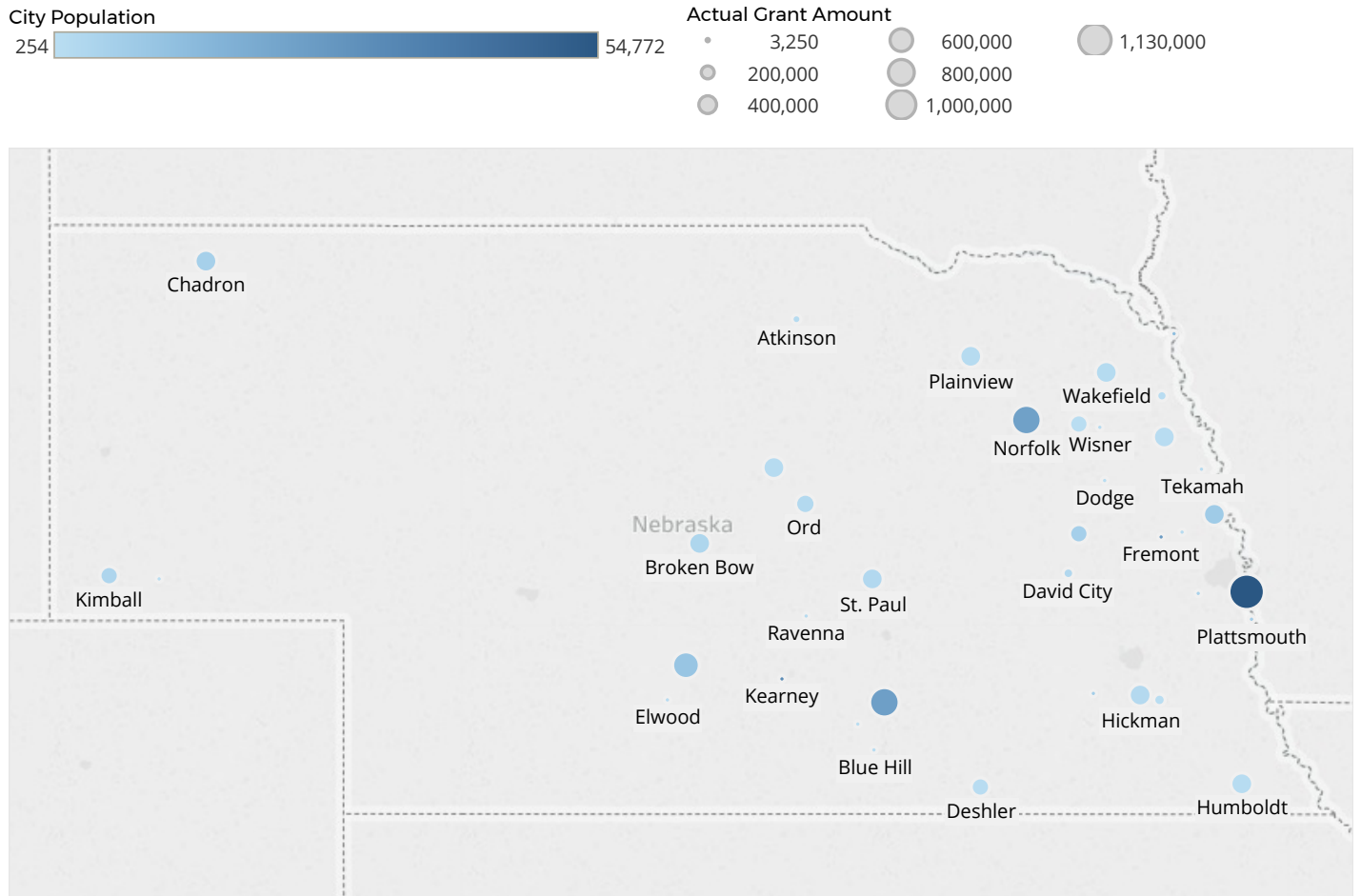


Awards by Congressional Districts

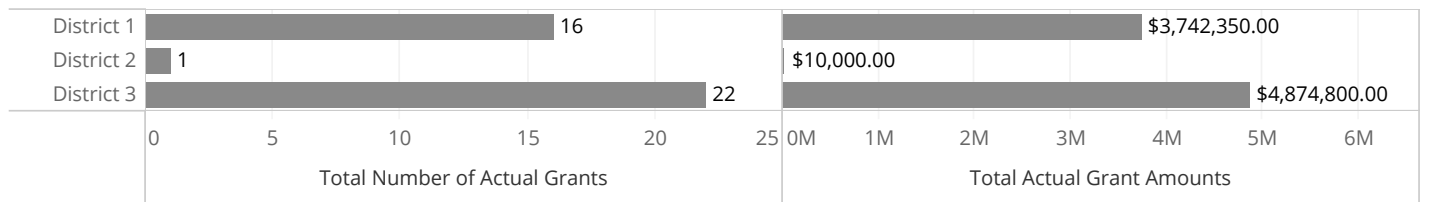


CCCFF Statewide Grant Distribution 2014-2016

Awards by City



Awards by Congressional Districts



| | HO | CR | CIS | PW | WWW | PP | DTR | ED | TD | Sum | Count | PD595_AMOUNT |
|-----------------|-----------|-----------|----------|-----------|----------|-----------|----------|-----------|----------|------------|------------|------------------------|
| County | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 4 | 2 | 8 | 8 | \$2,801,551.79 |
| 0-5k | 25 | 0 | 0 | 22 | 0 | 46 | 0 | 3 | 2 | 98 | 131 | \$20,101,562.23 |
| 5k-20k | 7 | 0 | 0 | 5 | 0 | 1 | 0 | 2 | 2 | 17 | 38 | \$6,737,202.72 |
| 20k+ | 1 | 38 | 0 | 0 | 0 | 0 | 0 | 3 | 2 | 44 | 52 | \$11,231,719.75 |
| DED Funds | | | | | | | | | | 2 | 2 | \$435,496.00 |
| NonCategory | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$0.00 |
| SubTotal | 34 | 38 | 0 | 27 | 0 | 48 | 0 | 12 | 8 | 169 | 231 | \$41,307,532.49 |

| | |
|--------------|-----------------|
| Total | Sum |
| 231 | \$41,307,532.49 |

| | HO | CR | CIS | PW | WW | PP | DTR | ED | TD | Sum | Count | PD595_AMOUNT |
