

OFFICE OF THE STATE AUDITOR

PERFORMANCE AUDIT FOLLOW-UP REPORT

Of the Status of Recommendations from
DEPARTMENT OF COMMERCE

December 22, 2010

Report No. 3027.1



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December 22, 2010

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

A fundamental objective of the Office of the State Auditor's work is to bring about improvements through recommendations. To achieve this, our recommendations need to be timely and effectively implemented. The Legislative Audit and Fiscal Review Committee (LAFRC) has requested the Office of the State Auditor to perform follow-up work after presentation of performance audit reports to the Committee and to report those agencies which have not implemented audit recommendations.

The Office of the State Auditor conducted an audit follow-up on the performance audit of the Department of Commerce (report #3027) dated August 11, 2009. The objective of this follow-up audit was to determine the status of the 50 recommendations included in the performance audit report. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives. The audit period for which information was collected and reviewed was July 1, 2009 through October 31, 2010.

As a result of the follow-up review, 38 recommendations were determined to be fully implemented, 10 were determined to be partially implemented, and 2 were determined to be not implemented.

Sincerely,

A handwritten signature in cursive script that reads "Bob Peterson".

Robert R. Peterson
State Auditor

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Department of Commerce
Report Dated August 11, 2009

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Recommendations Fully Implemented

Recommendation #1 **We recommend the Centers of Excellence Commission ensure compliance with North Dakota Century Code Section 15-69-04, Subsection 5 and determine whether Centers of Excellence are having the desired economic impact.**

Original Condition North Dakota Century Code (NDCC) Section 15-69-04, Subsection 5 requires the Centers of Excellence Commission to “monitor the center’s activities in order to determine whether the center is having the desired economic impact.” Based on our review of information regarding the monitoring of the Centers of Excellence, there was no determination being made as to whether the Centers of Excellence were having the desired economic impact. There were no comparisons performed on the desired economic impact in applications to what the actual economic impact had been. There was no analysis readily available to measure whether the Centers of Excellence were having the desired economic impact.

Action Taken The Centers of Excellence Commission established policies and procedures addressing how and when the Commission is to determine whether Centers are having the desired economic impact. Each Center of Excellence is to be reviewed after its third full year of operation to determine whether it is creating the economic impact projected in its application.

In June 2010, the Centers of Excellence Commission discussed whether nine Centers of Excellence in operation for three full years are having the desired economic impact. The Commission took into account commercialization, job creation, growth of private sector partners, matching funds received, and other criteria in making its conclusions. The Commission concluded seven of the nine Centers were on track to achieve their desired economic impact. The North Dakota State University Center for Surface Protection and the Valley City State University Enterprise University were both categorized as needing improvement. Concerns included limited job creation and questions about sustainability.

Result of Implementation The Centers of Excellence Commission is in compliance with state law requirements. The Commission has identified two Centers of Excellence not meeting expectations.

Recommendation #2 **We recommend the Department of Commerce ensure applications provided to the Centers of Excellence Commission contain budgeted expenditures which are in compliance with state law.**

Original Condition Applications to become a Center of Excellence are submitted to the Department of Commerce. In our review of 11 approved applications, we identified an application included \$165,000 for two outreach programs. While both outreach programs were in existence previous to the application, one of the programs (budgeted for \$105,000) appeared to use Centers of Excellence funding for supplanting current outreach operations.

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NDCC Section 15-69-05, Subsection 1 states.

“A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs.”

The use of Centers of Excellence funds to supplant current operations would result in noncompliance with state law (at the time of the review, no Centers of Excellence funds for this project had been expended). A discussion with a campus representative of this Center of Excellence identified outreach programs were a required part of federal grants in this area. Outreach programs are not a requirement of the Centers of Excellence program.

Action Taken

The Centers of Excellence Commission has established policies and procedures addressing the review process of Centers of Excellence applications. The review, performed by the Department of Commerce, is done to ensure applications are complete and in compliance with state law. This review occurs prior to applicants giving a presentation to the Commission. In our review of five applications, we identified budgeted expenditures appeared to be in compliance with state law.

Result of Implementation

An improved review process assists in ensuring applications are complete and budgeted expenditures are in compliance with state law.

Recommendation #3

We recommend the Centers of Excellence Commission establish formal policies and procedures for the evaluation of applications. At a minimum, the policies should address:

- a) A process incorporating all elements in North Dakota Century Code for consideration in approving and disapproving applications; and**
- b) Additional elements of consideration on applications from Centers of Excellence which were previously approved.**

Original Condition

In considering whether to approve or disapprove an application, NDCC Section 15-69-04, Subsection 3 required the Commission to consider various elements. For example, the Commission was to consider 9 elements such as whether the Center of Excellence would create high-value private sector employment opportunities in the state, leverage other funding, and become financially self-sustaining.

The Centers of Excellence Commission had established no formal policies regarding how applications were to be approved and disapproved. We were unable to determine whether the Commission had adequately taken into consideration the established legislative elements when determining whether applications would be approved or disapproved. When previously funded Centers of Excellence requested additional funds in a subsequent

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biennium, the Commission used an informal process in collecting additional information and did not establish how previously funded Centers of Excellence would be evaluated for subsequent approval.

Action Taken

The Centers of Excellence Commission established policies and procedures for the evaluation of applications. Policies require each member of the Commission to complete an evaluation form for each submitted application. The results of the evaluations are used by the Commission to determine how the Centers will be presented and to ensure the Center has met the criteria established in state law. Policies have also been established related to applications submitted from existing Centers of Excellence.

Result of Implementation

The establishment of policies and procedures enhances consistency in the evaluation of applications. In addition, documentation detailing the requirements in state law was included in the evaluation process.

Recommendation #4

We recommend the Centers of Excellence Commission establish criteria to be used for determining the approved funding amount in applications and analyze the effects of changing requested funding amounts of projects.

Original Condition

Applications submitted by campuses and college associated foundations to become Centers of Excellence include a requested funding amount. The Centers of Excellence Commission reduced the requested amount by 30% or more on 13 of 24 approved applications. There was no formal analysis conducted for determining the amount to be approved and no formal analysis on the impact of lowering requested amounts. In review of the Commission meeting minutes, it was apparent the Commission made the decision to attempt to fund as many projects as possible.

Action Taken

The Centers of Excellence Commission has established policies and procedures which address reductions in requested funding amounts. The policies identify the criteria the Commission will utilize to determine the reduction of funds for a proposal. This includes considering the impact in relation to the scope, budget, and results of the proposal. Applicants must submit a new application which reflects the changes to the budget and scope of work to be performed.

Result of Implementation

The establishment of policies and procedures enhances consistency and established the criteria to be used for analyzing changes in requested funding amounts.

Recommendation #5

We recommend the Centers of Excellence Commission establish formal policies and procedures for technical reviews of applications. At a minimum, the policies should address:

- a) A process for identifying proposals requiring a review;**
- b) Selection of a vendor to perform the review; and**

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c) Ensuring sufficient time exists to allow a review to be performed.

Original Condition

The Centers of Excellence Commission has statutory authority to contract for independent, expert reviews of applications to determine whether proposed Centers of Excellence were viable and whether they were likely to have the desired economic impact. No such technical reviews had been performed on Centers of Excellence applications. The Commission had established no formal policies and procedures detailing a process for technical reviews. In review of the application process, it was unclear whether sufficient time would have even been available to conduct technical reviews if it was determined necessary.

