


# MEMO

To: WEDC Board of Directors  
From: Hannah L. Renfro, Chief Legal Counsel & Compliance Officer   
Date: July 6, 2015  
  
Re: Fiscal Year 2016 Compliance Plan

This memo outlines WEDC's FY16 Compliance Plan. The objectives of it are to assist with:

- Cultivating a deeply-imbedded ethical culture and commitment to compliance with the laws, regulations, and policies that govern WEDC;
- Promoting the highest level of transparency and accountability in reporting;
- Creating mechanisms and an infrastructure to prevent wrongdoing;
- Minimizing exposure to findings, lawsuits, and penalties; and
- Fostering respect from the public, government officials, and the business community so that we can best perform our economic development activities.

These objectives are woven throughout the Compliance Plan and serve as our measure of success.

With the Board's approval of WEDC's engagement with the Center for Regional Economic Competitiveness (CREC), WEDC will be undertaking an intensive evaluation of its programs and operations. The results of this evaluation may impact staffing and strategies surrounding WEDC's compliance program. Any significant changes to the strategies outlined here will be brought to the Board.

Like the FY15 report, the FY16 Compliance Plan is organized by the following essential elements of a compliance plan: standards of conduct, oversight, education and training, monitoring and auditing, reporting and investigating, enforcement and discipline, and response and prevention.

## 1. Standards of Conduct

WEDC maintains two primary sets of standards of conduct: the systems policies, which guide WEDC's operations, and the program guidelines, which guide administration of WEDC's award programs.

WEDC has adopted and the Board has approved internal systems policies covering all aspect of WEDC's operations. As part of WEDC's commitment to continuous improvement, staff have been evaluating the effectiveness of our policies, the methods used for deployment and training, and recommendations from internal monitoring and external audits. Based on several discussions with the Board's Policy Committee, that evaluation revealed a need to more strictly differentiate between our organizational systems policies and divisional guidelines.

Beginning in FY16, WEDC will deploy to its staff an Employee Handbook, consisting of those organizational systems policies that all employees will be required to review and, where applicable, participate in training. This will include all human resource policies, and the policies on ethics, travel and expense reimbursements, use of WEDC credit cards, procurement, and others that are clearly defined as organization-wide policies. These are policies employees have already reviewed after approved by the Board. It is only a different mechanism for deploying them.

The content of the other policies will not be eliminated. Instead, they will be encompassed with written divisional guidelines, which will be the procedures by which those staff members are held accountable. Staff within the respective division will be required to understand those guidelines but we will not require all staff training on these divisional guidelines. To effectuate this transition, we will create workgroups for each policy area – Governance & Administration, Finance, Credit & Risk, Information Technology, Human Resources, Legal & Compliance, and Marketing. A member of the compliance team will participate on each workgroup to ensure consistency and that we account for recommendations and findings from audits.

Systems policies will continue to be subject to the existing review and approval process. Policy owners work with the Compliance team to draft or revise systems policies. The systems policies are reviewed initially by the Systems Policies Advisory Group, which is comprised of members of WEDC's executive team plus other members of management integral to policy development. Systems policies for which implementation tools need development are referred by the Advisory Group to the Systems Policies Assistance Team. Systems policies then are reviewed by the CEO. Upon CEO approval, systems policies are reviewed by the Board's Policy Committee, which recommends systems policies for the Board to approve or requests WEDC staff amend them prior to recommendation of Board approval.

Program guidelines also follow a robust process for development and approval. Each WEDC program is covered by a program guideline that describes the program, its purpose, budget, expected outcomes, relevant statutory parameters, among other information. The programmatic divisions work with management and program managers to develop the initial guidelines that are then led through a process of vetting with the Office of Public Policy. The Divisions of Credit & Risk, Finance, and Legal & Compliance ensure,

respectively, that the appropriate underwriting, financial, and legal matters are covered by the guidelines. After the review, the program guidelines are approved by the COO and CEO, and are included in each fiscal year's operations plan for the Board's approval.

