

STATE OF WEST VIRGINIA

AUDIT REPORT OF

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

FOR THE PERIOD

JULY 1, 2005 – JUNE 30, 2007



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the WVIAJDC Cash Clearing Fund (3141/9060), Industrial Development Loans Fund (3148/9061), WVEDA-Debt Service Series 1992A Fund (3151/9062), WVEDA Credit Insurance Fund (3152/9063), Small Business Environment Loan Fund (3159/9064), Economic Development Authority Project – Econ Dev Proj Fd (3167/9065), and the Economic Development Project Bridge Loan Fund (3169/9066).

Our Examination covers the period July 1, 2005 – June 30, 2007. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

SLS/cdo

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

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WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

EXIT CONFERENCE

We held an exit conference on January 6, 2009 with the Executive Director of the West Virginia Economic Development Authority. All findings and recommendations were reviewed and discussed. The above official's responses are included in bold and italics in the Executive Summary and after our recommendations in the General Remarks section of this report.

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

INTRODUCTION *

The West Virginia Economic Development Authority (EDA) was formed in 1962 as a public corporation and government instrumentality under Chapter 31, Article 15, of the West Virginia Code (the Act). The EDA is administered by a nine member Board of Directors comprised of the Governor, Tax Commissioner and seven at-large members appointed by the Governor. The EDA has statutory authority to borrow funds from the West Virginia Board of Treasury Investments to loan to borrowers.

Under the Act, the EDA is charged with the responsibility to develop and advance the business prosperity and economic welfare of the State of West Virginia, by providing financial assistance in the form of loans and direct financing and operating leases to industrial development agencies and enterprises for the promotion and retention of new and existing commercial and industrial development.

The EDA is empowered to borrow money and issue bonds, notes, commercial paper and other debt instruments and to furnish money, credit, or credit enhancement for the promotion of business development projects. Credit enhancement is available through the EDA's loan guarantee programs, which were created to insure payment or repayment of bonds and notes issued by the EDA and certain other public bodies, or other types of debt instruments entered into by an enterprise or state public body with a financial institution.

The EDA loans are secured by deeds of trust on property, security interests in equipment, promissory notes, and in certain cases, have supplemental collateral comprised of letters of credit, lease assignments and/or personal guarantees.

The EDA's loan terms are set by its Board of Directors (the Board), whose members periodically review market conditions. The amount the EDA may lend for projects varies depending upon the nature of the project and form of lending, as prescribed by the Board.

*- Taken from www.wveda.org

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY
AUTHORITY BOARD MEMBERS AND ADMINISTRATIVE STAFF
FOR THE PERIOD JULY 1, 2005 – JUNE 30, 2007

Governor Appointed Chairman

Kelly Goes July 1, 2006 - June 30, 2007
L. Thomas Bulla..... July 1, 2005 - June 30, 2007
Brian Helmick..... July 1, 2005 - June 30, 2006
Richard Slater..... July 1, 2005 - June 30, 2006

Tax Commissioners

Virgil Helton July 1, 2005 - June 30, 2007

Board Members

Douglas V. Reynolds July 1, 2005 - June 30, 2007
Timothy R. Duke July 1, 2005 - June 30, 2007
Roger P. Stewart, II..... July 1, 2005 - June 30, 2007
Jeff A. Vickers July 1, 2005 - June 30, 2007
Marcus W. Estlack..... July 1, 2005 - June 30, 2007
Richard L. Slater July 1, 2005 - June 30, 2007
Allen R. Butcher July 1, 2005 - June 30, 2007
William Carper, Jr..... July 1, 2005 - June 30, 2006
David W. Mullins..... July 1, 2005 - June 30, 2006
Paul W. Hill July 1, 2005 - June 30, 2006

Administrative Staff

David A. Warner Executive Director
Caren Wilcher Associate Director
Robin Greathouse..... Director of Financial Services

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

EXECUTIVE SUMMARY

1. No Adherence to Purchasing Division's Policies and Procedures

The EDA does not follow the West Virginia Purchasing Division's (the Purchasing Division) policies and procedures. In addition to noncompliance with the Purchasing Division's Policies and Procedures, the EDA has no written internal control procedures to ensure against misappropriation by fraud or error. We noted that approximately \$255,000.00, combined from fiscal years 2006 and 2007, was spent in areas generally governed by the Purchasing Division and the rules set forth in Chapter 5A of West Virginia Code.

Auditor's Recommendation

We recommend the EDA follow Chapter 5A, Article 3, Section 1(a) of the West Virginia Code, as amended, and adhere to the West Virginia Purchasing Division's Policies and Procedures.

Spending Unit's Responses

EDA attaches an updated memorandum of counsel that EDA continues to rely upon for its exemption from the policies and procedures of the Purchasing Division. (See Pages 13-18.)

2. Assets Not Recorded

The EDA has not recorded any assets purchased subsequent to June 2006 into the WVFIMS Fixed Asset System. Additionally, the EDA does not maintain a separate, internal system to track and monitor fixed assets to guard against loss or theft. As a result, we believe \$9,600.00 in fixed assets has not been properly recorded and accounted for.

Auditor's Recommendation

We recommend the West Virginia Economic Development Authority comply with the West Virginia Purchasing Division's Policies and Procedures Handbook and the State of West Virginia Purchasing Division Inventory Management and Surplus Property Disposition Policies and Guidelines and properly record and catalog fixed assets when received.

Spending Unit's Response

EDA concurs that it has not properly recorded assets under the WVFIMS Fixed Asset System.

(See Pages 18-20.)

3. Loans Insured in Violation of EDA Loan Insurance Programs

During our audit we noted three of eight loans listed on the EDA's Insurance Program Underwriting Report are insured in violation of the established policy of the EDA board; specifically, either the EDA's Loan Insurance (LINS) Program or their Leverage Technology Loan (LTL) Program. We noted during our testing: (1) one instance where the EDA's LINS insured portion exceeded 80% of the bank loan; (2) one instance where the WVEDA approved loan insurance through their LINS program in the amount of \$3,000,000.00 (more than the ceiling of \$500,000.00); and (3) one instance where the loan insurance term for a LTL guarantee was approved for more than five years.