Action Taken

The Centers of Excellence Commission has established policies and procedures for technical reviews of applications. The policies include a process for identifying proposals requiring a review and direct Commerce to contract with an entity to perform the review. The policies also state the technical review will be considered by the Commission prior to its decision to approve or disapprove a proposal.

Result of Implementation

The establishment of policies and procedures enhances consistency in the evaluation of applications.

Recommendation #6

We recommend the Centers of Excellence Commission review the due diligence requirements and either:

- a) Move the due diligence work to the beginning of the application process; or**
- b) Ensure an adequate amount of time is provided to allow the Department of Commerce to complete the due diligence work.**

Original Condition

After applications received a preliminary recommendation for funding by the Centers of Excellence Commission, the applications had due diligence work performed on the private sector partners. Information regarding likelihood of viability of the project, risks, matching requirements, job creation projections, and other areas were reviewed. We identified such work was required to take place in a relatively short period of time (average time available for conducting the work was 11 calendar days).

Action Taken

The Centers of Excellence Commission established policies related to due diligence work. The policy requires work to be performed once the application is received by the Department of Commerce and prior to the application being forwarded to the Commission.

Result of Implementation

Sufficient time is available to adequately perform the required due diligence work.

Recommendation #7

We recommend the Centers of Excellence Commission enter into formal agreements with approved applicants. At a minimum, the

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agreements should address:

- a) **Criteria for the use of state funds;**
- b) **Documentation requirements for payroll expenses; and**
- c) **Compliance with applicable purchasing policies.**

Original Condition

We reviewed 242 operating expenditures at selected Centers of Excellence. We identified 19 were not reasonable. Two of these expenditures (totaling over \$100,000) paid for the tuition and fees of students taking courses at a university. State law prohibits the use of Centers of Excellence funds to supplant current operations or academic instruction. We identified 5 expenditures used funds for purposes which did not meet the intent of the approved project. Other expenditures were a result of campuses' noncompliance with established purchasing policies and procedures.

Certain campuses used Personnel Activity Confirmation Reports (PACR) to support salary expenditures paid with Centers of Excellence funds. In our review of information, we identified three campuses in which PACR were not completed in a timely manner.

Action Taken

Upon approval of an application, a Compliance Agreement is entered into between the Centers of Excellence Commission and the campus. Information included in the agreements addresses the areas of concern identified in the original audit.

Result of Implementation

A formal arrangement with Centers of Excellence properly identifies requirements to follow and includes applicable contract language to reduce the risks of the state

Recommendation #8 We recommend the Centers of Excellence Commission update the functional review to improve the efficiency and effectiveness of the monitoring and reporting process.

Original Condition

The functional review is an annual report completed by the Centers of Excellence themselves which is then submitted to the Department of Commerce. This self-reporting process requires the Centers of Excellence to provide updates, progress information, and the status of the project. In our review of information, we identified a number of concerns related to various aspects including:

- Match amounts included in the application were not addressed in the functional review.
- The functional review stated the Centers of Excellence should attach support to corroborate reported contributions. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners. Also, we identified no donor letters of intent for 5 cash donors (total of \$50,000) listed in the functional review.

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- Inconsistencies in reporting information were identified in various functional reviews.

A number of questions on the functional review appeared to be irrelevant to the purpose of the functional review or did not improve the accountability of the Centers of Excellence. For example, Centers of Excellence were required to identify the cost per job. This information did not appear to have been used as a means of assessing the program.

Action Taken

The functional review outline was updated by the Department of Commerce. Questions which appeared irrelevant were removed. In our review of five functional reviews completed for 2010, we identified necessary supporting documentation had been submitted and match amounts were clearly stated.

Result of Implementation

The monitoring and reporting process is more efficient and effective.

Recommendation #9

We recommend the Centers of Excellence Commission establish formal policies and procedures for monitoring the Centers of Excellence. At a minimum, the policies should address:

- a) Establishing quarterly monitoring requirements;**
- b) Assessing job creation activities;**
- c) Assessing significant variations from the applications;**
- d) Establishing different reviews after the match has been met or after a specified period of time has expired; and**
- e) Establishing the frequency of updates to the Commission and/or holding meetings specifically for monitoring.**

Original Condition

NDCC Section 15-69-04, Subsection 2 states, in part, the Centers of Excellence Commission has the responsibility to “monitor centers for compliance with award requirements; review changes in assertions made in center applications; and conduct postaward monitoring of centers.” In review of the monitoring process, no formal policies and procedures for monitoring the progress of the Centers of Excellence were identified. While certain procedures had been established for monitoring, such procedures were not efficient or effective for monitoring the Centers of Excellence.

Action Taken

The Centers of Excellence Commission has established formal policies and procedures for monitoring the Centers of Excellence. The policies identify a number of requirements for monitoring progress of the Centers of Excellence. Examples include a requirement for quarterly updates and a requirement for a determination as to whether the Center of Excellence is having the economic impact projected in its application (after third full year of operation).

Result of Implementation

The establishment of policies and procedures enhances consistency with the monitoring performed on Centers of Excellence. The Centers of

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Excellence Commission is now able to identify where expectations are not being met by the Centers of Excellence.

Recommendation #10 **We recommend the Centers of Excellence Commission require the Centers of Excellence to establish measurable goals and objectives at least annually.**

Original Condition

In monitoring the Centers of Excellence, selected information on the progress of the Centers of Excellence was obtained. Comparing the progress of Centers of Excellence to expectations could be difficult as certain projects may take an extended period of time to be completed. Thus, a determination whether expectations were being met or were achieved may not be accomplished for a long period of time. Also, changes with partners may occur or other factors could change which delay projects and have an impact on measuring performance of the Centers of Excellence.

Action Taken

Included in the functional review is a requirement for Centers of Excellence to identify goals and objectives for the upcoming year. The progress on the goals and objectives is to be evaluated in the following functional review.

Result of Implementation

Measurable goals and objectives exist to measure and monitor the annual performance of the Centers of Excellence.

Recommendation #11 **We recommend the Centers of Excellence Commission establish formal policies and procedures addressing actions to be taken when Centers of Excellence are in noncompliance with requirements and when Centers of Excellence are not meeting stated expectations.**

Original Condition

A review of aspects of the Centers of Excellence identified noncompliance issues related to state law, noncompliance with reporting requirements, and indications of Centers of Excellence not meeting expectations. For example, Centers of Excellence funds appeared to have been used to supplant current operations, which is prohibited by state law. Also, one Center of Excellence application projected job creation of 35-38 private sector positions. Based on information provided by the Center of Excellence, a total of one private sector job and six positions at the university had been created in the three year span of the project. The Centers of Excellence Commission had no established policies for actions to be taken by either the Commission or the Department of Commerce when noncompliance issues were identified or when expectations were not being met.

Action Taken

We identified the Centers of Excellence Commission has established policies to address actions to be taken when Centers of Excellence are in noncompliance with requirements or are not meeting stated expectations. The policies state the Commission may withhold all or a portion of any

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undisbursed award funds from a Center. The policies also state the Commission may consult with the Office of the Attorney General to determine other courses of action.

