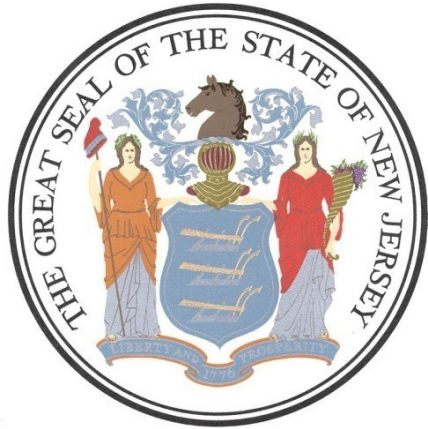


**State of New Jersey
Office of the State Comptroller**




***NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
A PERFORMANCE AUDIT OF
SELECTED STATE TAX INCENTIVE PROGRAMS***

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State Comptroller**

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BACKGROUND

The New Jersey Economic Development Authority (EDA) is an independent State agency that provides financial assistance to qualified companies (hereinafter referred to as awardee or recipient) for the purposes of maintaining and expanding employment opportunities in the state and increasing tax rates in underserved communities. EDA administers tax incentive programs that have job creation or retention requirements, provide financing for certain business activities, and revitalize communities through redevelopment initiatives.

EDA is governed by a Board of Directors (Board) that is responsible for approving incentive award projects. The Board is comprised of 13 voting members, 5 ex-officio members and 8 public members appointed by the Governor for three-year terms. The ex-officio members include the Commissioners of the Departments of Labor and Workforce Development (Labor), Banking and Insurance, and Environmental Protection, along with the State Treasurer, and an executive branch officer or employee appointed by the Governor. The Governor also appoints three alternate members.

In September 2013, the New Jersey Economic Opportunity Act of 2013 (the Act) was signed into law. The Act merged the state's then-existing economic development incentive programs with the goals of enhancing business attraction, retention and job creation efforts, and strengthening New Jersey's competitive edge in the global economy. Specifically, the Act phased out the Business Retention and Relocation Assistance Grant Program (BRRAG), the Business Employment Incentive Program (BEIP), and the Urban Transit Hub Tax Credit Program (HUB) effective December 31, 2013, and expanded the Grow New Jersey Assistance Program (GrowNJ) and the Economic Redevelopment and Growth Grant Program (ERG). The Act designated GrowNJ as the primary job creation incentive program and ERG as the main developer incentive program.

The Act required EDA to submit a detailed review of the incentive programs to the Governor before July 2018. In July 2018, Rutgers University, Edward J. Bloustein School of Planning and Public Policy, issued a report (the Rutgers Report). Pursuant to the Act,

both GrowNJ and ERG expire on July 1, 2019. To that end, EDA is prohibited from considering applications for these programs after June 30, 2019.

In 2017, the New Jersey Office of Legislative Services, Office of the State Auditor (OSA) issued an audit report that identified areas for improvement regarding the BEIP, BRRAG, and GrowNJ incentive programs. In response to the OSA audit, EDA submitted a corrective action plan (CAP) to address OSA’s recommendations. The corrective actions included additional reporting requirements. Additionally, in May 2017, EDA created a new department to focus on internal programmatic audits and compliance. This department also oversees the external auditor hired by EDA to verify jobs and capital investments of selected GrowNJ projects.

EDA’s Approved Projects

As of February 2018, EDA reported 1,000 approved projects (also referred to as incentive awards) under its various incentive programs. Applicants projected that those projects would create an estimated 161,804 new jobs,¹ retain 80,027 jobs, and include anticipated capital investment of approximately \$34 billion. EDA approved nearly \$11 billion in tax credit incentives for those projects.

A summary of these projects and incentive awards are set forth below.

Summary of Awarded Projects by Incentive Program

Incentive Program	Number of Projects Approved	Approved Tax Credit Incentive	Approved New Jobs	Approved Retained Jobs	Total Eligible Capital Investment
BEIP	454	\$1,535,813,245	80,988	0	\$12,197,503,685
BRRAG	85	125,053,800	0	31,654	2,084,809,839
ERG	82	1,917,582,895	34,635	0	9,706,334,108
GrowNJ	353	6,127,572,760	42,488	48,373	6,674,294,846
HUB	26	1,237,172,356	3,693	0	3,031,318,143
Grand Total	1,000	\$10,943,195,056	161,804	80,027	\$33,694,260,621

¹ The ERG statute does not require job creation or retention. Therefore, EDA does not require recipient reporting of the actual jobs created or retained.

The recipients of incentive awards are required to meet specific conditions detailed in their incentive award agreements in order to receive tax credits. This is referred to as the “certification process.” Between 2005 and 2017, EDA certified 401 projects, meaning that EDA had determined that the awardees had satisfied the award requirements for the incented jobs and/or capital investments and had received at least one tax credit. These 401 projects were initially awarded \$3.4 billion in tax credit incentives and were projected to create 50,633 new jobs, retain 33,727 jobs, and generate an anticipated capital investment of approximately \$9.3 billion as summarized below.

**Summary of Projects Certified Between 2005 and 2017
Receiving at Least One Annual Tax Credit**

Incentive Program	Number of Projects Approved	Approved Tax Credit Incentive	Approved New Jobs	Approved Retained Jobs	Total Eligible Capital Investment
BEIP	238	\$841,000,196	35,132	0	\$3,476,611,279
BRRAG	65	112,562,500	0	23,718	1,301,162,839
ERG	26	286,733,458	4,625	0	1,241,376,466
GrowNJ	52	1,205,847,177	8,148	10,009	807,685,108
HUB	20	977,060,776	2,728	0	2,424,905,078
Grand Total	401	\$3,423,204,107	50,633	33,727	\$9,251,740,770

Our audit sample included a judgmental selection of 42 projects out of the 401 certified projects and 6 additional projects that were provided by EDA as examples for each of the programs. These 48 projects were initially awarded \$812 million in tax credit incentives and were projected to create 8,713 new jobs, retain 6,657 jobs, and generate an anticipated capital investment of approximately \$2.5 billion as summarized below.

Summary of Sampled Projects

Incentive Program	Number of Certified Projects	Approved Tax Credit Incentive	Approved New Jobs	Approved Retained Jobs	Total Eligible Capital Investment
BEIP	13	\$75,239,725	3,740	0	\$801,427,897
BRRAG	8	5,655,400	0	3,640	331,758,500
ERG	7	100,956,795	1,704	0	447,429,073
GrowNJ	12	333,277,927	2,148	3,017	338,399,915
HUB	8	296,968,882	1,121	0	630,478,452
Grand Total	48	\$812,098,729	8,713	6,657	\$2,549,493,837

The tax incentive program activities in New Jersey have been the focus of a number of reports in the last several years. Two of the more recent reports include the Rutgers Report and a May 2017 report published by the PEW Charitable Trusts, an independent nonprofit organization.

In July 2018, as part of its submission of the Rutgers Report to the Governor and Legislature, EDA agreed that there should be a “deeper analysis of the types and quality of jobs created or retained, and whether some or all of the related economic activity would have happened with lower or no incentives.” EDA also called for a “comprehensive best practices review, assessing incentive programs available in other states.”

Highlights of the Rutgers and Pew Reports are included in Appendix B.

Incentive Program Descriptions

The primary purpose of each program is to attract and grow businesses to the benefit of New Jersey through job creation, retaining at-risk jobs, and securing capital investments. Some programs have other more specific goals, such as revitalizing economically distressed areas. A brief summary of the economic incentive programs currently administered by EDA follows:

Grow New Jersey Assistance Program (GrowNJ)

GrowNJ is the primary job creation and retention program in New Jersey. Businesses that are creating or retaining jobs may be eligible for annual tax credits ranging from \$500 to \$5,000 per job, with annual bonus credits ranging from \$250 to

\$3,000 per job. Eligibility for tax credits requires the GrowNJ business to meet or exceed the minimum employment and capital investment requirements, and be located in a qualified incentive area (e.g., urban transit hub, distressed municipality, or Garden State Growth Zone (Camden/Trenton/Paterson/Passaic)).

Economic Redevelopment and Growth Program (ERG)

ERG is an incentive program for developers and businesses to address revenue gaps in development projects. An ERG award, however, is not meant to be a substitute for conventional debt and equity financing.

Business Employment Incentive Program (BEIP)

BEIP approved projects provide awardees with annual incentives based on the creation of new jobs. Incentives can be in the form of cash payments or tax incentives and can equal up to 80 percent of the total annual amount of newly hired employees' state income taxes withheld for up to 10 years, for a maximum of \$50,000 per employee over the course of the award.

Business Retention and Relocation Assistance Grant Program (BRRAG)

BRRAG was created to preserve jobs or to reinvest and expand business operations. Tax credits of up to \$2,250 per job were made available to businesses that retained jobs through relocation within New Jersey, or to businesses that maintained jobs at a current location in New Jersey and also made a qualified capital investment.

Urban Transit Hub Tax Credit Program (HUB)

HUB was designed to spur private capital investment, business development, and employment by providing tax credits for businesses planning a large expansion or relocation to a designated transit hub located within one of nine New Jersey urban municipalities. A transit hub is located within one-half to one mile of a public transportation system or light rail station.

Although the Act phased out any new BEIP, BRRAG, and HUB applications, EDA is currently administering 307 projects that were approved before the statutory expiration

date of the programs. Current award recipients will have annual reporting requirements through project conclusion which will continue through 2030. EDA estimates the remaining incentive obligation for these projects is approximately \$1.7 billion.

A summary of the remaining projects is presented in the chart below.

Program	Number of Projects Awarded	Projected End Date	Total Remaining Incentive Obligation
BEIP Cash	49	2026	\$19,146,000
BEIP Credit	228	2026	863,529,000
BRRAG	4	2022	26,469,000
HUB	26	2030	791,684,000
Total	307		\$1,700,828,000

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

Pursuant to Executive Order #3 (Murphy, 2018), OSC conducted a performance audit of the incentive programs administered by EDA. The objectives of our audit were focused on assessing the effectiveness of EDA's administration of the incentive programs as well as evaluating the economic benefits realized from the programs and actual awarded projects. To meet these objectives, we examined incentive program projects that had been certified with at least one annual tax credit issued between January 1, 2005 and December 31, 2017.

The objectives of the audit included:

- 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;
- b. Analysis of the types of jobs that have been created, including salaries, wages, and benefit levels, as well as the locations within the state where those jobs have been created;
- c. Review of the decision-making process regarding the acceptance of applications, focusing on how the EDA has exercised its discretion under the related statutes; and
- d. Examination of the application process for such awards, including documentation and disclosure of expenses incurred by the applicants, including expenses for lobbyists, consultants, and legal representation, as well as information about the administrative costs incurred by the EDA in processing these applications.

To accomplish our objectives, we reviewed relevant laws and regulations, policies and procedures, applications and other supporting documentation, including relevant financial records related to projects awarded under the incentive programs. In addition, we reviewed selected internal controls and conducted interviews of key employees

regarding their responsibilities in the administration of the incentive programs and oversight of the awardees.

Our audit testing included verification of the awardees job data with Labor and the awardees' quarterly Employer Wage Reporting through the WR30 reports (hereinafter referred to as labor reports). OSC obtained an electronic download of the WR30 data from Labor for each of the sampled projects for the reporting periods covered in our testing.

Because we used a non-statistical sampling approach to provide conclusions about the assessment of EDA's administration of the incentive programs, validity of transactions, the adequacy of internal controls, and compliance with appropriate laws and regulations, the results of our testing cannot be projected over the entire population.

This audit was performed pursuant to the State Comptroller's authority as set forth in *N.J.S.A. 52:15C-1, et seq.* We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. What follows is our summary of the evidence obtained during the course of the audit.

SUMMARY OF AUDIT RESULTS

Our audit identified deficiencies with EDA's management and administration of the incentive programs. Key internal controls were lacking or nonexistent for the monitoring and oversight of recipient performance. EDA was, thus, prevented from determining whether the incented jobs were actually created or retained or from ensuring that the awardees had satisfied the incentive program requirements for these jobs. In addition, the agency lacks adequate policies, procedures, and controls to provide accurate and reliable program results.

Specifically, our audit found numerous significant deficiencies in EDA's management and oversight of the incentive programs. These deficiencies include:

- 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 representations 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 (GAAP).

Implementation of OSC's audit recommendations will increase EDA's overall accountability within the framework of the economic incentive programs. Moreover, our recommendations will result in stronger controls designed to ensure consistent and accurate reporting of program results and assessment of the economic benefit delivered to the state. Through development of stronger policies and procedures, EDA will be better positioned to improve its monitoring and oversight, provide greater efficiencies in operational practices, and determine economic program success.