Auditor's Recommendation

We recommend the EDA comply with their own policies and procedures as described in the West Virginia Economic Development Authority Program Information guidebook, subsection A, and only insure up to the limits they have imposed. If the EDA believes it necessary and in the best interest of the state to provide latitude in the amounts they can insure, we recommend the EDA amend their policies and procedures accordingly.

Spending Unit's Response

EDA concurs that the EDA board approved three loan insurance guarantees outside of its existing loan insurance policy... In each instance, the EDA Board, within its right to do so, chose to make an exception to its general policy due to the underlying circumstances. (See Pages 20-23.)

4. Uncharged Late Fees

The EDA does not assess the fees or penalties for late payments that the standard language of their loan contracts requires. As a result of non-compliance with the Financing Terms and Condition of the Loan Agreement between the aforementioned borrowers and the EDA, three borrowers underpaid the EDA a combined total of \$21,138.83 during the period July 1, 2005 through June 30, 2007.

Auditor's Recommendation

We recommend the West Virginia Economic Development Authority comply with Section A. of the Financing of the Loan Agreement between the West Virginia Economic Development Authority and the Borrowers and assess and collect the fees and penalties they are contractually bound to assess and collect. Additionally, if the EDA believes assessing fees and penalties for late payments is detrimental to both the customer and the State, they should consider amending the language of future contracts so that assessing fees and penalties is at the EDA's discretion.

Spending Unit's Response

EDA concurs that it does not assess and collect late fees on delinquent loans... Going forward, EDA will change the language in its loan agreements to reflect that EDA may charge late fees, instead of shall charge late fees. (See Pages 24-27.)

5. Inconsistencies Within the Revolving Loan Software System

The EDA's loan records within the Revolving Loan Software System (RLSS) do not mirror the information contained in the respective promissory notes. We uncovered 12 instances where the terms and/or information contained within loan promissory notes did not match the information contained within the RLSS.

Auditor's Recommendation

We recommend the EDA comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code and maintain proper documentation concerning the accounts of borrowers within the RLSS.

Spending Unit's Response

EDA concurs that some inconsistencies exist within the EDA loan software system and dates reflected on the loan documentation, however these inconsistencies do not result in the inaccurate computation or collection of interest and principal on EDA loans. (See Pages 27-30.)

6. Receipts Not Deposited Within 24 Hours

The EDA did not deposit all moneys within 24 hours of receipt as required. We tested 25 of the EDA's cash receipt transactions totaling \$2,506,909.18; we noted 6 transactions, or 24%, totaling \$169,944.73 where the EDA failed to deposit moneys within 24 hours.

Auditor's Recommendation

We recommend the EDA follow Chapter 12, Article 3, Section 2(a) of the West Virginia code as required and ensure all moneys collected are deposited within 24 hours of receipt.

Spending Unit's Response

EDA staff makes every attempt to make deposits with the State Treasurer within 24 hours of receipt. (See Pages 30-32.)

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the West Virginia Economic Development Authority (EDA). The audit covered the period July 1, 2005 through June 30, 2007.

SPECIAL REVENUE ACCOUNTS

The EDA utilized the following Special Revenue Accounts operating as a sub organization of the West Virginia Development Office (WVDO), Organization Number 0307, during the period of July 1, 2005 through May 31, 2006 for the revenues and expenditures of EDA operations:

<u>Account Number</u>	<u>Description</u>
Account 3141-523.....	Investment Earnings
3141-696.....	Other Collections, Fees, Licenses & Income
3141-697.....	Operating Funds Transfer
Account 3148-099.....	Unclassified
3148-523.....	Investment Earnings
3148-696.....	Other Collections, Fees, Licenses & Income
3148-697.....	Operating Funds Transfer
Account 3151-099.....	Unclassified
3151-523.....	Investment Earnings
3151-696.....	Other Collections, Fees, Licenses & Income
3151-697.....	Operating Funds Transfer
Account 3152-099.....	Unclassified
3152-523.....	Investment Earnings
3152-696.....	Other Collections, Fees, Licenses & Income
3152-697.....	Operating Funds Transfer
Account 3159-099.....	Unclassified
3159-696.....	Other Collections, Fees, Licenses & Income
3159-697.....	Operating Funds Transfer
Account 3167-523.....	Investment Earnings
3167-553.....	Statutory Transfers (Excess Lottery Proceeds)
3167-696.....	Other Collections, Fees, Licenses & Income
Account 3169-696.....	Other Collections, Fees, Licenses & Income

As of June 1, 2006, the EDA fully separated from parent organization WVDO, and was assigned a new organization number 0944 and new account numbers for the accounts previously mentioned:

<u>Account Number</u>	<u>Description</u>
Account 9060-099.....	Unclassified
9060-523	Investment Earnings
9060-696	Other Collections, Fees, Licenses & Interest Income
9060-697	Operating Funds Transfer
Account 9061-099.....	Unclassified
9061-523	Investment Earnings
9061-696	Other Collections, Fees, Licenses & Interest Income
9061-697	Operating Funds Transfer
Account 9062-099.....	Unclassified
9062-523	Investment Earnings
9062-696	Other Collections, Fees, Licenses & Interest Income
9062-697	Operating Funds Transfer
Account 9063-099.....	Unclassified
9063-523	Investment Earnings
9063-696	Other Collections, Fees, Licenses & Interest Income
Account 9064-099.....	Unclassified
9064-696	Other Collections, Fees, Licenses & Interest Income
9064-697	Operating Funds Transfer
Account 9065-523.....	Investment Earnings
9065-553	Statutory Transfers
9065-696	Other Collections, Fees, Licenses & Interest Income
Account 9066-696.....	Other Collections, Fees, Licenses & Interest Income

WVIAJDC Cash Clearing Fund – Account 3141/9060

This account provides for the collections and expenditures of those loans and or leases provided by the Board of Treasury Investments revolving loan in accordance with the Chapter 31, Article 15, and Section 3a of the West Virginia Code.