Result of Implementation The establishment of policies and procedures enhances consistency with actions taken by the Centers of Excellence Commission.

Recommendation #12 We recommend the Centers of Excellence Commission establish formal policies and procedures related to matching requirements. At a minimum, the policies should address:

- a) Required documentation to receive Centers of Excellence funds after an application is approved; and
- b) Requirements for verifying match and leverage amounts are actually received.

Original Condition The Centers of Excellence Commission had no established policies or procedures related to verification of matching or leveraged funds being received. We identified inconsistencies with the reporting and verification of these funds. For example, Centers of Excellence were not providing information as to match amounts or leveraged funds identified in the application. Also, amounts reported were not accurate or supported by documentation. A donor letter or other documentation was not attached as support to a functional review listing in-kind contribution of \$383,000 for use of equipment from corporate partners.

Action Taken The policies and procedures established by the Centers of Excellence Commission state the Center of Excellence must provide documentation evidencing the availability of the statutorily required matching funds. The policies also require the Centers to submit documentation detailing the contributions made by its private sector partners. In our review of five functional reviews, we identified supporting documentation was included to verify the receipt or commitment of funds.

Result of Implementation The establishment of policies and procedures enhances consistency on how matching funds will be monitored and verified.

Recommendation #13 We recommend the Centers of Excellence Commission establish a formal orientation training process for its members. At a minimum, the process should include:

- a) Identifying all state law requirements of the Commission; and
- b) Ensuring compliance with Code of Ethics requirements.

Original Condition When the Centers of Excellence Commission was established (2005 Session Law), a Code of Ethics was adopted which required provisions of the code to be reviewed and signed by each Commission member at the time of appointment. Commission members were not signing a statement regarding their review of the Code of Ethics. We identified no formal orientation training process for newly appointed members.

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Action Taken Centers of Excellence Commission policies identify requirements for orientation and training. We identified a Code of Ethics statement had been signed by all six current members of the Commission.

Result of Implementation The Centers of Excellence Commission members are provided information needed to adequately perform their duties.

Recommendation #14 **We recommend the Department of Commerce ensure administrative costs of local recipients paid with Community Development Block Grant funds are reasonable and adequately supported.**

Original Condition The Community Development Block Grant (CDBG) funds provided to local governments include funds to pay for project costs and grant administration costs. We identified the Department of Commerce monitored the use of the project funds provided. However, there was no monitoring of the funds provided to local governments for administration costs. Local governments enter into contracts with their respective Regional Planning Council for grant administration. We identified a lack of support for grant administration expenditures.

Action Taken As of the beginning of the 2010 program year, the Regional Planning Councils were informed documentation for administrative costs was required to be tracked by all the councils for each grant. In review of a grant administration reimbursement request, appropriate documentation was submitted by the Regional Planning Council.

Result of Implementation Adequate documentation for grant administrative costs ensures grant funds are expended appropriately.

Recommendation #15 **We recommend the Department of Commerce include requirements in the Operation Intern contracts to have employers:**
a) Verify student eligibility and maintain documentation confirming eligibility; and
b) Provide the midpoint and exit review materials to students at the appropriate time during the internships.

Original Condition The Department of Commerce requested certain information from students participating in the Operation Intern program. The information requested related to eligibility requirements of the program. We identified eligibility requirements were not verified.

To assist in monitoring the program, Commerce requested students and employers to complete midpoint and exit reviews. These communications were used by Commerce to evaluate the students' and employers' experiences during the internships. In a review of selected files, we identified most employers did not complete the reviews.

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Action Taken Commerce modified the contracts entered into with employers and required the employers to verify and retain records of the students meeting eligibility requirements. Commerce no longer requires midpoint and exit reviews as the department determined such information provided limited information as to the program's effectiveness.

Result of Implementation Having eligibility requirements verified by employers is more efficient and provides assurance eligibility requirements are met.

Recommendation #16 **We recommend the Department of Commerce make improvements to the Operation Intern program contracts. At a minimum, the Department of Commerce should:**

- a) **Develop a contract template using recommended language from the Office of the Attorney General's Contract Drafting and Review Manual;**
- b) **Develop a contract amendment document;**
- c) **Ensure the contract template and amendment are reviewed and approved by legal counsel; and**
- d) **Ensure contracts with employers and applicable amendments are executed prior to students beginning work.**

Original Condition Commerce entered into a contract with employers for the Operation Intern program. Our review of the contract identified standard terms and conditions were not consistent with the guidelines established by the Office of the Attorney General. Commerce representatives stated the Operation Intern contract had not been reviewed by legal counsel.

A new contract was entered into by Commerce for changes made to contractual terms. A standard contract amendment document would make such changes more efficient. Also, in review of 9 employers, we identified 5 were reimbursed for costs which were incurred prior to contracts being executed.

Action Taken The Department of Commerce developed a new contract template and a contract amendment template which appear to include appropriate terms and conditions. In review of certain employers participating in the Operation Intern program, we identified Commerce is ensuring agreements are entered into prior to students beginning work.

Result of Implementation The Operation Intern program contracts contain applicable provisions which provide the state the best legal protection.

Recommendation #17 **We recommend the Department of Commerce comply with its policy when evaluating Tourism Infrastructure and Expansion Grant Applications to provide a fair system for all potential applicants.**

Original Condition A policy was established for the Tourism Infrastructure and Expansion Grant Program identifying the criteria to receive a grant. One criteria

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required applicants to provide a cash match. In review of six grants, we identified one applicant used a land donation as its match. The Tourism Director stated an exception was made for this project as this type of attraction was in high demand. If the land value was excluded from the match amount, it appeared the project would have been ineligible for consideration.

Action Taken

The policy related to match requirements was revised to allow real estate and equipment to be used as a match. In a review of eight grant application files, all eight files were approved or disapproved in compliance with program policy.

Result of Implementation

Consistently evaluating applications in accordance with stated criteria provides a fair process to all applicants.

Recommendation #18 We recommend the Department of Commerce enter into formal agreements with Tourism Infrastructure and Expansion Grant recipients.

Original Condition

Commerce sent a letter to recipients notifying them when they had been approved for a Tourism Infrastructure and Expansion Grant. No formal agreement was entered into with recipients containing appropriate grant language, providing the appropriate liability/insurance coverage for the state, and reducing the risk involved with funds being spent inappropriately.

Action Taken

Commerce developed a formal agreement template to be used for 2010 grants awarded. In review of five grants, we identified a grant agreement was signed by each recipient and Commerce.

Result of Implementation

The use of formal grant agreements will reduce the state's contract risks with the grant program.

Recommendation #19 We recommend the Department of Commerce periodically review applicable North Dakota Century Code sections and ensure compliance with requirements or take appropriate action to make changes.

Original Condition

In a review of selected NDCC requirements, we identified instances in which Commerce appeared to be in noncompliance. For example, NDCC Section 54-44.5-08 required the Division of Community Services to inform all state agencies and institutions of the State Facility Energy Improvement Program by August 15 of each odd-numbered year. No letter appeared to have been sent in 2007.

Action Taken

Commerce included a review of statutory changes at its December 2009 senior staff retreat. In addition, two additional senior management meetings in October and November 2010 included a review of potential

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changes with state law. Commerce created a Compliance Manager position in February 2010 to assist in monitoring compliance.