OSC makes 21 recommendations to enhance EDA's monitoring and administration of the incentive programs.

AUDIT FINDINGS AND RECOMMENDATIONS

Management and Administration of Incentive Programs

EDA lacks appropriate policies, procedures, and controls for certain administrative actions required to ensure that final approved projects meet the statutory requirements and objectives of the incentive programs. In addition, EDA failed to comply with statutes, regulations, its own policies and procedures, and award agreement terms which resulted in overstated and overpaid incentive awards.

This performance audit included a comprehensive examination of EDA's management and administration of the five incentive programs identified earlier. In so doing, we first examined whether EDA had in place the necessary policies and internal controls to effectively administer these programs. Then, utilizing our sampled projects, we reviewed EDA's actual performance with regard to approving incentive awards for those programs and monitoring each recipient's compliance with the requirements of the specific program and their award agreements.

It is axiomatic that EDA management is responsible for establishing effective internal controls for its incentive programs. Such internal controls must provide "reasonable assurance" that transactions are executed and recorded in accordance with EDA management's authorization. EDA management is also responsible for establishing and implementing effective processes for monitoring and overseeing program recipients' compliance with the requirements of the incentive programs.

To effectively administer its incentive programs, EDA was required to: (1) establish sufficient policies; (2) implement controls that enhance compliance with applicable statutes, regulations, and internal policies and procedures; (3) appropriately assess the eligibility of applicants; (4) appropriately manage and oversee its agreements with awardees; and (5) enforce the terms of award agreements including suspension and recapture provisions as appropriate. Accordingly, we examined these key areas of EDA's administrative responsibilities and have set forth below our findings and recommendations.

I. Policies, Procedures, and Internal Controls for Incentive Programs

We found that EDA has adequate policies and procedures for some aspects of its incentive program administration but found them lacking in others, most notably in the area of EDA's monitoring and oversight of recipient performance.

As part of its administrative responsibilities, EDA is required to monitor a recipient's compliance with the terms of the program for which they received an incentive award. This necessarily includes the extent to which a recipient has satisfied the terms of its award agreement concerning the creation and/or retention of incented jobs and any capital investment goals as applicable. Our audit found several deficiencies in this key area. We note that in some cases these deficiencies led to overstated incentive awards for recipients. OSC has thus found that EDA lacks appropriate policies, procedures, and controls necessary for the effective monitoring and oversight of the incentive awards. This conclusion is based upon our findings that EDA did not:

- a. Have in place a policy setting forth the process for establishing an applicant's baseline employment numbers at the time of application (*i.e.*, pre-award stage) for all programs. Establishing an applicant's baseline employment numbers is essential to ensure that incentives are awarded only for newly created or retained jobs;
- b. Have in place an adequate policy that established 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;
- c. 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 Labor and the Department of Treasury, Division of Taxation (Taxation)²;

² OSC recognizes that EDA did obtain some verification of job data for BEIP projects, but as discussed later in this report there are still deficiencies in the process that prevent EDA from fully meeting its responsibilities to monitor the recipient-reported job data.

- d. Require sufficient supporting documentation to demonstrate that a project satisfied the net increase in employment and/or maintained the required statewide employment levels;
- e. Define the processes to evaluate pre-award and performance data for recipients with incentive awards from multiple programs to ensure that jobs are not duplicated and that incentives are appropriately earned for each program;
- f. Establish policies and procedures that define the eligibility processes for all of their various incentive programs or the method 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; and
- g. Consider actual "performance data" in analyzing a recipient's eligibility and a project's economic benefit to the state.

During the course of our audit, EDA management recognized that there are areas in need of improvement and has advised OSC that it has taken steps to implement processes that should enhance their operations. Notwithstanding these efforts, however, there is still room for improvement that will further strengthen EDA's management and administration of the incentive programs to provide greater transparency and accountability of the programs and to ensure that incentives are awarded in those instances when the applicant can demonstrate an economic benefit to the state.

II. EDA's Determination of Eligibility

An integral part of EDA's administration of the various incentive programs concerns its determination of a prospective applicant's "eligibility" for a particular program. Eligibility for incentive programs requires a prospective recipient to meet the applicable statutory and regulatory requirements that may include some or all of the following: new job creation, retention of at-risk jobs, capital investment commitments, and employment at a specific location. Additionally, for some programs, jobs must meet certain requirements, including but not limited to: minimum salary requirements, full-time employment defined as 35 hours per week, offering of benefits, hiring of non-related staff, and demonstrate that the project results in a net increase in employment, and/or

maintaining a minimum statewide employment level compared to the pre-award employment level.

The process of determining eligibility requires EDA to analyze a prospective recipient's submitted application information. All of the incentive programs require a prospective recipient to provide the following key information, as applicable, including but not limited to: (1) project cost; (2) site location information; (3) the number of jobs to be created or retained; and (4) the projected capital investment.

Our audit of sampled projects noted several deficiencies in EDA's review of applications and assessments of eligibility.

A. EDA Failed to Comply with the HUB Statute and Regulations

Our review included a sample of eight projects that received incentive awards under the HUB program. For the five commercial projects, we found that EDA failed to comply with the applicable statute and regulations in determining the incentive awards and 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 benefit analysis or NBA. First, 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 credit of 100 percent of its capital investment. (emphasis added). EDA's regulations further provide that a project's NBA 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 audit found, however, that EDA deviated from the language of the statute and the regulations. Specifically, in some cases, when the NBA was in fact below the amount of the proposed capital investment – thereby making the applicant arguably ineligible for a HUB award at all – EDA would simply reduce the award to an amount below the NBA rather than tie the award to the capital investment as required by the language of the statute.

EDA did not disagree with our assessment of its actions regarding the reduction of awards to satisfy the required NBAs, arguing that the state was still deriving an economic benefit greater than the amount of the incentive award. Moreover, EDA maintains that pursuant to advice from the Attorney General's Office, an applicant can receive an incentive award for less than 100 percent of its proposed capital investment.

OSC reviewed documentation submitted by EDA concerning the advice provided by the Attorney General's Office. While that documentation may support EDA's award of incentives for less than 100 percent of eligible capital investments, it certainly did not authorize EDA to award such incentives where the capital investments fell below the statutorily required minimum of \$50 million. For three of the projects we sampled, EDA awarded incentives to applicants based on capital investments below the \$50 million statutory minimum resulting in a clear violation of the HUB statute.

EDA continues to dispute the issue and believes it has complied with the statute and regulations in approving these HUB projects. However, OSC has reviewed all responses and data provided by EDA, including memoranda and emails from the Attorney General's Office, and does not believe that any changes to our finding is warranted. Therefore, OSC suggests that EDA consult with the Attorney General's Office to resolve this particular issue.

B. Economic Benefit Analysis

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 utilizes an automated spreadsheet that calculates a project's NBA. If the data elements are not accurate in the NBA, however, the resulting net economic benefit calculation will yield an inaccurate result. We found several deficiencies related to EDA's economic benefit analysis of our sampled projects which are set forth below. We note that these deficiencies, for the most part, were traced back to failures in EDA's assessment of a project's NBA. Specifically, EDA:

- a. Relied only on recipient-reported data (*e.g.*, a recipient's report of certain project data) in conducting the NBA for a project and did not independently verify such data.
- b. Utilized incorrect data elements when conducting the NBA contrary to its policy and procedures. These actions resulted in overstated incentive awards totaling \$4 million for two of the HUB projects we sampled.
- c. Utilized applicant-reported average salary data instead of the lower NBA computed average salary, contrary to EDA's current practice to consider both amounts when determining the incentive award. This resulted in an overstated incentive award of \$4.8 million for one HUB project in our sample.
- d. Failed to reassess its NBA against a recipient's actual performance to determine whether the state realized the estimated economic benefits. We note that in order for EDA to ensure the state is actually realizing the economic benefit projected in the NBA, it is essential to reassess a project's NBA and adjust the award based upon the recipient's actual performance. The NBA is heavily weighted for the number of estimated future jobs and average salaries. Our 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. In both instances, the recipients' actual job and salary information were lower than the estimates used in the initial NBAs.
- e. Completed the NBA for commercial ERG projects based only upon the recipients' reported job data. We note that similar to the HUB projects discussed above, EDA did not independently verify the submitted job data.
- f. Did not provide the complete NBA for one HUB project in our sample. That project was approved based on the creation of an estimated 212 new jobs for a total incentive award valued at \$41.7 million. EDA was not able to recalculate the NBA based on partial information that was available in the project file. As a result, OSC was unable to verify the data inputs or determine whether the NBA was properly calculated. The HUB statute and regulations require that new jobs exceed the statewide employment level in the period before the award was approved. Our audit found, however, that the recipient's statewide employment actually declined

- during the award performance period between 2010 and 2017. This particular recipient has received incentive awards totaling \$29.2 million through 2018.
- g. Does not have formal policies or procedures to assess the economic benefit for BRRAG projects. EDA again based its analysis of economic benefit solely on recipient-reported data.
 - h. Did not complete a formal NBA or other economic benefit analysis for BEIP projects.

C. Material Factor Certification

For all incentive programs except ERG, the process for approving an incentive award includes the submission of a “material factor certification” from a company official stating that an incentive award was a material factor in the company’s decision to expand and/or relocate operations in New Jersey. We found the certification used by EDA to be inadequate. Specifically, the certification did not require the disclosure of other information relevant to analyzing the material factor issue, such as the company’s existing business footprint in the state, the proposed alternate location’s suitability, specifics concerning the company’s existing labor force, relocation and business interruption costs, supplier networks and availability, and transportation networks. Indeed, prior to 2012, the material factor certification was accepted without any supporting documentation or other evidence relevant to a company’s decision-making process with regard to expanding and/or relocating its workforce. EDA’s acceptance of only a certification from a company official does not amount to sufficient evidence that the receipt of an incentive award was a material factor in the company’s decision to expand and/or relocate. To that end, EDA should consider incorporating additional relevant information into its analysis to protect against unnecessary, excessive, or inequitable incentive awards.

D. Cost Benefit Analysis

In 2012, EDA also required an applicant for incentive programs to submit a cost benefit analysis (CBA) to support its material factor assertion. EDA did not, however, have in place any formal policies or procedures to govern the applicant’s submission of the CBA or EDA’s evaluation of the CBA. The process in place required the applicant to

complete the CBA by inputting simplistic conclusory information into an automated spreadsheet template. Specifically, the template required the applicant to input its comparison of costs for the locations under consideration and a summary of the cost differential.

We also found deficiencies in EDA's current assessment of CBAs. Specifically, EDA did not implement a process to ensure that an applicant had identified all relevant costs related to the proposed site locations (e.g., building costs, employee relocation costs, company moving costs, costs for employee recruitment and training) and had disclosed other non-financial factors (e.g., existing state presence, transportation and supplier networks). Most notably, EDA did not require an applicant to submit supporting documentation for its proposed costs and simply accepted the applicant-reported data.

We note that for most of the sampled projects, the applicants' CBAs reported that the costs for the New Jersey location exceeded the costs for the competing location. Incentive program statutes and regulations, however, do not require that the CBA cost differential and the NBA be considered in determining incentive awards. For example, GrowNJ incentive awards are not structured to provide the lowest possible incentive to attract the business, rather they are based on a set amount per job irrespective of the project's NBA or CBA cost differential. In our sample of GrowNJ projects, we noted the CBA cost differentials compared to the incentive awards ranged from a low of 3 percent to as high as 100 percent or more showing a wide disparity in how much the incentive award had offset the additional costs as reported in the CBAs. This issue raises doubt as to whether the CBA and material factor certification are meaningful in determining whether an incentive award is a significant factor in an applicant's decision to remain in New Jersey.

III. Additional Issues Affecting Eligibility

During the course of our audit, we found additional weaknesses in EDA's processes that affect an applicant's continued eligibility for incentive programs.

A. Failure to Recalculate BEIP Incentive Awards

EDA calculates BEIP incentive awards utilizing a mathematical formula requiring data inputs for certain project factors. Applicable regulations and EDA's own policy require EDA to recalculate an incentive award when the actual number of jobs created are less than the projected number of jobs the initial award was based upon.

In our sample of projects, we found that EDA did not follow applicable regulations or its policy in determining and adjusting, when appropriate, 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.

B. Factoring in a Recipient's Awards Under Multiple Programs

Our sample of projects included four companies that had received multiple awards under different incentive programs. Our review of these projects found that EDA did not have specific policies, procedures, or processes in place to conduct a meaningful review of the pertinent job data either during the application review or during the award performance period. The implementation of appropriate policies and procedures are necessary to ensure that jobs and incentive awards are not duplicated. Our audit found 644 duplicate employees which we discuss in more detail later in this Report.