For FY16, the Board will be asked to review an Interim Operations Plan and a Continuing Resolution on Program Guidelines. These mechanisms will allow WEDC to continue operations while CREC completes its evaluation and necessary changes are implemented. When that evaluation is complete, a final Operations Plan will be presented to the Board.

## 2. Oversight

WEDC has instituted multiple layers of oversight. The continued commitment to compliance by the Board and upper management is key. This commitment is the first line of defense. The Board reviews or approves systems policies, program guidelines, reports on loan delinquencies, charge offs, award contract amendments, past due schedules of expenditures, contributions received, internal monitoring, budget amendments, among other reports as requested by the Board. In addition, the Chair of the Board's Audit Committee serves as one of the "whistleblower" contacts for WEDC.

A second layer of oversight is the compliance and internal control functions instilled as part of WEDC's operations. All divisions – especially Finance, Credit & Risk, Human Resources, and IT – have established rigorous controls in their operations. These will continue to be evaluated for efficacy.

Third, WEDC's Human Resources team collaborates with the Compliance team for training staff on systems policies, overseeing compliance with mandatory training, and including compliance as part of employees' performance evaluations. Legal & Compliance staff are also engaged with all other teams to assist with inquiries, program development, operational strategies, and other facets of WEDC's operations and program administration. WEDC also conducts ongoing internal monitoring to test compliance generally with a focus on compliance with systems policies.

The final layer of oversight is independent assurance. This oversight is accomplished primarily with audits by a private, independent auditor and the State of Wisconsin's Legislative Audit Bureau (LAB). Wisconsin law requires that WEDC be subject to an annual independent financial audit, a biennial financial audit by LAB, and a biennial programmatic audit by LAB. These audits are enhanced by independent consultants retained as needed, such as CREC.

### 3. Education and Training

WEDC continues to invest in a sophisticated training program led by an experienced expert Trainer on our Human Resources team. She, our Compliance & Ethics Analyst and policy owners develop training plans for WEDC's systems policies plus any other items that arise for which training is deemed warranted.

In FY15, we relied on a targeted training program that was successful in reaching the appropriate staff for the relevant policies. We also relied on a new learning management system in FY15 that we will continue to improve upon in FY16 to increase user accessibility.

In addition to this more formal training, training and education is conducted on a regular basis throughout the organization to improve compliance, processes, and enhance efficiencies. This type of education and training stems from corrective actions from internal monitoring, new technologies adopted, identified process improvement needs, and other areas.

### 4. Monitoring and Auditing

#### *Internal Reviews*

WEDC is in the process of developing a long-term plan for enhancing its risk assurance capabilities. This will include enhancing the understanding and accountability for defining WEDC's appetite for risk and acceptable tolerance boundaries. This will be completed in conjunction with the programmatic and operational evaluation by CREC.

In the short term, WEDC's compliance staff, including risk management, will be working with the Board's Policy Committee on edits to systems policies; developing policies and procedures in conjunction with CREC's evaluation; ensuring all audit findings are taken into account when developing policies and procedures; and working to develop tools that will be used to enhance the identification, prioritization, and ultimately the mitigation of organizational risk.

#### *External Audits*

Consistent with standing practice at WEDC and the statutory requirement, WEDC's independent auditor will conduct its audit of FY15 for presentation to the Board in the fall of FY16. In May 2015, LAB released its biennial programmatic and financial audits. WEDC's response and corrective actions based on that audit report are outlined below under Section 7 Response and Prevention.

## 5. Reporting and Investigating

Management, Human Resources, and the Legal & Compliance teams investigate matters of concern that arise at WEDC. Matters are reported to the Board, CEO, and other management as needed to keep them informed of the Compliance Plan, its implementation, and any issues that arise in relation to the organization's compliance.