|-----------------|-----------------------|-----------------------|---------------|-----------------------|---------------|-----------------------|---------------|-----------------------|-----------------------|------------------------|------------|------------------------|
| County | \$251,493.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$16,500.00 | \$0.00 | \$2,220,000.00 | \$313,558.79 | \$2,801,551.79 | 8 | \$2,801,551.79 |
| 0-5k | \$5,217,238.59 | \$0.00 | \$0.00 | \$5,131,304.43 | \$0.00 | \$1,019,817.58 | \$0.00 | \$1,017,000.00 | \$525,000.00 | \$12,910,360.60 | 131 | \$20,101,562.23 |
| 5k-20k | \$1,845,733.50 | \$0.00 | \$0.00 | \$1,417,533.82 | \$0.00 | \$28,724.00 | \$0.00 | \$255,335.95 | \$463,400.00 | \$4,010,727.27 | 38 | \$6,737,202.72 |
| 20k+ | \$375,476.00 | \$6,752,956.11 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$1,715,000.00 | \$600,000.00 | \$9,443,432.11 | 52 | \$11,231,719.75 |
| DED Funds | | | | | | | | | | \$435,496.00 | 2 | \$435,496.00 |
| NonCategory | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 0 | \$0.00 |
| SubTotal | \$7,689,941.09 | \$6,752,956.11 | \$0.00 | \$6,548,838.25 | \$0.00 | \$1,065,041.58 | \$0.00 | \$5,207,335.95 | \$1,901,958.79 | \$29,601,567.77 | 231 | \$41,307,532.49 |

