

Letter Report

**Wisconsin Health and  
Educational Facilities  
Authority**

*February 2010*



**Legislative Audit Bureau**

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**STATE OF WISCONSIN**  
**Legislative Audit Bureau**

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Janice Mueller  
State Auditor

February 26, 2010

Senator Kathleen Vinehout and  
Representative Peter Barca, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Vinehout and Representative Barca:

We have completed a limited-scope review of the Wisconsin Health and Educational Facilities Authority (WHEFA) as authorized in s. 231.19(1), Wis. Stats. Through June 2009, WHEFA has issued 603 revenue bonds totaling more than \$14.5 billion on behalf of tax-exempt healthcare and certain educational institutions. The tax-exempt bonds help the borrowing institutions finance capital projects. They are not debt or obligations of the State of Wisconsin and are repaid solely by the borrowing institutions.

WHEFA has no taxing power and does not receive state appropriations. It is governed by a seven-member board and has four full-time employees, whose salaries and fringe benefits are its primary operating costs. WHEFA funds those costs with annual fees paid by borrowing institutions.

As of June 30, 2009, WHEFA accumulated a surplus balance of \$3.1 million, which is more than four times its annual operating expenses. We include a recommendation that WHEFA continue to carefully monitor its surplus balance for appropriateness. We are also concerned that the WHEFA Board's actions to increase compensation for the Executive Director have had the effect of circumventing a statutory salary limit on the Executive Director's salary. Since 2005, the WHEFA Board has provided him with 40 days of vacation each year. WHEFA paid him for unused leave, including vacation and sick leave, by making annual deposits into the Wisconsin Deferred Compensation Program. As a result, the Executive Director's annual compensation has exceeded the statutory limit established for his position by an average of \$16,200 annually. In addition, we believe WHEFA is incorrectly reporting some unused leave as earnings that will effectively increase its employees' pension benefits under the Wisconsin Retirement System. We include recommendations for the Legislature to take steps to address these concerns and for WHEFA to work with the Department of Employee Trust Funds to correctly report future earnings.

We appreciate the courtesy and cooperation extended to us by the WHEFA Board and staff in completing this review.

Sincerely,

Janice Mueller  
State Auditor

JM/SH/ss



## **WISCONSIN HEALTH AND EDUCATIONAL FACILITIES AUTHORITY**

The Wisconsin Health and Educational Facilities Authority (WHEFA) was created as a public body politic and corporate by Chapter 304, Laws of 1973 and began to operate in 1979. WHEFA's primary responsibility is to help tax-exempt healthcare and certain educational institutions finance capital projects by issuing revenue bonds on their behalf. Revenue bonds issued through WHEFA are not debt or obligations of the State of Wisconsin. However, they are exempt from federal taxes and can therefore be marketed at interest rates that lower financing costs for the borrowing institutions.

The majority of WHEFA's revenue bonds are issued to finance new construction, expansion, or renovation of healthcare and educational facilities, including nonprofit research facilities. For example, during fiscal year (FY) 2008-09, Bellin Memorial Hospital, Inc., received bond proceeds of \$10.0 million to finance the acquisition and installation of information technology, surgical, and other medical equipment, and the Medical College of Wisconsin received bond proceeds of \$83.4 million to complete an existing research facility. Through June 2009, WHEFA has issued 603 revenue bonds totaling more than \$14.5 billion.

WHEFA is governed by the seven-member WHEFA Board, which is appointed by the Governor with the advice and consent of the Senate. Its four full-time employees are hired outside of the civil service system but are eligible for benefit programs available to State of Wisconsin employees under ch. 40, Wis. Stats., including the pension, deferred compensation, accumulated sick leave conversion, and various insurance programs. The WHEFA Board establishes compensation and leave policies for its employees, although their salaries are not permitted to exceed limits established in s. 231.02(2), Wis. Stats. Staff salaries and fringe benefits, attorney fees, and rent for office space located in Brookfield, Wisconsin, are WHEFA's primary operating expenses.

WHEFA has no taxing power and does not receive state appropriations. It funds its operations by charging annual fees to borrowing institutions. The Board approves fee amounts and WHEFA's annual operating budget. Currently, each borrowing institution is assessed an annual fee of \$62.50 per \$1.0 million in average outstanding bonds. In FY 2008-09, approximately 136 borrowing institutions paid an average of \$3,700 each in annual fees.