## 6. Enforcement and Discipline

All managers are expected to include in performance evaluations consideration of each employee's adherence to WEDC's compliance program. This includes acknowledging all systems policies deployed, participating in training, and, most importantly, complying with the systems policies, regulations, and laws governing WEDC. Staff who fail to follow these requirements are to be disciplined appropriately.

In addition, as part of the internal monitoring program, compliance staff and management meet with staff when noncompliance is found. Depending on the circumstances, a risk manager may conduct specific monitoring, including surprise audits, to provide an additional layer of oversight.

## 7. Response and Prevention

WEDC also maintains response controls to prevent noncompliance. Compliance staff work in conjunction with other teams to conduct investigations due to a particular area of risk or to address concerns about noncompliance. In the event the investigation reveals an instance of noncompliance, it will be handled with prompt corrective actions. The specific composition of the corrective action will depend on the matter investigated and the findings. However, it will always incorporate measures to ensure accountability is enforced.

LAB's Audit Report 15-3 outlined 25 recommendation for WEDC. WEDC's response and corrective actions are as follows:

### Recommendation # 1.

We recommend the Wisconsin Economic Development Corporation execute a grant or loan contract only after a full staff review has been completed for the program through which the award is made. (Page 23)

→ *WEDC executes awards only after all necessary reviews are completed and approvals obtained according to its Awards Administration Policy. The awards underlying this recommendation were approved in 2011 or 2012. In 2013, WEDC implemented processes and policies that enhanced the requirements and, importantly, the controls to which awards and their staff reviews are subject.*

*The primary means of documenting the details on an award is the staff review. However, as noted in the report, WEDC also relies on formal memoranda reviewed and approved through the Management Review Committee (MRC) process when necessary for handling any ancillary matters related to an award. These may include matters that were not covered in or arose after the staff review was completed. We will continue to evaluate this and other processes and policies for areas of improvement, including how to most effectively handle matters related to awards that arise after a staff review has been completed.*

Recommendation # 2.

We recommend the Wisconsin Economic Development Corporation execute only grant and loan contracts that contain all statutorily required provisions. (Page 24)

- ➔ *WEDC's loan and grant contracts include all statutorily required language, including specifically the statutorily required remedies provisions. As LAB acknowledges in its report, that the contracts' remedies provision uses the word "may" instead of "shall" does not in any way affect WEDC's legal ability to enforce a clawback. The language used by WEDC is consistent with the statutes.*

Recommendation # 3.

We recommend the Wisconsin Economic Development Corporation ensure staff reviews evaluate all grant and loan program policy requirements; and execute only grant and loan contracts that comply with its program policies. (Page 26)

- ➔ *WEDC's awards comply with the program guidelines that were effective at the time the original decision is made to approve the award and a letter of intent or award letter sent to the recipient. All of the awards underlying this recommendation were decisioned prior to adoption of the FY13 and FY14 program guidelines.*

*WEDC has continued the longstanding Department of Commerce practice of administering awards based on the decision date. The decision date is the date on which the award is originally approved by management. This occurs after it has been underwritten. At that time, a chain of events surrounding the award is triggered, including encumbering funds and sending a letter of intent to the recipient. The letter of intent outlines the basic terms of the agreement and is signed by the recipient. WEDC applies the guidelines and policies as they existed at the time of the original decision date and the letter of intent or award letter is sent. Awardees rely on this date to assure business certainty in planning projects.*

Recommendation # 4.

We recommend the Wisconsin Economic Development Corporation contractually require grant and loan recipients to submit information showing that jobs were actually created and retained. (Page 27)

- ➔ *Grant and loan recipients submit to WEDC performance reports documenting the number of jobs created and retained. An official of the recipient must sign the report, attesting to its accuracy. In addition, WEDC conducts an annual award verification on a sample of performance reports to verify the accuracy of the reports.*

Recommendation # 5.