Result of Implementation A review of applicable statutes should identify changes to bring to the Legislature for its consideration.

Recommendation #20 **We recommend the Department of Commerce make improvements with the Value-Added Agriculture Promotion Board by either:**
a) Ensuring compliance with state law requirements; or
b) Taking appropriate action to amend state law.

Original Condition NDCC Section 54-34.3-12 establishes the Value-Added Agriculture Promotion Board. The Board is to consist of a minimum of nine and a maximum of eleven members. At the time of our review, the Board had not met in nearly three years. It was unclear how the Board was fulfilling its responsibilities. In addition, while state law required the Board to consist of at least 9 members, the total number of members was 8.

Action Taken The Commissioner of Commerce stated a discussion was held with the Governor's Office regarding the Board. A determination was made no meetings would be called during the 2009-2011 biennium. As such, an additional member was not appointed. A bill has been submitted to the 2011 Legislature to eliminate the board.

Result of Implementation Information has been submitted to the 2011 Legislature for consideration as to the existence of the Value-Added Agriculture Promotion Board.

Recommendation #21 **We recommend the Department of Commerce ensure the Commerce Cabinet complies with state law requirements related to meetings of public entities or take appropriate action to modify state laws.**

Original Condition The North Dakota Commerce Cabinet is comprised of the directors of each Commerce division, executive heads of certain other state agencies, and the Commerce Commissioner. The Cabinet was in noncompliance with open meeting requirements as no public notice was given in advance of meetings as required.

Action Taken Agendas for the cabinet meetings are now properly provided to the Secretary of State. The agenda outlines the topics covered during the meeting and the projected timeline of the meeting.

Result of Implementation There is compliance with open meeting requirements.

Recommendation #22 **We recommend the Department of Commerce ensure contractual payments are made after services have been performed to the department's satisfaction.**

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<i>Original Condition</i>	In review of payments, we identified Commerce was making pre-payments to contractors. For example, a contract required Commerce to pay \$36,000 in advance of services being received. Also, while Commerce typically withheld final payments to presenters or promotional representatives until services are received, one payment was made before the event was held.
<i>Action Taken</i>	Commerce's Compliance Manager stated the practice of pre-payments was ended immediately following the original audit. In our review of four contracts (including the contract which had previously required a payment in advance), we identified no payments made in advance of receiving services.
<i>Result of Implementation</i>	Payment after receipt of goods or services being performed ensures such goods or services are satisfactory and in compliance with contracted terms.

Recommendation #23 We recommend the Department of Commerce make improvements to procurement processes to ensure compliance with laws and policies.

<i>Original Condition</i>	In review of 63 procurement related expenditures, we identified 7 instances of noncompliance with procurement laws, policies, and procedures. For example, Commerce purchased software (\$13,000) from a vendor no longer included on the state contract for software.
<i>Action Taken</i>	All contracts entered into by Commerce are now reviewed by the department's Compliance Manager (position filled in February 2010). Training on procurement requirements was provided to Commerce employees and the department's procurement policy was updated. In review of 25 expenditures, we identified no significant errors related to procurement requirements.
<i>Result of Implementation</i>	Commerce is in compliance with state procurement requirements.

Recommendation #24 We recommend the Department of Commerce make improvements with the monitoring of contracts. At a minimum, the Department of Commerce should:

- a) Centralize contract administration and record keeping; and**
- b) Ensure appropriate insurance certificates or endorsements are obtained.**

<i>Original Condition</i>	In review of 5 contracts, we identified improvements were needed with the monitoring of contracts. For example, in all 5 contracts reviewed, appropriate insurance documentation was not obtained and/or the insurance documentation did not identify the appropriate insurance requirements as required by the contract. Inconsistencies with documenting changes to contracts were identified and changes were needed with centralizing contract administration.
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Action Taken Commerce has created a Compliance Manager position. A responsibility of this new position is to assist in the centralization of the contracting process. All contracts are to be reviewed by the Compliance Manager prior to being signed by the Commissioner. In a limited review of expenditures and contracts, we identified contract monitoring improvements have been made.

Result of Implementation Centralizing contract administration has assisted in ensuring appropriate contract terms and conditions are included in contracts as well as ensuring appropriate documents are obtained from vendors.

Recommendation #25 We recommend the Department of Commerce ensure employees are paid overtime and earn compensatory time only when hours actually worked exceed 40 in a week.

Original Condition Based on a review of salary information and payments to employees of Commerce, we identified employees were being paid overtime and earning compensatory time in weeks when annual or sick leave was used. This contradicts Commerce's policy on calculating overtime and allows the employee to convert such leave into additional pay.

Action Taken Commerce implemented a new policy in December 2009 for calculating overtime payments. The policy indicates other non-work time (e.g. Annual Leave, Sick Leave, etc.), whether paid or not, is not to be counted as time worked in determining overtime or comp time. In our review of overtime payments to three employees, we identified overtime was calculated in accordance with the new policy.

Result of Implementation Commerce is calculating overtime in accordance with its policy and is no longer allowing sick and annual leave to be converted to overtime or comp time.

Recommendation #26 We recommend the Department of Commerce make changes to their cell phone policy. At a minimum, the policy should:

- a) Be consistent with Office of Management and Budget policy; and**
- b) Address the use of state issued cell phones for personal use.**

Original Condition Office of Management and Budget (OMB) Policy 523 states an employee is eligible for reimbursement for business calls made on a cell phone only if the employee has exceeded the "free minutes" given to the employee by their cell phone provider. Commerce's policy was to reimburse employees for business related calls on personal cell phones regardless of whether the "free minutes" were exceeded due to the business calls. Commerce reimbursed employees under their policy and, as a result, payments were made to employees for more than what was allowed by OMB policy. The policy by Commerce did not address the personal use of state issued cell phones.

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Action Taken According to Commerce representatives, the department began following the OMB policy in December 2009. Commerce has updated its policy to be consistent with OMB policy. In a limited review of expenditure information, no employees were identified as being reimbursed for cell phone expenses.

Result of Implementation Commerce is in compliance with the OMB policy related to cell phones.

Recommendation #27 **We recommend the Department of Commerce work with the Records Management Division of the Information Technology Department to make improvements to the records management program. At a minimum, actions should be taken to:**

- a) Review all operations to identify appropriate records;
- b) Ensure appropriate records series descriptions and retention periods are identified; and
- c) Assign State Form Numbers to documents where appropriate.

Original Condition The Records Management Division of the Information Technology Department is responsible for establishing, implementing, and administering a records management program for all state agencies. Guidance provided by this division is to be followed by state agencies to ensure creation, maintenance, retention, and disposition of records. In review of selected Commerce programs, we identified a number of improvements were needed related to records management. For example, certain documents used by Commerce did not contain an appropriate State Form Number (SFN).

Action Taken In January 2010, applicable training was received from the Records Management Division. Each Commerce division has worked to assign SFN's for applicable forms and ensure records series descriptions are created for all programs. In our limited review of programs and documents used by Commerce, it appears appropriate improvements have been made.

Result of Implementation Commerce is in compliance with records management requirements.

