Review of Implementation of Recommendations to New Jersey Economic Development Authority Regarding Selected State Tax Incentive Programs

AUDIT DIVISION REVIEW

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OFFICE OF THE STATE
COMPTROLLER

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I. Introduction

In its January 9, 2019 audit report, *A Performance Audit of Selected State Tax Incentive Programs* (2019 Audit), the Office of the State Comptroller (OSC) made 21 recommendations to the New Jersey Economic Development Authority (EDA or the Authority) regarding its administration of New Jersey's various tax incentive programs. This report reviews whether EDA has complied with OSC's prior recommendations.

As detailed below, OSC found that EDA has complied with 11 of the 21 recommendations made by OSC; partially complied with an additional 7 recommendations; and not complied with 3 recommendations. As part of our review, we also separately revisited specific audit exceptions that were identified in the 2019 Audit concerning over-certifications, overpayments, and improper awards. In doing so, OSC found that EDA has made substantial progress in improving its processes and internal controls for administering the State's various tax incentive programs. But OSC also found significant issues that should be addressed by EDA. Those findings, and additional recommendations to EDA, are set forth in detail below.

II. Executive Summary

As required by statute, OSC has revisited its 2019 Audit of EDA's administration of various tax incentive programs to assess whether the numerous significant deficiencies previously identified in EDA's management and oversight of certain incentive programs have been addressed as recommended.

What we found was full compliance with 11 recommendations, partial compliance with 7 recommendations, and noncompliance with 3 recommendations. We also found that EDA has not sought to recover substantial amounts of public funds that it acknowledges should be pursued.

The 11 recommendations that EDA has implemented involve policies and processes that are relied on throughout EDA's administration of tax incentive awards. Through these important changes, EDA has improved its processes for verifying that employees whose positions are incentivized by tax incentives were employed by businesses that received the incentives. EDA has also adopted policies and procedures that provide greater assurance that incentives are awarded based only on eligible employees and thus that the goals of the economic incentive programs are achieved. However, there is more to be done.

The seven recommendations with which EDA has partially complied involve multiple policies and processes that EDA has either implemented for some but not all programs or that are found to be inadequate in design or implementation. Two of the partially implemented recommendations involve processes for avoiding double-counting of jobs when a recipient received awards in two incentive programs.

OSC also found that EDA only partially implemented OSC's recommendation to rely on actual data annually when evaluating whether to award tax credit incentives. EDA previously declined to fully accept that recommendation, despite the substantial negative financial impact of its choice to rely on outdated information. EDA did, however, perform limited one-time reassessments for one incentive program subsequent to our initial audit that reduced incentive awards by $108 million in a two-year period. In response to a draft of this report, EDA prospectively changed its position as to two of the incentive programs, agreeing to conduct the same sort of analyses for all awards in these programs. If properly implemented, annual awards will be more directly tied to the goals of the incentive programs, which likely will have a substantial positive financial impact. EDA notes though that its policy is "contingent upon [the Attorney General's] guidance" regarding "the applicable legislation." Thus, although EDA has agreed to implement OSC's recommendation for two tax incentive programs, it remains to be seen whether that will occur.

There are three recommendations that OSC finds EDA has not implemented at all. Two of them involve transparency. EDA has not developed or implemented an evaluation and assessment process for the incentive programs to report on the success and accomplishments of the programs and determine the economic benefits actually realized. Nor has EDA revised its processes for annual reporting of incentive program activities to address actual performance by award recipients. The information contained in annual reports does not address actual program results, economic benefits realized, or the success or failure of the incentive programs. Without this level of detail, policymakers and other stakeholders are unable to make informed decisions regarding continuing existing incentive programs or when crafting new incentive programs.

OSC has also found that EDA has taken little corrective action to recover for over-certifications and overpayments identified in the 2019 Audit involving more than $200 million in awards. EDA has now indicated it will make more proactive efforts in this area as well.

For recommendations that have not been fully implemented by EDA, OSC makes a number of additional recommendations that are set out in detail in this report.

In short, EDA has made substantial progress since OSC's 2019 Audit. In order to fulfill its stated mission of growing the State's economy and increasing equitable access to opportunity in the most fiscally responsible way, and with due regard to its fiduciary responsibility to taxpayers, EDA should fully comply with OSC's recommendations.

III. Background, Scope, and Objective

The EDA is an independent State agency that provides financial assistance to qualified companies (awardees or recipients) for the purpose of maintaining and expanding employment opportunities in the state and increasing tax ratables in underserved communities. EDA administers tax incentive programs that have job creation or retention requirements and are intended to revitalize communities through redevelopment initiatives. These incentive programs include the Business Retention and Relocation Assistance Grant Program (BRRAG); the Business Employment Incentive Program (BEIP); the Urban Transit Hub Tax Credit Program (HUB); the Grow New Jersey Assistance Program (GROW); and the Economic Redevelopment and Growth Grant Program (ERG).[1] Each of these programs is governed by a web of enabling statutes, regulations, policies and procedures, and legal considerations. EDA is responsible for ensuring that these programs are administered in accordance with their respective guidelines and that the almost $11 billion in grants and incentives identified in the 2019 Audit achieve their stated goals, which include promised economic benefits to the State and its taxpayers.

Based partly on findings by the Office of the State Auditor concerning EDA's administration of incentive programs and recognizing the important various policy issues associated with the award of tax credits in New Jersey, on January 19, 2018, Governor Philip D. Murphy entered Executive Order 3 (EO 3). EO 3 directed OSC to conduct a complete performance audit of these programs. In doing so, EO 3 outlined the following areas for review: (1) "[a] comparison of the actual economic benefits realized, including but not limited to the number of new jobs actually created from the incentive award, against the projected economic benefits that were asserted or considered in evaluating applications approved for such awards"; (2) "the types of jobs that have been created, including salaries, wages, and benefit levels, as well as the locations within the state where these jobs have been created" and "the decision-making process regarding the acceptance of applications, focusing on how EDA has exercised its discretion under the statutes"; and (3) "the application process for such awards, including documentation and disclosure of expenses incurred by the applicants, including lobbyists, consultants, and legal representation" and the administrative costs related to the applications.

Pursuant to EO 3, OSC conducted a performance audit of the five above-noted incentive programs, GROW, ERG, BRRAG, BEIP, and HUB, from 2010 onward. On January 9, 2019, we issued a comprehensive report—the 2019 Audit—detailing our findings involving "numerous significant deficiencies in EDA's management and oversight of the incentive programs." The deficiencies included:

> a. Inadequate monitoring, insufficient oversight, and non-existent policies and procedures that have created control deficiencies that weaken the transparency and accountability of the incentive programs and their success.
>
> b. The lack of an adequate process to assess accomplishments and effectiveness of the incentive programs or to determine whether the state realized the economic benefits asserted by the applicants.
>
> c. The lack of policies and procedures to monitor awardees' performance (i.e., number of jobs created, etc.) and insufficient documentation requirements for awardees to report specific accomplishments of their performance results. These failures resulted in inaccurate repre-

[1] For a full description of each incentive program, please see the 2019 Audit at pages 4 through 6.

sentations of awardee performance to the stakeholders and taxpayers.

d. A failure to properly analyze recipient performance data to determine whether the incented jobs were actually created or retained pursuant to the award terms. These actions resulted in 2,993 reported jobs that were not substantiated as having been created or retained.

e. A failure to assess and collect appropriate fees from all applicants and recipients.

f. Inadequate accounting processes and lack of appropriate controls to ensure that the fees were recorded pursuant to Generally Accepted Accounting Principles.

In turn, OSC made 21 recommendations intended to correct these deficiencies. We also highlighted specific audit exceptions concerning over-certifications, overpayments, and improper awards. In a letter that accompanied the 2019 Audit, EDA disagreed with certain findings made by OSC. EDA agreed to comply with, or indicated that it had partially or fully complied with, most of the recommendations made by OSC. But EDA disagreed with and declined to comply with others. Most notably, EDA disagreed with those recommendations designed to ensure that New Jersey actually receives the economic benefits pledged by incentive program recipients at the time of application. In a corrective action plan dated April 9, 2019, EDA reaffirmed that position and declined to take any corrective measures to address those matters.

Weeks after the OSC issued the 2019 Audit, on January 24, 2019, Governor Murphy issued Executive Order 52 (EO 52). EO 52 noted that OSC's audit of EDA had "revealed grossly inadequate compliance and enforcement efforts by the EDA that failed to ensure that the tax incentive programs operated to the benefit of the State's economy." The executive order further stated that "the taxpayers of New Jersey deserve a thorough explanation of how and why these tax incentive programs operated with minimal oversight and accountability." The executive order established the Task Force on EDA's Tax Incentives (the Task Force) and charged it with "conduct[ing] an in-depth examination of the deficiencies in the design, implementation, and oversight of GROW and ERG, including those identified in the State Comptroller's performance audit, to inform consideration regarding the planning, development and execution of any future iterations of these or similar tax incentive programs."

The Task Force ultimately made 27 recommendations, including that EDA "issue comprehensive written policies and procedures to guide its employees" in administering the tax credit incentive programs. The Task Force also recommended that "EDA consider creating an internal inspector general or similar role, with a mandate to investigate misconduct, negligence, or similar issues within the Authority, and with appropriate independence" and that "when the EDA seeks to implement changes that implicate the eligibility requirements for obtaining tax incentives, it implement those changes by the formal rule-making process where possible."

Two years later, on January 7, 2021, Governor Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, which took effect immediately. That act was amended in part by P.L. 2021, c. 160, which took effect on July 2, 2021. Whether the EDA has complied with the Task Force recommendations or this more recent law is outside the scope of this report.

The primary objective of our review was to verify whether EDA has implemented the 21 recommendations contained in the 2019 Audit. We also revisited certain previously identified exceptions to determine whether they had been addressed. In conducting our review, OSC considered relevant statutes, regulations, EDA's policies and procedures, EDA's annual reports, and supporting documentation. We also interviewed key personnel at EDA and the New Jersey Department of the Treasury, Division of Taxation (Taxation) to obtain an understanding of key processes and internal controls.

This follow-up report thus first analyzes EDA's level of compliance with each of the 21 recommendations set forth in OSC's 2019 Audit, highlighting areas where EDA has fully implemented the recommendations and those areas where more work is required due to only partial implementation of a particular recommendation or a complete failure to implement any part of the recommendation. Next, it separately details EDA's apparent decision to take little to no action on specific audit exceptions that were previously identified in the 2019 Audit concerning over-certifications, overpayments, and improper awards and makes program-specific recommendations. Finally, OSC comprehensively summarizes its recommendations concerning the significant issues that remain to be addressed by EDA to ensure it is effectively administering New Jersey's various tax incentive programs, while simultaneously protecting New Jersey from financial harm that results from improper management of these programs.

IV. Status of 2019 Audit Recommendations

Recommendation 1

Create a policy to establish an applicant's baseline employment numbers at the time of application (i.e., pre-award stage) to ensure that incentives are awarded only for newly created or retained jobs. (2019 Audit, p. 12)

Status: Implemented

Our 2019 Audit found that EDA lacked appropriate policies, procedures, and controls in the pre-award stage necessary for the effective monitoring and oversight of the incentive awards. Specifically, EDA had not adopted and implemented policies and procedures for establishing an applicant's baseline employment numbers at the time of application to ensure that incentives were awarded only for newly created or retained jobs.

EDA advised in its corrective action plan that the Authority would require an applicant's baseline employment number to be established and identified at the time of application using Department of Labor and Workforce Development (Labor) data.