Industrial Development Loans Fund - Account 3148/9061

This account provides for the collections and expenditures of those loans and or leases provided by the Infrastructure Council loans and the EDA monies. This account is the

account utilized by the EDA for general administrative expenditures. These funds are to be used for the purposes of Chapter 31, Article 15, and Section 7 of the West Virginia Code.

WVEDA-Debt Service Series 1992A Fund - Account 3151/9062

This account provides for the investment earnings from loan application fees, bond issuance fees and interest income. This fund is to be used for the purposes of Chapter 29, Article 18, and Section 10-11 of the West Virginia Code. The EDA utilized this account to make payment for the Board of Risk and Insurance Premium in accordance with Senate Bill number 1002 and to transfer monies to the account 3152/9063 for insurance claim payments.

WVEDA Credit Insurance Fund - Account 3152/9063

This account provides for the expenditure of loan insurance claims and the collection of loan application fees, investment income, and recovery payments of those monies resulting from loan insurance transactions. This fund is to be used for the purpose of Chapter 31, Article 15, Section 8 and Chapter 17, Article 16A, Section 23b of the West Virginia Code.

Small Business Environment Loan Fund - Account 3159/9064

In accordance with Chapter 22, Article 24, Section 5 of the West Virginia Code, this account provides for the collection of interest income from the Small Business Environmental Loan Program and fines and penalties from the various sources.

Economic Development Authority Project – Econ Dev Proj Fd - Account 3167/9065

This account was created for the issuance of excess revenue bonds from the Lottery Commission to disburse monies to the grantees' 47 projects in accordance with Chapter 29, Article, 22, Section 18a(d)(2). The EDA is only responsible for administering the bonds issued on behalf of the Economic Development Grant Committee and United National Bank, trustee of the bond funds, is responsible for disbursement of the excess revenue bonds to the

grantees as required, as well as disbursing funds for principal and interest payments to bond holders.

Economic Development Project Bridge Loan Fund - Account 3169/9066

Unused grant monies for projects, which are granted by the Economic Development Grant Committee, are deposited into the Bridge Loan Fund in accordance with the West Virginia Legislature's direction. This fund is utilized by the Legislature to mandate loans between the EDA and various other entities in accordance with Chapter 22, Article 24, and Section 5 of the West Virginia Code.

COMPLIANCE MATTERS

Chapter 31, Article 15 generally governs the EDA. We tested applicable sections of the above, plus general State regulations and other applicable chapters, articles and sections of the West Virginia Code as they pertain to fiscal matters.

Our findings are listed below.

1. No Adherence to Purchasing Division's Policies and Procedures

The EDA does not follow the West Virginia Purchasing Division's (the Purchasing Division) policies and procedures. In addition to noncompliance with the Purchasing Division's Policies and Procedures, the EDA has no written internal control procedures to ensure against misappropriation by fraud or error. In conjunction with the Legal Division of Legislative Services, we have determined the EDA is legally required to follow the Purchasing Division's policies and procedures. We noted that approximately \$255,000.00, combined from fiscal years 2006 and 2007, was spent in areas generally governed by the Purchasing Division and the rules set forth in Chapter 5A of West Virginia Code. Chapter 5A, Article 3, Section 1(a) of the West Virginia Code, as amended, states in part:

“(a) The Purchasing Division of the Department of Administration is continued for the purpose of establishing centralized offices to provide purchasing, and travel services to the various state agencies...The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.” (Emphasis Added)

The Director of the EDA informed us it is the EDA’s position, on advice from their legal counsel, that they are not required to follow the Purchasing Division’s Policies and Procedures. We asked the Legal Division of Legislative Services to issue an opinion on the matter and it states:

“I am responding to the memorandum you sent to John Homburg requesting an opinion concerning the position taken by the Economic Development Authority as to the applicability of the State’s purchasing laws to the Authority. You were told by the Authority’s Director that its legal counsel had informed him the Authority was exempt from the purchasing requirements of W. Va. Code §§5A-3-1 through -58 because the Authority is not a "spending unit" as mentioned in W. Va. Code §5A-3-1. This section states in part:...

The provisions of this article shall apply to all of the spending units of state government, except as is otherwise provided by this article or by law...

W. Va. Code §5A-1-1 defines a "spending unit" as:

...a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the legislature...

I have reviewed the enrolled budget bills for the applicable years. Each budget contains a specific appropriation for the Economic Development Authority, as well as general language making appropriations of special revenue funds. It appears that the Authority is a spending unit as that term is defined in the Code.

Additionally, the Authority takes the position that W. Va. Code §31-15-6, subdivision (II) exempts it from the State's purchasing law, as it allows it:

...to exercise all of the powers of which a corporation may lawfully exercise under the laws of the state...

I have found no authority for the proposition that such language exempts a state entity from the State’s purchasing laws. Had the Legislature intended the Authority to be exempt it could have provided express language allowing an exemption.

I do not agree that the positions taken by the Authority are correct interpretations of State law.

I hope that I have adequately addressed your questions. If you need anything further in this matter do not hesitate to contact me.”

The Purchasing Division is charged with making high-dollar purchases via contract (those exceeding \$25,000.00 subsequent to July 1, 2007, and \$10,000.00 prior to) and implementing procedures for state agencies to follow concerning: requirements for obtaining oral and written bids in order to award contracts; the approval of purchases made by an agency; and, requirements for documented support of all purchases made. Additionally, the Purchasing Division provides tools to assist agencies in following the many other purchasing guidelines set forth in West Virginia Code. Contracts initiated by agencies contrary to the provisions set forth in West Virginia Code are null and void and the head of the initiating agency shall be held personally liable.

Chapter 5A, Article 3, Section 17 of the West Virginia Code states in part:

“If a spending unit purchases or contracts for commodities contrary to the provisions of this article or the rules and regulations made thereunder, such purchase or contract shall be void and of no effect. The head of such spending unit shall be personally liable for the costs of such purchase or contract, and, if already paid out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor.”

Therefore, we find it imperative that agencies required to follow the direction of the Purchasing Division do so in order to circumvent any potential issues that may put the State’s interests at stake.