IV. Management and Oversight of Incentive Awards

Recipients are monitored through EDA's post-closing process based on the policies and procedures detailed in EDA's Post-Closing Manual (PCM). According to the PCM, EDA must, among other things, determine the extent to which recipients satisfy the terms of their award agreements to create or retain the jobs and meet capital investment goals. EDA is also responsible for ensuring that the incentive awards satisfy the overall program goals of economic growth.

A. Monitoring of Recipient Performance

We found that EDA did not adequately analyze all project data during the application review or during award performance, and did not verify and/or confirm the estimates or actual performance data. Instead, EDA relied only on recipient-reported data and recipient certifications. We further found that EDA did not incorporate into its processes a method to assess or track certain essential information such as the projected factors considered to determine a project's economic benefit or even the factors used to calculate incentive awards. As stated earlier, EDA also did not consistently undertake a comparison of projected information with actual performance. As a result, incentive awards have been improperly awarded, overstated, and overpaid.

Incentive program regulations set forth certain requirements for incented jobs. For example, incented jobs must be full-time jobs with the employee working a minimum of 35 hours per week. The employee must also satisfy a certain number of work hours at a project location and site location. EDA accepted certain annual reporting information from recipients that was insufficient for EDA to adequately assess their compliance with all job requirements set forth in award agreements. Indeed, we found EDA generally deemed terms fulfilled based solely on the recipient company official's certification.

In addition, our audit found that EDA did not:

- a. Ensure that recipient-reported employee data was accurate or have a process to ensure that incented jobs were actually created or retained.
- b. Collect sufficiently detailed information from recipients about the jobs created or retained. Pursuant to the award agreement terms, awardees were required to create or retain jobs but were not required to submit detailed information such as payroll records, showing that jobs were actually created or retained. Such information is critical to ensuring that recipients satisfy all incentive award requirements and program goals. This information is also critical to determining a recipient's future performance period incentives.
- c. Verify recipients' net increase in employment and/or statewide employment levels as required by award agreements.

- d. Verify with Taxation the recipient-reported employee state income tax withholding data for the GrowNJ program.
- e. Ensure that recipients actually satisfied all of the award requirements for incented jobs.
- f. Verify recipients' assertions that all award agreement requirements had been satisfied and instead accepted recipient certifications as evidence of compliance.
- g. Adjust eligibility or incentive awards based on actual performance.

B. Net Increase in Employment and Required Employment Levels

Our audit also found that EDA did not develop policies and procedures to monitor recipients' compliance with the net increase in employment and minimum employment levels requirements of the award agreements. The BEIP and HUB programs both require that the incented jobs result in a net increase to a recipient's workforce. The BRRAG and HUB programs require recipients to maintain minimum employment levels during the post-performance or during the award performance period. We found that EDA did not consistently require or obtain sufficiently detailed documentation concerning these matters nor did it have a formal process to verify such information. Instead, EDA relied solely on the recipient company official's certification to document purported compliance.

C. Employment Data and Unique Identifier

Pursuant to the incentive program regulations, EDA is authorized to obtain "personnel" information enabling it to administer the incentive programs. The applicable regulations do not specifically define personnel information nor do they restrict or address EDA's authority to obtain confidential employment-related data. As a result, we found that EDA may be somewhat limited in its ability to effectively monitor some aspects of recipient performance.

The fact remains that EDA has not consistently collected sufficient information from recipients regarding the employees who fill incented jobs. This deficiency prevents EDA from adequately verifying and confirming the recipient-reported data and from concluding that incented jobs were actually created or retained. The most important aspect of verifying job data is the ability to identify the employee and compare recipient-

reported data with information from Labor and Taxation. Because of differences in awardee reporting processes and the lack of using consistent data formats for collecting information such as employee names (*e.g.*, middle names/middle initial), the need for a unique employee identifier is critical. A social security number (SSN) or some other unique identifier³ would enable EDA to accurately verify recipient-reported job data with that of Labor and Taxation. EDA, however, has not consistently required recipients to provide SSNs or some other unique identifier for job reporting purposes. Without this critical information, EDA cannot accurately assess whether recipients have actually complied with the job-related terms of their incentive agreements.

D. Certification of Incentive Award Taxation Data

EDA has established a process for Taxation to verify certain recipient-reported employee data under the BEIP program prior to the issuance of an incentive award. Pursuant to this process, EDA provides its annual BEIP reports to Taxation. Taxation staff advised OSC that they conduct a limited review of the data included in these reports and generally only review data for 10 percent of the employees included in the reports. We first note that this limited review may not be sufficient to verify the information that is critical in the determination of the incentive award.

Moreover, with regard to any adjustments to incentive awards based on employee information, we found that Taxation only advises EDA of the final adjusted incentive award amount. Taxation does not provide a reason or any details regarding the adjustment because of certain statutory limitations in their sharing of tax-related data.⁴ Without such information, EDA is unable to adequately monitor recipient job data during

³ OSC recognizes that as a result of federal Privacy Laws, EDA may be limited in its ability to request or use SSNs, which is why we do not recommend the use of SSNs in its monitoring process but instead suggest that EDA consider its options in verifying and validating the job-reported data as well as consider those state agencies who may assist in that process.

⁴ Pursuant to *N.J.S.A. 54:50-8*, Taxation cannot “divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any [tax related] information obtained from the said records or files or from any examination or inspection of the premises or property of any person.”

future award-performance periods. Notwithstanding the language of the statute, OSC notes that EDA provides Taxation with all of the recipient-reported data in its possession including the employer's tax identification number, employee name, SSN when available, wages, and state income tax withholdings. Given that EDA is already in possession of this highly sensitive, confidential information there would seem to be no basis for Taxation's decision to withhold the details relating to its award determinations. Throughout this audit process, Taxation has not identified any information in its possession beyond that which EDA provided.

Certain GrowNJ awards are capped at 90 percent of the employer's withholding of employee state income taxes. Unlike the BEIP program, EDA did not verify the recipient-reported data with Taxation and relies instead on the unverified data to process incentive awards. EDA failed to implement appropriate controls to properly verify the recipient-reported tax data that is used in determining the recipient's incentive award. This failure prevents detection of incorrect or inaccurate recipient-reported state income tax withholding amounts and could result in overstated incentive awards.

E. Recipient Non-Compliance with Award Agreement Terms

EDA's incentive award agreements, together with applicable regulations and EDA policies, allow for certain sanctions to be imposed when a recipient fails to comply with the terms of an agreement. These sanctions include suspending or terminating an award and/or recapturing an improperly issued incentive award.

Our audit of the sampled projects found several instances where EDA failed to take any action when recipients failed to meet the terms of their award agreements. Specifically, one BRRAG recipient had not submitted the annual reports for two reporting periods, one was more than a year late and the other was a few months late. EDA was unaware of the recipient's failures until alerted by OSC.

We also found that two BRRAG recipients and one GrowNJ recipient had failed to meet certain employment levels as required by their award agreement letters and/or project agreement terms. This particular GrowNJ example also included inconsistent employment requirements in the award letter and the project agreement, resulting in lack

of clarity as to the recipient's actual employment requirements. EDA has yet to take any action to recapture any portion of the tax incentives issued to the BRRAG recipients or to formally resolve the inconsistencies in the employment requirements for the GrowNJ project.

F. Issued BEIP Incentive Award

Our review of the sampled BEIP projects found that EDA improperly issued an incentive award to a recipient after EDA had failed to detect that the recipient had reported incorrect job data. In this instance, the recipient overstated its job data by reporting data for a one-year period instead of reporting a partial year of data. As a result, EDA issued an overstated incentive award for this recipient in the amount of approximately \$137,000.

G. Systems Update – Programming Issue

During the course of our audit we also found that one BEIP project in our sample had annual incentive awards certified by Taxation in excess of its capped incentive award amount by approximately \$1.3 million from 2010 through 2013. To date, only approximately \$65,000 of the \$1.3 million award has actually been issued and EDA advised us that it is addressing the overstated incentive by reducing future tax credits.

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 certain EDA databases. EDA did not have sufficient controls in place at the time to validate the data and thus was unaware of the programming issue and overstated incentives for BEIP awards. 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. EDA advised OSC that the programming issue has now been corrected and that the Attorney General's Office has been consulted with regard to the recovery of the overpayments.

In summary, the need for an effective monitoring process is essential to ensure continuing eligibility, prevent improper incentive awards, ensure economic benefits to the state are realized throughout the terms of the incentive agreement, and to properly report on awardee and overall incentive program achievements. The deficiencies in the reporting process and EDA's failure to implement a more robust monitoring program raise questions regarding the accuracy of reported awardee performance. Later in this Report, we present findings related to the inaccurate recipient-reported data.

Recommendations

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.
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.
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.
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.
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.
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.

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.

Program Results and Reporting

EDA failed to develop or implement an evaluation process to assess the effectiveness or success of the incentive programs. In addition, EDA's reporting of incentive award performance is based on unverified projections of jobs and is not adjusted for actual performance results.

During this audit, OSC staff examined whether EDA has met its obligations regarding the reporting of program results. Upon reviewing EDA's practices and procedures in this regard, OSC found that EDA lacks a comprehensive process or system to determine whether recipient businesses in fact created or retained jobs or had satisfied the program conditions for those jobs. Further, EDA did not perform a comprehensive evaluation of the economic benefits realized from the nearly \$11 billion of approved incentive awards.

As a result, OSC concludes that tax incentives may have been improperly awarded, miscalculated, overstated, and overpaid resulting in potential lost tax revenue. In addition, EDA did not evaluate the success of the incentive programs or determine if they generated economic benefits to the state. Finally, the number of created and retained jobs published by EDA are inaccurate and overstated because they are based on unverified data.

I. Program Effectiveness

As of February 2018, EDA had approved 1,000 projects that are estimated to provide close to \$11 billion in tax incentives to businesses. Despite the significant value of the tax incentives, EDA failed to: (1) assess whether the awardees actually created or retained the required jobs; (2) implement a process to analyze which incentive programs work; or (3) determine whether the incentive awards provided the economic benefits considered during the approval process for the projects. Of course, the overall success of the incentive programs is inextricably tied to the achievements and success of each

awardee. Notwithstanding that, EDA did not have a process in place to collect detailed job data sufficient to assess whether the promised jobs were actually created or retained.

II. Program Results

OSC found additional issues related to the manner in which EDA has reported the results of its different programs. As with EDA's inability to assess the true effectiveness of the awards, these reporting issues tie back, in large part, to the degree to which EDA was able (or unable) to determine the true number and nature of the jobs either retained or created as required by each award. This is particularly significant given that the reporting that did take place may have included inaccurate or misleading data. Even when this was called to EDA's attention by OSA in 2017, OSC found that EDA's steps to remediate this problem did not adequately address the issues.

III. EDA's Annual Report To The Governor and Legislature

By statute, EDA is required to report annually to the Governor and Legislature on its activities for the preceding year. Pursuant to *N.J.S.A. 34:1B-4(j)*, the annual report shall "set forth a complete operating and financial statement covering [EDA's] operations during the year." Unlike other states, EDA's annual reporting requirements do not require an assessment of the effectiveness of its programs or an analysis of the economic benefits realized.

EDA also publishes annual reports and summary project data on its website. The annual reports consist of a compilation of the current year's approved awards and job data. OSC found, however, that the reported job data was based upon unverified estimates that were not evaluated or revised based upon the recipient's actual performance. Any public-facing statements regarding program results must be based on accurate and reliable information. EDA's reporting of unverified data could easily mislead and/or misinform the public and other stakeholders.

Moreover, a detailed review revealed that EDA's annual reports did not fairly reflect the current status of incentive award accomplishments or address the effectiveness

of the incentive programs in achieving the overall program goals and objectives. OSC believes that the annual report should provide actionable information regarding the incentive programs to allow legislators and stakeholders to make informed decisions about the economic programs themselves and whether or not they remain viable.

It should be noted that two of the incentive programs that were discontinued by the 2013 Act, specifically the BRAGG and BEIP programs, did each require that EDA submit to the Governor and Legislature an annual report concerning the impact of job retention in the state.⁵ EDA discontinued submitting these reports, however, when the Act became effective even though more than 300 active projects will continue for the next several years. While the statutes governing HUB and the current surviving incentive programs, GrowNJ and ERG, do not contain any such reporting requirements, OSC concludes that EDA should report on the impact of these award programs on a yearly basis until all of the active projects are completed.

Indeed, EDA has a responsibility to New Jersey's taxpayers and stakeholders to properly administer the incentive programs and to assess the success of each program with a particular emphasis on the extent to which New Jersey's economic position has improved. Without such validation, there is no evidence that the incentive awards are doing more than just providing a subsidy for businesses and not detracting from other activities that promote economic growth, such as education, job training, and transportation.