Consistent with EDA's corrective action plan, our review found that EDA adopted new policies and procedures that require baseline employment to be independently verified and established at the time of application.

Recommendation 2

Create a policy to establish adequate job-reporting requirements and obtain sufficient supporting documentation from recipients to ensure that jobs were actually created or retained in accordance with incentive agreements. (2019 Audit, pp. 12, 20-22)

Status: Implemented - BEIP, BRRAG, HUB, and GROW

Our 2019 Audit found that EDA had not instituted job-reporting requirements for award recipients to ensure that jobs were actually created or retained in accordance with incentive agreements. EDA also failed to obtain sufficient supporting documentation from recipients to ensure that jobs were created or retained in accordance with incentive agreements.

EDA advised in its corrective action plan that in addition to the memorandum of understanding (MOU) with Labor, it had already added process improvements to validate every job identified by an applicant in the pre-award stage. Specifically, EDA indicated that it had created an Excel add-in feature that incorporates quarterly WR-30 data into the job log required to be submitted by recipients, identifies discrepancies, and determines whether the employee qualifies.

During our review, we confirmed that EDA created policies that establish appropriate job reporting requirements across all programs. Examples of job reporting requirements include, among other things, a requirement that an applicant submit annual employee job logs that include an employee's full name, a unique employee identifier (i.e., full or abbreviated social security number), employment status (i.e., retained/new job and hire/termination dates), and position title. Additionally, the policies and procedures addressing EDA's access to recipient WR-30 data, the subsequent independent verification of jobs, and the review of BEIP jobs by Taxation were found to be sufficient.

Recommendation 3

Establish and define specific monitoring processes to assess recipient performance that, at a minimum, address the procedures to verify and compare the recipient-reported job data with independent information from the Department of Labor and Workforce Development and Department of Treasury, Division of Taxation. (2019 Audit, pp. 12, 16, 21-23)

Status: Implemented

Our 2019 Audit found that EDA had not established and defined specific monitoring processes to verify and compare the recipient-reported job data with independent information from Labor and Taxation.

EDA advised in its corrective action plan that, in addition to its MOU with Labor, it had drafted an MOU with Taxation outlining the specific roles and responsibilities assumed by the two entities. Additionally, EDA reported that it had contracted with an independent auditor to perform an operational review of the processes involving various state agencies, with a focus on process flow, documentation collection, and collaborative efforts by various state agencies and authorities in the collection of job data, cost verification, and documentation review involving the State's incentive programs.

We confirmed that the procedures for the operational review that will be undertaken by the independent auditor have been drafted, but not yet finalized as of October 22, 2021.

BRRAG, HUB, and GROW

During our review, we confirmed that EDA established sufficient policies and procedures to verify recipient-reported job data by means of an independent review of recipient-submitted job data that considers data from Labor for the BRRAG, HUB, and GROW programs.

BEIP

During our review, we found that the BEIP policies and procedures included verifications and validations of recipient-reported job data by EDA, as well as a review of the BEIP-incentivized jobs by Taxation. We confirmed directly with Taxation that the division audits 100 percent of the BEIP-incentivized jobs using an automated program called MACROS. The automated program compares the wages and withholdings submitted with the incentivized employees' tax filings and identifies anomalies. Anomalies may include, but are not limited to, incentivized employee tax return figures that are less than what was submitted by EDA and employers that are not registered with Taxation. We found that EDA drafted an MOU with Taxation outlining the procedures to audit 100 percent of the incentivized employees using automated matching techniques and a comprehensive review or audit of any record deemed incomplete, insufficient, or incorrect. Although EDA's corrective action plan stated that the MOU was to be executed in the second quarter of 2019, it had not yet been finalized at the beginning of this follow-up review. When questioned about the delay, EDA officials stated that they were awaiting the results of the Governor's Task

Force Report and the introduction of new incentive bills to ensure any issues and new components were properly addressed in the MOU prior to its execution. EDA provided an executed MOU with Taxation dated September 1, 2021 that outlines the responsibilities for both entities, including the procedures that will be used by Taxation.

We confirmed with Taxation that a record of verifications performed via MACROS is not saved. Consequently, we were unable to review the actual verifications performed for the sampled projects. We recommend to both EDA and Taxation that they update their MOU to institute a process and procedures for requiring the retention of records of all verifications performed. This is important for both future audit purposes and quality control.

Recommendation 4

Require recipients to submit sufficient supporting documentation to demonstrate that projects satisfied the net increase in employment and/or maintained the required statewide employment levels. (2019 Audit, pp. 20-22)

Status: Partially Implemented

Our 2019 Audit found that EDA lacked appropriate policies, procedures, and controls necessary for the effective monitoring and oversight of the incentive awards. Specifically, EDA did not consistently require or obtain sufficiently detailed documentation and did not have a formal process for verifying that a project satisfied the net increase in employment and/or maintained the required statewide employment levels. Instead, EDA relied solely on a recipient company official's certification to document purported compliance. EDA advised in its corrective action plan that it had enhanced its review of the job information provided by awardees through the MOU entered into with Labor.

Our review revealed that EDA partially implemented changes that address this recommendation, but there were deficiencies with its implementation of the baseline employment policy. We found that the MOU with Labor provides EDA the ability to access quarterly WR-30 data in lieu of relying solely on recipient-reported data to compare a recipient's baseline employment figure when determining if a project satisfied the net increase in employment and/or maintained the required statewide employment levels. We tested all five projects approved subsequent to EDA's submission of its corrective action plan on April 9, 2019 and verified that EDA has implemented its baseline employment policy for each project. However, at the time of our follow-up review, these processes could not be confirmed because projects tested under the newly implemented guidelines did not have executed grant agreements or had not received tax certificates. As a result, those entities have not submitted annual reports at this time and we were prevented from testing this recommendation for full compliance.

Our review found that when confirming baseline employment, EDA did not always collect sufficient information to determine whether a project satisfied employment requirements. Of the projects requiring a confirmation of baseline employment, EDA utilized a wage report to confirm baseline employment for one of the five GROW projects available for our review that had unique identifiers for employees redacted. It is not possible to establish the baseline in a reliable way that protects the State's interests without identifying specific persons who are verified through external sources to be employees.

Our review also found that EDA did not have a record of work documenting baseline employment verifications for any of the projects tested with baseline employment at application. This is especially concerning because we identified variances between employees reported on recipients' New Jersey payroll reports and baseline employment figures established by underwriters. EDA's policy provides that "[a]ny relevant applicant/consultant correspondence must be saved to the file." Applicants who pledge to increase jobs as a condition of receiving tax credits may have an incentive to establish a low baseline to make meeting their targets easier.

EDA's process should ensure that this does not happen and should review applicants' claims with an appropriate level of skepticism. Variances between payroll reports and established baseline employment, which are common because the reports contain ineligible part-time and newly hired or terminated employees, must be reconciled as part of this process. In the absence of documentation addressing the variances, it is not possible to ensure that the analysis was done or done correctly. A detailed record of work should be prepared to memorialize that a review was completed, to indicate if and how variances were reconciled, and to ensure that employees deemed ineligible based on program terms and eligibility are excluded from future awards.

To summarize, we urge EDA to address these issues by ensuring it establishes baseline employment by using unique identifiers to ensure proper verification of all employees and memorialize the process for establishing baseline employment, including a record of variances. Taking these steps will ensure that EDA is accountable for its decisions on this crucial issue, will enable future oversight to occur, and will ensure incentives are only awarded when recipients actually earn them.

We further urge EDA as part of its implementation of the new tax incentive programs to ensure that these recommendations are considered.

Recommendation 5

Establish and define the processes to evaluate pre-award and performance data for recipients that receive incentive awards from multiple programs to ensure that jobs are not duplicated and that incentives are appropriately earned for each program. (2019 Audit, pp. 13, 19)

Status: Partially Implemented

Our 2019 Audit found that EDA did not define the processes for evaluating pre-award and performance data for recipients with incentive awards from multiple programs to ensure that jobs were not duplicated and that incentives were appropriately earned for each program.

EDA advised in its corrective action plan that it had updated processes to ensure that companies that are receiving multiple awards are not duplicating employees. Additionally, EDA stated that it would review all previous disbursements to multiple award recipients and, in consultation with the Attorney General's Office, would seek to recover any funds that were disbursed inappropriately or would reduce future certifications.

We reviewed the policy established by EDA for monitoring recipients of multiple incentive awards. We concluded that the policy is inadequate because it does not establish procedures at an appropriate level of detail to guard effectively against EDA making ineligible payments or awarding tax credits inappropriately when a recipient has received multiple incentive awards.

EDA's policy for monitoring recipients of multiple incentive awards requires the same incentive officer to conduct the annual review of a recipient of multiple incentive awards. The incentive officer is directed to review the recipient's compliance for each award and to identify any employees included in the annual report for more than one award. While it is an improvement to have the same incentive officer review the annual reports for all incentive programs, the policy does not provide sufficient details of the processes to be performed by the incentive officer. The policy lacks specific steps that should be undertaken by the incentive officer to conduct a meaningful review of pertinent job data, such as a comparison of unique identifiers across multiple incentive program annual reports to ensure an employee is not incentivized more than once. Additionally, the policy does not require the creation of a detailed record of work to memorialize the result of the incentive officer's review.

Our review found that EDA examined all previous disbursements issued to multiple award recipients between 2006 and 2017. EDA's examination was completed on January 29, 2019. The review included 23 companies with multiple incentive awards and identified 4 projects that received ineligible payments totaling $66,000. However, EDA informed us that it was unable to locate reports for 1 or more years for 13 of the 23 recipients whose commitments have expired. In the more than two years since the examination was completed, EDA has taken no action to recover the funds. EDA pledged to reduce future awards by the amounts that were overpaid.

We urge EDA to create a policy that includes specific steps for evaluating pre-award and performance data to ensure that jobs are not counted twice and that incentives are appropriately earned for each program. In order to protect the State's financial interests when multiple awards are provided, we urge EDA to take timely action to recover the inappropriately earned awards.

The risks identified in this area may also be present with the new incentive programs, which include job requirements. We urge EDA as part of its implementation of those programs to ensure that the recommendations in this section are considered.

Recommendation 6

Establish policies and procedures that define the eligibility processes for all incentive programs and a method to determine a project's economic benefit to the state to ensure that all incentive awards are executed pursuant to the statutory and regulatory provisions of the applicable incentive program. (2019 Audit, pp. 13-19)

Status: Implemented - BEIP, BRRAG, HUB, and GROW

Our 2019 Audit found that EDA had not established policies and procedures that define the eligibility processes for the various incentive programs or the methods to determine a project's economic benefit to the State. Both of these efforts are essential to ensure that all incentive awards are executed pursuant to the statutory and regulatory provisions of the applicable incentive programs.

EDA advised in its corrective action plan that it would establish new, and strengthen existing, policies and procedures governing all aspects of the administration of incentive programs. EDA indicated that its Portfolio Management and Compliance Division had reviewed the process flow and implemented adjustments to further enhance oversight and that the then-newly established Quality Control Department would focus on ensuring that the project officers review the recipient's documentation and issue tax credit certificates when program requirements have been satisfied.

During our review, we confirmed that EDA created appropriate policies and procedures for initial program eligibility. Additionally, EDA established policies and procedures for calculating a project's estimated economic benefits to the State at the time of application as required by relevant statutes and regulations. EDA's organizational chart does not include a Quality Control Department, but there were two individuals identified with titles indicating a quality control function: a Director of Incentives Risk and Quality Assurance and a Senior Incentives Quality Control Officer. Furthermore, EDA developed quality control checklists that are currently being used to review GROW projects.