We recommend the Wisconsin Economic Development Corporation: determine the loan balance for each of those loans that were amended to defer repayments, written off, or forgiven during each six-month period thereafter; determine each of those loans that were no longer 90 days or more past due during each six-month period thereafter because the recipient made loan repayments; determine the payment delinquency rate and the principle delinquency rate on July 1, 2015, and six months later and on January 1, 2016, and six months later; report this information to the Joint Legislative Audit Committee by February 1, 2016, for the six-month period from July 2015 through December 2015; and report this information to the Joint Legislative Audit Committee by August 1, 2016, for the six-month period from January 2016 through June 2016. (Page 31)

- ➔ *WEDC will, by February 1, 2016 and again by August 1, 2016, provide the Joint Legislative Audit Committee a copy of the quarterly loan delinquency reports routinely submitted to WEDC's Board of Directors; and will comply with any additional requests by that Committee.*

Recommendation # 6.

We again recommend WEDC establish all statutorily required policies for its tax credit programs.  
(Page 40)

- ➔ *WEDC will continue to closely monitor its program guidelines and ensure that all statutory requirements are clearly outlined in the program guidelines. On June 30, 2015, the Board's Awards Administration Committee reviewed revised Development Opportunity Zone Tax Credit and Economic Development Tax Credit Program Guidelines that addressed the audit report's two specific concerns.*

Recommendation # 7.

We recommend the Wisconsin Economic Development Corporation ensure staff reviews evaluate whether businesses meet all eligibility requirements. (Page 41)

→ *WEDC will continue to closely review its staff reviews and ensure that all program guideline requirements are included in them. The majority of the awards underlying this recommendation were approved in 2011 or 2012. In 2013, WEDC implemented new processes and policies that enhanced the requirements and, importantly, the controls to which awards and their staff reviews are subject. We will continue to evaluate those controls for means of improving them.*

Recommendation # 8.

We recommend the Wisconsin Economic Development Corporation establish policies that specify how long a completed staff review remains valid and that requires a new staff review to be completed if a contract has not been executed within that period of time. (Page 43)

→ *The Board's Awards Administration Committee reviewed at its June 30, 2015 meeting a revised Awards Administration Policy that incorporates a requirement that staff reviews be completed again if more than a year passes before a decision date on the proposed award. The Board will review this policy at the July 20, 2015 Board meeting.*

Recommendation # 9.

We recommend the Wisconsin Economic Development Corporation allocate tax credits only in accordance with statutory requirements and its program policies. (Page 46)

→ *WEDC has implemented a thorough review and approval process, and will continue to evaluate means of improving those controls to ensure no details are missed either in staff reviews or contracts. Of the instances underlying this recommendation, there is one isolated incident of noncompliance – an award that used the wrong statutory salary threshold to calculate the tax credits for which the company was eligible. This resulted in an overpayment of \$400 to the company.*

*After the evaluation is completed by the Center for Regional Economic Competitiveness, WEDC will undertake in FY16 a comprehensive review of all its award contract templates to ensure the language is clear and consistent surrounding all statutory and program guideline requirements. As part of this, WEDC staff will review whether all statutory and program guideline requirements – such as health insurance coverage and tax liability – should be in the contract.*

Recommendation # 10.

We again recommend the Wisconsin Economic Development Corporation allocate tax credits only for projects that have not yet begun when contracts are executed. (Page 48)

- *Consistent with statutes, WEDC allows award recipients to begin incurring expenses for projects after the certification date established by WEDC.*

Recommendation # 11.

We recommend WEDC establish policies for verifying information submitted by businesses on the extent to which contractually specified outcomes were achieved; and award tax credits only in accordance with statutory requirements. (Page 49)

- *WEDC verifies the performance of tax credit award recipients by (1) receipt of a performance report signed by an official working for the recipient, attesting to the accuracy of the information included in the performance report; (2) receipt of payroll information from the recipient documenting the employees and wages; and (3) completing an annual verification of a sample of awards consistent with Wisconsin law, Wis. Stat. § 238.03(2)(e).*

*Commencing in FY16, additional information will be verified by an independent auditing firm. In addition, in FY16, WEDC will undertake a comprehensive review of all its award contract templates to ensure the language is clear and consistent surrounding all statutory and program guidelines requirements.*

Recommendation # 12.