EDA's failure to implement an effective monitoring system must be addressed. Timely and accurate information will assist legislators and stakeholders in making appropriate statutory revisions or evaluating recommendations as to whether incentive programs should be continued or repealed or are best-suited for the state.

⁵ See *N.J.S.A. 34:1B-121* (BRAGG) and *N.J.S.A. 34:1B-134* (BEIP).

IV. 2017 Incentive Award Monitoring Update

This is not the first time EDA will have been put on notice of program results and reporting issues. Indeed, the OSA audit found similar issues. In 2017, however, when required to develop a CAP for the OSA audit, EDA did not sufficiently address the underlying issues discussed above. Specifically, EDA now requires awardees to submit copies of their labor reports with the annual reports. As OSC discovered when attempting to verify this data, however, this only allows EDA to compare the total number of employees between the annual report and the labor reports. Since EDA did not require SSNs or some other unique identifier from all recipients, it does not have the ability to thoroughly analyze this information to determine whether the recipient-reported jobs were actually created or retained. In addition, our audit noted inconsistent reporting of employee names in the annual reports and labor reports (*i.e.*, nick names, middle initial/names, and last name changes) making it difficult, if not impossible in some instances, for EDA to verify employee data without a unique employee identifier.

Program regulations permit EDA to have audits performed as it deems necessary. Prior to the 2017 CAP, however, EDA had not engaged any audits of the recipients or incentive programs. In 2017, EDA issued a three-year (plus two annual options), \$500,000 contract to an independent certified public accounting firm to assist EDA with determining whether the cost and job certification reports submitted by the awardees complied with program requirements. The firm conducted four engagements of GrowNJ projects the first year of the contract and was scheduled to complete five engagements in the second year. During our audit, we were provided six completed reports that, unlike the OSC and OSA audit results, did not identify any significant issues. OSC determined that the results were based on limited procedures, which were agreed upon by EDA and the independent audit firm, and did not include a comprehensive reconciliation and comparison of the recipient-reported job data with labor reports as this audit or OSA's audit. EDA should consider the effectiveness of the independent auditor's reconciliation in the development of any future monitoring and oversight activities.

Future monitoring and oversight should provide a more thorough and comprehensive analysis and independent verification to ensure that awardees actually

created new jobs and/or retained jobs pursuant to the terms of the award agreements and incentive program provisions. The limited evidence and reliance on a company official's unverified certification is insufficient given the size, scope, and complexity of the incentive awards. EDA should rely on detailed evidence rather than mere certifications.

In summary, OSC has found that EDA's monitoring and oversight process is still less than effective since it does not consider detailed data sufficient to confirm whether the promised jobs were actually created or retained. As such, the process cannot accurately inform whether recipients received overstated incentive awards or if overpayments were made. A more robust monitoring and oversight program would provide transparency, accountability, and greater assurance of a recipient's progress, program success, and assurance that the state received economic benefits from the economic development programs.

Recommendations

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.
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.
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.

Evaluation of Recipient Performance

EDA's current monitoring and oversight process lacks sufficiently detailed data to confirm whether jobs were actually created or retained and has led to overstated and overpaid incentive awards. In 24 of the 37 sampled projects, about 65 percent, we found close to 3,000 recipient-reported jobs that were not substantiated as having been created or retained.

In completing our assessment of the five individual incentive programs that were the subject of this audit, OSC staff examined data and reporting issues relating to each of the programs. Unlike the prior section, in which we focused on EDA's annual reporting to stakeholders and to the public, this section addresses the underpinnings of that larger problem on an individualized level.

I. Recipient Annual Reporting Concerns and Issues

37 projects within our 48-project sample required the creation or retention of jobs pursuant to the program requirements specific to each of the 4 incentive programs.⁶ Award recipients in these programs are required to submit annual reports to document and/or verify that the required jobs were indeed created or retained. As we began to discuss in the prior section, our audit found numerous deficiencies with the annual reporting process that prevented EDA from accurately conveying recipient performance. Here, we discuss in greater detail some of the specific types of information that EDA could have, but did not, capture in the recipients' individual yearly reports. Generally, OSC has found that these recipient reports (1) were not consistent in the format or data elements provided or required, (2) did not consistently include a level of detail necessary to test the accuracy or reliability of the recipient-reported job data, and (3) did not provide the details necessary to ensure that the recipient had satisfied all of the required job factors.

⁶ Residential HUB and ERG projects do not include tax incentives for new or retained jobs. Therefore, these projects were excluded from testing.

These deficiencies hamper EDA's efforts to perform a thorough analysis and assessment that jobs were actually created or retained pursuant to the program requirements. Indeed, the current process did not provide enough detail to track the new or retained position by job title or through specific identifiers that would be necessary to identify each individual employee filling each position throughout the year. Instead, award recipients provide a list of employees, sometimes provide a job title, do not consistently include hire or termination dates, and do not consistently track when positions are vacant and when they are backfilled. The missing data is of critical importance given that some programs require that a new or retained position be "in addition to" the awardee's pre-award statewide employment level. Under the current reporting process, EDA cannot make that determination.

Clearly a more sophisticated reporting process or position-tracking system would permit EDA to perform a more thorough analysis of the awardees' compliance with the requirements of the incentive programs with respect to minimum statewide employment levels.

II. Failure to Obtain Sufficiently Detailed Job Data

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 auditors 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).

III. Awardees Overstated the Incented Job Data as Actual Jobs Were Not Realized

EDA did not monitor, in a meaningful way, the accuracy and reliability of the recipient-reported job data. As such, it is impossible to properly assess whether each reported job properly satisfied the incentive-program job requirements. OSC engaged in a deeper analysis of the reported jobs within the sample set that was the subject of this audit. In particular, OSC attempted to verify that each employee included in the recipients' annual reports was also included in the labor reports for the same reporting

period. With respect to GrowNJ projects in particular, OSC attempted to verify that the awardees had reported wages to Labor for each reported employee in a new or retained position for all four quarters in the reporting period as required by that program. For both the GrowNJ and HUB projects, our auditors attempted to verify that awardees had maintained the required statewide employment levels. Finally, for the BRRAG projects, we also focused on verifying that the awardees maintained the required post-performance employment levels.

In general, the significant deficiencies in the annual reporting data elements combined with EDA's failure to obtain detailed job data prevented OSC from making an absolute finding as to whether the required jobs were in fact created and/or retained thereby making it impossible to determine whether or not all program requirements and award agreement terms had been satisfied. Notwithstanding that, our review did allow us to make specific findings in some areas. For example, our 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 include: 726 employees claimed in the annual reports that were not included in the labor reports, 261 GrowNJ 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. OSC was unable to complete testing for 1,362 jobs in 2 of the projects primarily due to a lack of reporting details, explained in more detail later in this Report. In total, incentives were certified or overpaid totaling about \$3.9 million. These details have been shared with EDA for its review and monitoring of annual reports in subsequent periods to prevent improper incentive awards in the future.

The details of the exceptions found during our audit include:

A. Employees Not Included in Labor Reports

Our audit of the recipient-reported employees as compared with the labor reports noted that a total of 726 employees were not reported to Labor in 20 of the 33 sampled GrowNJ, BRRAG, and BEIP projects. The total overpaid incentive awards amount related to this exception is approximately \$585,000.

B. Employees Do Not Have Wages for the Full Year

261 employees included in the recipient-reported data for GrowNJ did not have wages that were reported to Labor for all four quarters of the annual reporting period. Without sufficiently detailed documentation regarding each employee's annual work history, we were not able to verify that these employees met the full-time work requirement contained in the incentive program regulations. The incentive payment for this specific set of employees totals approximately \$1.2 million.

To illustrate this weakness, program regulations specify that employees are considered "full-time" provided they work 35 hours each week. However, EDA did not specify that a minimum work requirement be included in the recipients' annual reports. Our review revealed that awardees would often include employees who had not worked a full month. EDA advised OSC, however, that an employee hired on the last day of the month would qualify for inclusion in the annual report. It appears, from our review, that numerous recipients reported employees with hire dates at the end of the annual reporting period. For example, one company hired six individuals in the last two weeks of its reporting period presumably to meet the number of employees required by its award agreement.

C. Employees Reported in Multiple Programs

Two awardees in our sample were recipients of both BEIP and BRRAG awards. These recipients improperly reported the same 644 employees in both incentive awards for the same reporting periods. Assuming the retained BRRAG positions were filled before any new positions in the BEIP program were created, we determined the improper BEIP incentive award totals about \$102,000.

D. Statewide Employment Level

In addition to creating or retaining jobs, the GrowNJ and HUB regulations require awardees to maintain their statewide employment level as determined during the approval process. OSC found gaps in the data collected during the application process,

however, which would have made it difficult, if not impossible, for EDA to monitor those employment levels.

For example, with respect to the sampled HUB Projects, EDA did not obtain hire dates for all employees who existed at the time the applications were approved. Without such data, EDA could not determine whether or not awardees had met their requirements with respect to retained employees or maintained the necessary statewide employment level during the award performance period.

E. Incomplete or Missing Annual Reports

EDA did not provide or only provided partial annual reports for two of the sampled BRRAG projects. Without the complete reports, we were not able to verify whether 1,362 jobs were retained. The details of the missing information include:

- a. The annual report for a BRRAG recipient with an incentive award valued at \$810,000 for 540 retained jobs was not provided.
- b. Incomplete annual report data for another BRRAG recipient with an incentive award valued at \$1.2 million for 822 retained jobs. The recipient did not include employee names in the annual report. Without employee names, OSC was not able to determine whether the recipient-reported jobs were, in fact, retained and whether the awardee satisfied the award agreement terms for those jobs. This particular awardee also had received a BEIP incentive award. OSC found that the annual reports for the BEIP project included employee names. EDA did not explain or justify why it was appropriate to exclude the employee names for the BRRAG award nor did it explain how it determined the accuracy of the number of jobs asserted by the awardee.

F. Post-Performance Reporting Deficiencies

All six BRRAG recipients that were included in our testing identified employees in their annual reports that had not been reported in the labor reports. Two of the awardees failed to meet the required employment levels for some part of their five-year post-performance period. Because EDA had not verified or compared the recipient-reported

job data with the labor reports, it was unaware of the non-compliance and, therefore, did not take action to recapture any of the incentive awards issued to these recipients.

G. Other Issues

- a. During our testing of the GrowNJ, BRRAG, and HUB projects, we found numerous employees included in the annual reports that had not been included in labor reports. Since the awardees otherwise met the program required employment levels there was no impact to their incentive awards. However, these discrepancies raise doubt as to the accuracy of the recipient-reported data and further highlight the need for EDA to develop and implement a robust monitoring and oversight process including independent verification of awardee job data and thorough assessment of awardee performance.
- b. Our audit found that 4 of the 6 BRRAG awardees did not include all 12 months of job data.
- c. During the course of our audit, one of our sampled projects included a recipient who had filed for bankruptcy and was terminated or withdrew from the incentive program. EDA advised OSC that it does not take action, either to seek recovery or to legally file as a creditor, in bankruptcy proceedings in these cases. OSC reminds EDA that, given the various outcomes in bankruptcy proceedings, including reorganizations, EDA may want to consult with the Attorney General's Office regarding its options for filing as a creditor. Moreover, EDA should consider defining when and if such recipients might qualify for consideration for future incentive programs.
- d. OSC notes that under the Act, the GrowNJ incentive program will sunset on July 1, 2019. In light of this fact, we offer the following for EDA's consideration. In 10 of the 12 sampled GrowNJ awards we reviewed, the recipients had reported only a partial year of job data during their initial year in the program. Unlike the BEIP awards we reviewed, EDA awarded incentives for these recipients based on a full year instead of pro-rating the incentive to reflect the period for the actual employment. Although the applicable statute and regulations do not prohibit the

manner in which EDA calculated these awards, pro-rating the award would be more equitable.

Recommendations

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.
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.
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.
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.
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.
16. Assess the feasibility of implementing a more sophisticated position tracking system to facilitate the monitoring and oversight activities.

17. Consult with the Attorney General's Office regarding the appropriate action to take in those instances where an awardee has filed for bankruptcy.

Incentive Award Jobs Data

EDA does not utilize a single reporting mechanism to collect uniform data regarding the incented jobs from all awardees. As a result, there is limited ability to summarize and report specific job factors and benefits for all jobs.

As discussed in greater detail above, a proper and complete analysis of the five incentive programs can only be performed with the collection of detailed, adequate data regarding the awardees' performance. When that performance is tied to the creation or retention of jobs and taxpayer funds are being used to support these programs, oversight entities have an obligation to determine whether or not performance metrics are, in fact, being met. OSC auditors found that the process that EDA used to capture recipients' annual reports is insufficient to allow for a proper assessment of those metrics. In fact, EDA currently utilizes different processes for recipients to submit their annual reports and does not have a comprehensive database for all awards or for all programs. Absent a centralized job-tracking system, one that includes uniform data elements for all programs, it is difficult to summarize the key employment factors for the incented jobs.