Recommendation #28 **We recommend the Department of Commerce ensure confidential or sensitive information is obtained through secured websites.**

Original Condition An online application for students for the Operation Intern program was available on Commerce's website. The website used to gather student information, including social security numbers, addresses, and phone numbers, was not secure. Students' confidential or sensitive information was vulnerable to unauthorized use if someone had gained access to the website submissions.

Action Taken We identified students interested in Operation Intern no longer submit information online. Students interested in Operation Intern are now

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required to print the enrollment form and mail it to Commerce. We performed a limited review of Commerce's website and identified no indications of confidential or sensitive information which was able to be submitted online through an unsecure website.

Result of Implementation The Department of Commerce has reduced the risk of exposure of confidential and sensitive information.

Recommendation #29 We recommend the North Dakota Development Fund, Inc. ensure compliance with policies for investments. In instances of exceptions or waivers of policies, reasons should be adequately documented.

Original Condition In review of 17 Development Fund investment files, we identified noncompliance with certain policies. For example, personal guarantees were not obtained as required from individuals owning 20% or more of the company in which the Development Fund made investments. Development Fund staff stated exceptions to investment policies were made on a case-by-case basis depending on the compensating strengths of each proposed investment. However, exceptions and compensating factors were not sufficiently documented in the investment files.

Action Taken We reviewed the files of four businesses in which the Development Fund has made an investment. We did identify certain instances in which the Development Fund did not comply with policy. For example, one investment was made even though the maximum dollar amount per full time employee projected to be added was exceeded. However, documentation included in the files gave justification for these noncompliance issues.

Result of Implementation The Development Fund staff have adequately documented exceptions granted with certain investments.

Recommendation #30 We recommend the North Dakota Development Fund, Inc. ensure all relevant matters concerning investments, including monitoring activities and actions taken, are documented.

Original Condition The Development Fund's policy requires a file to be maintained for each investment. Each file is required to contain sufficient information to provide a single reference source for all relevant matters concerning the investment. The Development Fund staff was responsible for monitoring loans and equity investments. A review of investment files identified all relevant matters were not documented. For example, staff did not document meetings held in person or via phone with companies who had a loan which was not being paid.

Action Taken The CEO of the Development Fund reviewed with staff the requirement to document relevant matters concerning investments. We reviewed the files of four businesses in which the Development Fund has made an

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investment. We identified appropriate documentation related to monitoring and actions taken were included in the file.

Result of Implementation The Development Fund is in compliance with investment policies.

Recommendation #31 We recommend the North Dakota Development Fund, Inc. formally establish the authority granted to the staff regarding changes to terms and conditions of investments.

Original Condition Investment policies state the Board of Directors may assign lending authority to the Development Fund staff as deemed appropriate. We identified very minimal to no formal authority being granted to staff. We identified decisions were made by Development Fund staff regarding investment terms and conditions, including changes to Board approvals, without documented Board review and approval. While the underlying reasoning provided by Development Fund staff appeared to support the decisions made, there was no documented authority allowing the staff to make such decisions.

Action Taken In its January 28, 2010 meeting, the Development Fund Board took action to formally establish the authority granted to the staff regarding changes to terms and conditions of investments. The Board gave authority to the Development Fund CEO and Vice President to negotiate or waive any terms and conditions of a loan and equity investment approved by the Board of Directors, including the term of servicing the investment. The Development Fund CEO and Vice President were also given authority to increase the funding amount of loan and equity investments up to 10% of the originally approved amount.

Result of Implementation The Development Fund staff have been given appropriate authority to make certain changes to investments approved by the Board.

Recommendation #32 We recommend the North Dakota Development Fund, Inc. increase the dollar limit of investments the staff is authorized to approve.

Original Condition Development Fund investment policy required investment applications over \$50,000 be approved by the Development Fund Board. Investment applications under \$50,000 could be approved by Development Fund staff. We identified very few investment applications were less than \$50,000. In review of a selection of Development Fund investment files, the Board agreed with the staff's investment recommendations on all of the investment files reviewed.

Action Taken In its January 28, 2010 meeting, the Development Fund Board took action to increase the dollar limit of investments the staff is authorized to approve. For example, the CEO was given authority to approve loans up to \$150,000 and equity investments up to \$100,000.

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Result of Implementation The investment approval process has become more efficient.

Recommendation #33 **We recommend the North Dakota Development Fund, Inc. review, with assistance from the Office of the Attorney General, open meeting law requirements and make appropriate changes to comply with these requirements.**

Original Condition NDCC Section 10-30.5-07 states commercial or financial information of an entity in which an equity interest is purchased or considered or to which a loan has been made is confidential. For this reason, the Board is required to move into executive session when discussing the confidential information. We identified discussions were held in executive session which were not related to confidential matters. We also identified actions were taken in executive session which should have occurred during an open meeting.

Action Taken Commerce representatives indicated the Development Fund Board and staff met with a representative of the Office of Attorney General in January 2010. In our review of Board meeting minutes from January 2010 through October 2010, we identified the Board appears to be moving in and out of executive session appropriately.

Result of Implementation The Development Fund is in compliance with open meeting law requirements.

Recommendation #34 **We recommend the North Dakota Development Fund, Inc. establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.**

Original Condition We identified a Code of Ethics had not been established for the Development Fund Board of Directors. A Code of Ethics would identify the ethical principles each Board member is expected to follow in carrying out their duties.

Action Taken We reviewed the signed 2009 Code of Ethics documents of the Development Fund Board members. All members of the Development Fund Board of Directors have a signed Code of Ethics form on file.

Result of Implementation Members of the Development Fund Board of Directors have signed and are aware of the Code of Ethics.

Recommendation #35 **We recommend the Agricultural Products Utilization Commission make improvements with the monitoring of requirements in North Dakota Administrative Code Title 95. At a minimum, the Agricultural Products Utilization Commission should:**

- a) **Ensure compliance with requirements established in rules;**
- and**

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b) Take appropriate action to ensure rules are updated as necessary.

<i>Original Condition</i>	North Dakota Administrative Code (NDAC) Chapter 95-02-02 established the scoring system to be used by the Agricultural Products Utilization Commission (APUC) Board of Directors to evaluate each application. We identified grant applications from one category, Farm Diversification, were not scored as required by NDAC. NDAC for APUC had not been modified for an extended period of time.
<i>Action Taken</i>	We reviewed the files of six businesses who had applied for APUC grants. We identified no issues of noncompliance with NDAC Title 95. APUC has proposed changes to applicable NDAC and worked with the Office of the Attorney General. The proposed changes now go through a public hearing process prior to being formally adopted.
<i>Result of Implementation</i>	APUC has ensured compliance with North Dakota Administrative Code and has taken the appropriate steps to update the administrative rules.

Recommendation #36 **We recommend the Agricultural Products Utilization Commission retain scoring documentation for each member of the Board of Directors.**

<i>Original Condition</i>	NDAC Chapter 95-02-02 required each application to be evaluated using a certain scoring system. No documentation was maintained identifying Board members' evaluation of applications. It was unclear whether each Board member evaluated applications in accordance with NDAC.
<i>Action Taken</i>	In a review of six APUC files, we identified all the applications reviewed had been evaluated using the appropriate scoring system. The scoring documents of each member of the APUC Board of Directors were included in the corresponding project files.
<i>Result of Implementation</i>	Documentation is available identifying the required scoring system was used. Documentation is also available to support the approval or disapproval of APUC grant applications.