Recommendation 7

Analyze "actual" performance data to determine a recipient's continued eligibility for incentives, a project's economic benefit to the state, and whether there are grounds to terminate or suspend awards as applicable. (2019 Audit, pp. 13, 16, 19-21)

Status: Partially Implemented - BRRAG, GROW, and HUB
Not Implemented - ERG
Implemented - BEIP

Our 2019 Audit found that EDA did not consider actual performance data when analyzing a recipient's continued eligibility for an incentive program prior to, for instance, issuing a letter annually that permitted an entity to claim tax credits. EDA did not adjust eligibility or incentive awards based on actual performance and did not reassess the net benefit analysis considering the recipient's actual job performance throughout the award term. During the 2019 Audit, our testing found that if EDA had reassessed 2 of the sampled projects for the actual number of jobs and average salaries reported by the recipient, the incentive awards for those projects would have been reduced by approximately $11.2 million.

EDA disagreed with OSC's recommendation, writing that "a reassessment of the net benefit test throughout the life of an award is not required by any current incentive legislation, although NJEDA supports this being included in future legislation." EDA further claimed that "applicants cannot be compelled to provide additional information unless included in the relevant statute."

And:

> The NJEDA strongly disagrees with OSC's suggestion that the net benefit be rerun to determine deficiency for both the HUB and ERG programs because this is not required by statute; as dictated by statute, these programs have no specific job creation/retention requirements, other than meeting eligibility threshold baselines. As a result, the NJEDA verifies the capital investment and threshold job numbers at certification in strict accordance with statutes.

EDA also noted that:

> for its most active program [GROW], the NJEDA introduced reassessing the Net Benefit Analysis under certain circumstances through regulation, and the NJEDA anticipates that reassessment may be a part of any new incentive legislation. However, NJEDA disagrees with OSC's use of deficiency for both the HUB and ERG programs; as dictated by legislation, these

programs had no specific job creation/retention requirements, other than meeting eligibility threshold baselines.

Issue of Statutory Requirement to Review Economic Benefits

EDA's position on this issue articulated in response to the 2019 Audit appears to be unsound in four ways. First, the mere fact that a statute does not require a regular review of the economic benefits simply means that EDA has discretion on that issue and can choose whether and how to conduct such a review. The absence of a statutory requirement is not dispositive of the issue in the way that EDA suggests.[2] EDA has discretion to implement OSC's recommendation.

Second, there is an adequate statutory basis to require regular reviews of economic benefits as part of ERG, HUB, and GROW.[3] All three statutes require projects to provide net economic benefits in addition to other requirements. EDA, through regulation, has defined the requisite net economic benefit as being at least 110 percent of the award. A net economic benefit of at least 110 percent is therefore a component of program eligibility—as a matter of law—and EDA may require that this minimum standard be satisfied as part of an annual evaluation of whether to award tax credits.[4]

There is also nothing in any of the enabling legislation for the various tax credit programs that explicitly prevents EDA from linking its incentive awards to a net economic benefit greater than 110 percent. State agencies have powers that have been expressly granted by the Legislature and incidental or implied powers that are reasonably necessary or appropriate to effectuate those expressly granted powers.[5] EDA thus has wide authority to adopt regulations and enforce agreements with recipients if its actions achieve the legislative goal of ensuring a net economic benefit to New Jersey. Thus, for instance, if a project was underwritten based on a recipient's pledge to provide more than 110 percent benefit to the State, EDA may ensure compliance with that higher pledge. In all of the regulations, the 110 percent level is a minimum, not a maximum.

Third, EDA's grant agreements for ERG, HUB, and GROW preserve EDA's discretion to enforce eligibility requirements when awarding tax credits annually. ERG grant agreements require recipients to "[s]ubmit to the Authority for its review and approval any substantive change in the scope, financial structure and/or projected returns." The agreement states that "[i]f upon this review, the Project no longer meets the eligibility requirements for a State ERG Grant, this Agreement may, in the Authority's sole discretion, be terminated or adjusted to meet eligibility." HUB grant agreements require as part of an annual request for tax credits by a recipient that the recipient submit "[a] certification acceptable to the Authority by the Recipient indicating whether or not the Recipient is aware of any condition, event or act which would cause the business not to be in compliance with the approval, the Act or the regulations promulgated thereunder." GROW agreements include specific provisions reducing or eliminating tax credits when the

[2] *J.K. v. N.J. State Parole Bd.*, 247 N.J. 120 (2021) (explaining that agency does not need specific statutory language permitting it to take a specific action when that action falls within its broadly delegated authority).

[3] This section focuses on these three programs and not BEIP and BRRAG because BEIP is not subject to the net benefit requirement, and BRRAG only had three outstanding incentive awards at the time of our follow-up engagement.

[4] The risk of a recipient becoming ineligible based on insufficient economic benefits is especially great if the project was underwritten at an economic benefit level that is close to or at the minimum 110 percent level. We identified instances in which incentive awards were approved at exactly the 110 percent threshold. Consequently, if these projects fail to create or maintain one less job, the projects are at risk of not producing the required 110 percent net economic benefit and thereby become ineligible.

[5] *In re Public Serv. Elec. & Gas Company's Rate Unbundling,* 167 N.J. 377, 384 (2001) (recognizing "[t]he grant of authority to an administrative agency is to be liberally construed to enable the agency to accomplish the Legislature's goals"). See also *State v. N. Beach 1003*, 451 N.J. Super. 214, 234 (App. Div. 2017) (collecting cases).

capital investment or number of jobs drop below 25 percent of what was pledged and further states in bold and capitalized letters that “**ANY REDUCTION IN THE NUMBER OF ELIGIBLE GROW JOBS SHALL REDUCE THE AMOUNT OF TAX CREDITS FOR THAT YEAR**.”

Fourth, EDA is incorrect that “applicants cannot be compelled to provide additional information unless included in the relevant statute.” EDA’s regulations, policies and procedures, and grant agreements all require information to be submitted that is not required by statute. Additionally, EDA, for most programs, already requires this information to be submitted and records the information as part of its normal processes. EDA though to date elected not to use the data it collects for purposes of regularly evaluating the economic benefit of the incentivized projects.

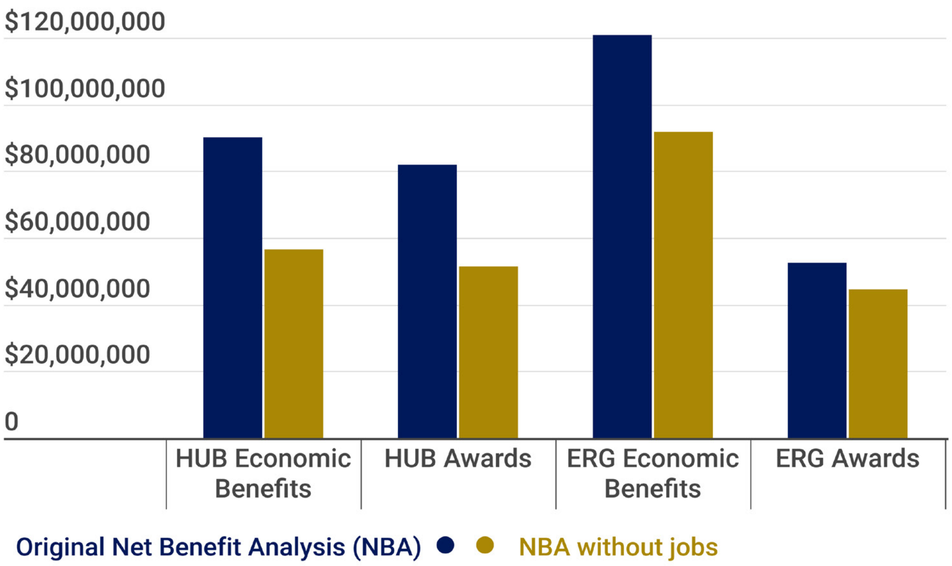
EDA’s rejection of OSC’s 2019 recommendation that EDA “[a]nalyze ‘actual’ performance data to determine a recipient’s continued eligibility for incentives” because statutes do not require consideration of this data is not grounded in law or supported by the regulations or agreements that have been approved by EDA. EDA has both express and implied powers to annually assess the net economic benefit and the job performance data for its award of tax credits for the tax incentive programs, even if the Legislature did not expressly require EDA to do so. Both the Legislature and EDA have, through the statutes and regulations, acknowledged EDA’s fiduciary obligation to reassess the net economic benefit and job performance data for the awards of tax credits under these tax incentive programs.

The Impacts of EDA’s Failure to Use Actual Performance Data

Under its current policies, EDA most often disregards actual performance when considering a project’s net economic benefit to the State, except in limited circumstances. A simulation involving EDA’s net economic benefit model and EDA’s actual infrequent reassessments using its own model revealed that EDA’s failure to rely on actual performance may be causing the State to award many millions of dollars’ worth of unearned tax credits.

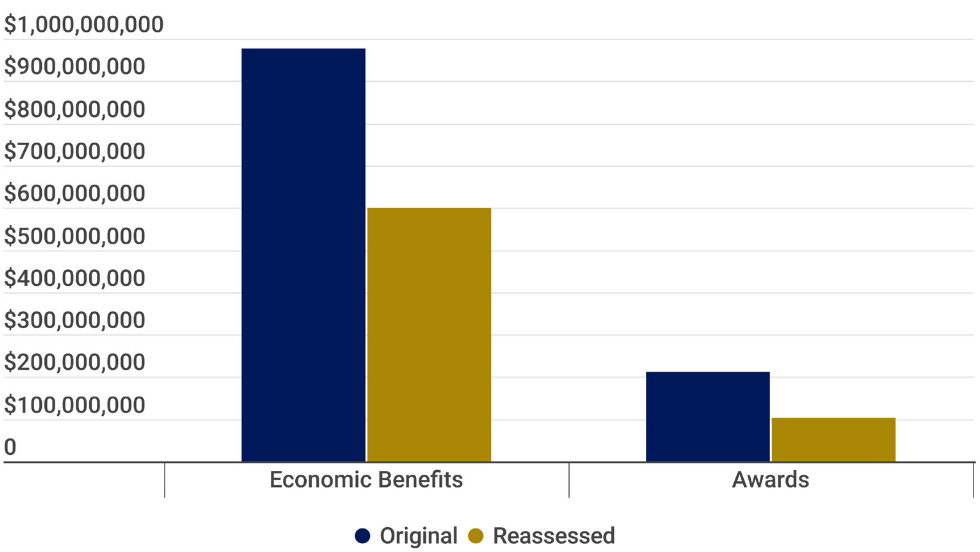
The simulation of the net benefit analysis using EDA’s model for the HUB and ERG programs demonstrates that jobs form a large part of the projected net economic benefit. The HUB and ERG programs in part provide incentive awards for commercial projects based on economic benefits that were calculated based substantially on projected jobs with specified salaries. These figures are used to estimate the economic benefits a project would create to satisfy eligibility requirements. To demonstrate how much of the projected benefits are based on jobs, we removed the jobs from the model for commercial HUB and ERG projects included in our review sample. The chart below shows that approximately one-third of each project, or $63 million total of the projected economic benefits, is tied to jobs. This demonstrates that EDA’s failure to fully verify jobs using actual data could conceivably result in the State losing out on substantial economic benefits.