We recommend WEDC establish policies for recovering previously awarded tax credits from recipients that did not meet contractual obligations. (Page 50)

- *In April 2014, WEDC had completed development of the necessary processes with the Department of Revenue to recoup tax credits when necessary. Because of the complexity, it took several months of discussion with multiple staff members of each agency to accomplish that task.*

Recommendation # 13.

We recommend the Wisconsin Economic Development Corporation's governing board comply with statutes by establishing at least one quantifiable benchmark for each goal of its economic development programs. (Page 54)

- *Each of WEDC's programs include at least one goal and at least one quantifiable benchmark. Going forward, WEDC will ensure that in addition to establishing the goals and benchmarks, staff will clarify that each individual goal corresponds with an individual quantifiable benchmark. The revised program guidelines reviewed by the Board's Awards Administration Committee on June 30, 2015 included this clarification.*

Recommendation # 14.

We recommend the Wisconsin Economic Development Corporation's governing board ensure its staff comply with its policy to send, in a timely manner, past-due notices to all award recipients that do not submit contractually required progress reports on time. (Page 57)

→ *WEDC's performance report delinquency rate has decreased from 55% to 5.4% as noted in the audit report. With the changes made in staff and improvements in processes, that rate continues to improve.*

Recommendation # 15.

We recommend the Wisconsin Economic Development Corporation's governing board comply with statutes by contractually requiring all recipients of grants and loans of at least \$100,000 to submit schedules of expenditures. (Page 58)

→ *WEDC is collecting the required schedules of expenditures from award recipients even if the contract inadvertently referenced a verified statement.*

Recommendation # 16.

We recommend the Wisconsin Economic Development Corporation's governing board ensure its staff comply with its policy by sending notices in a timely manner to all grant and loan recipients that do not submit contractually required schedules of expenditures on time. (Page 58)

→ *Since transferring the duties within WEDC related to managing the schedules of expenditures, all award recipients requiring a notice of a due schedule of expenditure have received one. The number of award recipients owing WEDC a schedule of expenditures has been cut in half, from 80 to 42. On February 24, 2015, WEDC notified the Board of Directors of the delay in sending out reminder and past due notices to award recipients owing WEDC a schedule of expenditure and has implemented stricter controls, including a quarterly report to the Board on recipients with an overdue schedule of expenditure.*

Recommendation # 17.

We recommend the Wisconsin Economic Development Corporation's governing board comply with statutes by annually verifying the performance information reported by a sample of grant and loan recipients. (Page 59)

→ *WEDC complied with this requirement delineated in Wis. Stat. §238.03(2)(e), as LAB indicates in its report. This statute requires WEDC to verify a sample of the performance reports submitted to WEDC by award recipients, which staff did over the course of several months during calendar year 2014. The task is time consuming because it involves reviewing, among other things, invoices for multi-million dollar capital investment projects. The final memorandum summarizing*

*the results of the verification was completed on January 12, 2015. Again, LAB points this out in its report.*

Recommendation # 18.

We recommend the Wisconsin Economic Development Corporation's governing board ensure its staff comply with its policy for site visits and review information needed to determine whether award recipients spent awarded funds in accordance with contractual provisions and achieved contractually specified outcomes. (Page 60)

- ➔ *WEDC's staff complied with the Awards Verification Policy's site visit requirement. The policy requires that "Grants, loans and tax credits equal to or more than \$1,000,000 will receive a physical site visit by WEDC staff to view the capital investment and/or review the underlying financial records, e.g. invoices, payroll data, etc." It was not the intent of the policy to require inspection of financial records at every site visit but only when necessary. The language will be clarified to avoid any future confusion.*

Recommendation # 19.