I. Incentives Data Management System

Since 2012, EDA has utilized a proprietary database, the Incentives Data Management System (iDMS), to collect certain recipient reports and supporting documents that are required pursuant to the award program conditions. GrowNJ, HUB, and BEIP are currently utilizing iDMS. Within iDMS, awardees can submit their annual reports of incented jobs and supporting documentation, such as certifications from corporate officials. The system has a structured file format designed to collect information about each incented job, including: first and last name of the employee in the title, salary, job title, and the employee's hire date. Because, however, each program requires different levels of reporting, not all of these data elements are required to be submitted. The system does perform various data validations, such as quality control checks for typographical errors and date discrepancies, before accepting the file for

submission. But there is no process in place to verify the accuracy of the submitted data elements.

II. Information on the Types of Jobs Created/Retained

These discrepancies are particularly troubling when considering the manner in which job titles are submitted and recorded. Although job titles are collected through iDMS, there is no uniformity as these job titles are all company specific. As of April 2018, OSC identified over 50,000 different job titles listed within iDMS. Without requiring some uniformity, it is again virtually impossible to determine what types of jobs have been created or retained. This is critical given that, in many cases, awards are tied, not only to the fact that a job was created or retained, but that it was created or retained in a particular category or sector.

One other way to try to determine the true nature of each job title is by analyzing the related salary levels. In this way, one might be able to determine the “level” of the job created or retained (*e.g.*, an entry-level position versus a high-level management position). But this too is an imperfect solution. Using nine salary range tiers, the incented jobs are summarized below.

**Summary of the Incented Jobs for each Salary Range
iDMS as of April 2018**

Salary Greater Than	Salary Less Than or Equal To	Number Of Reported Jobs Within the Salary Range	Percent of Total Reported Jobs
\$0	\$25,000	13,242	12.0%
\$25,000	\$50,000	19,621	17.8%
\$50,000	\$75,000	17,457	15.9%
\$75,000	\$100,000	15,743	14.3%
\$100,000	\$125,000	12,726	11.6%
\$125,000	\$150,000	10,980	10.0%
\$150,000	\$175,000	7,374	6.7%
\$175,000	\$200,000	4,536	4.1%
\$200,000		8,442	7.7%
	<u>TOTAL</u>	<u>110,121</u>	<u>100%</u>

While this salary data is instructive on some level, it is far from conclusive when trying to determine what the true nature of each reported job is and, therefore, whether it meets the specific requirements of each award.

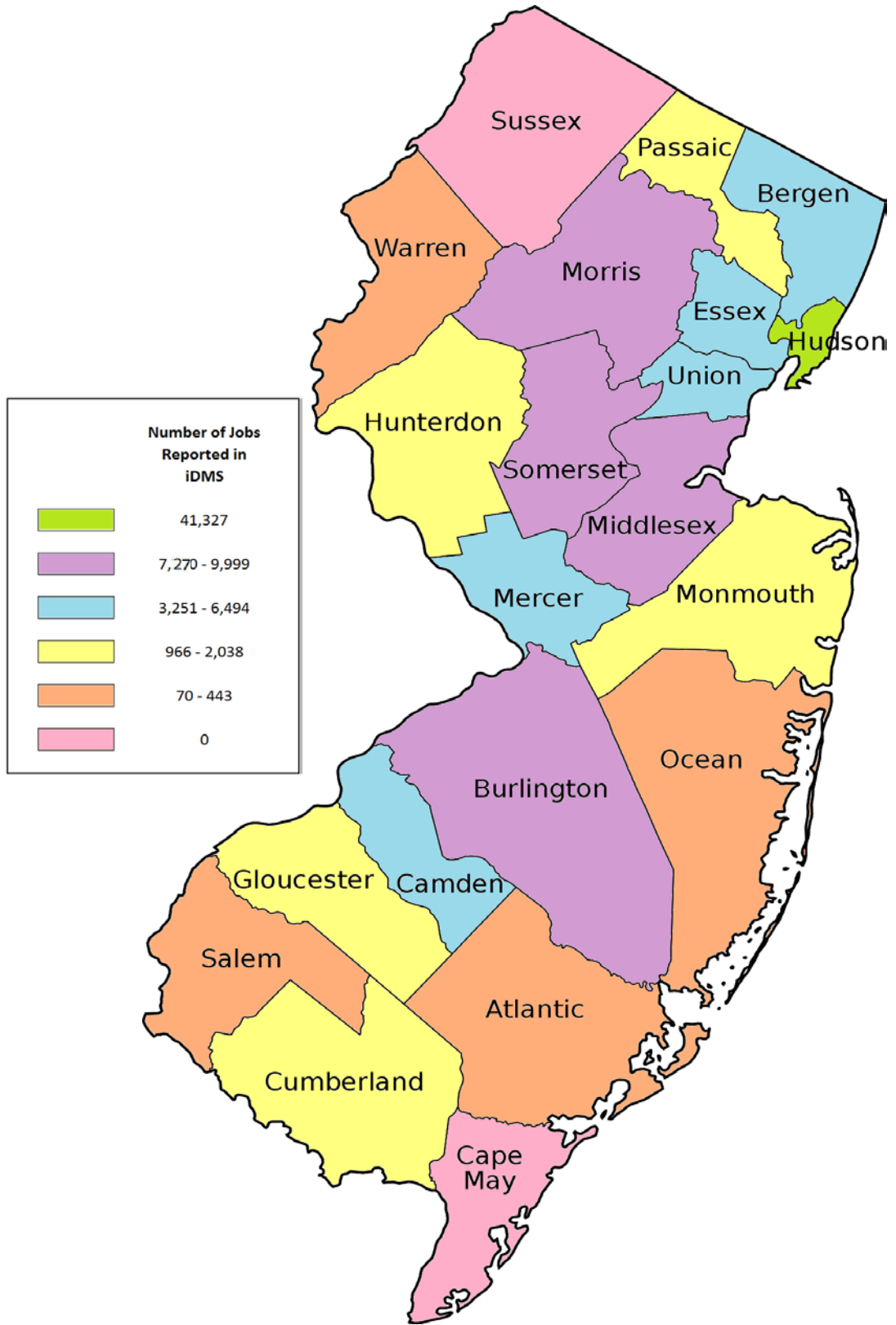
III. Information on the Locations of Jobs Created/Retained

iDMS is useful in illustrating what areas of the state benefit most from the incentive programs. Using the information from the annual reports accepted by iDMS as of April 2018, OSC summarized the total approved, recipient-reported jobs, and average salaries for each county.

Summary of Incented Jobs by County - iDMS as of April 2018

County	Projects	Total Approved Jobs	Jobs Reported	Average Annual Salary of Reported Jobs (in \$)
Hudson	111	34,463	41,327	123,421
Morris	36	7,554	9,999	127,148
Middlesex	49	5,232	8,509	81,142
Burlington	18	5,124	8,008	60,278
Somerset	26	7,351	7,270	113,065
Bergen	36	4,436	6,494	86,489
Essex	21	3,874	6,076	49,776
Union	16	2,373	4,751	107,681
Camden	24	3,223	4,263	78,302
Mercer	20	2,989	3,251	112,916
Cumberland	9	758	2,038	26,771
Monmouth	9	2,644	1,677	90,677
Passaic	8	1,332	1,558	87,316
Hunterdon	4	428	1,161	90,317
Gloucester	6	741	966	30,984
Salem	1	320	443	42,046
Ocean	2	538	442	56,684
Atlantic	2	392	435	33,076
Warren	1	166	70	114,849
Cape May	0	0	0	
Sussex	0	0	0	
Statewide	399	83,938	108,738	\$101,043

Incented Jobs by County -iDMS as of April 2018



Recommendations

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.
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.

Administrative Costs and Fees

EDA does not adequately track administrative costs related to the management of its incentive programs to determine the reasonableness of related fees imposed on applicants or awardees. Additionally, EDA has not established a proper segregation of duties as it relates to the collection and recording of fees and cannot ensure that all revenue related to the fees has been recognized when earned and measurable.

I. EDA Administrative Costs

According to the FY 2017 audited financial statements, EDA's operating expenses totaled \$56 million. Operating expenses include \$30 million in salaries and benefits for the EDA staff responsible for administering all of its loan, business, tax incentive, and other programs. Non-Payroll administrative expenditures include, among other things, legal, marketing and outreach, information systems hardware and maintenance, contracted services for actuarial assessments, and the independent financial audit. These non-payroll expenses total \$26 million, representing 46 percent of EDA's total operating expenses.

Pursuant to *N.J.S.A. 34:1B-5(k)*, EDA may collect fees from program applicants and awardees as determined to be reasonable. Fees may include charges for EDA's administrative, organizational, insurance, operating, legal, and other expenses. In FY 2017, for example, EDA collected \$26 million in fees, \$19 million of which were related to the incentive programs included in our audit. EDA does not have, however, a process to track, report, and adequately analyze information regarding the administrative costs that are directly related to the management of the incentive programs. As a result, EDA was not able to provide evidence that the fees it charges are reasonable. Similarly, without a calculation of the administrative costs related to these incentive programs, OSC is unable to determine if the fees charged are reasonable in relation to the costs of each incentive program.

As noted previously, pursuant to Executive Order #3, OSC was asked to examine the documentation and disclosure of expenses incurred by the applicants, including lobbyists, consultants, and legal representation. EDA, however, did not require applicants to submit such information. Since this information was not available, OSC did not have substantial evidence to report or provide conclusions.⁷

II. Assessment and Collection of Fees

Fees are triggered by various actions related to the administration of the incentive programs such as application review, Board approval, closing fees, annual servicing, award modifications, and termination. Each such action has an individual fee structure that may result in a flat fee or a fee tied to a percentage of the total value of the award. OSC found that the fees collected for the 48 sampled projects totaled \$5.3 million collected between 2012 and 2017.

Once a triggering event occurs, EDA's "incentive officers" are responsible for assessing and collecting the funds. The incentive officer informs the applicant or recipient of the fee but does not always notify EDA's Accounting Department. Since the incentive officers perform these functions independent of the Accounting Department and its process, there is a lack of proper segregation of duties and appropriate management oversight that could prevent errors in the process.

Our audit found examples of fees that were either not assessed or collected for all triggering events and, in other instances, fees that were collected for incorrect amounts. Of the 48 sampled projects, our audit found mistakes regarding fee amounts for 9 projects with a total amount in error of \$22,750. Fees for 4 of these projects were under-collected in the amount of \$8,500. Fees for the remaining 5 projects were not collected at all. This

⁷ Because EDA does not track this data and in an effort to obtain this information, OSC developed and distributed to awardees a survey designed to collect the information outlined in the executive order. Despite our best efforts, we received a minimal response and, given the time constraints associated with this project, were unable to pursue the matter further.

error resulted in a loss amount of \$14,250. OSC also noted that of the \$22,750, \$15,250 in modification fees for 5 projects were either not collected or under collected.

Although the Accounting Department records the fees once they are received by EDA, it does not create an initial invoice in the accounting system. Absent an invoicing process, EDA cannot ensure that all fees have been assessed, recorded, or collected. This deficiency may have caused EDA to violate Generally Accepted Accounting Principles that require revenues be recorded in the period in which they are earned and become measurable.

Recommendations

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.
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.

REPORTING REQUIREMENTS

We have provided a draft copy of this report to EDA officials for their review and comment. EDA's comments were considered in preparing our final Report and are attached as Appendix A. EDA agreed with many of our recommendations and, according to its response, has already taken steps to implement some of those recommendations.

EDA also disagreed with some of our findings and recommendations. EDA, however, failed to provide any compelling evidence warranting a change to the audit conclusions. In many instances, EDA disagreed with certain findings and recommendations based on the fact that it believes it followed statutory and regulatory requirements. Many of our findings and recommendations, however, concern EDA's failure to implement effective internal controls in addition to ensuring that statutory and regulatory requirements have been met. We believe that effective internal controls are critical to ensuring transparency, integrity, and accountability in the administration of the incentive programs.

Of particular concern, EDA highlights in its response that the results of OSC's testing cannot be extrapolated over the entire population of incentive awards. While this may be true from an auditing perspective, our Report found numerous deficiencies in EDA's administration of the incentive programs that we believe are representative of systemic failures that warrant attention for EDA's administration of its incentive programs. As the entity charged with administering and overseeing incentive programs for the state, EDA has an obligation to ensure that it implements the processes, policies and procedures to appropriately award, monitor and oversee the incentive programs.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement and in accordance with *N.J.A.C. 17:44-2.8(a)*, following the distribution of the final audit Report, EDA shall report to the Office of the State Comptroller within 90 days stating the corrective action taken or underway to implement the recommendations contained in the report and, if not implemented, the reason therefore. This Office will review the implementation of the corrective action plan.