The Director of the EDA informed us that while the EDA does not, as a general rule, adhere to the Purchasing Division’s Policies and Procedures, they do make purchases in line with statewide contracts where they feel its possible and they do attempt to garner bids when they feel it’s practical. We believe full compliance with the required rules and regulations are necessary to maintain fair, balanced and ethical treatment of vendors and to best protect the State

of West Virginia. Additionally, he informed us that the provision given the EDA in §31-16-6(II) of the West Virginia Code, which states in part “...the authority...shall have the power...to exercise all of the powers which a corporation may lawfully exercise under the laws of this state” and the legal definition of a state spending unit set forth in §5A-1-1 of the West Virginia Code, which defines a spending unit as “...a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature” combine to exempt the EDA from following the Purchasing Division’s Policies and Procedures even though a specific exemption is not granted. At the conclusion of this report, the EDA provided, from their legal counsel, a more detailed explanation of their claim of exempt status [SEE EXHIBIT A].

We recommend the EDA follow Chapter 5A, Article 3, Section 1(a) of the West Virginia Code, as amended, and adhere to the West Virginia Purchasing Division’s Policies and Procedures.

Spending Unit’s Response

EDA attaches an updated memorandum of counsel that EDA continues to rely upon for its exemption from the policies and procedures of the Purchasing Division.

EDA further challenges that the dollar value identified as the amount EDA spent during the audit period in areas generally governed by the Purchasing Division and the rules set forth in Chapter 5A of West Virginia Code is not reflective of actual practices at EDA. Of the individual transactions identified that aggregate \$255,000.00, only nineteen (19) of those transactions were larger than \$2,500.00 and they aggregate \$145,000.00. The balance of the transactions cited were all below \$2,500.00 and not subject to bidding procedures of the West Virginia Purchasing Division.

Of those nineteen transactions:

Two transactions of \$14,342.00 and \$13,000.00 respectively were for an annual subscription to services provided by Dun & Bradstreet which provides background information on clients that were discussing incentives with the West Virginia Development Office (WVDO) or EDA staff. One transaction for \$12,225.00 to construct a stairway for the EDA office in which three written bids were solicited and two were received with EDA selecting the lowest bid. Two transactions for \$6,038.00 and \$6,245.00 reimbursing FARS for the cost of the State of West Virginia's single audit. Four transactions of \$11,000.00, \$4,985.00, \$3,860.00, and \$25,800.00 respectively are all payments to the outside CPA firm that EDA selected to conduct the EDA annual audit. Audit firms were selected through an RFP process and the low bidder was selected. Two transactions of \$3,370.93 and \$3,615.63 respectively that were refunds to EDA borrowers that had made loan payments in excess of their required payment. One transaction of \$4,343.85 to purchase furniture under the State contract. Two transactions of \$4,413.00 and \$4,995.00 for the purchase of supplemental software to EDA's existing accounting software and the annual license and warranty for EDA's existing accounting software respectively. Two transactions of \$2,537.00 and \$2,830 for printing of the EDA annual report. Printing bids were obtained by the Communications Division of the Bureau of Commerce. One transaction of \$3,500.00 for the design of a web site for EDA. Three written bids were received with the award given to the lowest bidder. One transaction of \$3,320.65 for reimbursement to the WVDO of cell phone expenses covering a six month period during the transfer of accounts payable duties from the WVDO to EDA. One transaction of \$14,616.00 for the crane repair at a building owned by EDA in Raleigh County necessary to consummate the sale of said building to a company that created

twenty manufacturing jobs. Bids were not solicited as the crane repair company utilized previously did the initial installation and annual inspections for several years.

2. Assets Not Recorded

The EDA has not recorded any assets purchased subsequent to June 2006 into the WVFIMS Fixed Asset System. Additionally, the EDA does not maintain a separate, internal system to track and monitor fixed assets to guard against loss or theft. In approximately June 2006, the EDA fully separated from the West Virginia Development Office (WVDO) as a result, the EDA assumed all administrative duties of their agency, many of which were previously performed by the WVDO. Included in these duties was the monitoring and recording of fixed assets for the EDA. According to EDA management, however, no one at the EDA knew to assume these duties after their separation from the WVDO. As a result, we believe \$9,600.00 in fixed assets has not been properly recorded and accounted for. Additionally, we noted the retirement of a laptop computer (which was removed from service after the EDA assumed administrative duties in June 2006) has not been completed and the computer is being stored in the closet of the EDA's Secretary.

Section 10.1.4 of the West Virginia Purchasing Division's Policies and Procedures Handbook states:

“Inventory: Once payment has been made to the vendor and the I-document established, reportable property must be added to the WVFIMS Fixed Assets System.”

The State of West Virginia Purchasing Division Inventory Management and Surplus Property Disposition Policies and Guidelines states the following sections in part:

“3.1 The head of every department of State government must, on or before July fifteenth of every year, file with the Director of the Purchasing Division a certification verifying that all reportable

property in its possession as of the close of the last fiscal year was properly entered into the WVFIMS Fixed Asset System in accordance with the policy and the WVFIMS Fixed Assets Training Manual. (See Part II of this handbook for detailed instructions on entering and retiring assets in the WVFIMS Fixed Asset System.)”

“3.2 Coordinator:

Each agency head is responsible for appointing an agency inventory coordinator and registering the coordinator’s name(s) with the Surplus Property Unit of the Purchasing Division by completing the **Inventory Management Coordinator Designation Form, WV-101** (see Appendix A). The agency coordinator will be responsible for maintaining the agency’s inventory and submitting proper and timely information to the Surplus Property Unit of the Purchasing Division as required. The coordinator’s responsibility is also to notify and train employees within their agency on the procedures regarding the care and proper disposition of all state owned equipment as outlined in this handbook.”

“3.3 Responsibility:

Agencies are responsible for all property under its jurisdiction, regardless of its state (removable or fixed), origin, or acquisition cost. **Agencies are responsible for** maintaining equipment from date of purchase to date of retirement, such as keeping equipment secure, **entering assets into the WVFIMS Fixed Asset system**, conducting physical inventories, submitting annual certification, retiring assets properly, etc **all in accordance with policy and procedures as outlined in this handbook.” (Emphasis Added)**

By not following guidelines for the proper management of fixed assets the risk of misappropriation due to theft, of loss or misplacement or of fraud is greatly increased.