Economic Benefits With and Without Jobs



EDA's own infrequent reassessments also illustrate the point. As part of our review, we requested and reviewed a listing of all net benefit analysis reassessments performed by EDA. EDA identified 14 net benefit analysis reassessments that were performed subsequent to our 2019 Audit during 2019 and 2020. The reassessments calculated an estimated loss of approximately $377 million in economic benefits as compared to the original net benefit analyses. In connection with the reduction in economic benefits, EDA reduced approved awards by $108 million.

Reassessment Results



As demonstrated by these figures, net benefit analysis reassessments may have a significant impact on award amounts. It is likely that EDA would save the State considerable sums of money if it performed such analyses regularly.

It is additionally important to note that the likelihood of the State not receiving anticipated economic benefits appears greater during the COVID-19 pandemic, when substantial numbers of employees were laid off or began working remotely instead of onsite. To protect the State's interests, it is especially important that EDA evaluate whether the State received the benefit of the bargain prior to releasing tax credit certificates to businesses that may not have provided the promised economic benefits since March 2020.

Testing with Actual Performance Data within Incentive Programs

As part of our review, we identified samples within each program and evaluated the impact of EDA's policies regarding net benefit reassessments within the program. We found as follows:

Status: Partially Implemented - BRRAG

Our sample contained one BRRAG project that submitted an annual report for the 2019 reporting year. Our review confirmed that WR-30 data was obtained and reviewed to validate actual job performance. We found, however, that EDA does not actively track or assess the economic benefits to the State based on these figures. Inputting the 2019 reporting year job figures into the net benefit analysis generated an estimated $10.9 million in additional estimated economic benefit to the State that is not reported publicly by EDA.

We find recommendation 7 is partially implemented as to the BRRAG program. While actual job performance was considered during the determination of continued eligibility, economic benefits were not tracked and reassessed throughout the award term.

Status: Partially Implemented - GROW

There were 44 projects subject to the recommendation in the 2019 reporting year. These projects had combined annual and overall awards totaling approximately $73.7 million and $751 million, respectively. Our sample included 8 of those projects, with combined annual and overall awards totaling approximately $40.3 million and $406.5 million, respectively. Our review found that although EDA incentive officers are performing independent verification of jobs utilizing Labor's data to validate "actual job performance," EDA does not consistently use this data to assess a project's economic benefit to the State.

EDA updated the GROW program's policies and procedures to include the reassessment of a project's net benefit analysis under certain circumstances. Contrary to what is suggested in the grant agreements for the program, which are discussed above, the reassessments are not ongoing and are conducted only during the overall review phase of the project. Inputting "actual job performance" within the sampled GROW projects' net benefit analyses resulted in an estimated loss of approximately $5.47 million in economic benefits for 1 project and a combined total estimated gain of approximately $348.9 million in economic benefits for 6 other projects. The estimated loss in economic benefits for the one project did not affect the calculated award amount, but it is relevant to the economic benefits created by the project and thus the success of the program as a whole.

We find recommendation 7 is partially implemented as to the GROW program. While actual job performance was considered during the determination of continued eligibility, economic benefits were not tracked and reassessed throughout the award term.

Status: Partially Implemented - HUB

There were three commercial HUB projects subject to the recommendation that submitted annual reports for the 2019 reporting year. These 3 projects had combined annual approved awards for 2019 of approximately $35 million and combined overall incentive awards totaling $350.7 million. The sample universe contained 2 of the aforementioned projects; had 2019 reporting year awards totaling $29.1 million; and had combined overall incentive awards totaling $292.7 million. Our review confirmed that independent verifications of jobs are performed utilizing Labor's WR-30 data. Incentive officers obtain and review Labor's data to validate job performance and to confirm the minimum requirements of the program are met (i.e., 250 full-time jobs located on-site and, if applicable, 200 of said jobs considered new). All jobs reported, however, were not verified and jobs that were in excess of the minimum requirements were instead marked as "exceeds job requirements."

We confirmed that EDA does not actively track or monitor a HUB project's economic benefit to the State and that the net benefit analysis reassessment policy does not apply to HUB projects. Testing found that inputting average job performance figures to evaluate 1 of the sampled project's net benefits resulted in a projected decrease of approximately $12.2 million in economic benefits and an award overstatement of approximately $11.1 million. For the other sampled HUB project, EDA failed to provide an updated net benefit analysis spreadsheet for the project that was awarded $210.8 million in incentive awards with expected economic benefits of approximately $232 million. Therefore, the projected economic benefits could not be tested based on job performance.

During our review of the HUB program, we identified an EDA Board memo for one project that incorporated a provision requiring the recipient to create the jobs inputted within the net benefit analysis or face a proportionate award reduction. The added provision is consistent with our conclusion that EDA may lawfully, as an exercise of its fiduciary duties, take steps to ensure jobs inputted within the net benefit analysis were actually created, even though such an exercise is not statutorily mandated. The Board memo is notably for the previously discussed project with $210.8 million in incentive awards for which EDA could not produce the updated net benefit analysis.

We find recommendation 7 is partially implemented as to the HUB program. While actual job performance was considered during the determination of continued eligibility, economic benefits were not tracked and reassessed throughout the award term.

Status: Not Implemented - ERG

Our review focused on commercial ERG projects as residential and mixed-use projects are not subject to the net benefit analysis requirement. Our sample consisted of all six commercial ERG projects that were subject to the recommendation that EDA rely on actual performance data. These projects had combined annual incentive awards of $3.2 million, and overall approved awards totaling $52.5 million.

Our review identified 595 jobs that were included within the sampled commercial ERG projects' net benefit analyses. In order to identify the economic impact of these jobs, OSC performed a reassessment by removing the 595 jobs from their respective net benefit analyses. The reassessments found that the removed jobs accounted for $29 million dollars in estimated economic benefits. Furthermore, the removal of jobs identified 3 projects that could be at risk of not generating the required minimum 110 percent net economic benefit to the State that is imposed by regulation. The unverified jobs associated with these 3 projects directly accounted for $7.94 million dollars in incentive awards. We were unable to perform reassessments based on actual performance because EDA does not require recipients to submit annual job logs for the commercial ERG program.

We find recommendation 7 is not implemented as to the ERG program because actual job performance was not considered during the determination of continued eligibility, and economic benefits were not tracked and reassessed throughout the award term.

Status: Implemented - BEIP

For the BEIP program, EDA performs a manual review and automated validations of the recipient's annual progress reports, which is followed by a review by Taxation of 100 percent of the incentivized BEIP employees. The review performed by Taxation compares recipient-reported data to information within Taxation's GENTS system. Based on the process explained by Taxation, key job factors, such as incentivized employees' wages and state income tax withholdings, are fully verified. For purposes of testing this recommendation, the review and validations completed by EDA and subsequent review performed by Taxation were considered.

The universe of projects subject to the recommendation included 19 projects with combined total awards of approximately $241 million. Our sample included 7 of the aforementioned projects that combined for approximately $72 million in total awards. The sampled projects were approved by EDA to receive $11.5 million in annual awards based on 1,647 incentivized jobs. Our review found that Taxation deemed 191, or 12 percent, of the sample's 1,647 jobs and $786,979, or 7 percent, of the $11.5 million in awards approved by EDA to be ineligible.

EDA's verification procedures in conjunction with Taxation's subsequent review were found to sufficiently address the recommendation for the BEIP program.

In sum, EDA's prior unwillingness to fully implement recommendation 7 across all programs and reassess net economic benefits has had substantial negative financial impacts on the State. Businesses that pledged to provide jobs at a certain level and failed to do so nevertheless received the same tax incentives. Additionally, failing to revisit the assessments has limited EDA's ability to accurately report on the economic benefits and the overall effectiveness of the incentive programs. This information is essential for policymakers to make informed decisions regarding the continuation of existing incentive programs and the creation of new ones.

In response to a draft of this report, as discussed in Appendix A, EDA agreed prospectively to change its policy regarding the reevaluation of net economic benefits for all GROW and HUB awards. EDA committed to reevaluate net economic benefits for all active GROW and HUB awards at their overall certification and on an annual basis. EDA further committed to reevaluate a sample of projects with previously-issued tax credits.

We note that EDA's change is contingent on the Attorney General's guidance regarding applicable legislation. In the absence of that legal advice, EDA presumably cannot implement its planned programmatic changes. In view of the fact that three years has already passed since the 2019 Audit, and in view of the substantial positive impact on the State that this change is expected to have, it is important that EDA's policy be implemented soon.

EDA's commitment regarding GROW and HUB does not extend to ERG. EDA notably has not collected job data for ERG incentive awards, which makes it more difficult to implement the policy change for that program. We nevertheless maintain our recommendation as to ERG.

Recommendation 8

Develop and implement an evaluation and assessment process for the incentive programs to report on the success and accomplishments of the programs and determine the economic benefits actually realized. (2019 Audit, p. 27)

Status: Not Implemented - BEIP, BRRAG, GROW, HUB, and ERG

Our 2019 Audit found that EDA lacked a comprehensive process for determining whether tax award recipients created, retained, or satisfied the incentive program requirements. Furthermore, EDA did not have a process for determining which and how much incentive programs provide economic benefits to the State.

EDA advised in its corrective action plan that its new CRM and EnABLE systems would serve as a centralized database. The new systems would contain all jobs and capital investments data, which would allow EDA to better report on the jobs created and retained and on capital investments made by the award recipients.

During our review, we found that EDA did not update policies or procedures to implement an assessment process to report the success, accomplishments, and economic benefits realized by the five reviewed incentive programs. EDA explained that prior to OSC's audit, the annual reports simply identified the projects and incentive programs that received tax awards in the reported year. During the follow-up review, EDA stated that it included the award issuance amounts in the annual report. We reviewed EDA's 2019 Annual Report and found that it did not sufficiently detail award recipient performance, ongoing accomplishments, and overall program successes. The report did not address jobs created, retained, or satisfied conditions during 2019. We note that this appears to be inconsistent with Executive Order 37 (Corzine 2006) (EO 37), which establishes state policy regarding annual reports issued by independent state authorities and directs them to include "a discussion of the degree of success the authority had [during the previous fiscal year] in promoting the State's economic growth strategies and other policies."[6]

We found recommendation 8 was not implemented because EDA did not update policies or procedures to implement an assessment process to report the success, accomplishments, and economic benefits realized by the five reviewed incentive programs. OSC urges EDA to be as transparent as possible regarding the State's tax incentive programs because transparency enables the public and elected officials to hold EDA accountable and to require adjustments in the future. Transparency also minimizes the risk

[6] EO 37, paragraph 2, states:

> On an annual basis, each State authority shall prepare a comprehensive report concerning the authority's operations. The report shall set forth the significant actions of the authority from the previous year, including a discussion of the degree of success the authority had in promoting the State's economic growth strategies and other policies. In addition, the report shall include authority financial statements and identify internal financial controls at the authority that govern expenditures, financial reporting, procurement, and other financial matters and transactions. The report shall contain a certification by the appropriate senior staff member(s) that during the preceding year the authority has, to the best of their knowledge, followed all of the authority's standards, procedures, and internal controls, or, where such certification is not warranted, shall set forth the manner in which such controls were not followed and a description of the corrective action to be taken by the authority. Following approval of the report by the board of directors, a copy of the report shall be submitted to the Governor's Authorities Unit and posted on the authority's web-site.

and appearance of favoritism. We thus urge EDA to use its discretion to provide as much detail as possible regarding incentive awards by, among other things, using its CRM system, which collects the number of jobs at application, jobs committed to, jobs created, and jobs certified. This level of detail provides transparency that assists policymakers and the public in their evaluation of whether the economic benefits of incentive programs are attained.