Recommendation #37 **We recommend the Agricultural Products Utilization Commission ensure compliance with established guidelines for the grant program.**

<i>Original Condition</i>	In review of 30 APUC grant files, we identified improvements were needed to ensure compliance with program guidelines. For example, the Nature-Based Tourism and Prototype guidelines stated peer reviews will be obtained for projects in these categories. Peer reviews were not obtained for the three grant applications reviewed in these categories.
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Action Taken We reviewed the files of six businesses who had applied for an APUC grant. We identified no significant noncompliance issues.

Result of Implementation APUC is in compliance with applicable program guidelines.

Recommendation #38 **We recommend the Agricultural Products Utilization Commission establish a Code of Ethics to be signed annually by all members of the Board of Directors to guide ethical decision making regarding the use of public funds.**

Original Condition A review of APUC guidelines identified a Code of Ethics had not been established for the Board of Directors. A Code of Ethics should identify the ethical principles each Board member is expected to follow in carrying out their duties.

Action Taken A Code of Ethics was adopted and is to be signed annually by members of the APUC Board of Directors. We reviewed the signed 2009 Code of Ethics documents of the APUC Board members. All members of the APUC Board of Directors have a signed Code of Ethics form on file.

Result of Implementation Members of the APUC Board of Directors have signed and are aware of the Code of Ethics.

Recommendations Partially Implemented

Recommendation #39 We recommend the Centers of Excellence Commission establish formal policies and procedures for the application process. At a minimum, the policies should address:

- a) **Definitions of key terms used in the application;**
- b) **Submission of revised applications, budgets, and/or other information when recommending a lesser amount than is being requested;**
- c) **Submission of information from Centers of Excellence previously receiving funding; and**
- d) **Completed applications being forwarded to the Commission.**

Original Condition

North Dakota Century Code (NDCC) Section 15-69-04, Subsection 1 requires the Department of Commerce to forward completed applications to the Centers of Excellence Commission in accordance with guidelines established by the Commission. We concluded no guidelines had been established. In addition, we identified a lack of policies and procedures in the application process.

Action Taken

Policies and procedures related to the application process have been established by the Centers of Excellence Commission. We identified policies related to submission of information when recommending a lesser amount, submission of information from previously funded Centers of Excellence, and applications being forwarded to the Commission. However, there are still key terms used in the application which have not been defined or clarified. We identified neither the policies nor the application identified a definition for “high-value private sector employment opportunities.” This is a specific criterion the Commission is to consider when approving or disapproving an application. Also, other terms such as supplanting and match versus leverage are not defined.

Management’s Response

Commerce agrees with the status of this recommendation. Commerce will place the definition for “high-value private sector employment opportunities” in the policies and application. This definition has already been approved by the Centers of Excellence Commission. Also, Commerce will present suggested definitions for the other key terms to the Centers of Excellence Commission at an upcoming meeting.

Recommendation #40 We recommend the Centers of Excellence Commission monitor compliance with North Dakota Century Code Section 15-69-05, Subsection 2 and ensure annual audits are completed or take appropriate action to modify the requirement for annual audits of Centers of Excellence.

Original Condition

NDCC Section 15-69-05, Subsection 2 states, in part, “As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter.” The Centers of Excellence engaged accounting firms to perform certain

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agreed-upon procedures on the funds received. We identified two Centers of Excellence combined their agreed-upon procedures work for two years rather than having the work done annually. One Center of Excellence did not have work done for one year. Based on our review of the agreed-upon procedures work and other information, we concluded such work is not an “audit” and thus, there was noncompliance with the state law requirement.

Action Taken

Audits are still not being conducted as required by state law. Instead of complying with the requirement, action was taken to have a bill introduced for the 2011 Legislative Session which would modify the annual audit requirement. This action appears to have been taken as the Department of Commerce and the Centers of Excellence Commission relied on advice from its Assistant Attorney General within the Office of the Attorney General.

An Assistant Attorney General (attorney) provided advice in a memo, dated January 15, 2010, to the Department of Commerce Commissioner which stated, in part, “the reasonable choice of action to comply with the audit recommendation would be to continue applying the agreed upon procedures until this matter may be resolved next session.” Also, the same attorney presented information at the February 2010 Centers of Excellence Commission meeting. The minutes state the attorney recommended the Commission continue with the agreed upon procedures and begin preparing a bill draft to be introduced to the legislature.

In our review of the information provided by the Assistant Attorney General, we identified a number of concerns related to the accuracy and relevancy of information used and relied upon. While the memo states the attorney surmised what the Office of the State Auditor intended, the conclusion drawn by the attorney was incorrect and was made with no discussion with either our office or with our legal counsel. While the advice provided appears to be followed by the Commission and Department of Commerce, we conclude the advice provided resulted in noncompliance with a state law requirement for a significant period of time. Rather than attempt to come into compliance during the biennium, no action was taken to attempt to have audits performed.

Management’s Response

Commerce agrees with the status of this recommendation as being partially implemented. The Centers of Excellence Commission and the Department of Commerce has worked to implement this recommendation, including putting the issue before the appropriate legislative committee which has put forward a bill, House Bill No. 1060, to clarify this issue. Commerce also met with University System personnel on this issue and subsequently sought, received, and followed guidance and advice from the Office of the Attorney General on how to proceed prior to the legislative session. Commerce intends to abide by any legislation enacted to address this issue.

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Recommendation #41 We recommend the Department of Commerce establish an effective department-wide monitoring function emphasizing compliance, consolidation of processes and procedures, and efficient operations. If reallocating resources is not possible to establish such a function, the Department should take appropriate action to obtain additional full-time equivalent positions and/or other necessary resources.

Original Condition

Through our review of limited aspects of Commerce, we identified a number of areas where improvements were needed. There was a lack of centralization of functions and uniform processes as each division within Commerce appeared to operate independently of other divisions. We identified limited department-wide monitoring efforts had been established.

Action Taken

The Department of Commerce created a Compliance Manager position to centralize and monitor department functions. We identified improvements in monitoring and centralizing certain processes within the department. However, the Compliance Manager, who was promoted from within the department in February 2010, continued to perform grant administration duties. These duties appear to have taken a significant amount of time away from the Compliance Manager position's primary functions. As a result, additional work is still expected to be performed to implement a department-wide monitoring function.

Management's Response

Commerce agrees with the status of this recommendation. There is additional work that still needs to be done by the Compliance Manager in this area. Commerce reassigned duties internally in order to be able to create the Compliance Manager position. Although, the majority of the duties from the previous position were reassigned, it was determined that the grant administration duties associated with the childcare program would remain with this individual due to the fact that the program was possibly nearing its conclusion.

Recommendation #42 We recommend the Department of Commerce make changes to the contracts entered into with the Regional Planning Councils for scoring and ranking Community Development Block Grant applications. At a minimum, the contracts should:

- a) Identify a maximum amount for subjective scores; and
- b) Require a Conflict of Interest and/or Code of Conduct statement be developed and signed annually by individuals conducting the scoring and ranking of applications.