We recommend the West Virginia Economic Development Authority comply with the West Virginia Purchasing Division’s Policies and Procedures Handbook and the State of West Virginia Purchasing Division Inventory Management and Surplus Property Disposition Policies and Guidelines and properly record and catalog fixed assets when received.

Spending Unit's Response

EDA concurs that it has not properly recorded assets under the WVFIMS Fixed Asset System. When EDA assumed the accounts payable functions and the payroll/human resource functions from WVDO, EDA was not made aware of the WVFIMS Fixed Asset System requirements. Upon learning of this deficiency during the audit, EDA staff made several attempts to get the necessary information from WVDO transferred to the Surplus Property Unit enabling EDA to establish its own fixed asset system. That transfer of information has still not occurred, and EDA is working on having this corrected

3. Loans Insured in Violation of EDA Loan Insurance Programs

During our audit we noted three of eight loans listed on the EDA's Insurance Program Underwriting Report are insured in violation of the established policy of the EDA board; specifically, either the EDA's Loan Insurance (LINS) Program or their Leverage Technology Loan (LTL) Program. In an effort to promote new business and grow existing business within the State of West Virginia the EDA offer a LINS Program where the EDA guarantees up to 80% of a bank loan, not to exceed \$500,000.00 for a maximum of four years. Similarly, the LTL program guarantees up to 90% of a bank loan, not to exceed \$150,000.00 for a maximum of five years. We noted during our testing: (1) one instance where the EDA's LINS insured portion exceeded 80% of the bank loan; (2) one instance where the WVEDA approved loan insurance through their LINS program in the amount of \$3,000,000.00 (more than the ceiling of \$500,000.00); and (3) one instance where the loan insurance term for a LTL guarantee was approved for more than five years.

In a Legislative Performance Review dated July 2008, the Performance Evaluation & Research Division of the West Virginia Legislative Auditor's office concluded of

this program that it "...has been a generally effective tool for promoting business in West Virginia. It is a tool used by most states in West Virginia's competitive region. However, recently the WVEDA has increased its risk when guaranteeing loans by going beyond its \$500,000 limit and that has resulted in some substantial claims being paid..." and recommended "...that the West Virginia Economic Development Authority refrain from exceeding the limits of its loan insurance program..."

The Indirect Lending Programs section of the West Virginia Economic Development Authority Program Information guidebook, subsection A, states in part:

"The Loan Insurance Program (LINS) is a loan guarantee program where WVEDA guarantees up to 80% of a bank loan. WVEDA's guaranteed portion cannot exceed \$500,000 and is for a maximum term of four years..."

...The Leveraged Technology Loan Program (LTL) is a loan guarantee program where WVEDA guarantees up to 90% of a bank loan. WVEDA's guaranteed portion cannot exceed \$150,000 and is for a maximum term of five years..."

In the first instance mentioned above, one LINS loan insurance agreement insured 100% of a loan totaling \$300,000.00 to Borrower 1. The EDA closed on an agreement with the Monongahela Valley Bank, Inc. (lender) on June 28, 2004 to insure this loan at 100% although EDA's policies stipulate the maximum amount they will insure is 80% of a loan.

For the second instance, the EDA insured \$3,000,000.00 of a \$4,875,000.00 Note to the First National Bank of Ronceverte (lender) for the benefit of Borrower 2 on March 18, 2004. This far exceeds the stated ceiling for LINS insurance, defined by the EDA as \$500,000.00. Of further note, Borrower 2 defaulted on this loan and in December 2007 the EDA paid the claim of \$3,000,000.00.

The third instance spoken of above finds that the EDA approved loan insurance for a loan from United National Bank (lender) to Borrower 3 for a period of ten years from January 25, 2002 to February 1, 2012. This exceeds the EDA's listed maximum term for a LTL guarantee of five years.

The EDA increases its risk by insuring amounts greater than the limits it sets for the program. Additionally, by advertising stipulations to applicants to the program then overriding those stipulations in certain situations the EDA may be viewed as giving unfair advantage to certain businesses.

We recommend the EDA comply with their own policies and procedures as described in the West Virginia Economic Development Authority Program Information guidebook, subsection A, and only insure up to the limits they have imposed. If the EDA believes it necessary and in the best interest of the state to provide latitude in the amounts they can insure, we recommend the EDA amend their policies and procedures accordingly.

Spending Unit's Response

EDA concurs that the EDA board approved three loan insurance guarantees outside of its existing loan insurance policy. The individual circumstances warranting the same were:

The first exception to the loan insurance policy refers to a project in Barbour County where EDA insured 100% of a \$300,000 bank loan. In this instance the bank had made a separate loan to the company in which part of the loan proceeds were used to pay-off a delinquent EDA equipment loan in excess of \$800,000.00. This action prevented the EDA from liquidating the equipment and realizing a sizable loss, and, more importantly, provided a new company to begin operations in Barbour County employing local workers. EDA's 100%

guarantee of the smaller bank loan allowed the larger bank loan to close under the terms of a federal U.S. Department of Agriculture loan guarantee which recovered a substantial EDA delinquent loan and created new jobs.

The second exception to the loan insurance policy refers to a project in Greenbrier County where EDA insured 100% of a \$3,000,000 portion of a \$4,875,000 Bank loan. The bank loan represented the local match requirement for a U.S. Department of Energy grant of \$5,000,000 allowing the project to acquire all of the initial engineering, feasibility studies, and permits necessary to construct a waste coal fired electricity generating facility. If successful, the project would have received an additional \$110 million of financing for the construction of the facility. Delays in the permitting process ultimately caused the construction cost estimates to dramatically increase for steel and concrete undermining the financing model in place supporting the issuance of bonds to finance the facility.

The third exception to the loan insurance policy refers to a project in Webster county where EDA insured a loan for a term of ten years exceeding its policy of a four year guarantee. The borrower was a municipality that obtained a bank loan to renovate a former drug store building enabling it to lease the building to a private company that provided 25 jobs in Webster County. The bank would not make a long term loan to a municipality without a longer term guarantee from EDA. This project is still operating and a successful endeavor by EDA.