| | |
|--------------|-----------------|
| Total | Sum |
| 231 | \$41,307,532.49 |

| CD Priority | CR category | CIS category | PW category | WWW category | PP category | DTR category | CD Priority | percentage |
|-----------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|------------------------|----------------|
| County | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$16,500.00 | \$0.00 | \$16,500.00 | 0.06% |
| 0-5k | \$0.00 | \$0.00 | \$5,131,304.43 | \$4,359,667.14 | \$1,019,817.58 | \$2,831,534.49 | \$13,342,323.64 | 51.17% |
| 5k-20k | \$0.00 | \$1,199,231.88 | \$1,417,533.82 | \$0.00 | \$28,724.00 | \$1,527,243.57 | \$4,172,733.27 | 16.00% |
| 20k+ | \$6,752,956.11 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$1,788,287.64 | \$8,541,243.75 | 32.76% |
| DED Funds | | | | | | | \$0.00 | 0.00% |
| SubTotal | \$6,752,956.11 | \$1,199,231.88 | \$6,548,838.25 | \$4,359,667.14 | \$1,065,041.58 | \$6,147,065.70 | \$26,072,800.66 | 100.00% |

| CR | CIS | PW | WWW | PP | DTR | count |
|----|-----|----|-----|----|-----|-------|
| 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| 0 | 0 | 22 | 0 | 46 | 0 | 68 |
| 0 | 0 | 5 | 0 | 1 | 0 | 6 |
| 38 | 0 | 0 | 0 | 0 | 0 | 38 |
| | | | | | | 0 |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | 0 |
| 38 | 0 | 27 | 0 | 48 | 0 | 113 |

Total

| | |
|-----------------|-----------------------|
| County | \$251,493.00 |
| 0-5k | \$5,217,238.79 |
| 5k-20k | \$1,845,733.50 |
| 20k+ | \$375,476.00 |
| DED Funds | |
| NonCategory | \$0.00 |
| SubTotal | \$7,689,941.29 |

| Community D | PW | WWW | PP | DTR | CD Priority | percentage |
|-------------------|----------------|----------------|----------------|----------------|-----------------|------------|
| 3.27% County | \$0.00 | \$0.00 | \$16,500.00 | \$0.00 | \$16,500.00 | 0.09% |
| 67.84% 0-5k | \$5,131,304.43 | \$4,359,667.14 | \$1,019,817.58 | \$2,831,534.49 | \$13,342,323.64 | 73.63% |
| 24.00% 5k-20k | \$1,417,533.82 | \$0.00 | \$28,724.00 | \$1,527,243.57 | \$2,973,501.39 | 16.41% |
| 4.88% 20k+ | \$0.00 | \$0.00 | \$0.00 | \$1,788,287.64 | \$1,788,287.64 | 9.87% |
| 0.00% DED Funds | | | | | | |
| 0.00% NonCategory | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | 0.00% |
| | | | | | | |
| 100.00% SubTotal | \$6,548,838.25 | \$4,359,667.14 | \$1,065,041.58 | \$6,147,065.70 | \$18,120,612.67 | 100.00% |
| | | | | | \$0.00 | |

| Community D | PW | WWW | PP | DTR | count |
|-------------|----|-----|----|-----|-------|
| County | 0 | 0 | 1 | 0 | 1 |
| 0-5k | 22 | 0 | 46 | 0 | 68 |
| 5k-20k | 5 | 0 | 1 | 0 | 6 |
| 20k+ | 0 | 0 | 0 | 0 | 0 |
| DED Funds | | | | | 0 |
| NonCategory | 0 | 0 | 0 | 0 | 0 |
| | | | | | 0 |
| SubTotal | 27 | 0 | 48 | 0 | 75 |