Original Condition

Commerce entered into a contract with each Regional Planning Council for the evaluation of applications to receive Community Development Block Grant (CDBG) funding. The top ranked applications at the regional level were forwarded to Commerce for approval. Each of the eight councils had developed their own scoring and ranking systems. In a limited review of scoring systems, we identified a relatively large amount of the total score was based on subjective criteria. For example, one

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Regional Planning Council used 60% subjective criteria and 40% objective criteria to rank each project to determine those to be forwarded to Commerce.

The contract with the Regional Planning Councils contained Code of Conduct and Conflict of Interest statements which prohibit council members from obtaining a financial interest or benefit. However, neither statement required members to sign acknowledgment of these statements on an annual basis.

Action Taken

A representative of the Department of Commerce stated conflict of interest statements have been signed by all Regional Planning Council board members by April 30, 2010. In our review of information for three Regional Planning Councils, we identified conflict of interest statements had been signed. No changes were made to the contracts to identify a maximum amount for subjective scoring.

Management's Response

Commerce agrees with the status of this recommendation. We believe we have fully implemented part B and no further action is intended for part A.

Recommendation #43

We recommend the Department of Commerce make improvements to Operation Intern monitoring procedures to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) No longer require supporting documentation be submitted for all Requests for Funds;**
- b) Periodically select various employers to verify adequate support for expenditures is retained; and**
- c) Eliminate redundant monitoring processes.**

Original Condition

The Operation Intern program reimburses employers for student interns' salary expenses. Commerce required employers to submit supporting documentation for every reimbursement request. This was a significant amount of information being submitted, including time sheets, payroll reports, etc. In grant administration, it is not a common practice to require all support to be submitted when funds are requested. In review of other fiscal monitoring performed by Commerce, we identified the same information was being reviewed multiple times. The monitoring procedures were not an efficient or effective use of time.

Action Taken

Supporting documentation is no longer required to be submitted for all Requests for Funds. Operation Intern guidelines require 20% of participating businesses be reviewed. In our review of the monitoring procedures, we identified improvements had been made and redundant monitoring processes no longer exist. However, no monitoring policies and procedures exist to identify what constituted significant errors, steps to be taken when reviews performed identified significant errors, or who was responsible for pursuing errors or overpayments.

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Management's Response Commerce agrees with the status of this recommendation. Monitoring procedures will be addressed in the Fiscal Manual which is nearing completion.

Recommendation #44 **We recommend the Department of Commerce comply with legislative intent for use of line item appropriations and full-time equivalent positions.**

Original Condition In review of Session Laws and Commerce expenditure information, we identified improvements were needed to ensure compliance with legislative intent. For example, we identified Lewis and Clark appropriated funds were used to pay non Lewis and Clark expenses.

Action Taken We reviewed four requirements from the 2009 Session Laws which required the Department of Commerce to take action, established new requirements for Commerce, and provided additional full-time equivalent positions. Our review identified Commerce has developed criteria for large tourism infrastructure grants, provided funds to the Lewis and Clark Foundation once matching funds were secured, and used the new positions for the areas identified. In our review of the grant program to finance early childhood facilities, we identified concerns regarding the grant program and conclude legislative intent was not followed. For example:

- While Chapter 108 of the 2009 Session Laws states a grant awarded for infrastructure may not exceed \$5,000 per recipient, Commerce determined no applications would be accepted for any project less than \$1,000. We conclude setting a minimum project cost could have had an adverse impact on the grant program. If a facility had a need for an improvement of less than \$1,000, the facility either didn't get the project completed or had to make the cost of the project higher than anticipated to qualify. In discussing this minimum project amount, Commerce representatives stated the department took into consideration administrative costs, driving down debt service, and attempting to use funds for larger capital items.
- The grant program required the applicant to have available \$1 of matching funds for every \$3 of grant funds (thus, the applicant had to have 25% available of a project cost). If an applicant only had available \$200 of matching funds, they were excluded from the program due to Commerce setting a minimum project amount.
- While the Legislature imposed a maximum of \$5,000 per recipient for infrastructure, Commerce imposed a maximum of \$3,000 for a certain type of infrastructure project (fences). This was determined after grant applications were received in the first round of funding.
- Commerce decided to provide grants in two rounds (a third round is being used as grant funds are still available). Commerce determined if a recipient received a grant in the first round for infrastructure, they could not receive another grant for

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infrastructure in the second round even if the first grant was less than \$5,000. This determination does not appear to have been communicated to applicants prior to the first round of funding. This could have impacted how facilities submitted grant applications. For example, if a facility had multiple infrastructure needs and submitted a grant application for \$5,000 for fences, the facility could have only received a \$3,000 due to Commerce setting a maximum amount for fences. Even though the facility still could have had additional infrastructure needs, they were unable to apply and may have applied for these in the first round if they had known a \$3,000 maximum would be imposed.

- The 2009 Session Law states in making awards under the grant program, “the department shall ensure funds are fairly distributed between for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities.” When asked how this requirement was complied with, a Commerce representative stated Commerce awarded grants to all applicants who applied and were qualified. However, Commerce did not appear to take into consideration the effect setting a new maximum and minimum amount could have on ensuring funds were fairly distributed.

During our review of recommendations related to the Centers of Excellence, we identified a 2009 Session Law requirement in which it appears Commerce was in noncompliance. During the 2009-2011 biennium, Commerce was to report on the status of the Centers of Excellence program and the status of the Centers of Excellence fund to the Budget Section during the third quarter of 2010. Neither report was provided during the third quarter of 2010. The report on the status of the fund was not provided until December 2010. We were also concerned with the information in the report provided on the status of the program to the Budget Section in June 2010. While a significant amount of information was provided in the report related to accomplishments and positive impacts the program has had, Commerce did not report to the Budget Section certain other information. In June 2010, the Commission reviewed whether each Center of Excellence in operation for three full fiscal years was on track to achieve its desired economic impact, on track to exceed its desired economic impact, or needed improvement in order to achieve its desired economic impact. The Commission’s determination on two Centers of Excellence reviewed was they needed improvement in order to achieve their desired economic impact (total of 9 Centers of Excellence reviewed). This information was not presented to the Budget Section as part of the report on the status of the program.

Management’s Response

Commerce disagrees with the status of this recommendation as being partially implemented. Commerce believes it complied with the legislative authority and intent granted to Commerce for use in line item appropriations and full-time equivalent positions. Full legislative intent is

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found in final statutes and session laws. Legislative history is extremely useful in resolving ambiguities and providing guidance for implementing and administering programs, however it may not constitute a fair and objective standard from which to evaluate agency performance.

Childcare Grant Program

Commerce implemented the childcare grant program based on our interpretation of legislative authority and intent. We recognize that there is always room for improvement when a new program is implemented and Commerce will continue to improve this program in the future.

Centers of Excellence Reporting

Commerce provided reports to the Budget Section on the status of the Centers of Excellence program and the status of the Centers of Excellence fund. That, coupled with testimony; provided a report on the status of the Centers of Excellence program, specifically activity of the Centers of Excellence Commission and Commerce in relation to awards and distribution of funds. Commerce has prepared and provided to each legislator a copy of the newly completed 2010 Centers of Excellence Annual Report on January 25, 2011. Also included was a cover letter with a summary of the Centers of Excellence Commission's determinations about whether nine of the most mature centers are achieving the desired economic impact. Commerce will strive to be responsive to legislative requests for information concerning the COE programs.