In each instance, the EDA Board, within its right to do so, chose to make an exception to its general policy due to the underlying circumstances.

4. Uncharged Late Fees

The EDA does not assess the fees or penalties for late payments that the standard language of their loan contracts requires. We tested eight loan disbursements; of those, three borrowers remitted late payments. As a result of non-compliance with the Financing Terms and Condition of the Loan Agreement between the aforementioned borrowers and the EDA, three borrowers underpaid the EDA a combined total of \$21,138.83 during the period July 1, 2005 through June 30, 2007.

Section A. Financing of the Loan Agreement between the West Virginia Economic Development Authority and the Borrower (One, Two and Three) states in part:

“ . . . 3. Any Payment due to WVEDA pursuant to the terms and conditions of the WVEDA Loan not made within ten days of its due date **shall be subject to a late charge equal to five percent (5%) of the monthly payment due. An additional five percent (5%) will be charged for each successive month the payment remains past due.** This late payment charge shall apply individually to all payments due, and there shall be no daily pro-rata adjustment. All late charges accrue to the benefit of WVEDA and are in addition to, not in lieu of, the continuing accrual of interest.” **(Emphasis Added)**

We were told by the Director of the EDA does not believe it's in the best interest of the borrower or the State to assess penalties and fees when the borrower is already having problems meeting the payment deadlines for interest and principal. The three borrowers mentioned above are:

Borrower One received a loan in the amount of \$600,000.00 with an interest rate of four percent (4%) from the EDA on December 29, 2005, as a portion of the financing and agreed to make the loan payment in the amount of \$5,253.17 on the 29th day of every month for a term of twelve years. However, Borrower One paid the monthly loan payments after the day of its due date beginning with the first payment on January 29,

2006. We determined the following late fees were not charged from Borrower One during fiscal years 2006 and 2007:

<u>Due Date</u>	<u>Received/Post Check Date</u>	<u>*Number of Days Delayed</u>	<u>**Late Fees Per Month</u>
01/29/06	03/02/06	32	\$ 262.66
02/29/06	04/03/06	34	262.66
03/29/06	04/24/06	26	262.66
04/29/06	05/24/06	25	262.66
05/29/06	06/30/06	32	262.66
07/29/06	09/05/06	38	262.66
08/29/06	10/27/06	59	525.32
09/29/06	12/08/06	70	525.32
10/29/06	12/08/06	40	262.66
12/29/06	02/05/07	38	262.66
01/29/07	03/02/07	32	262.66
Total			<u>\$3,414.56</u>

**This number includes the grace period (the first 10 days following the due date), though late fees during this period do not apply.*

***Late Fee due = 5% of the monthly payment due (\$5,253.17) with an additional 5% of the monthly payment due for each successive Month outstanding.*

The EDA closed a loan in the aggregate amount of \$293,621.00 with an interest rate of five percent (5%) per annum with **Borrower Two** on April 28, 1997. Borrower Two agreed to pay \$2,324.07 a month for a term of 15 years; however, beginning July 2005 they failed to make their payments on time. We determined the following late fees were not charged from Borrower Two during fiscal years 2006 and 2007:

<u>Due Date</u>	<u>Received/Post Check Date</u>	<u>*Number of Days Delayed</u>	<u>**Late Fees Per Month</u>
07/28/05	05/01/06	277	\$ 2,340.42
08/28/05	05/01/06	246	2,080.38
09/28/05	05/01/06	215	1,820.33
10/28/05	06/05/06	220	1,820.33
11/28/05	06/05/06	189	1,560.28
12/28/05	06/05/06	159	1,300.24
01/28/06	07/10/06	163	1,300.24
02/28/06	07/10/06	132	1,040.19
03/28/06	08/04/06	129	1,040.19
04/28/06	08/04/06	98	780.14

<u>Due Date</u>	<u>Received/Post Check Date</u>	<u>*Number of Days Delayed</u>	<u>**Late Fees Per Month</u>
05/28/06	09/05/06	100	780.14
06/28/06	09/05/06	69	520.09
07/28/06	10/02/06	66	520.09
08/28/06	10/02/06	35	260.05
09/28/06	11/06/06	39	260.05
Total			<u>\$17,423.15</u>

**This number includes the grace period (the first 10 days following the due date), though late fees during this period do not apply.*

***Late Fee due = 5% of the monthly payment due (\$2,324.07) with an additional 5% of the monthly payment due for each successive Month outstanding.*

The WVEDA finalized a loan in the amount of \$800,000 with an interest rate of 4.25% to **Borrower Three** on December 14, 2006. Borrower Three promised to pay the monthly loan payment in the amount of \$6,022.35 for a term of 15 years and subsequently paid the monthly loan payments by their due dates during our audit period except their payment for March 2007. We determined the following late fees were not charged from Borrower Three during fiscal years 2006 and 2007:

<u>Due Date</u>	<u>Received/Post Check Date</u>	<u>*Number of Days Delayed</u>	<u>**Late Fees Per Month</u>
03/14/07	04/09/07	26	\$301.12
Total			<u>\$301.12</u>

**This number includes the grace period (the first 10 days following the due date), though late fees during this period do not apply.*

***Late Fee due = 5% of the monthly payment due (\$6,022.35) with an additional 5% of the monthly payment due for each successive Month outstanding.*

We recommend the West Virginia Economic Development Authority comply with Section A. of the Financing of the Loan Agreement between the West Virginia Economic Development Authority and the Borrowers and assess and collect the fees and penalties they are contractually bound to assess and collect. Additionally, if the EDA believe assessing fees and penalties for late payments is detrimental to both the customer and the State, they should

consider amending the language of future contracts so that assessing fees and penalties is at the EDA's discretion.

Spending Unit's Response

EDA concurs that it does not assess and collect late fees on delinquent loans. It is the opinion of the EDA that punishing a West Virginia small business at a time when the business is experiencing cash flow difficulties is a punitive action unnecessary and contrary to EDA's mission of providing financial assistance to businesses in West Virginia. When delinquent payments are received, payments are first applied to outstanding accrued interest and, if anything remains, it is applied to the loan principal. Going forward, EDA will change the language in its loan agreements to reflect that EDA may charge late fees, instead of shall charge late fees.