We again recommend the Wisconsin Economic Development Corporation's governing board comply with statutes by ensuring that the annual economic development program report presents clear, accurate, and complete information on each program's results. (Page 63)

- ➔ *The Annual Report on Economic Development (ARED) showcases WEDC's and other state agencies' commitment to transparency. ARED's interactive map is a user friendly tool that allows for easy analysis of statewide, regional, and an individual award's economic impact. The databases contain all statutorily required information plus more. WEDC staff expend tremendous efforts year-round to administer the quality of the data in the report, how it is accessed, and the tools it provides for evaluating the State's economic development efforts. There are thousands of points of data in the report, and, as with any report, there will be isolated and unintentional mistakes. WEDC staff regularly monitor the data and fix any mistakes found. WEDC is committed to continuously improving the ARED and welcomes suggestions for improvement from stakeholders and, of course, its Board.*

Recommendation # 20.

We recommend the Legislature consider modifying Wis. Stat. 238.07(2) to require WEDC's governing board to include in its annual economic development program report the total number of jobs created and the total number of jobs retained as a result of all economic development awards made since July 1, 2011. (Page 66)

- ➔ *WEDC will comply with any changes made to the law. Of note, WEDC's online database already includes jobs created and jobs retained for all economic*

*development awards made since July 1, 2011. Any member of the public can use the database to compile those total numbers.*

Recommendation # 21.

We recommend the Wisconsin Economic Development Corporation's governing board review its fund balance policy so that the target for the unassigned fund balance is based on its administrative expenditures. (Page 69)

➔ *As stated in the audit, WEDC's current fund balance policy aligns with the best practices suggested by the Government Finance Officers Association (GFOA). It also complies with Statement No. 54 of the Governmental Accounting Standards Board (GASB). Although the statement in the audit report, "Given these specific circumstances, WEDC's unassigned fund balance need cover only its administrative expenditures." is misguided, we acknowledge that accounting standards provide some flexibility in how to characterize fund balance.*

*In response to the audit and to comply with the current language in the State's budget bill WEDC will propose changing its Fund Balance Policy. The change will adopt a fund balance concept limiting WEDC's unassigned fund balance on June 30<sup>th</sup> of each year to two twelfths of the estimated annual administrative expenditures for that year.*

Recommendation # 22.

We recommend the Wisconsin Economic Development Corporation periodically review credit card usage and close the accounts of unnecessary credit cards, including those that are seldom or never used; and ensure that appropriate credit limits are maintained on all of its credit cards; and maintain documentation of the approved credit limits on each of its credit cards, including changes to those limits. (Page 76)

➔ *The credit card policy that was implemented in FY 2013/2014 was designed to balance operational efficiency and risk. The policy resulted in a reduction in the number of active credit cards and improved the internal monitoring of transactions. WEDC staff recently completed an internal review of the policy and a sample of FY 2014/2015 transactions. Staff issued their findings and recommendations which are consistent with the report. WEDC's internal policy committee will continue to consider improvements that enhance efficiency while striving to mitigate the inherent risk associated with credit card transactions.*

Recommendation # 23.

We recommend the Wisconsin Economic Development Corporation's governing board direct its staff to present for its review and approval policies that comply in all respects with statutory requirements; and ensure that its staff comply with all the policies it establishes. (Page 82)

➔ *WEDC staff will comply with any directive of the Board for presenting such information.*

Recommendation # 24.

We recommend the Legislature consider the Wisconsin Economic Development Corporation's unassigned fund balance when determining the amount to appropriate to either the Wisconsin Economic Development Authority or the Forward Wisconsin Development Authority for the 2015-17 biennium. (Page 84)

→ *WEDC welcomes the opportunity to discuss with the Legislature its fund balance policy and budget.*

Recommendation # 25.

The governing board of either the Wisconsin Economic Development Corporation or the Forward Wisconsin Development Authority report to the Joint Legislative Audit Committee by February 1, 2016, on its efforts to implement each of our recommendations. (Page 85)

→ *WEDC will provide a report on such efforts by February 1, 2016.*