Recommendation #45 **We recommend the Department of Commerce establish a consistent and uniform process for hiring employees. At a minimum, the Department of Commerce should:**

- a) Centralize the hiring process;**
- b) Establish a standardized scoring system; and**
- c) Ensure compliance with laws and policies.**

Original Condition

A review of information regarding how employees of Commerce were hired identified the hiring process was decentralized and improvements were needed. Each division used their own screening and hiring process. Various point scales were used by divisions to evaluate candidates. In one instance, the point scale included an inadequate amount of veterans' preference points for applicable candidates.

Action Taken

The Department of Commerce has centralized the hiring process by having the Compliance Manager, appointed in February 2010, involved in the process. In a review of three competitive hiring processes, we did identify a similar process being used and a standardized scoring system was in place. However, we identified concerns related to veterans' preference being applied inappropriately in the hiring processes. The Department of Commerce relied on information received from the North Dakota Department of Veterans' Affairs. The information received from the Department of Veterans' Affairs was not consistent with proper

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application of veterans' preference. Due to this, additional changes in the hiring process are needed.

Management's Response Commerce agrees with the status of this recommendation. Commerce is currently seeking guidance from the Attorney General's Office to clarify these issues. Commerce will implement and follow this advice.

Recommendation #46

We recommend the Department of Commerce ensure programs and services have established policies and procedures which are reviewed and updated periodically.

Original Condition In a review of six Commerce grant and loan programs, we identified improvements were needed with certain policies and procedures. While all programs within Commerce were not reviewed, we did identify certain programs did not appear to have policies and procedures. Without effective guidance, program operations may not be administered efficiently and effectively.

Action Taken The Department of Commerce performed a review of policies and procedures and made certain changes. In our work performed on determining the status of recommendations, we identified additional changes were still necessary with certain policies and procedures. Also, in review of a new grant program for the 2009-2011 biennium (grants to Early Childhood Facilities), we identified limited formal policies and procedures were established prior to the first round of accepting grant applications. After applications were received, Commerce changed certain criteria in making the grant awards. Additional policies and procedures were established for the second round of grant awards.

Management's Response Commerce agrees with the status of this recommendation. Policies and procedures will be implemented with appropriate programs and services.

Recommendation #47

We recommend the North Dakota Development Fund, Inc. make improvements with the policies established for investments. At a minimum, the Development Fund, Inc. should:

- a) Review and update current policies;**
- b) Update policies when changes occur to the investment program; and**
- c) Establish a periodic review process.**

Original Condition We concluded the Development Fund policies required updating as they did not reflect current practices in all cases. For example, the investment policies identified limits for maximum investment per job created or retained as \$10,000 for urban and \$20,000 for rural. The Development

Fund CEO stated those limits had been increased to \$20,000 urban and \$30,000 rural, effective in May 2008.

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<i>Action Taken</i>	The Development Fund, Inc. incorporated a new policy for a semi-annual review of policies. While certain changes have been made to policies, we identified certain authority granted to staff by the Development Fund Board had not been included in policies. For example, while the Development Fund Board granted authority to staff to change the terms and conditions of loans and equity investments or increase funding up to 10%, such information was not included in the policies.
<i>Management's Response</i>	Commerce agrees with the status of this recommendation. Internal loan policy was updated on December 27, 2010 to reflect the authority granted by the ND Development Fund Board of Directors to the Development Fund staff to change terms and conditions of loans and equity investments or increase funding up to 10%.

Recommendation #48	We recommend the Agricultural Products Utilization Commission make improvements with guidelines established for the grant program. At a minimum, the Agricultural Products Utilization Commission should: <ul style="list-style-type: none">a) Review and update current guidelines;b) Update guidelines when changes occur to the grant program; andc) Establish a periodic review process.
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<i>Original Condition</i>	The Agricultural Products Utilization Commission (APUC) guidelines had not been updated since July 2005 and did not appear to be reflecting current practices. For example, while the Nature-Based Tourism and Prototype grant guidelines required a peer review be obtained, the APUC Director stated such peer reviews were not obtained as they did not add value to the process.
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<i>Action Taken</i>	APUC is to annually review and make appropriate changes to its guidelines. In discussions with the APUC Program Manager, it was identified changes to guidelines were to be made once the North Dakota Administrative Code was modified. Since changes to administrative code could require changes with the guidelines, this appears reasonable. However, we identified guidelines still required independent peer reviews of certain grant applications. These peer reviews are not required by administrative code and APUC was not obtaining such peer reviews.
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<i>Management's Response</i>	Commerce agrees with the status of this recommendation. The guidelines have been reviewed but not modified; therefore they are still dated July, 2005. APUC decided to wait to modify the guidelines until the new administrative rules have been adopted and implemented. After this has been completed, APUC will review the guidelines again and make any necessary changes. In regards to peer reviews; this was an oversight, which will be reviewed and addressed at the next regular meeting of the APUC Board.
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Recommendations Not Implemented

Recommendation #49 We recommend the Department of Commerce make improvements to Community Development Block Grant program monitoring processes to increase efficiency and effectiveness. At a minimum, the Department of Commerce should:

- a) Identify information to the grant administrators on their responsibilities and duties;
- b) No longer accept and review supporting documentation on all Request for Funds; and
- c) Periodically select various grants and loans to verify adequate support for expenditures is retained.

Original Condition

The Community Development Block Grant (CDBG) program reimburses local governments for work performed on the project when a Request for Funds was submitted. Except in certain circumstances, the Department of Commerce did not require supporting documentation to be submitted when a Request for Funds was submitted. However, in review of 25 projects, the majority of requests included supporting documentation. Commerce invested time to review such documentation and determined whether expenditures were appropriate. Such grant administration work should have been performed at the local level, not by Commerce. CDBG funding is provided to local governments specifically for grant administration on each project. In grant administration, it is not a common practice to require all support be submitted when funds are requested.

Action Taken

While Commerce added in a requirement to the award letter related to compliance with the grant administrative manual, grant administrators were already required to follow such requirements. No changes related to monitoring processes appear to have been implemented by Commerce.

Management's Response

Commerce agrees with the status of this recommendation. This recommendation has not been implemented and no future action is intended.

Recommendation #50 We recommend the Agricultural Products Utilization Commission make improvements to expenditure monitoring procedures to increase efficiency and effectiveness. At a minimum, the Agricultural Products Utilization Commission should:

- a) No longer require supporting documentation be submitted for all reimbursement requests; and
- b) Periodically select various grantees to verify adequate support for expenditures is retained.

Original Condition

The Agricultural Products Utilization Commission (APUC) generally distributed funds in two payments. The first half was paid when the grant was awarded and the second half was paid after supporting documentation for expenditures was received. Grantees were required to submit supporting documentation for every expense included in the reimbursement request. This was a significant amount of information

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being submitted, including time sheets, payroll reports, receipts, etc. In grant administration, it is not a common practice to require all support be submitted when funds are requested. Typically, grantees are required to maintain supporting documentation and provide it only when requested. In addition, examples of APUC making the second payment when all required expenditure support had not been received were identified.

Action Taken

No changes related to monitoring processes appear to have been implemented.

Management's Response

Commerce agrees with the status of this recommendation. This recommendation has not been implemented and no future action is intended.