5. Inconsistencies Within the Revolving Loan Software System

The EDA's loan records within the Revolving Loan Software System (RLSS) do not mirror the information contained in the respective promissory notes. We uncovered 12 instances where the terms and/or information contained within loan promissory notes did not match the information contained within the RLSS.

Chapter 31, Article 15, Section 26 of the West Virginia Code states, in part:

“All money accruing to the authority from whatever source derived, except legislative appropriations, shall be collected and received by the treasurer of the authority, who shall pay it into the state treasury in the manner required by section two [12-2-2], article two, chapter twelve of this code, which shall be credited to the appropriate fund of the authority.”

Chapter 5A, Article 8, Section 9(b) of the West Virginia Code states, in part:

“Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to

furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities. ”

The RLSS is used by the EDA to record payments made from borrowers and to indicate the current status of a borrower's account. Included in the RLSS are the terms of the loan (i.e. interest rate, repayment period and the due date for monthly payments) and an amortization schedule for payments. The following table illustrates the discrepancies found between the RLSS and the respective Promissory Notes for the loans involved.

	Loan #	<i>Finding Detail</i>	Loan Amount
1	603	<i>Loan Terms were modified in the Loan System and the Loan System does not have the capability to archive original terms.</i>	\$1,771,924.00
2	612	<i>Loan Terms were modified in the Loan System and Loan System does not have the capability to archive original terms</i>	\$1,771,924.00
3	176	<i>(a) Term number of payments in the RLSS Master File is 180; Loan Promissory Note is for 60 months; (b) Loan System cannot calculate Balloon payments</i>	\$2,900,000.00
4	147	<i>Loan Terms were modified in the Loan System and Loan System does not have the capability to archive original terms</i>	\$1,000,000.00
5	354	<i>RLSS Loan Terms were modified in the RLSS Loan System and Loan System does not have the capability to archive original terms.</i>	\$2,000,000.00
6	211	<i>RLSS Loan Terms were modified in the RLSS Loan System and Loan System does not have the capability to archive original terms.</i>	\$370,000.00
7	994	<i>(a) 1st payment due date was 5/22/1996 on the RLSS Master File Report however 4/22/1996 is listed as the due date on the Loan Promissory Note; (b) Loan interest is fixed at 3% in the RLSS Master File Report however the Loan Promissory Note indicates a variable rate based upon index being no less 2%</i>	\$1,125,000.00
8	777	<i>1st payment due date was 10/27/1999 on the RLSS Master File Report however the Loan Promissory Note indicated a Payment due date of 10/28/1999.</i>	\$2,000,000.00

	<u>Loan #</u>	<u>Finding Detail</u>	<u>Loan Amount</u>
9	902	<i>Loan Payment Amount from RLSS Master File Report does not coincide with the Loan Payment Amount of the Loan Promissory Note, or Auditor's Calculated Loan Payment.</i>	\$46,309.00
10	222	<i>(a) Loan Payment Amount and Interest Rate from the RLSS Master File Report does not coincide with the Loan Promissory Note or Calculated Payment Amount according to the terms indicated.</i>	\$500,000 & \$414,762.30
11	116	<i>1st payment due date was for 3/15/1996 however the RLSS Master File Report has the 1st payment due on 3/16/1996</i>	\$2,358,000.00
12	748	<i>1st payment due date was for 3/15/1996 however the RLSS Master File Report has the 1st payment due on 3/16/1996</i>	\$144,400.00

We spoke to the two Accountants for the EDA in regards to the discrepancies. They stated the discrepancies can be attributed to multiple factors, such as: the information being input in the system without proper review of the promissory note, or the original loan terms being modified in the System. The RLSS is unable to archive the original loan information when modifications are made to the loan terms.

As a result of the conflict of information, we were unable to assure ourselves all loan payments received by the EDA were properly recorded and were in conformity with the loan terms and conditions agreed to by both the borrowers and the EDA.

We recommend the EDA comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code and maintain proper documentation concerning the accounts of borrowers within the RLSS.

Spending Unit's Response

EDA concurs that some inconsistencies exist within the EDA loan software system and dates reflected on the loan documentation, however these inconsistencies do not result in the inaccurate computation or collection of interest and principal on EDA loans.

During the normal process to close an EDA loan and disburse funds, EDA schedules a loan closing date, obtains proper signatures, and then recordable documents, such as deeds of trust and Uniform Commercial Code Financing Statements must be filed at their proper filing locations. Deeds of trust are recorded at the county clerk's office within the county in which the real property used as collateral for the EDA loan is located. UCC Financing Statements are filed with the secretary of state's office in the state where the borrower is incorporated. In many instances an EDA borrower in West Virginia is not incorporated in West Virginia. Thus, timing issues are involved in the recording of documents, and it is very common for EDA to disburse funds several days after the physical closing and signing of documents takes place. For EDA's loan software to calculate the payment of accrued interest correctly it must use the date of funds disbursement as the original date of the loan and not necessarily the date on the promissory note.

6. Receipts Not Deposited Within 24 Hours

The EDA did not deposit all moneys within 24 hours of receipt as required. We tested 25 of the EDA's cash receipt transactions totaling \$2,506,909.18; we noted six transactions, or 24%, totaling \$169,944.73 where the EDA failed to deposit moneys within 24 hours.