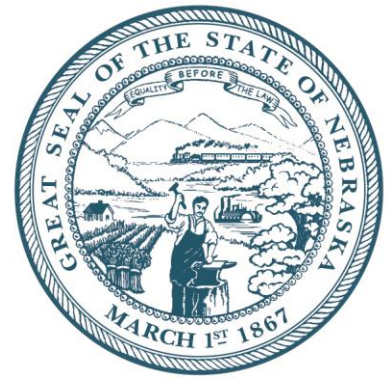
| Community D | CR | CI | CD Priority | CR | CI | count |
|-------------|----|----|-------------|----|----|-------|
|-------------|----|----|-------------|----|----|-------|

| | | | | | | |
|-------------|----------------|----------------|----------------|----|----|----|
| County | \$0.00 | \$0.00 | \$0.00 | 0 | 0 | 0 |
| 0-5k | \$0.00 | \$0.00 | \$0.00 | 0 | 0 | 0 |
| 5k-20k | \$0.00 | \$1,199,231.88 | \$1,199,231.88 | 0 | 12 | 12 |
| 20k+ | \$6,752,956.11 | \$0.00 | \$6,752,956.11 | 38 | 0 | 38 |
| DED Funds | | | \$0.00 | | | |
| NonCategory | \$0.00 | \$0.00 | \$0.00 | 0 | 0 | 0 |
| | | | \$0.00 | | | |
| SubTotal | \$6,752,956.11 | \$1,199,231.88 | \$7,952,187.99 | 38 | 12 | 50 |

NEBRASKA

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Pete Ricketts, Governor

March 6, 2017

Martha Carter, Legislative Auditor
11th Floor
State Capitol
P.O. Box 94604
Lincoln, NE 68509

Dear Ms. Carter,

Thank you for the opportunity to revise the Nebraska Department of Economic Development (DED) response to the Legislative Audit Office (LAO) as it pertains to the matching component of Nebraska Affordable Housing Trust Fund (NAHTF) eligible activities.

Upon further legal review, DED agrees with the LAO interpretation of Neb. Rev. Stat. §58-707 which concluded that the statute provides that all NAHTF qualified recipients are statutorily required to provide, or cause to be provided, a financial match. That match amount is to be determined by DED, but it may never be less than ten percent (10%). DED agrees with the finding of the Legislative Audit Office and all subsequent grant awards will comply with the mandatory match requirement.

Thank you again for this opportunity to respond and please contact me if there is any additional clarification DED can provide.

Kind regards,

A handwritten signature in cursive script that reads "Courtney Dentlinger".

Courtney Dentlinger, Director
Nebraska Department of Economic Development

Courtney Dentlinger, Director

Department of Economic Development

P.O. Box 94666

301 Centennial Mall South
Lincoln, Nebraska 68509

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Legislative Auditor’s Summary of Agency Response

This summary meets the requirement of Neb. Rev. Stat. § 50-1210 that the Legislative Auditor briefly summarize the agency’s response to the draft performance audit report and describe any significant disagreements the agency has with the report or recommendations.

The Department of Economic Development Director’s response (Director’s response) indicates support for most of the Audit Office’s draft recommendations. Additionally, the Director amended the agency’s response to remove an issue the agency initially said was an error in statutory interpretation in the draft report. That issue is explained in more detail below, along with the areas in which the Audit Office and agency disagree.

Nebraska Affordable Housing Trust Fund (NAHTF)

Updating Grant Amounts Spent

The Director’s response disagrees with the draft recommendation that DED’s annual NAHTF reports should include updated grant amounts reflecting the amount actually spent by grantees, not only the amount of the initial grant award. The response notes that total program expenditures are reported in the “State and Cash Revolving Funds” report published by the Legislative Fiscal Office. In the response, DED also offers to provide expenditure information separate from its annual reports, stating it could be confusing to include both the awarded amount and actual expenditures in the annual report.