During the course of our review, we found that job data within EDA's incentive database, CRM, relies on manual inputs. For our sampled projects, we identified 145 jobs for 3 projects that were not captured due to input errors. Additionally, EDA did not consistently apply its policies and procedures when verifying newly created jobs. Consequently, we identified 382 jobs reported in CRM that were not created. In both instances, the job counts did not affect award amounts, but the error prevented EDA from accurately reporting on job creation. We also identified various issues in CRM specifically related to the BEIP program. These issues include coding errors related to award caps and inaccurate project data. These errors did not require reductions in awards. EDA's reliance on CRM for annual reporting of incentive program activities discussed in recommendations 8 and 9 highlight the importance of collecting reliable information. We recommend that EDA perform validations of the BEIP program as a whole and job counts for all incentive programs.

In its response to this report, EDA disagreed with our determination that recommendation 8 was not implemented. EDA cited the 2020 annual report, standard operating procedures, and the "Completed and Certified" report. We note that the 2020 annual report and standard operating procedures were not available until our testing was complete and a discussion draft of this report was provided to EDA. Also, the 2020 report was in draft form when it was provided to us and the "Completed and Certified" report did not consistently include actual job creation figures. It is additionally noteworthy that EDA's commitment to relying on actual data in awarding annual tax credits for two programs, as discussed in recommendation 7, will elevate the relevance of that data for purposes of EDA's internal processes and reporting, which may over time increase the likelihood that EDA complies with OSC's recommendation regarding reporting.

We further urge EDA as part of its implementation of the new programs to ensure that the recommendations in this section are considered.

Recommendation 9

Revise current processes for the annual reporting of incentive program activities to be based on actual performance and that address ongoing accomplishments and success of the awardee's performance. (2019 Audit, p. 28)

Status: Not Implemented - BEIP, BRRAG, GROW, HUB, and ERG

Our 2019 Audit found that EDA's annual reports were based on unverified recipient-reported job data, which were not adjusted to reflect recipients' actual performance. The data was simply published in its raw form on EDA's website.

EDA advised in its corrective action plan that its collaboration with Labor would enhance the reporting of jobs created and retained within the programs. Additionally, EDA planned to summarize in its annual report the accomplishments of incentive programs and provide a year-over-year summary to show the progress within the active programs.

During our review, we found that EDA had not revised policies or procedures for the annual reporting process to focus on recipients' actual performance. Our review of EDA's 2019 Annual Report indicated that it lacked transparency with regard to award recipients' actual performance because it did not indicate jobs created, retained, or satisfied conditions during 2019. The report simply presented tax credits issued in 2019 per program and per project for the incentive programs.

Lastly, as of 2019, the report presented the cumulative number of jobs created and capital investments made by the BEIP and BRRAG programs. Presenting the cumulative number to date, instead of yearly amounts, does not provide transparency regarding the actual number of jobs created and retained in the program in a way that enables the public to scrutinize and understand the program.

As noted above in recommendation 8, in its response to this report, EDA disagreed with our determination that recommendation 9 was not implemented.

Full implementation of this recommendation is essential to provide transparency to enable taxpayers and legislators to make informed decisions regarding current and future incentive programs. We urge EDA to revise its annual reporting process for incentive programs performances to be based on actual recipients' performance results, highlighting their accomplishments and failures, in order to provide transparent and reliable information to policymakers, stakeholders, and New Jersey residents.

Recommendation 10

Assess the efficiency and cost effectiveness of the current monitoring activities performed by the independent audit firm as compared to other available options, including enhancing EDA's current internal operations. (2019 Audit, p. 30)

Status: Partially Implemented - GROW
Not Implemented - BEIP, BRRAG, HUB, and ERG

Our 2019 Audit found that the agreed-upon procedure reports prepared by the independent auditor were inadequate because, among other things, they did not include a comparison of the recipient-reported jobs with the Labor data.

As part of its proposed corrective action, EDA reported that it had expanded the scope of its contract with the independent auditor to increase both the number of annually reviewed certified businesses and the breadth of the reviews. The expanded scope also included the performance and operational review between various state agencies. Lastly, EDA stated that it had established the Quality Control Department to ensure the documentation reviewed by EDA project officers satisfied all incentive program requirements.

We found that EDA did not complete a cost analysis of the independent auditor's monitoring activities and exercised a two-year contract extension until January 10, 2022. The contract extension increased the number of projects to be reviewed and included an operational review of the collaboration between EDA and state agencies. The extension increased the value of the original contract from $500,000 to $690,100. Our review also noted the contract extension did not include language addressing the increased percent or number of projects reviewed or revising the agreed-upon procedures for the selected projects. In addition, the operational review was not finalized and remained in draft form as of October 22, 2021. When questioned, EDA explained the review was being completed because new legislation had been enacted.

Status: Partially Implemented - GROW

EDA increased the number of GROW projects reviewed under the auditor's contract from 10 to 20 percent and required independently verified recipient-reported job data using Labor reports. We also noted that EDA's Quality Control Department reviews GROW projects for compliance with program requirements.

We found that the operational review detailed in EDA's corrective action plan included a review of the GROW incentive program, but had not been finalized. Furthermore, the independent auditor continued to apply the same auditing procedures from 2018 in 2019 reviews without adjusting the scope of the verification procedures to account for OSC's recommendation.

Status: Not Implemented - BEIP, BRRAG, HUB, and ERG

We found that EDA independently verified the BRRAG and HUB recipient-reported job data with Labor reports. EDA did not verify data reported in the BEIP program. Although EDA does not confirm BEIP recipient-reported data with Labor reports, Taxation performs a 100 percent review of incentivized employees. EDA's contract and extension with the independent auditor included the review of HUB and ERG incentive programs, but BEIP and BRRAG incentive programs were not included. Although HUB and ERG were included in the contract and extension, we found that in 2019, the independent auditor did not review any HUB or ERG projects.

We found that the operational review performed by the independent auditor included the ERG incentive program, but excluded the BEIP, BRRAG, and HUB incentive programs. Additionally, the operational review has not been finalized. Lastly, we noted that the Quality Control Department did not review BEIP, BRRAG, HUB, or ERG projects.

In sum, full implementation of recommendation 10 is essential to ensure that public funds are spent responsibly and that monitoring procedures identify irregularities. We urge EDA to fully implement its contract with the independent auditor, which includes review of the GROW, HUB, and ERG certified projects. Furthermore, we urge EDA to assess internal and/or external monitoring activities for the incentivized employees in the BEIP, BRRAG, HUB, and ERG projects. In addition, consistent with the recommendation in our 2019 Audit, we urge EDA to complete a cost analysis of the monitoring services provided by the independent auditor in order to implement the most efficient and cost effective monitoring activities.

Recommendation 11

Develop and implement reporting requirements and a uniform process utilizing templates that: (1) require consistent format and data elements; (2) require the level of detail necessary to test the accuracy or reliability of recipient-reported job data; and (3) provide the details necessary to ensure that a recipient has satisfied all of the required job factors. (2019 Audit, pp. 32-38)

Status: Implemented - BEIP, BRRAG, GROW, and HUB

Our 2019 Audit found that recipient annual reports were not consistent in their format or data elements, did not include sufficiently detailed information to test the accuracy of the recipient-reported job data, and did not ensure the recipient had satisfied all of the program requirements.

EDA advised in its corrective action plan that it had updated the job log review process and would also be working with Labor to verify that all of the incentive award job requirements have been met. Additionally, EDA explained that creating one uniform template process across all programs would not sufficiently allow for the level of detail required for each unique program.

During our review, we found EDA implemented a reporting process requiring BEIP, BRRAG, GROW, and HUB program recipients to provide sufficiently detailed job data that allows EDA to verify the accuracy of the recipient-reported job data and thereby ensure the recipients met the respective program requirements.

Recommendation 12

Develop and implement monitoring and oversight activities that require a thorough analysis and assessment to determine whether: (1) jobs were actually created or retained pursuant to program requirements; (2) awardees have complied with the requirements of award programs with respect to minimum statewide and/or post-performance employment levels; and (3) awardees have complied with the requirements of award agreements with respect to employees' actual work hour and location requirements. (2019 Audit, pp. 33-36)

Status: Implemented

Our 2019 Audit found that EDA's current monitoring and oversight process lacked sufficiently detailed data to confirm whether jobs were actually created or retained, which led to overstated and overpaid incentive awards. We identified a total of 2,993 exceptions with the recipient-reported jobs in 24 of the 37 sampled projects, about 65 percent.

EDA advised in its corrective action plan that the job log had been amended to require additional specific information and that the Authority would validate, on a monthly basis, every job reported on the job log submitted by the applicant by cross-referencing WR-30 information. Additionally, EDA informed us that there had been a restructuring within the Portfolio Management and Compliance Department to ensure roles and responsibilities were consistent among divisions. EDA also reported that it had created a new Quality Control Department.

Our review found that EDA's independent verification of recipient-reported jobs for the sampled BRRAG, HUB, and GROW programs sufficiently confirmed that jobs were actually created or retained pursuant to applicable program requirements, that minimum eligibility requirements were met, and that no award adjustments were necessary. Additionally, the validations performed by EDA and Taxation's subsequent review of BEIP jobs sufficiently confirmed the same. Our review confirmed that EDA sufficiently developed and implemented monitoring and oversight activities involving recipient compliance with minimum statewide and/or post-performance employment levels, work hours, and locations.

Recommendation 13

Enhance monitoring and oversight activities by independently verifying and confirming recipient-reported data with other state resources from the Department of Labor and Workforce Development and the Department of Treasury, Division of Taxation. (2019 Audit, pp. 21-23, 33-34)

Status: Implemented

Our 2019 Audit found that a total of 726 employees were not reported to Labor in 20 of the 33 sampled GROW, BRRAG, and BEIP projects. The total overpaid incentive awards, which were approximately $585,000, could not be substantiated against Labor reports.

EDA advised in its corrective action plan that it had entered into an MOU with Labor to share WR-30 data to ensure the jobs certified by a recipient's CFO are verified. EDA also stated that it had drafted an MOU with Taxation to clearly identify each department's role and to memorialize Taxation's review of 100 percent of BEIP-incentivized jobs.

Our review confirmed that Taxation has implemented the procedures outlined within the MOU, specifically the review of 100 percent of incentivized BEIP jobs. Additionally, our review confirmed that EDA independently verified recipient-reported job data for the sampled BRRAG, HUB, and GROW projects against data from Labor.

We urge EDA to continue building on its independent verification procedures and to implement additional controls, such as supervisory review and checklists, to ensure these procedures are performed correctly.

Recommendation 14

Enhance monitoring and oversight activities with independent verification and confirmation of recipient-reported data through receipt, collection, and review of recipient supporting documentation, including but not limited to time records, payroll registers, payroll tax returns, and other relevant information. (2019 Audit, p. 33)

Status: Implemented - BEIP and GROW
Partially Implemented - BRRAG and HUB

Our 2019 Audit found that EDA has the authority to obtain all necessary personnel information to administer its incentive programs and may have audits performed as EDA deems necessary. Despite that, OSC found that EDA did not consider or obtain sufficiently detailed job data, nor did it require awardees to submit other verifiable evidence to substantiate reported job data (e.g., time records, payroll registers, or payroll tax records.

EDA advised in its corrective action plan that it had expanded the scope of its contract with the independent auditing firm to specifically review the items referenced within the recommendation. EDA also stated that the WR-30 data sharing from Labor in addition to Taxation's review of 100 percent of BEIP-incentivized jobs would further enhance EDA's independent verification.

Status: Implemented - BEIP and GROW

Our review confirmed that the MOU between EDA and Taxation requires Taxation to perform a review of 100 percent of the BEIP-incentivized employees, which includes substantiating recipient-reported data against tax return data. The comparison of recipient-reported data against tax return data within Taxation's own system sufficiently addresses the recommendation.

For GROW, EDA sufficiently obtains and reviews recipient WR-30 data and compares it against recipient-reported job logs, and the independent auditor reviews additional supporting documentation referenced in the recommendation.

Status: Partially Implemented - BRRAG and HUB

For BRRAG and HUB, EDA obtains and reviews recipient WR-30 data and compares it against recipient-reported job logs. However, it was confirmed that EDA does not substantiate WR-30 data against other forms of supporting documentation, which may include, but is not limited to, time records, payroll registers, and payroll tax returns. We note that WR-30 data is self-reported to Labor, and these additional steps and review of the additional documentation aid in providing greater assurance of the incentivized jobs. Additionally, as discussed in recommendation 10, EDA's independent auditor did not perform reviews for BRRAG or HUB incentive programs.

We find recommendation 14 is partially implemented as to the BRRAG and HUB incentive programs because EDA independently verifies job logs with WR-30 data, but failed to substantiate WR-30 data against other forms of supporting documentation, or have reviews conducted by their independent auditor.

We urge EDA to enhance its independent verification process by substantiating recipients' job data obtained from Labor against other supporting documentation such as time records, payroll registers, and payroll tax returns, or to have reviews performed by the independent auditor. Additional verifications provide greater assurance that only eligible employees are incentivized.

Recommendation 15

Formulate a monitoring process and activities to identify awardees with multiple incentive awards and ensure that their employees and/or jobs comply with program requirements. (2019 Audit, p. 35)

Status: Partially Implemented

Our 2019 Audit found that 2 awardees improperly reported 644 employees in multiple incentive programs for the same reporting periods, which led to improper incentive award payments of approximately $102,000.

EDA advised in its corrective action plan that it had reassigned roles under the Portfolio Management and Compliance Division and updated processes to verify that companies that have received multiple awards are incentivized for unique, non-duplicative employees.

As addressed in recommendation 5, EDA's policy for monitoring recipients with multiple incentive awards is insufficient. In addition to the policy review, we identified and tested five projects with multiple awards certified by EDA and Taxation. Testing of these projects confirmed that the award recipients did not report duplicate employees. Consequently, EDA did not have an opportunity to identify or remove duplicate employees. Based on the insufficient policy and limited universe of companies with multiple awards, we do not have an acceptable level of assurance that the Authority's existing policy is likely to identify all companies with multiple incentive awards and ensure that their employees and/or jobs comply with program requirements.

We find recommendation 15 to be partially implemented because there was a limited duplicate award universe for the follow-up period and EDA's multiple incentives award monitoring policy is insufficient. Full implementation of this recommendation is essential for adequate monitoring and oversight of the programs to ensure incentives are only awarded to eligible recipients. We urge EDA to create a policy that details specific processes for evaluating pre-award and performance data to ensure that jobs are not duplicated and that incentives are appropriately earned for each program. The risks associated with the limitations identified in this area are increased as incentive programs with job requirements were enacted in the Economic Recovery Act of 2020, thereby making it possible that companies will attempt to receive tax credits for the same employee in multiple awards.

Recommendation 16

Assess the feasibility of implementing a more sophisticated position tracking system to facilitate the monitoring and oversight activities. (2019 Audit, pp. 32-33)

Status: Implemented

Our 2019 Audit found numerous deficiencies with the annual reporting process that prevented EDA from accurately presenting information regarding recipient performance. Specifically, the 2019 Audit identified the lack of a centralized job-tracking system that includes uniform data elements for all programs. This made it difficult to summarize the key employment factors for the incented jobs.

EDA advised in its corrective action plan that its newly implemented CRM database would become the centralized data system for incentive program monitoring.

During our review, we found that recipient-reported data is now required to be submitted in a consistent format across all programs at a level of detail necessary to test the accuracy and reliability of the data. This approach ensures that recipients satisfy all of the requirements involving jobs.

Our review also found that EDA's CRM database includes pertinent job data fields and is an appropriate and effective tool for the monitoring and oversight of all of EDA's incentive programs. We tested 18 projects with a total award amount of $81.2 million that were subject to the policies and procedures identified in EDA's corrective action plan and verified that the CRM database captured job data for all projects.

Recommendation 17

Consult with the Attorney General's Office regarding the appropriate action to take in those instances where an awardee has filed for bankruptcy. (2019 Audit, p. 37)

Status: Implemented - BEIP, BRRAG, GROW, and HUB

Our 2019 Audit identified one award recipient who had filed for bankruptcy that was removed from the incentive program. We noted that EDA had not filed as a creditor to seek recovery. EDA advised in its corrective action plan that it consults with the Attorney General's Office on all legal issues, including, but not limited to, when award recipients file for bankruptcy.

During our review, EDA informed us that one tax credit recipient filed for bankruptcy in 2019 and that no other recipients filed for bankruptcy during the follow-up review period. We verified that EDA consulted with the Attorney General's Office and filed a claim as a creditor for this tax credit recipient.

Recommendation 18

Assess and define the incentive program metrics with specific job data and other project elements to provide thorough analysis of awardee performance and job data. (2019 Audit, pp. 40-44)

Status: Implemented - BEIP, BRRAG, GROW, and HUB

Our 2019 Audit found that EDA had not collected detailed and adequate data to perform a thorough analysis of the incentive program award recipients.

EDA advised in its corrective action plan that it had updated, and would continue to update, the data fields within the Incentives Data Management System (iDMS to capture information required for each program. Additionally, it reported that the new CRM and EnABLE systems would become the centralized data systems for EDA.

During our review, we found EDA assessed and defined detailed program metrics for the BEIP, BRRAG, GROW, and HUB programs. EDA has required awardees' annual reports to include the job title, location, wages earned, annual salary, and social security number for each reported employee. Additionally, EDA's CRM system records the reported number of jobs at the time of application, the number of jobs recipients committed to create, and the number of jobs that have been retained and certified.

Recommendation 19

Develop a uniform system or process to collect annual reports and other project data, with sufficiently detailed data considering the limitations noted in this and prior audits. (2019 Audit, pp. 40-44)

Status: Implemented - BEIP, GROW, and HUB

Our 2019 Audit found that EDA did not utilize a single reporting mechanism to collect uniform data from incentive program recipients. EDA advised in its corrective action plan that the new CRM and EnABLE systems would become the centralized databases for incentive program recipient-reported data, tracking reports, and other relevant project-related data.

During our review, we found that EDA collects all of the annual reports and other job data for the BEIP, GROW, and HUB award recipients through the iDMS system. EDA did not incorporate the BRRAG program into the iDMS system because only three projects remain active and no awards have been approved since 2013. Due to the limited number of projects remaining, EDA's decision not to change BRRAG's annual reporting process appears appropriate.

Recommendation 20

EDA should track administrative costs associated with each incentive program to ensure that fees are set at a reasonable rate that covers the costs incurred. (2019 Audit, p. 46)

Status: Not Implemented - BRRAG, BEIP, GROW, HUB, and ERG

Our 2019 Audit found that EDA did not have a process to track, report, and adequately analyze information regarding the administrative costs directly related to the management of the incentive programs. As a result, EDA was not able to provide evidence regarding appropriateness of the fees charged.

EDA advised in its corrective action plan that it was exploring the best methodology to track expenses specific to each tax credit program.

During our review, we found that EDA did not establish a system for tracking administrative costs for any of the incentive programs under audit. EDA explained it was exploring the tracking of administrative costs as part of the newly enacted Economic Recovery Act of 2020.

In its response to this report, EDA disagreed with our determination that recommendation 20 was not implemented. We note that our review tested the five incentive programs identified in the 2019 Audit. No action has been taken to track administrative costs for those programs, and EDA continues to collect fees on an annual basis. Our position therefore remains unchanged.

Full implementation of this recommendation will ensure that public funds are not spent to cover administrative costs attributable to incentive award recipients. We urge EDA to implement a process or system to track administrative costs for each incentive program in order to ensure those costs are paid by award recipients.

We note further that although there has never been a question regarding whether EDA has the authority to track and collect administrative costs, newly adopted *N.J.S.A.* 34:1B-209.4 requires applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the tax credits.

Recommendation 21

EDA should establish a proper segregation of duties and/or oversight system as related to the assessment and collection of fees. Appropriate EDA staff should notify EDA's Accounting Department upon the occurrence of the triggering event which forms the basis for the fee. At that point, the Accounting Department should be responsible for the invoicing and collecting of fees. (2019 Audit, pp. 47-48)

Status: Partially Implemented - BEIP, BRRAG, GROW, and HUB

Our 2019 Audit found that EDA had not established proper segregation of duties between the assessment and collection of incentive program fees.

EDA advised in its corrective action plan that the CRM and EnABLE systems will address this recommendation by separating the duties of the incentive officers and the accounting department.

During our review, we confirmed that EDA established a process for assessing fees using the CRM system and a process to collect fees using the EnABLE system, which effectively segregated duties as recommended. We noted several limitations though when testing the systems.

We reviewed fee records from 29 sampled projects and noted that tax credit award amounts used to calculate the fees of 2 BEIP projects were not available. Consequently, we could not review the accuracy of 4 out of 65 fee determinations. Additionally, neither system indicated when the fees were requested or invoiced. Likewise, neither system includes automatic controls to prevent the issuance of tax credits without receiving payment in full. EDA explained that incentive officers use checklists prior to issuing tax credit amounts.

We find recommendation 21 to be partially implemented due to a lack of information present within the CRM and EnABLE systems. We urge EDA to strengthen the CRM and EnABLE systems to ensure the accuracy of billing amounts, incorporate sufficiently detailed records to ensure proper verification and monitoring of fee collections, and, as a new recommendation, to incorporate automatic controls to prevent the issuance of tax credit awards without receiving full payments.

V. Follow-Up Review of Exceptions Identified in the 2019 Audit

As an additional part of our review, we revisited a number of significant exceptions that had been identified in the 2019 Audit and required correction. In doing so, we requested updates from EDA for actions taken to substantiate jobs that were not reported to Labor and to recover for over-certifications and overpayments identified in the 2019 Audit. We found that, despite being informed of these deficiencies that were revealed through extensive fieldwork, EDA took little corrective action on these issues.

Over-Certifications and Overpayments

Our 2019 Audit found a total of 2,993 exceptions with the recipient-reported jobs in 24 of the 37 sampled projects, about 65 percent. These exceptions included: 726 employees claimed in the annual reports that were not included in the Labor reports; 261 GROW employees that were not considered full-time because wages were not reported for all 4 quarters in the reporting period; and 644 employees reported in 2 incentive awards for the same reporting period. In total, incentives were certified or overpaid totaling about $3.9 million. During the 2019 Audit, these details were shared with EDA for its review and monitoring of annual reports in subsequent periods to prevent improper incentive awards in the future. *(2019 Audit, p. 34)*

In our current review, we found that EDA applied its updated policy to the sampled projects by comparing recipient-reported data to independent Labor data. Despite improving employee verifications going forward, notable deficiencies remain. EDA did not take action to substantiate the 726 employees claimed in the annual reports that were not included in the Labor reports or the 261 GROW employees that were not considered full-time because wages were not reported for all 4 quarters in the reporting period. EDA retroactively reviewed all companies between the 2006 and 2017 reporting years that had multiple jobs incentivized for the same location and cross-checked the active reporting years for each incentive to identify duplicate employees. Four projects were identified as receiving overpayments, but as of May 18, 2021 no action had been taken to recover the funds.