<u>WV FIMS #</u>	<u>Amount of Deposit</u>	<u>Date of Receipt</u>	<u>Date of Deposit</u>	<u>Days Late</u>
D001235862	\$ 4,567.80	May 16, 2006	May 18, 2006	1
D001236425	\$ 5,000.00	May 17, 2006	May 22, 2006	2
D001236410	\$ 10,000.00	May 17, 2006	May 22, 2006	2
D001236452	\$ 15,499.17	May 18, 2006	May 22, 2006	2
D001283087	\$ 82,339.32	October 30, 2006	November 1, 2006	1
D001283824	\$ 52,538.44	November 1, 2006	November 3, 2006	1
	<u>\$169,944.73</u>		Average -	<u>1.5</u>

Chapter 12, Article 2, Section 2(a) of the West Virginia Code states in part:

“All officials and employees of the state authorized by statute to accept moneys due the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and **shall deposit within twenty-four hours with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever.** The State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: ...” **(Emphasis Added)**

We were told the deposits were made late because of employee absences due to training seminars and the late hours at which some of the deposits were received. The longer funds are held prior to deposit, the greater the risk of misappropriation or loss. Additionally, considering the large dollar amount of the moneys received by EDA, the loss of interest revenue on collections is magnified. Assuming an annual return of 3%, the State had a loss of interest totaling \$20.95 within our sample. Applying an average of one-and-one-half days late to 24% of the total population of EDA collections (\$211,380,854.57) indicates the State may have lost interest income totaling approximately \$6,254.56 during our audit period.

We recommend the EDA follow Chapter 12, Article 3, Section 2(a) of the West Virginia code as required and ensure all moneys collected are deposited within 24 hours of receipt.

Spending Unit's Response

EDA staff makes every attempt to make deposits with the State Treasurer within 24 hours of receipt. There are times when an accounting staff of three people can have conflicting schedules due to a combination of annual leave, sick leave, and State mandated training seminars, etc. Said deposits are made into accounts 9060-696; 9061-696; 9064-696; and 9063-696. All of these accounts are non-interest bearing and accounts 9060-696 and 9061-696 are used to pay EDA operating expenses. Being a special revenue agency and not receiving general fund appropriations, EDA must pay its current obligations from these funds. EDA staff transfers excess amounts in these accounts to interest bearing investment accounts, as needed.

Supplemental Information

Exhibit A

MEMO

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE

To: David A. Warner, Executive Director
West Virginia Economic Development Authority

From: Brian C. Helmick, Esq. and
Dale W. Steager, Esq.

Date: December 30, 2008

Re: West Virginia Economic Development Authority

This memorandum sets forth the basis for exemption for the West Virginia Economic Development Authority ("WVEDA") from the purchasing requirements set forth in W. Va. Code § 5A-3-1 *et seq.*

The applicable section of the purchasing law reads:

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division of the Department of Administration is continued for the purpose of establishing centralized offices to provide purchasing, and travel services to the various state agencies. No person may be appointed director of the Purchasing Division unless that person is, at the time of appointment, a graduate of an accredited college or university and has spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise. The provisions of the article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(b) The provisions of this article do not apply to the legislative branch unless otherwise provided or the Legislature or either house requests the director to render specific services under the provisions of this chapter, nor to purchases of stock made by the Alcohol Beverage Control Commissioner, nor to purchases of textbooks for the state Board of Education.

(Emphasis added.)

While there is no explicit exemption W. Va. Code § 5A-3-1 for the WVEDA, like there is for certain other State entities, the basis in support of a finding that the WVEDA is not subject to the purchasing rules is based upon various provisions of the West Virginia Economic Development Authority Act, which reveal the intention of the Legislature to create a public corporation and government instrumentality that has been freed from bureaucratic rules generally applicable to State agencies, boards, commissions, department and offices, such as the purchasing rules set forth in W. Va. Code § 5A-3-1. These various provisions include:

1. "The West Virginia economic development authority is continued as a body corporate and politic, constituting a public corporation and government instrumentality." W. Va. Code § 31-15-5(a).

2. "The board [of the WVEDA] shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted." W. Va. Code § 31-15-5(g).

3. "The board [of the WVEDA] shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority." W. Va. Code § 31-15-5(h).

4. "The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power . . . [to do some 40 enumerated things], W. Va. Code § 31-15-6, including the powers:

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.

(q) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business.

* * *

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

* * *

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(ll) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of article three, chapter five, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.”

* * *

(Emphasis added.)

Another autonomous public corporation established by the Legislature is the West Virginia Housing Development Fund established in W. Va. Code § 31-18-1 *et seq.* The Housing Development Fund’s employees, like those of the WVEDA, are eligible for the various fringe benefits available to employees of the WVEDA and other State employees. Based on our knowledge and conversations with the executive director of the Housing Development Fund, the Fund has and still claims an exemption from the State’s purchasing rules due to its autonomous legislative directive to operate free from traditional bureaucratic rules, including purchasing rules.

The basis for the Housing Development Fund’s exemption from the purchasing rules is based upon various provisions of W. Va. Code § 31-18-1 *et seq.*, which collectively reveal the intention of the Legislature to create a public corporation and government instrumentality that has been freed from bureaucratic rules generally applicable to State agencies, boards, commissions, department and offices, such as the purchasing rules set forth in W. Va. Code § 5A-3-1. These various provisions include:

1. The West Virginia housing development fund is “a governmental instrumentality of the State of West Virginia, a public corporate[.]” W. Va. Code § 31-18-4(a).
2. “The management and control of the housing development fund shall be vested solely in the board of directors in accordance with the provisions of this article.” W. Va. Code § 31-18-5(a).
3. The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but

not limited to, the following [thirty-six enumerated powers], W. Va. Code § 31-18-6, including the power:

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization;

* * *

(31) To exercise all of the rights, powers and authorities of a public housing authority as set forth and provided in article fifteen, chapter sixteen of this code, in any area or areas of the state which the housing development fund shall determine by resolution to be necessary or appropriate[.]

The purchasing statutes recognize that entities may be exempt from the purchasing requirements under either the State purchasing laws or under some other provision of the West Virginia Code. W. Va. Code § 5A-3-1 (the provisions of the article apply to all of the spending units of state government, except as otherwise provided by this article or by law).

In summary, WVEDA's exemption from the State's purchasing laws is based on the language provided in the West Virginia Economic Development Authority Act, which vests in the Board of the WVEDA the unrestricted power to decide how the WVEDA will do its purchasing, operates effectively as an exemption from the purchasing rules within the meaning of W. Va. Code § 5A-3-1.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 12th day of January 2009.



Stacy L. Sneed, CPA, CICA Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the West Virginia Economic Development Authority; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.