The Audit Office believes the Legislature needs better information on how NAHTF funds are actually being spent by individual grantees, especially in light of the large surplus identified during the course of this report. We believe the information on award amounts and on expended amounts could be included in annual reports in a way that was not confusing. For example, one section could list only awarded amounts and another the spent amount to date. However, it is ultimately up to the Performance Audit Committee to decide whether it is important to have the additional information reported and in what form.

Statutory Interpretation

The Director’s response raised an issue of statutory interpretation relating to which grantees are required to provide matching funds under Neb. Rev. Stat. sec. 58-707. The draft audit report stated that all projects are required to have at least a 10 percent match, but the Director’s response stated that the match requirement applied to only certain entities.¹ After additional questions from the Audit Office, the Director agreed with the Audit Office interpretation.

This exchange led to the Audit Office adding another finding and draft recommendation to the audit report. The finding states that DED has not been complying with the statutory

¹ See DED response, p. 3.

requirement for projects to include matching funds, which means the state has spent more on those projects than it otherwise would have. The draft recommendation states that in addition to following the statute in question, DED should direct staff who are not administering NAHTF—such as the agency’s internal auditor and legal counsel—to review all of the statutory requirements for this program and to report back to the Audit Committee on the results of that review. The Audit Office believes that a full statutory review is needed because we found other instances in which DED was not complying with NAHTF statutes.

Timing of Funding Access

The Director’s response also disagreed with a statement in the draft report that release of NAHTF funding to grantees is timed to coincide with the construction season. The response states that “The time in which a grantee receives access to NAHTF funding by receiving a Release of Funds letter is not dependent on the construction season, but rather will depend on when the grantee can satisfy the Special Conditions for the Contract.”

The Audit Office believes that language in the report cited by DED in its comment does not address the date of the award letter. However, preceding language in the report does state that award letters are mailed in the late summer or early fall. We believe that we have accurately reported the information regarding the application and award process as communicated to us by DED staff on April 14, 2016 and is consistent with the information provided in this comment.

Civic and Community Center Financing Fund (CCCCF)

The only concern about this fund in the Director’s response is with the Audit Office’s use of the term “rejected” to describe applications that are not funded. The Office will use a different term in the final report.

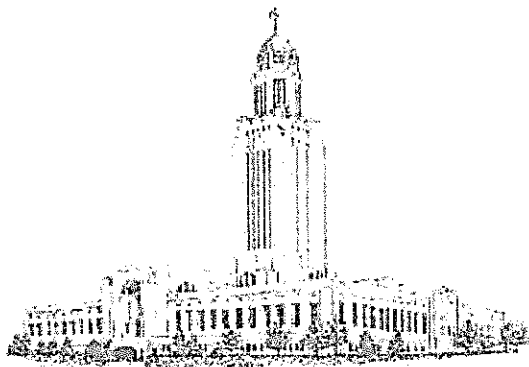
Community Development Block Grant (CDBG)

The Director’s response includes additional information on this program but no disagreements with the draft report. The Audit Office did revise this section based on comments by CDBG staff at the audit exit conference. DED’s primary concern was that the report be clear that, viewed in its totality, CDBG has provided more funds to smaller communities in Nebraska than to larger communities, and the Audit Office clarified that point.

State of Nebraska

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M E M O

Martha Carter, Legislative Auditor
PO Box 94604, State Capitol
Lincoln, NE 68509

Dear Martha,

The Legislative Fiscal Office has reviewed the draft report of the Legislative Performance Audit of the Department of Economic Development. It is the opinion of the Legislative Fiscal Office that all recommendations contained in the draft report could be implemented using the current appropriations of the Department of Economic Development.

Sincerely,

Michael Calvert
Legislative Fiscal Analyst

02021034.MC