We request that EDA take the actions necessary to address these deficiencies and to report to OSC within 90 days regarding the actions that have been taken.

Recalculation of BEIP Incentive Awards

Our 2019 Audit found that program regulations and EDA's own policy require EDA to recalculate BEIP incentive awards when the actual number of jobs created is less than the projected number of jobs that the initial award was based upon. In our 2019 Audit, we found that EDA did not follow applicable regulations or its own policy in adjusting the incentive awards for some of the sampled projects. Specifically, we found that EDA did not use correct data inputs to complete the initial formula for 3 of the 13 projects and did not recalculate the awards for 6 of the 13 projects to account for the fact that there were fewer actual jobs realized. These collective failures resulted in projects being over-certified for incentive awards in an amount totaling $2.5 million. *(2019 Audit, p. 19)*

Our review found that EDA agreed that 3 projects were over-certified and/or overpaid for more than $2.5 million, but had not taken action to recover the funds as of June 1, 2021. EDA stated that it would work with the Attorney General's Office and Taxation to correct the errors.

We request that EDA take the actions necessary to address these deficiencies and to report to OSC within 90 days regarding the actions that have been taken.

BEIP Incentive Awards in Excess of Cap

Our 2019 Audit found that one of the sampled BEIP projects had annual incentive awards certified by Taxation in excess of its capped incentive award amount by approximately $1.3 million. In light of the above overstated award, we inquired further of EDA staff to determine whether this error is systemic in nature. In doing so, we learned that a programming error in 2012 caused unintentional changes to data transferred between EDA databases. As a result of this finding, EDA conducted a further examination of its data and determined that, as of October 2018, it had miscalculated 17 BEIP awards. These miscalculations resulted in overpayments of incentives totaling $1.4 million, $2.3 million in over-certified incentives yet to be issued, and incentives pending Taxation certification valued at $3.6 million. At the time of our 2019 Audit, EDA advised OSC that the programming issue had been corrected and that EDA had consulted with the Attorney General's Office regarding the recovery of the overpayments. (2019 Audit, pp. 24)

During our review, we found that EDA reviewed a second time all 17 projects it had previously identified and determined that only 9 of the 17 awardees received an overpayment or over-issuance of tax credits. For these nine awardees, EDA has taken the initial steps to recover over-certifications and/or payments.

The inconsistent information provided by EDA regarding the nature and extent of the programming issue suggests a more in-depth and comprehensive review is appropriate. We cannot confirm that the universe of projects affected by the programming error has been accurately identified and cannot confirm the accuracy of the overpayments or over-certifications. EDA has not provided reliable information regarding the programming issue or its initial or revised assessment. Therefore, it is likely that the actual universe of BEIP projects with improperly calculated awards has not been accurately identified and is greater than the nine identified by EDA in its revised assessment.

We recommend that EDA conduct a comprehensive review of this programming issue to evaluate whether over-certifications or overpayments occurred with regard to other BEIP projects.

Recalculation of Net Economic Benefits

Our 2019 Audit found that pursuant to the incentive programs' statutes, regulations, and applicable EDA policies, recipient eligibility also may require the determination of a project's "economic benefit to the state." To determine the economic benefit to the State, EDA utilized an automated spreadsheet that calculated a project's net economic benefit. If the data elements are not accurate in the calculation, however, the resulting net economic benefit calculation would yield an inaccurate result. Specifically, the 2019 Audit found that EDA utilized incorrect data elements when conducting the net economic benefit analysis, contrary to its policy and procedures. These actions resulted in overstated incentive awards totaling $4 million for 2 of the HUB projects. Additionally, EDA utilized higher estimated applicant-reported average salary data instead of the lower net economic benefit analysis computed average salary, contrary to EDA's practice to consider the lower amount when determining the incentive award. This resulted in an overstated incentive award of $4.8 million. Lastly, EDA failed to reassess its net economic benefit assessment against a recipient's actual performance to determine whether the State realized the estimated economic benefits. The 2019 Audit found that if EDA had reassessed two of the sampled HUB projects for the actual number of jobs and salaries reported by the recipient, the incentive awards for those projects would have been reduced by approximately $11.2 million. *(2019 Audit, pp. 15-16)*

EDA disagreed with the deficiencies identified by OSC and did not take any action to recalculate the economic benefits after the project's approval. It also did not take any action to recover the $20 million in overstated awards identified above.

As discussed with regard to recommendation 7 in this report, we maintain our position that EDA should have recalculated the net economic benefit in the manner suggested in our original report. If the State did not obtain the full benefits pledged by the recipient, the recipient should not receive the full tax incentives. We recommend that EDA recalculate the net benefit analysis for each year of the award to determine the proper award amount and recover all overpayments.

Improper HUB Awards

Our 2019 Audit found that EDA failed to comply with the applicable statute and regulations in determining HUB incentive awards, which resulted in the improper award of approximately $179 million in incentives. Pursuant to the applicable statute and regulations, HUB projects require EDA to analyze two critical pieces of information: the amount of the proposed capital investment and the result of the net economic benefit analysis. Pursuant to *N.J.S.A*. 34:1B-209 *et seq.,* a business with capital investments totaling not less than $50 million in a qualified business facility shall be allowed a tax credit of 100 percent of its capital investment. EDA's regulations further provide that a project's net economic benefit must total at least 110 percent of the proposed capital investment for the project to be eligible for an incentive award equal to 100 percent of the proposed capital investment. *N.J.A.C*. 19:31-9-3. Our 2019 Audit found, however, that EDA deviated from the language of the statute and the regulations. *(2019 Audit, p. 14)*

As part of our 2019 Audit, EDA disagreed with OSC's legal interpretation of the statute and the finding. EDA bases its position in part on legal guidance received from the Attorney General's Office. We find that that guidance, which was received after EDA made the awards, is inconsistent with the plain language of the law requiring an applicant to make at minimum $50 million in capital investments. *N.J.S.A*. 34:1B-209a(2). EDA did not take any action on these projects subsequent to the release of the 2019 Audit. We note that two of the five award recipients are currently in default for failing to provide annual reports, and the remaining three have each received tax credits since the release of our 2019 Audit.

VI. Recommendations

EDA made progress addressing most recommendations contained in the 2019 Audit, but as detailed throughout this follow-up report, significant issues remain to be addressed by EDA.

With regard to recommendation 3, we recommend to both EDA and Taxation that they update their MOU to institute a process and procedures for requiring the retention of records of all verifications performed.

With regard to recommendation 4, EDA should establish baseline employment by using unique identifiers to ensure proper verification of all employees and memorialize the process for establishing baseline employment, including a record of variances. Taking these steps will ensure that EDA is accountable for its decisions on this crucial issue, will enable future oversight to occur, and will ensure incentives are only awarded when recipients have satisfied the award terms and conditions.

With regard to recommendation 5, EDA should create a policy that includes specific steps for evaluating pre-award and performance data of recipients with awards for multiple programs to ensure that the reported jobs in each program are not duplicated and that incentives are appropriately earned for each program. Additionally, we urge EDA to adjust awards and/or recover any incentives that are deemed inappropriate as a result of any jobs reported in multiple programs.

With regard to recommendation 7, especially in view of changes to levels of employment that may have occurred during the COVID-19 pandemic, EDA should finalize and implement forthwith the policy it proposed in its response to a draft of this report. EDA should use its lawful discretion to protect the State's interests by ensuring project eligibility and full achievement of pledged economic benefits throughout the eligibility period. EDA should require award recipients to prove that they have provided the pledged economic benefits and EDA should verify all documentation provided. We further recommend that EDA identify ways to ensure ERG incentive awards are based on current data in accordance with the discretion provided to it by law.

With regard to recommendation 8, we urge EDA to use its discretion to provide as much detail as possible regarding incentive awards by, among other things, using the CRM system, which collects the number of jobs at application, jobs committed to, jobs created, and jobs certified. Additionally, EDA should report on actual economic benefits realized. This level of detail provides transparency that assists policymakers and the public in their evaluation of whether the benefits of incentive programs are worth the costs. Lastly, EDA should perform validations in CRM of the BEIP program as a whole and job counts for all incentive programs.

With regard to recommendation 9, we urge EDA to revise its annual reporting process for incentive programs. The annual reports should be based on actual results of the recipient's performance highlighting their accomplishments and failures, in order to provide transparent and reliable information to policymakers, stakeholders, and New Jersey residents.

With regard to recommendation 10, we urge EDA to fully implement its contract with the independent auditor, which includes review of the GROW, HUB, and ERG certified projects. Furthermore, we urge EDA to assess internal and/or external monitoring activities for the incentivized employees in the BEIP, BRRAG, HUB, and ERG projects. In addition, consistent with the recommendation in our 2019 Audit, we urge EDA to complete a cost analysis of the monitoring services provided by the independent auditor in order to implement the most efficient and cost effective monitoring activities.

With regard to recommendation 14, we urge EDA to enhance its independent verification process by substantiating recipients' job data obtained from Labor against other supporting documentation such as time records, payroll registers, and payroll tax returns, or to have reviews performed by the independent auditor.

With regard to recommendation 15, we urge EDA to create a policy that details specific processes for evaluating pre-award and performance data to ensure that jobs are not duplicated and that incentives are appropriately earned for each program.

With regard to recommendation 20, we urge EDA to implement a process or system to track administrative costs for each incentive program in order to ensure the costs are paid by award recipients.

With regard to recommendation 21, we urge EDA to strengthen the CRM and EnABLE systems to ensure the accuracy of billing amounts, incorporate sufficiently detailed records to ensure proper verification and monitoring of fee collections, and, as a new recommendation, to incorporate automatic controls to prevent the issuance of incentive awards to recipients with unpaid fees.

With regard to the exceptions from the 2019 Audit that were revisited in this follow-up report under the above section "Follow-Up Review of Exceptions Identified in 2019 Audit," we further recommend that EDA take the project-specific steps detailed above to address each issue.

VII. Reporting Requirements

We provided a draft copy of this report to EDA for its review and comment. EDA's written response was considered in preparing our final report and is attached as Appendix A. EDA agreed with many of our recommendations and, according to its response, has already taken additional steps to implement some of those recommendations. EDA also disagreed with some of our recommendations. EDA, however, failed to provide any compelling evidence warranting a change to the conclusions in this follow-up report. See our comments to EDA's response regarding recommendations 7, 8, 9, and 20 in the corresponding sections of this report.

By statute, we are required to monitor the implementation of our recommendations. To enable us to meet this requirement, within 90 days, EDA shall report to our office regarding any additional corrective or remedial actions that have been taken or will be taken regarding the recommendations made in this report.

We thank the management and staff of EDA for the courtesies and cooperation extended to our auditors during this review.

NJEDA

December 10, 2021

Yvonne Tierney, Director
Audit Division
Office of the State Comptroller
P.O. Box 024
Trenton, NJ 08625-0024

RE: Follow-Up Report - New Jersey Economic Development Authority (NJEDA)

Dear Ms. Tierney:

I have received and reviewed the Office of the State Comptroller's (OSC) Follow-Up Report on Selected State Tax Incentive Programs. We very much appreciate OSC's recognition of the substantial progress made by the NJEDA in improving its processes and internal controls for administering the State's various tax incentive programs. While we are still making improvements—and will continue to make improvements—we take pride in how much we have accomplished over the past three years and are gratified that OSC acknowledged that the NJEDA has addressed the most significant issues raised in its prior report.