On behalf of OSC, I thank the management and staff of EDA, the New Jersey Department of Labor and Workforce Development, and the Division of Taxation for the courtesies and cooperation extended to our auditors during this engagement.



January 3, 2019

Philip James Degnan, State Comptroller
Office of the State Comptroller
P.O. Box 024
Trenton, NJ 08625

RE: NJEDA Response to Discussion Draft

Dear State Comptroller Degnan:

The New Jersey Economic Development Authority (NJEDA) welcomes the opportunity to respond to the Discussion Draft provided on December 21, 2018 by the Office of the State Comptroller (OSC) as a result of Executive Order #3, requiring “a complete performance audit of the Grow New Jersey Assistance Program and the Economic Redevelopment and Growth Grant Program, and predecessor programs, from 2010 onward.”

The NJEDA has been administering incentive programs on behalf of the State of New Jersey for over two decades. While these complex and nuanced programs each have a different set of statutory requirements and public policy goals, a consistent thread has been the NJEDA’s commitment to the highest level of transparency and due diligence in recommending projects to its Board and ensuring every project approved is done so in strict compliance with statutes and regulations.

The OSC report focused on five programs: the Business Employment Incentive Program (BEIP), the Business Retention and Relocation Assistance Grant Program (BRRAG), the Urban Transit Hub Tax Credit Program (HUB), the Economic Redevelopment and Growth Program (ERG), and the Grow New Jersey Assistance Program (GrowNJ). Three of these programs, BEIP, BRRAG and HUB, are legacy or “predecessor” programs that are no longer accepting applications, with one program (BRRAG), having started at the Commerce Commission, with the NJEDA assuming administrative responsibility when the Commerce Commission merged with the NJEDA in 2008.

As we communicated from the beginning of this process, the NJEDA welcomes the OSC’s audit as an opportunity to assess areas for further improvement, and we appreciate and agree with a number of the recommendations outlined in the report. It should be noted that the NJEDA does not agree with the conclusory nature of the OSC audit deeming certain activities to be “deficient,” despite the NJEDA adhering to statutory requirements. The OSC indicated that some of these conclusions are based on their view of best practices. The NJEDA welcomes the opportunity to evaluate the feasibility and legality of implementing these best practices should the OSC provide them.

As statutes, regulations, management and administration of incentive programs have evolved, it should also be noted that, appropriately, 70 percent of the findings and recommendations detailed in the OSC

report are related to the legacy or “predecessor” programs. Furthermore, of the reported jobs that OSC contends lacks substantiation at approval, 88 percent relate to the predecessor programs, with over 1,300 of the 2,933 jobs in question having been approved at the Commerce Commission. It also must be noted that, as it relates to economic impact and program results, there is an important distinction between the NJEDA Board’s approval of an application and the actual realization of an award of tax credits. Of the approximately \$8 billion NJEDA has approved for projects under the HUB, ERG, and GrowNJ programs, less than nine percent has actually been paid out to date.

The NJEDA appreciates the recommendations provided by OSC given this is a pivotal time as the ERG and GrowNJ programs sunset in July 2019. To that extent, and under new leadership beginning in late February 2018, the NJEDA has already begun to take significant actions to ensure the utmost transparency and due diligence is exhibited for all legacy and future programs.

A critical step has been the creation of a new division – Portfolio Management and Compliance – which reports directly to me as Chief Executive Officer and focuses on the post-approval monitoring of projects and compliance. I charged Division leadership to review the existing incentive management and compliance process, which has resulted in a clear action plan to significantly enhance compliance and data integrity moving forward.

A second critical step is that the NJEDA and the New Jersey Department of Labor and Workforce Development (NJLWD) have met to set up a data sharing arrangement to better monitor job performance. This data sharing agreement will serve to assist NJEDA in better verifying the information submitted by applicants. This, in addition to NJEDA’s current procedure of CPA, CEO and CFO certifications and random external audits, will strengthen documentation.

Third, the NJEDA continues to update the annual requirements for businesses seeking tax credit certifications, having already incorporated many of the recommendations laid out by OSC.

Lastly, the NJEDA is close to completion of a new organization-wide data and documentation system that will be the central database for all programs at the NJEDA, which will allow ready access to information.

Executive Summary of NJEDA Response

As the agency charged with administering the State’s incentive programs, the NJEDA’s fiduciary responsibility and strong resolve to protect the public interest remain our paramount obligation. As demonstrated through improvements executed during the two decades NJEDA has been administering incentive programs, the NJEDA welcomes the opportunity to strengthen related policies and processes.

The NJEDA’s response will address the findings detailed by OSC and the subsequent recommendations. Prior to getting into the details of these findings, it is important to make clear that the NJEDA administers the five programs detailed in the OSC report based on legislation. The legislation, not the NJEDA, sets the requirements of each program, with each having its own nuances that distinguishes it from one another. The NJEDA then publishes rules to ensure the program requirements of the legislation are being met. Due to the complexity and nuances related to the incentive programs, an outside observer may misunderstand what is required from each program and how respective statutes dictate the specific evaluation of the various information required. Further, and as stated by the OSC, a non-statistical sampling approach was used, and therefore, cross-portfolio extrapolations cannot be

made. As OSC notes, the results of their testing cannot be projected over the entire population of incentives.

OSC's findings roughly fall into three categories. First, because they find that that NJEDA in the past has not verified job information with NJLWD, OSC concludes that NJEDA's job data is unreliable. As noted throughout the NJEDA's response, NJEDA has been working with NJLWD to use its job data to verify NJEDA's incentive data. As found by OSC, however, it is difficult to use this data to verify incentive data because the rules of the incentive programs that define employment do not necessarily match the data provided in the NJLWD reports. Because of this mismatch, NJEDA will continue its current practice of closely reviewing reports for internal inconsistencies, maintaining close communications with applicants to understand their businesses, and randomly auditing submissions using an outside CPA firm to ensure accuracy.

Second, OSC found that certain files were incomplete and therefore concluded that NJEDA processes are flawed. As noted throughout NJEDA's response, NJEDA recognized the limitations of its legacy data information systems and will be introducing a new system in early 2019, customized to meet the needs of incentive programs. This initiative began in 2014. NJEDA will continue its practice of a thorough review of each application. Currently each application is subjected to at least two staff meetings attended by a Deputy Attorney General, where eligibility and difficult issues are discussed and resolved before it is presented to the full NJEDA Board. The new data system will allow better memorialization of this review.

Third, OSC recommends certain activities that are not presently supported by legislation and concludes that the failure to undertake these activities demonstrates a weakness in NJEDA's processes. For example, as explained herein, under federal law it is not possible for the NJEDA to require the submission of Social Security Numbers. Similarly, 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. Throughout the evolution of its administration of incentive programs, the NJEDA has sought guidance from the Attorney General's office on legal matters and has adhered to this guidance and will continue to do so.

Key points outlined in the response include:

- Under new leadership, the NJEDA has created a Division of Portfolio Management and Compliance to focus on developing and overseeing internal process improvement initiatives. This is in addition to the internal audit department that was created in 2017 to align and enhance risk, compliance and reporting functions that had been operating in other business units.
- The NJEDA is finalizing a partnership with NJLWD related to data sharing, which will ensure enhanced monitoring of job performance of incentive recipients.
- The NJEDA will launch its new organization wide data and documentation system in early 2019, which will serve as the central database for all programs and will strengthen practices related to verification, monitoring and reporting.
- The NJEDA does not agree with the conclusory nature of the OSC audit deeming certain activities to be "deficient," despite adhering to statutory requirements.

- Statutes, regulations, management and administration of incentive programs have evolved since BEIP was first created in 1996. Therefore, it is important to note that 70 percent of the findings and recommendations detailed by OSC are related to predecessor programs, and that 88 percent of the reported jobs in question by OSC are tied to the predecessor programs, with 1,300 of 2,933 having been approved by the Commerce Commission and not the NJEDA.
- In consultation with the Attorney General’s office, the NJEDA disagrees with OSC’s legal interpretation of the statute and the subsequent finding in the report related to HUB projects and an ability to apply for less than the capital investment to satisfy the 110 percent net benefit.
- 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.
- The NJEDA disagrees with the statements put forth by OSC related to material factor. The NJEDA already reviews various factors referenced by OSC and verifies that all components of the material factor test are satisfied.
- Projects referenced by OSC as being “over-certified” does not mean that the applicant has received the approved incentive award. Where appropriate/relevant, EDA will remedy any miscalculations through the pro-ration of future year credits, and if applicable, seek repayment of any overpayments that cannot be remedied in this manner because the tax credit agreement has expired.
- As it relates to oversight, in consultation with the Attorney General’s office, the NJEDA is not legally able to require that Social Security Numbers are submitted by applicants. Furthermore, the statute dictates how job information is verified.
- The NJEDA disagrees with the contention that a GrowNJ applicant failed to meet certain employment levels as all documentation has been provided to OSC, in consultation with the Attorney General’s office explaining how the award and subsequent tax credits were valid.
- Overpayments amounted to .18 percent of the total BEIP payments. The NJEDA is committed to take legally available options to collect any overpayments.
- As it relates to program results and reporting, there is an important distinction between the NJEDA Board’s approval of an application and the actual realization of an award of tax credits. The NJEDA would appropriately not be able to report on the actual economic impact of a project until it certifies completion. Of the approximately \$8 billion NJEDA has approved for projects under the HUB, ERG, and GrowNJ programs, a combined total of \$696.7 million has actually been paid out to date – less than nine percent of what has been approved.
- NJEDA determined that its annual report was not a sufficient vehicle to provide up to date incentive activity results. As such, by May 2015, the NJEDA began posting to its website project lists for all five incentive programs, including pertinent information on all approved projects in

an accessible and easily understandable format. When projects certify completion and tax credits are issued, the relevant information is also posted on the NJEDA website via the regularly updated Completed and Certified Incentive Projects report.

- The incentive programs were designed by the Legislature to be performance-based. The NJEDA assesses whether the awardees have actually created or retained jobs and determines the actual capital investment through the required certification process – at project completion and then annually. Per statute, the NJEDA also submitted a written report in July 2018 after formally engaging the Edward J. Bloustein School of Planning and Public Policy at Rutgers University to undertake an economic analysis of the Grow NJ and ERG programs.
- The NJEDA believes that OSC does not fully understand the engagement of the NJEDA’s CPA firm relating to the GrowNJ program, or the process related to recipient annual reporting requirements and verification.
- The NJEDA believes that OSC has misinterpreted information comparing incented job data against NJLWD data.
- The NJEDA strongly disagrees with the suggestion that the variation in job titles submitted by unique individual businesses is troubling. To try and create uniform job titles that would apply across vast industries would be inefficient for businesses as well as misrepresent the diverse positions that the State’s businesses employ.
- The NJEDA thanks the OSC for its methodology used to identify salary ranges. This information will be helpful in the implementation of the State’s economic development plan moving forward.
- The NJEDA has a very detailed procedure in place to analyze fees, which will be further strengthened through the NJEDA’s new data management system.

Discussion and Response to Findings

I. Policies, Procedures, and Internal Controls

The NJEDA continuously looks for ways to improve processes and controls and welcomes the recommendations of OSC (and previously welcomed the recommendations of the Office of the State Auditor). The NJEDA’s policies have continued to evolve in the monitoring of projects as the incentive portfolio has matured. Additionally, as addressed above, the NJEDA has created and charged the new Division of Portfolio Management and Compliance with continuing to strengthen policies and procedures, while validating all data and information.

As part of this continual evolution, to assist in understanding the baseline jobs of a company, the NJEDA began collecting Employee Information Worksheets for all new GrowNJ businesses in mid-2017 to establish baseline employment, which then is reviewed as the business certifies their employment numbers at completion of the project. This was a result of the recommendations of the Office of the State Auditor. Requiring this baseline information supplements NJEDA’s current policy of requiring hiring dates for each employee.

These Employee Information Worksheets, however, are submitted at application and because applications for the BEIP, BRRAG, and HUB Programs are closed, they cannot be submitted for those programs. However, this type of information may be obtained from prior applicants through audits, as applicable.

II. EDA's Determination of Eligibility

A. HUB Statute and Regulations

The NJEDA acknowledges that awards for the HUB Program were reduced as a result of the applicant businesses not satisfying the required 110 percent net benefit to the State. The statute simply states that a project must have a positive benefit to the State; however, the NJEDA, as fiduciaries to the taxpayers of the State, felt it was imperative for an additional minimum 10 percent benefit to the State because the projects at application and approval are good faith estimates and many factors may change.