Under authority granted to the Legislative Audit Bureau in ss. 13.94(4)(a)1 and 231.19(1), Wis. Stats., we completed a limited-scope review that focused on WHEFA's financial position and its compliance with statutory limits on staff salaries. To complete this review, we analyzed:

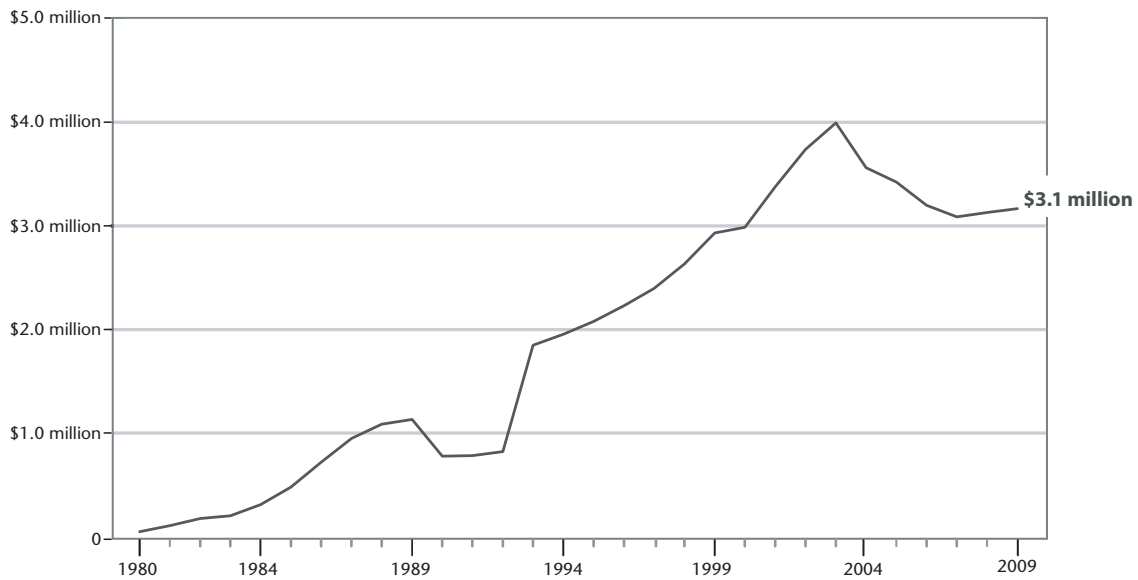
- the WHEFA Board's minutes and policies, including provisions related to employee benefit programs;
- staff compensation documents; and
- documentation to support operating expenses, including travel.

## WHEFA Financial Position

WHEFA is maintaining a sound financial position. As bonding activity has increased, the annual fees collected from borrowing institutions have regularly exceeded operating expenses, and as shown in Figure 1, WHEFA accumulated a surplus balance of \$3.1 million as of June 30, 2009.

Figure 1

### WHEFA Surplus Balances



Initially, WHEFA assessed each borrowing institution an annual fee of \$1,000 per \$1.0 million in average outstanding bonds. A fee reduction was first approved in 1989, and the Board subsequently reduced fees five more times. The fee reductions have helped to moderate increases in the surplus balance. As shown in Table 1, operating expenses exceeded revenues in three of the past five years, and a portion of the surplus balance was used to help fund operations in those years.

Table 1

**WHEFA Operating Revenues and Expenses**

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Operating Revenues:					
Annual User Fees	\$ 372,200	\$ 418,000	\$ 450,100	\$503,000	\$511,300
Investment Income	116,300	75,100	155,800	210,400	172,200
Total Operating Revenues	488,500	493,100	605,900	713,400	683,500
Operating Expenses:					
Salaries and Fringe Benefits	397,500	426,700	435,300	444,300	442,000
Other Expenses	230,600	220,200	300,300	242,000	240,000
Total Operating Expenses	628,100	646,900	735,600	686,300	682,000
<b>Net Income (Loss)</b>	<b>\$(139,600)</b>	<b>\$(153,800)</b>	<b>\$(129,700)</b>	<b>\$ 27,100</b>	<b>\$ 1,500</b>

Source: Annual financial statements audited by Schenck, SC, a private accounting firm

WHEFA's surplus balances have also been used to fund its reinvestment initiative program, for which expenditures totaled \$262,900 through June 30, 2009. As part of the reinvestment initiative program, WHEFA established a collaborative relationship with the Wisconsin Technology Council, which provides nonpartisan advice on technology issues to the Governor and the Legislature and advocated on WHEFA's behalf to extend the availability of its tax-exempt bonding authority to nonprofit research facilities. WHEFA's authority was extended under 2009 Wisconsin Act 2. Through FY 2008-09, WHEFA has expended \$51,500 to help support the Council's mission.