As a result of NJEDA's enhanced due diligence, project review and certification processes, during Governor Murphy's administration we have reduced Grow NJ tax credit awards by nearly $350 million based on actual job creation and capital expense outlays by applicant companies compared to promised job creation at application approval.

Since receiving OSC's January 2019 report, the NJEDA has worked extraordinarily hard to address issues raised by OSC and has focused on improving performance with regard to project approvals and compliance. To address specific concerns articulated by OSC (as well as the Governor's Task Force on NJEDA Tax Incentives), we have taken multiple steps, including adopting and implementing additional Standard Operating Procedures, to ensure thorough and consistent due diligence. Among other things, the NJEDA has:

- Entered into a Memorandum of Understanding with the Department of Labor and Workforce Development (DOLWD) to ensure the NJEDA has access to data needed to verify information provided by applicants and recipients, such as quarterly WR-30s, which allows the Authority to validate every job reported by the reporting businesses;
- Adopted policies and procedures requiring: the establishment of an applicant's baseline employment number be established at the time of application, recipients provide annual job logs by recipients, and NJEDA verify that information using

independent DOLWD data;

- Entered into a Memorandum of Understanding with the Department of the Treasury clarifying the parties' specific roles and responsibilities and ensuring independent verification of job and other data provided by applicants/recipients;
- Expanded the scope of its contract with an independent auditor to increase the number of certified businesses reviewed annually;
- Supplemented and amended its policies and procedures to ensure that companies that receive multiple awards are not duplicating employees; and
- Adopted policies and procedures governing the determination of initial program eligibility and the calculation of a project's estimated economic benefits to the State at the time of application.

As a result of the recommendations made by the OSC and Task Force, the NJEDA now conducts a rigorous, thorough review of more than 400,000 jobs associated with our various programs annually.

At the same time, we have recognized the need to ensure the Authority does not just espouse a culture of compliance, transparency and continuous improvement, but trains, ingrains and inculcates that culture throughout the Authority. To effectuate change Authority-wide, the NJEDA has provided staff with the tools and the training to encourage them to ask provocative questions, dig deeper, and employ commercially-reasonable skepticism. We have also taken a number of critical organizational redesign steps, including:

- Appointing a Chief Compliance Officer;
- Creating the Division of Compliance and Program Management;
- Reorganizing our front-end program teams to clarify product ownership responsibilities and establish a more transparent staff recommendation and decision-making process;
- Procuring an additional independent, external compliance auditor;
- Establishing a Quality Control Department to ensure the documentation reviewed by EDA project officers satisfied all incentive program requirements;
- Hiring an Evaluation/Reporting Officer and creating a comprehensive process for evaluating all NJEDA programs;
- Creating the Business Operations Department within the Division of Legal and Strategic Affairs, which is responsible for process improvements and development and implementation of written policies and procedures throughout the organization; and
- Improving our policies with regard to whistleblower complaints (from both employees and third parties) and expanding our reporting hotline to permit anonymous complaints.

Over the past four years, the NJEDA has undergone a fundamental transformation from a transaction-oriented bank to a comprehensive economic development agency, with a particular focus on innovation, small business and economic diversification. We have developed and rolled out a significant number of new programs and initiatives, including more than 10 new programs authorized by the Economic Recovery Act of 2020, which reflected significant reforms based on recommendations from the OSC and the Task Force. During the unprecedented challenges for our economy presented by the Covid-19 pandemic, we implemented numerous new programs – and modified pre-existing programs – to support the State's small businesses. In total, the EDA was responsible for nearly $800 million of small business support, including more than 80,000 grant awards and groundbreaking national model programs such as the Sustain and Serve program, which will drive the purchase of more than 4 million meals from hard-hit restaurants to support New Jerseyans experiencing food insecurity. The NJEDA was at the forefront nationally in efforts to stabilize small businesses and the economy – and, we did it quickly, efficiently and effectively, without sacrificing quality or compliance. In fact, in an Audit Report issued on June 1, 2021, the State Auditor found that "adequate controls were in place at the NJEDA to approve and disburse funds through the selected programs in compliance with internal requirements and applicable program criteria." More recently, our financial auditors issued an unqualified ("clean") opinion of our 2020 financial audit.

While we continue to make improvements and adapt to the changing economic environment, the NJEDA has taken significant strides forward over the past three years.

Additionally, I am happy to report that the New Jersey Economic Recovery Act of 2020 recognized and addressed many of the shortcomings of prior tax incentive legislation and gave the NJEDA additional tools and powers to ensure the State of New Jersey reaps the intended rewards of its investment of taxpayer dollars. The implementation of these new programs has been and will be guided by the recommendations of the OSC and Task Force.

We would also like to acknowledge our incredible inter-agency partners who have been instrumental in EDA's improvements, particularly the Department of Labor & Workforce Development and the Department of the Treasury/Division of Taxation.

We also acknowledge that more work remains to be done to build upon these major improvements.

<u>Response to Recommendation 7</u>

The NJEDA will commit to taking additional steps to evaluate the Net Benefit Test (NBT) at overall certification and annually for all Grow and HUB Projects. This new process will involve the following components:

1. Prospective reviews that can commence immediately and reassessment of awards contingent upon AG's guidance of the applicable legislation;
2. The NBT will be re-run on all projects at overall certification, as well as at annual certification. This is in addition to the re-running of the NBT when

there is a 10% or 25% change in the project's cap expenditure or reported jobs, which is the current policy;

3. A sampling will be conducted on previous annual certification submissions; and
4. Actual job certification and capital expenditure data will be used to reassess the Net Benefit of the project.

Response to Recommendations Deemed "Not Implemented"

Recommendations 8 and 9

The OSC's most recent report makes important recommendations regarding transparency, and we agree that more steps can be taken to provide lawmakers and other stakeholders with all relevant data to evaluate the impact and success of these important programs. However, we do not agree with the conclusion that the NJEDA did not implement Recommendations 8 and 9, because of significant enhancements to our Annual Report (which we will continue to work to improve). NJEDA's 2020 Annual Report more than 700 page long and contains detailed project-level information on all NJEDA programs and projects. In the interest of keeping an already voluminous report as manageable as possible, the Report itself also contains links to other reports that are posted on the NJEDA's website, including the Completed and Certified Report (a copy of which was provided to OSC). The Completed and Certified Report is an Excel spreadsheet containing more than 4,000 data points for all projects that have been certified, including: the minimum jobs required, the number of jobs reported each year, and the certified credit amount (among other data), since 2014. Additionally, the NJEDA has a Standard Operating Procedure that describes the data to be compiled for the Annual Report and how that whole process works (a copy of which was provided to OSC). Finally, EO37 requires the Annual Report discuss the degree of success the Authority had in promoting the State's economic growth strategies and other policies. The NJEDA's Annual Report complies with this requirement in that it reviews the State's economic plan, *The State of Innovation: Building A Stronger and Fairer Economy In New Jersey*, and discusses how the Authority has promoted the economic growth strategies listed in that plan.

Recommendation 20

In its 2019 report, OSC recommended that the NJEDA develop a methodology to better justify fees charged in connection with tax credit programs, a recommendation we accepted and implemented for new programs authorized under the Economic Recovery Act of 2020. For example, with regard to the Emerge NJ tax credit program, we undertook a comprehensive in-depth analysis of our administrative costs and used that analysis to create a new methodology for calculating fees. That fee methodology was incorporated into proposed rules that were approved by NJEDA Board on May 12 and became effective on May 20, 2021. Those Emerge program rules were just one set of rules adopted to implement OSC's recommendation. This methodology was incorporated into several sets of program specific rules that have been proposed and/or adopted this past year,[1] and this new methodology will be incorporated in all new rule proposals going forward. It would be impractical to seek to retroactively change the application fees charged for programs for which we are no longer accepting new applications, such as Grow NJ. However, we will evaluate the cost/benefit impact of a potential rule amendment to incorporate our new fee methodology into annual certification and other ongoing fees for these legacy programs.

<u>Response to Select Recommendations Deemed "Partially Implemented"</u>

Recommendations 5, 10 and 15

OSC's most recent report concluded that the NJEDA had only partially implemented Recommendations 5, 10 and 15. However, the NJEDA has expanded upon the Multiple Incentives policy (which was put in place as a result of OSC's initial report). That detailed, step-by-step policy describes the processes utilized to review reconciled reports for duplicated employees to ensure they are not incented under multiple incentives. It describes each step of that process, including the hierarchy of programs, and requires any duplicates that are identified be removed. We believe that this fully satisfies the recommendation of OSC. The NJEDA is also actively engaged with the Attorney General's (AG's) office to recover any overpayments or over-certifications, to the extent permitted by law.

To further our compliance with these recommendations, the NJEDA has also, previous to the issuance of this most recent report, procured an independent, external compliance auditor in accordance with Subsection 101(b)(2) of the New Jersey Economic Recovery Act of 2020 and all other applicable federal and state laws, rules, regulations and standards. That compliance auditor conducts periodic, systematic audits of the NJEDA's economic development incentive programs for compliance with applicable laws, regulations, codes, orders, procedures, advisory opinions and rulings. The compliance auditor began performing compliance audits in 2021. This additional monitoring was put in place to provide an independent evaluation of the NJEDA's programs – including those reviewed by OSC – and make sure the projects are complying with applicable laws, adhering to the NJEDA's policies and procedures, and are adequate to protect taxpayers' resources.

<u>Response to Select Review of Initial Audit Exceptions</u>

With regard to recapturing of improperly calculated awards, primarily under the BEIP program that stopped accepting applications in 2013, the NJEDA provided OSC

[1] OSC's report references amendments to N.J.S.A. 34:1B-209.4 (enacted on January 7, 2021), requiring applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the tax credits. To implement that statute, the NJEDA adopted detailed rules. Proposed rules were approved by NJEDA Board on June 9, 2021, published in the New Jersey Register on August 16, 2021, and became effective upon publication on November 15, 2021.

detailed memos as to the review of the files in question, the amount of money that needed to be recaptured, and the means by which the NJEDA was going to recapture. The NJEDA did recapture funds that were improperly disbursed, but which were not acknowledged within the report. To date, the NJEDA has recovered nearly $45,000 from businesses that received an overpayment, has notified another business of a $606,000 overpayment, and has reduced or are in the process of reducing tax credit issuances by nearly $670,000 from businesses that were over-certified. Understandably, these recapturing efforts were tabled during the Covid-19 pandemic at a time of extraordinary duress in the New Jersey economy. The NJEDA is actively working with the AG's office and anticipates sending notifications to those remaining applicants, which are affected by over-payments/certifications, within the 90-day timeframe prescribed by OSC. In addition, the NJEDA will memorialize a policy and procedure that will be used in the future when other overpayments/over-certifications are identified.

Conclusion

We want to thank you and your staff for both the recognition of our significant progress to date and the feedback that will help us continue to improve. The NJEDA is building a culture of continuous improvement and is committed to compliance and transparency as we work to fulfill our mission of growing the state's economy and increasing equitable access to opportunity by supporting high-quality job creation, catalyzing investment, and fostering vibrant, inclusive community development.

Very truly yours,

Tim Sullivan
Chief Executive Officer

cc: Elizabeth Maher Muoio, Treasurer, Department of the Treasury
Jennifer Keyes-Maloney, Assistant Treasurer, Department of the Treasury
Kevin A. Quinn, Chairman
Bruce Ciallella, Chief Operations & Compliance Officer
Christine Baker, Chief Legal and Strategic Affairs Officer
Jorge Santos, Chief of Staff