The NJEDA strongly disagrees with OSC's interpretation of the legislation and the subsequent finding in the report. Here, in consultation with the Attorney General's office, EDA's interpretation is that a business is not required to apply for 100 percent of their capital investment. As a result, a business can apply for less than their capital investment to satisfy the 110 percent net benefit requirement. In practice, instead of the NJEDA declining an application and then having the business re-apply, the NJEDA works with the applicant to effectively revise their application to reduce their requested award to an amount that satisfies the Net Benefit requirement.

The NJEDA provided various documentation from the Attorney General's Office supporting this conclusion.

B. Economic Benefit Analysis

Understanding the importance of a project's long-term benefit to the State, the NJEDA contracts with Jones Lang LaSalle to create a comprehensive set of factors, which includes both direct and indirect benefits to the State as a result of the project brought forth by a business. This Net Benefit Model is continually updated as economic factors, census data, and wages are adjusted, in addition to the NJEDA's continued evolution and experience in administering the economic development incentive programs for the State.

The NJEDA asserts that the deficiencies cited in the OSC report are items that have been addressed as programs have evolved or are not part of the legislation governing the programs. For example, the NJEDA relies on information from an application that is certified by the applicant CEO, however, if costs exceed a certain square footage amount, the lesser of the two figures is entered into the model. From the start, the NJEDA has evolved the net benefit test to be conservative, to account for the variances that may occur from when a project is presented to the NJEDA and when it is ultimately completed.

The NJEDA understands OSC's position on the reassessment of the Net Benefit Analysis after project completion, however, reassessment is not required in any incentive legislation. However, for its most active program, GrowNJ, 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. As a result, the NJEDA verified the capital investment and threshold job numbers at certification in accordance with statutes but did not rerun the Net Benefit Analysis as the statute does not require it, [and despite the policy merits, applicants cannot be compelled to provide additional information unless included in the relevant statute. This is an important consideration as new legislation governing incentives is considered in 2019].

As a point of clarification, the NJEDA did provide the completed Net Benefit Analysis for the project in section f. - Economic Benefit Analysis, but it was in the form of a .pdf, unlike other projects where the NJEDA provided Excel files. The project satisfied all requirements of the approval process as dictated on the documentation provided to OSC at Board approval. The NJEDA acknowledges the inability to provide the Excel file and has already taken action steps to address this, specifically the development of a new organization wide data and document collection system that will remedy this issue once implemented in early 2019.

As a point of clarification, the net benefit test is the same for all programs. Therefore, with respect to subsection g, the policies and procedures for the net benefit test for the newer version of BRRAG, which requires a net benefit test, are the same as in NJEDA's other programs.

C. Material Factor Certification

The NJEDA agrees that many factors are considered as part of a company's location decision to either remain or move within the State. Thus, requiring the CEO - the highest-ranking member of an organization - to certify under penalty of law that the incentive is a material factor is a safeguard put in place, as the CEO knows and can attest to the strategic direction of the company. The NJEDA contends, however, that it does look at many of the other factors called out by OSC in their report. For example, the NJEDA requires: a business to identify their statewide workforce at application (existing business footprint); and, the disclosure of an alternative site. NJEDA staff performs a comparison to ensure, in most cases, that New Jersey is more expensive, in addition to looking at the various costs associated with moving as detailed in the Cost Benefit Analysis (CBA).

Collectively, NJEDA reviews the application to verify that all the components of the Material Factor test are satisfied.

D. Cost Benefit Analysis

The CBA procedures, which were referenced by the Office of the State Auditor's 2016 report and provided by the NJEDA Internal Audit Department in 2018, have been substantially modified since the applications reviewed by OSC. The procedures in place require staff to substantiate all costs provided by the applicant for both the New Jersey location as well as the alternate location.

Additionally, the NJEDA welcomes the suggestion that the CBA should be a factor in adjusting the size of the incentive award. Currently, only the GrowNJ legislation allows for the NJEDA to re-size an award if it is over \$4 million annually at approval. This is an important consideration as new legislation governing incentives is considered in 2019

III. Additional Issues Affecting Eligibility

As discussed above, the NJEDA has formed a new Division of Portfolio Management and Compliance to better track and monitor the various incentive programs, which includes the legacy programs identified by OSC within this section of the report. The NJEDA would like to clarify that BEIP “projects being over-certified” does not mean that the BEIP applicants actually received the miscalculated incentive amount, as BEIP payments were discontinued in Fiscal Year 2015 and have only recommenced this year. In all incentive programs, the NJEDA is committed to take any legal action necessary to collect overpayments, however, in this case that is not applicable as the businesses have not received any overpayments to date.

IV. Management and Oversight of Incentive Awards

The NJEDA appreciates the various suggestions set forth within this section of the report to strengthen monitoring. To date, the NJEDA has worked with NJLWD to obtain digital job data, in addition to asking businesses to voluntarily provide Social Security Numbers; however, in consultation with the Attorney General’s office, the NJEDA’s position is that it is not legally able to require such information. Without it, matching specific jobs based on a unique identifier is a difficult exercise. Furthermore, when the legislation directs how the information is to be verified, as the BEIP legislation directs NJEDA to work with the NJ Division of Taxation, the NJEDA has worked cooperatively with its government partners.

The NJEDA disagrees with the contention that a GrowNJ applicant failed to meet certain employment levels as all documentation has been provided to OSC, in consultation with the Attorney General’s office explaining how the award and subsequent tax credits were valid.

With respect to subsection g., the NJEDA acknowledges a software programming issue related to the BEIP program that was identified. Immediately, the NJEDA evaluated the entire program to determine the severity of the issue and concluded that the overpayments amounted to .18 percent of the total BEIP payments. As discussed above, the NJEDA is committed to take legally available options to collect overpayments.

Program Results and Reporting

Due to the complexity and nuances related to the State’s incentive programs, the NJEDA acknowledges that an outside party may misunderstand and subsequently misrepresent program results and reporting. As the agency charged with administering State incentive programs for more than two decades, the NJEDA would like to take this opportunity to clarify certain observations of the OSC.

Frequently, incentive program results have typically been oversimplified and it has been incorrectly reported that the NJEDA has paid out \$11 billion in actual tax credits under the five legislatively-created incentive programs that the OSC reviewed. This is not the case and it is imperative that the NJEDA clarify that there is an important distinction between the NJEDA Board’s approval of an application and the actual realization of an award of tax credits. Because of this distinction and the long lead time associated with projects approved under the incentive programs, the NJEDA would appropriately not be able to report on the actual economic impact of a project until it certifies completion.

While the Board’s approval represents the opportunity for a project to realize tax credits and generate new economic activity, companies and developers must evidence that they have satisfied specific legislative requirements before they receive any credits. Since all of the programs were designed by the Legislature to be performance-based, this means that approved projects must first generate new tax

revenue, complete capital investments, and/or hire or retain employees to receive the approved benefits.

As a point of clarification, of the approximately \$8 billion NJEDA has approved for projects under the HUB, ERG, and GrowNJ programs, a combined total of \$696.7 million has actually been paid out to date – less than nine percent of what has been approved. This information is made publicly available via the NJEDA’s website and updated monthly – www.njeda.com.

As part of the NJEDA’s commitment to the highest level of transparency and an overarching desire to provide accurate and timely information to the public and Legislature, it was determined that the annual report was not a sufficient vehicle to provide up to date incentive activity results. As such, by May 2015, the NJEDA began posting to its website project lists for all five incentive programs, including pertinent information on all approved projects in an accessible and easily understandable format. These reports, updated monthly, include a status update for each approved project, the amounts paid out to date for relevant projects, and the related job creation and/or private investment data estimated at the time of application. When projects certify completion and tax credits are issued, the relevant information is posted on the NJEDA website via the Completed and Certified Incentive Projects report, also updated monthly. It must be stated that all projects undergo a comprehensive review to ensure compliance with all legal requirements and are fully vetted by the Board of the NJEDA at a public meeting held each month. The minutes of these Board meetings, as well as the detailed Board memos for each project, are subsequently posted to the NJEDA’s website.

I. Program Effectiveness

As noted above, these incentive programs were appropriately designed by the Legislature to be performance-based. As such, the NJEDA strongly disagrees with the OSC’s assessment related to NJEDA’s ability to report on program effectiveness. Specifically:

- The NJEDA assesses outcomes regarding whether the awardees have actually created or retained jobs and determines the actual capital investment through the required certification process – at project completion and then annually. These results are posted on the NJEDA’s website and updated monthly. OSC suggests adding another layer of verification by using NJLWD data and the NJEDA agrees that additional information will strengthen confidence in the accuracy of reported results. Current submissions, however, such as certificates of occupancy, certifications of green building standards and the CPA certificate evidence that capital improvements have been completed and that jobs have been created or retained.
- Less than nine percent of approved projects have certified completion and received payments or tax credits to date; the actual job impact of these projects is detailed in the Completed and Certified Incentive Projects report available at www.njeda.com and updated monthly.
- The NJEDA administers these legislatively-created programs in compliance with statutes. This included a requirement through the Economic Opportunity Act of 2013 that the NJEDA submit a written report by July 1, 2018 to the Governor and Legislature providing a comprehensive review and analysis of the GrowNJ and ERG programs. In response to this directive, the NJEDA formally engaged the Edward J. Bloustein School of Planning and Public Policy at Rutgers University in March 2016 to undertake an analysis of the GrowNJ and ERG programs. The analysis concluded that there has been a significant volume of project approvals under GrowNJ,

which are associated with significant volumes of retained and created jobs, but which will also generate a substantial offset to the Corporate Business Tax and Insurance Premium Tax in the years ahead, and that, given the long lead time associated with GrowNJ and ERG projects, it is too soon to fully evaluate the impact of these programs on the State's economy.

II. Program Results

The NJEDA is required to share data on incentive program performance and does so through its incentive activity reports online, updated monthly, and as part of its comprehensive annual report. This data is derived from the information verified through the post-closing process and is therefore the information publicly reported. NJEDA has always undertaken to review and strengthen its processes on an ongoing basis and as mentioned above, is currently working to partner with NJLWD for additional verification, in addition to the implementation of the NJEDA's new data management and document storage system.

III. EDA's Annual Report

As it relates to the reporting of unverified information, the NJEDA again must point out that it relies and reports on the information which has been validated through the NJEDA's post-closing process.

As to the contention that the annual report does not reflect the current status of incentive projects, the NJEDA is pleased to report that it provides monthly updates of incentive project status via the incentive activity reports available at www.njeda.com. The NJEDA believed that the annual report was not the best vehicle to report this information as new incentive projects are approved and others reach varying milestones more frequently than once a year. Because of the monthly reporting associated with incentive activity, the annual report seeks to provide a consolidated, but comprehensive, overview of the annual activities of the NJEDA, including a complete listing of all projects that have closed on assistance in the given year, per its enabling statute requiring that "the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature."

As it relates to the BEIP and BRRAG annual reports, the NJEDA acknowledges that it did stop this practice given that no new activity has been generated under these programs since they ceased as a result of the Economic Opportunity Act of 2013. While any related activity (i.e. actual job creation and payments) is updated via the BEIP and BRRAG incentive activity reports available on the NJEDA's website, the NJEDA will begin sending hard copies of this information to the Governor and Legislature annually based on OSC's observation.

IV. 2017 Incentive Award Monitoring Update

OSC states that without Social Security Numbers, it is impossible to cross check individual employees against NJLWD reports. The NJEDA specifically addressed the collection of the Social Security Numbers with OSC and that, in consultation with the Attorney General's office guidance, NJEDA's position is that Federal Privacy Laws prevent the NJEDA from requiring the Social Security Numbers. The NJEDA offered to obtain additional or more formal guidance on this matter but was instructed to hold off on such a request. The NJEDA now asks for the information voluntarily from all businesses; however, as communicated to OSC, the requirement of such information is illegal.

As addressed throughout this report, the NJEDA is working with NJLWD to better cross reference the data provided during the certification process by the business and that which is reported to NJLWD. The NJEDA believes this partnership will address many of the concerns of OSC.

The NJEDA contends that OSC does not understand fully the engagement of the NJEDA's CPA firm relating to the GrowNJ program. The scope of the NJEDA's relationship with this independent auditor is to evaluate the submission of the overall certification from the applicable business. The NJEDA worked with their CPA firm to develop testing procedures to ensure the information provided to the NJEDA was accurate. These procedures required the independent auditor to look at both the job documentation of the business as well as the capital investment submitted to the NJEDA, adding an additional layer of confidence by double-checking the work already performed by our customers' CFO and CPA firm, respectively.