Other reinvestment initiative program expenditures have included:

- collaborating with healthcare organizations to fund conferences, studies, and other programs;
- offering credit assessments to assist potential new borrowers; and
- providing healthcare organizations assistance in complying with privacy requirements included in the Health Insurance Portability and Accountability Act of 1996.

The appendix includes additional detail on activities funded through WHEFA's reinvestment initiative program.

According to its Chair, the WHEFA Board has established a target of \$2.0 to \$4.0 million as a surplus balance to generate investment income and help stabilize the fees charged to borrowing

institutions. While steps have been taken in recent years to curtail growth in WHEFA's accumulated surplus balance, as of June 30, 2009, the balance was more than four times WHEFA's annual operating expenses. Maintaining a surplus balance is prudent and can help to address the potential variability in WHEFA's operating revenues and annual fee levels. It has also allowed WHEFA to create its reinvestment initiative program. However, we believe maintaining a surplus balance that is no more than one to two years' operating expenses may be more reasonable.

### **☑ Recommendation**

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*We recommend the Wisconsin Health and Educational Facilities Authority continue to carefully monitor its surplus balance for appropriateness.*

## **Executive Director Compensation**

As a public body politic and corporate, WHEFA has more autonomy than state agencies in establishing staff compensation and leave policies. However, s. 231.02(2), Wis. Stats., limits the salaries of its employees to specific executive salary groups that are established pursuant to s. 20.923(1), Wis. Stats. Under these limits, the Executive Director's salary may not exceed the maximum for salary group 4, which is currently \$116,001, and the salaries of the three other WHEFA employees may not exceed the maximum for salary group 3, which is currently \$107,407.

WHEFA employees earn 16.25 days of sick leave and 4.5 personal days annually, as do state employees. Under the Board's policies, WHEFA employees also earn a maximum of 20.0 days of vacation after ten years of employment, unless additional amounts are approved either by the Executive Director or by the Board. The Board has approved additional vacation time for the Executive Director, who has been employed by WHEFA since 1983.

Under ch. 230, Wis. Stats., the maximum vacation time a long-term state employee may earn is 216 hours, or 27 days. In July 2005, the WHEFA Board increased the Executive Director's vacation time from 30 days to 40 days annually, which significantly exceeds the maximum vacation time available to long-term state employees. The Board's Chair indicates that additional vacation time has been awarded because the Executive Director's salary, which is subject to statutory limits, is not sufficient compensation for his expertise, responsibilities, and tenure.

The Board's policy provides the Executive Director and other WHEFA employees several options for using their unused vacation and sick leave, including the option to carry the leave forward, receive a cash payment for a portion of it, or deposit its cash value into the Wisconsin Deferred Compensation Program, subject to certain limitations. The other employees have typically chosen to receive cash payment for unused leave. However, the cash value of the Executive Director's unused leave has been deposited into his Wisconsin Deferred Compensation Program account.

Table 2 shows the difference between the Executive Director's annual compensation as reported to the Wisconsin Retirement System (WRS) and the maximum salary for his position under



s. 231.02(2), Wis. Stats. For example, in 2008, WHEFA deposited \$19,600 in the Executive Director's deferred compensation account, which represents the cash value of an estimated 44 days of unused leave, and his total compensation reported to the WRS was \$135,612, which is 16.9 percent greater than the salary limit for his position specified by statute. We estimate that over the past ten years, approximately \$162,300 in payments for unused leave have been deposited into the Executive Director's deferred compensation account.

Table 2

**WHEFA Executive Director Compensation**

Year	Compensation <sup>1</sup>	Salary Limit Specified by Statute <sup>2</sup>	Difference	Estimated Leave Days Represented by Difference <sup>3</sup>
1991	\$ 74,838	\$ 73,456	\$ 1,382	5
1992	80,709	76,579	4,130	14
1993	81,484	77,730	3,754	13
1994	85,825	82,065	3,760	12
1995	89,166	82,065	7,101	22
1996	89,617	84,545	5,072	16
1997	92,918	87,082	5,836	17
1998	97,771	90,131	7,640	22
1999	104,036	93,375	10,661	30
2000	108,863	96,852	12,011	32
2001	112,830	103,757	9,073	23
2002	122,742	105,834	16,908	42
2003	125,940	105,834	20,106	49
2004	127,940	105,834	22,106	54
2005	124,772	107,954	16,818	41
2006	129,036	110,117	18,919	45
2007	130,965	114,848	16,117	36
2008	135,612	116,001	19,611	44

<sup>1</sup> Compensation as reported to the WRS, which includes salary and additional cash amounts deposited into the Executive Director's deferred compensation account for unused vacation and sick leave.

<sup>2</sup> Reflects the range maximum for executive salary group 4 as of December 31 of each year.

<sup>3</sup> Estimates are based on the difference in reported compensation and the statutory salary limit. Actual leave days may have differed from estimates if the limit for executive salary group 4 was changed mid-year.

When we questioned the policy, the WHEFA Board Chair stated that he believes the Executive Director's compensation package complies with s. 231.02(2), Wis. Stats., because he has been advised by WHEFA's legal counsel that the statutory limit addresses salary only, not overall compensation. Further, the Board Chair indicated that the Executive Director's compensation package was established by the Board to meet its fiduciary responsibility to ensure that necessary staff expertise is retained. However, the Board's actions have had the effect of circumventing the statutory salary limit. WHEFA staff indicated that past attempts to tie the salary of the Executive Director to a higher-paying executive salary group were not successful, and the WHEFA Board did not believe other options were available.

The Legislature may wish to consider several options to address WHEFA's actions. If it agrees that the special expertise and experience of the Executive Director warrant a higher salary level, it could amend the Wisconsin statutes and assign the salary of the Executive Director to a higher-paying salary group. However, if it believes the current salary limit is reasonable in light of WHEFA's staff size and responsibilities, it could direct the WHEFA Board to comply with the executive salary limit established pursuant to s. 20.923(1), Wis. Stats.

**Recommendation**

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*We recommend the Legislature consider steps to address the Wisconsin Health and Educational Facilities Authority Board's circumvention of the statutory salary limit for its Executive Director.*

Based on discussions with the Department of Employee Trust Funds, we believe WHEFA is also incorrectly reporting some unused leave as earnings to the WRS, and thereby effectively increasing its employees' pension benefits. Under s. 40.02(22)(b)11, Wis. Stats., earnings reported to the WRS must be based on an employee's salary, and payments made in lieu of fringe benefits at an employee's option are explicitly excluded from WRS earnings. The WHEFA Board's policies allowing cash payments and deposits of the cash value of unused leave into the Wisconsin Deferred Compensation Program would appear to fall under this statutory exclusion. However, WHEFA regularly reports the value of such leave as WRS earnings. Because pension benefits reflect reported earnings, WHEFA's incorrect reporting may result in its employees receiving higher pension benefits than allowed by statute.

**Recommendation**

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*We recommend the Wisconsin Health and Educational Facilities Authority work with the Department of Employee Trust Funds to correctly report future earnings for its employees and correct errors in prior years' reported earnings to the Wisconsin Retirement System.*

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## Appendix

### **WHEFA Reinvestment Initiative Program Expenses**

Inception through June 30, 2009

Recipient	Description	Year(s)	Amount
Wisconsin Technology Council	Support for the Council's mission to advise the Governor and the Legislature	2005-2008	\$ 51,500
Wisconsin Association of Independent Colleges and Universities	Funded economic impact and feasibility studies, such as joint utilities purchasing, and sponsored other member programs	1995, 1999, 2000	35,000
Various Organizations	Funded credit assessments to assist potential new borrowers	1998, 2000-2002, 2005	34,000
Wisconsin Primary Health Care Association	Provided business development assistance to members and technical assistance to the community	1997	30,000
Wisconsin Rural Hospital Flexibility Program ( <i>Department of Health Services</i> )	Funded expansion of existing technical assistance to critical access hospitals and additional projects	2000, 2001	28,462
Wisconsin Primary Care Loan Fund	Assisted with cost of developing a primary care loan fund	1994-1996	26,300
Health Insurance Portability and Accountability Act Collaboration of Wisconsin	Sponsored a conference and Web site development and provided funding for consultants and for information technology assistance	2001, 2004, 2007	15,000
Wisconsin Office of Rural Health/Rural Health Development Council ( <i>University of Wisconsin School of Medicine and Public Health</i> )	Provided funding for technical support in connecting rural health care providers, and sponsored the Wisconsin Farm Health Summit	2002	11,500
Rural Wisconsin Health Cooperative	Provided funding for broadcast, storage, and electronic media, as well as a lunch for a meeting	2006, 2007	10,367
Wisconsin Hospital Association	Subsidized a study to assess the viability of Wisconsin hospitals	2000	5,775
Southwest Area Health Education Center, Inc.	Funded an impact study for Grant County	1997	5,000
Healthcare Financial Management Association (HFMA)	Sponsored 17 participants' attendance at a HFMA workshop	2002	5,000
Coalition for Wisconsin Health	Not specified	1999	5,000
<b>Total</b>			<b>\$262,904</b>

Source: Wisconsin Health and Educational Facilities Authority