Evaluation of Recipient Performance

I. Recipient Annual Reporting Concerns and Issues

As stated above, due to the complexity and nuances related to the State's incentive programs, an outside observer may misunderstand what is required from each program and how respective statutes dictate the specific evaluation of the various information required. The information detailed in the annual report has evolved over time and the earlier programs do not require many of the elements listed in the current report. As stated throughout this response, the requirements have been strengthened over time, an evolution that is evident with the GrowNJ program.

II. Failure to Obtain Sufficiently Detailed Job Data

As OSC is aware based on their previous reference, the NJEDA has hired a CPA firm to look at the exact information that is detailed in this finding. As stated in NJEDA's response above, these are exactly the elements looked at by the CPA firm in the detailed procedures NJEDA worked with them to create. The NJEDA accepts the certified job reports from the CFO of the business and the NJEDA's CPA firm looks at the same information detailed by OSC to confirm it is accurate.

III. Awardees Overstated the Incented Job data – Actual Jobs Not Realized

The NJEDA will continue to strengthen the review of the certified job information provided by the individual businesses by cross-referencing the information with the NJLWD, which has been addressed throughout this response. OSC's experience with cross checking incentive information against NJLWD data highlights the limitations of this method of verification. OSC misinterprets its inability to absolutely verify jobs as a failure of NJEDA, while the reason is that there are nuances in the incentive programs that make it difficult to undertake a simple cross-check against NJWD information.

First, there may be justifiable reasons why an employee would not be on an employee report, yet count as an employee of the business. Second, OSC is confusing the nuances of the GrowNJ program relating to overall certification and annual certifications. Per statute and program regulations, the overall certification is a snapshot in time of how many employees were employed by the entity. Whereas, the annual award of a tax credit is an *average* of the employment throughout the year; there is no requirement that the same employee work for four quarters. For these reasons, even as it institutes NJLWD cross checks, NJEDA will continue to carefully review annual reports, maintain communication

with awardees to understand their businesses, and use CPA reports and random audits to ensure accuracy.

As it relates to any overpayments, the NJEDA is committed to take legally available options to collect. However, the NJEDA again wants to distinguish between overpayments and over-certifications. Over-certifications have not necessarily led to any overpayments, and the NJEDA is committed to take legally available options to reduce the over-certifications.

Lastly, the NJEDA will consult with the Attorney General's office to identify any legal actions appropriate for businesses' declaring bankruptcy. There are very few instances of companies going bankrupt in these programs.

Incentive Award Job Data

The NJEDA contends that the information in iDMS is verified by staff during the review process, however, this process will be further enhanced by collecting data from NJLWD. The NJEDA strongly disagrees with the suggestion that the variation in job titles submitted by unique individual businesses is troubling. The State of New Jersey prides itself on the diversity of its workforce and wide range of businesses. To try and impose uniform job titles on private companies that would apply across vast industries would be inefficient for businesses as well as misrepresent the diverse positions that the State's businesses create. For example, a manufacturing firm and a bio-pharmaceutical company will have drastically different job titles and responsibilities. In this example, a manufacturing technician and a lab technician are vastly different jobs and should not be considered just a "technician."

The NJEDA does applaud the methodology used to identify salary ranges. This information will be helpful in the implementation of the State's economic development plan moving forward.

EDA Administrative Costs

The NJEDA provided OSC with the policy and fee matrix system in determining fees for the various incentive programs. While the NJEDA acknowledges that these were not individually broken down, the NJEDA has a very detailed procedure in place to analyze fees. OSC was also provided with the detailed breakdown of how fee payments will be recorded and tracked in the NJEDA's new data management system, which the NJEDA expects will alleviate the findings of OSC.

With respect to the financial statement disclosure issues OSC raised related to fees and GAAP presentation, NJEDA's year-end financial statements record this information and the independent auditors of the NJEDA test proper cut-off of fee revenue. These independent auditors also perform a subsequent events test to ensure that any fees that come in between January and April are properly recorded in the respective year. Any appropriate adjustments are then made.

In summary, the NJEDA appreciates the time OSC spent attempting to understand these complex and nuanced programs. We welcome the opportunity to strengthen management and administration of these programs wherever possible, and we remain steadfast in our commitment to exercise the utmost level of due diligence and fiduciary oversight.

Again, the NJEDA thanks the OSC for the opportunity to respond to the Discussion Draft. Should you have any questions, please contact Bruce Ciallella, Senior Vice President – Portfolio Management and Compliance, by phone at (609) 858-6091 or via email at bciallella@njeda.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Sullivan', written over a horizontal line.

Tim Sullivan
Chief Executive Officer
New Jersey Economic Development Authority

APPENDIX B

Pursuant to the Act, EDA submitted a report to the Governor's office in July 2018, prepared by Rutgers University, Edward J. Bloustein School of Planning and Public Policy (the Rutgers' report). According to the Act, the purpose of this report was to provide a "comprehensive review and analysis" of the GrowNJ and ERG tax incentive programs, along with other economic incentive programs under EDA's jurisdiction. Some of the key observations of the Rutgers' report relative to GrowNJ and ERG include:

- There has been a significant volume of project approvals under GrowNJ, which are associated with significant volumes of retained and created jobs, but which will also generate a substantial offset to the Corporate Business Tax and Insurance Premium Tax in the years ahead.
- Commercial ERG projects leverage a considerable amount of private investment.
- Given the long lead time associated with GrowNJ and ERG projects, it is too soon to fully evaluate the impact of these programs on the State's economy.
- Projects approved under GrowNJ are generally concentrated in the northern, more populous counties of the State. A significant percentage of project funding in the eight southern counties has been concentrated in Camden.
- Redundancies in the GrowNJ base and bonus award structure are potentially providing more generous incentives than intended by the statute.
- Because certain bonuses have been underutilized, it is not clear that the program has advanced certain policy goals intended by the legislation such as clean energy investment and the creation of incubators.
- There is an opportunity to improve EDA's analysis of proposed incentive projects.

The Rutgers report also examined EDA's use of a benefit-cost analysis, required by the Act, to determine whether applicants qualify for GrowNJ awards. The analysis compares the benefits of the award, which is measured in terms of the state and local tax revenues associated with both the project's initial capital expenditures and with the firm's operations, with the costs, which is measured by the dollar value of the tax incentives granted to the applicant. Under the Act, the current analytical framework for GrowNJ requires that the ratio of benefits to costs for proposed awards be at least 110 percent for most awards, 100 percent in the case of Garden State Growth Zone awards.

The Rutgers report identified the following in regards to the benefit-cost analysis:

- A benefit-cost ratio higher than 1.1 would reflect the element of uncertainty regarding the role of the award in the retention or attraction of any given firm and could potentially reduce the number of approved awards or require a reduction in the size of many awards relative to the projects' projected benefits.
- A number of revisions to the benefit-cost methodology have already been adopted by EDA in order to make the calculated benefit-cost ratios more accurate, and in most cases, more conservative. A series of further technical revisions are recommended for the benefit-cost model that have a variety of potential effects on calculated benefits.
- Further research is suggested to provide an empirical comparison between benefit cost models, across regions and job types, in order to identify how raising the benefit-cost threshold would affect past and future awards.

The PEW Charitable Trusts, an independent nonprofit organization, released a report in May 2017 that focused on a national assessment of how states are improving tax incentives for jobs and growth. The report assessed each state on the extent to which it has taken each of three steps that were identified as best practices for effectively evaluating tax incentives. The three steps were to make a plan, measure the impact, and inform policy choices. New Jersey was ranked as trailing other states because it has not adopted a plan for regular evaluation of tax incentives.

Below are some examples of what the report identified from those states determined to be “leading.”

- In spring 2014, Indiana lawmakers approved legislation requiring evaluation of tax incentives on a five-year cycle. By the end of the year, the nonpartisan staff of the Legislative Services Agency (LSA) had completed a rigorous evaluation that showed two small incentives were providing a poor return on investment. Lawmakers eliminated those incentives in 2015. Since then, the LSA has continued to produce high-quality studies that are helping to inform policymaker debates over tax incentives—making Indiana a national leader in this area.
- Under a 2012 law, the nonpartisan professional staff of Maryland’s Department of Legislative Services produces detailed studies of tax credits each year. These evaluations are helping lawmakers improve the effectiveness of the state’s incentives.
- Mississippi has become a leader in tax incentive evaluation as a result of bipartisan 2014 legislation that requires the University Research Center, an office within Mississippi’s higher education system, to evaluate the state’s economic development incentives every four years.
- In 2015, Oklahoma passed legislation that requires evaluation of economic development incentives on a four-year rotating cycle. The law created the Incentive Evaluation Commission to oversee the process. The commission determines which incentives will be evaluated each year and identifies their goals and what criteria to use to measure their success. The commission contracts with academic institutions or private consultants to analyze each incentive.
- Washington has one of the nation’s longest-standing and most successful tax incentive evaluation processes. These evaluations have helped lawmakers improve incentive policy. For example, a 2012 evaluation showed that two tax incentives designed to encourage research and development spending were producing few jobs relative to their cost. Based on that finding, a citizen commission that oversees

Washington's evaluations recommended that policymakers allow the programs to expire. Lawmakers followed that advice, saving the state tens of millions of dollars.

The PEW report did give credit to New Jersey for contracting with Rutgers to complete a "comprehensive review and analysis" of incentives administered by EDA, citing that many states have received rigorous evaluations by contracting with private consultants or academic institutions.

EXECUTIVE ORDER NO. 3

WHEREAS, creating good-paying jobs for New Jerseyans is a central focus of my administration; and

WHEREAS, New Jersey enjoys many natural advantages that other states cannot match, including our location, labor force, transportation networks, public education system, and research and development, that provide powerful incentives for any company looking to operate a successful business; and

WHEREAS, tax incentives are only one factor in businesses' decisions on where to locate; and

WHEREAS, studies have consistently demonstrated that New Jersey's current economic incentive programs have proven less effective than those in other states; and

WHEREAS, one study showed that New Jersey spends \$162,000 in economic incentives for each job, while Massachusetts spends only \$22,000 per job; and

WHEREAS, while the amount of economic incentives provided by the State of New Jersey has increased dramatically over the last decade, these incentives have gone primarily to large companies while the number of small businesses in the State has declined from 2010 to 2015; and

WHEREAS, despite the dramatic increase in tax incentives, New Jersey's economic recovery from the recession caused by the financial crisis has lagged behind competitor states; and

WHEREAS, it is important to ensure that our economic development programs benefit both large and small companies, and that their benefits are fairly distributed among all regions of our State; and

WHEREAS, under the Economic Opportunity Act of 2013, the Economic Development Authority ("EDA") has the power to issue large tax incentive packages and create end-year obligations; and

WHEREAS, the EDA's discretion in approving tax incentive packages is limited by strict statutory guidelines; and

WHEREAS, from a financial perspective, EDA's award of a dollar in tax incentives has the same effect as spending a dollar of taxpayer money, and therefore the EDA must be accountable to the taxpayers of this State; and

WHEREAS, the Office of the State Auditor found that the EDA needed to improve its efforts to verify several aspects of applications submitted by businesses, including: (1) the difference in cost between staying in New Jersey and moving out of the state, and (2) the existence of at-risk jobs; and

WHEREAS, the Office of the State Auditor also found that the EDA needed to strengthen procedures designed to ensure compliance with the terms of the EDA grants; and

WHEREAS, a comprehensive performance audit of the EDA's two primary tax incentive programs, the Grow New Jersey Assistance Program and the Economic Redevelopment and Growth Grant Program, will both inform the public about the EDA's operations and assist lawmakers in their deliberations as to whether these programs should be reauthorized when they expire on July 1, 2019;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Office of the State Comptroller ("State Comptroller") shall conduct a complete performance audit of the Grow New Jersey Assistance Program and the Economic Redevelopment and Growth Grant Program, and predecessor programs, from 2010 onward. The audit shall include, but not be limited to:

a. 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;

b. Information on 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;

c. A review of the decision-making process regarding the acceptance of applications, focusing on how the EDA has exercised its discretion under the statutes; and

d. An examination of the application process for such awards, including documentation and disclosure of expenses incurred by the applicants, including lobbyists, consultants, and legal representation, as well as information about the administrative costs incurred by the EDA in processing these applications.

2. The EDA shall, to the extent consistent with law, cooperate fully with the State Comptroller and provide such information and assistance on as timely a basis as is necessary to accomplish the purposes of this Order.

3. The audit shall be commenced within 60 days of this Order, with a target completion date of December 31, 2018.

4. This Order shall take effect immediately.

[seal] GIVEN, under my hand and seal this
19th day of January,
Two Thousand and Eighteen,
and of the Independence of
the United States, the Two
Hundred and Forty-Second.

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor