New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor

New Jersey Economic Development Authority Selected Incentive Programs

July 1, 2011 to September 30, 2016

Stephen M. Eells
State Auditor

New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES
OFFICE OF THE STATE AUDITOR
125 SOUTH WARREN STREET
PO BOX 067
TRENTON NJ 08625-0067

PERI A. HOROWITZ
Executive Director
(609) 847-3901

OFFICE OF THE STATE AUDITOR
(609) 847-3470
FAX (609) 633-0834

STEPHEN M. EELLS
State Auditor

DAVID J. KASCHAK
Assistant State Auditor

JOHN J. TERMYNA
Assistant State Auditor

The Honorable Chris Christie
Governor of New Jersey

The Honorable Stephen M. Sweeney
President of the Senate

The Honorable Vincent Prieto
Speaker of the General Assembly

Ms. Peri A. Horowitz
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the New Jersey Economic Development Authority, Selected Incentive Programs for the period of July 1, 2011 to September 30, 2016. If you would like a personal briefing, please call me at (609) 847-3470.

Stephen M. Eells
State Auditor
January 19, 2017

Table of Contents

Scope

We have completed an audit of the New Jersey Economic Development Authority (NJEDA), Selected Incentive Programs for the period July 1, 2011 to September 30, 2016. Our audit included a review of the Business Employment Incentive Program (BEIP), the Business Retention and Relocation Assistance Grant Program (BRRAG), and the Grow New Jersey Assistance Program (GROW). The audit included financial activities accounted for in the state's General Fund.

Created by law in 1996, the intent of the BEIP is to provide grants to businesses that create jobs in New Jersey. Enacted in 2004, the primary purpose of the BRRAG is to provide tax credits to businesses to encourage economic development, preserve existing jobs, and stimulate capital investment in New Jersey. The BEIP and BRRAG grants were awarded to businesses for up to 10 years and six years, respectively, and are still active. In accordance with the New Jersey Economic Opportunity Act of 2013, the NJEDA is no longer accepting new applications for assistance under the BEIP and BRRAG programs. The NJEDA executed 454 BEIP grants valued at $1.5 billion and 85 BRRAG tax credit grants valued at $125.1 million. The GROW is the current job creation and retention incentive program that awards tax credits to businesses that create or retain jobs in the state and make a qualified capital investment. Pursuant to the New Jersey Economic Opportunity Act of 2013, the NJEDA has awarded 207 GROW grants valued at $3.9 billion of which $10.8 million in tax credits have been certified. Tax credits awarded under the BRRAG and GROW can only be applied against the New Jersey Corporation Business Tax, Insurance Premiums Tax, and Gross Income Tax for partnerships.

Objectives

The objectives of our audit were to determine whether adequate controls were in place at the NJEDA to award and administer business incentive program grants in compliance with statutory requirements and whether the NJEDA was monitoring grant recipients for compliance with statutory requirements.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, and policies of the NJEDA. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and testing. We also reviewed financial trends and interviewed NJEDA personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples were designed to provide conclusions on our audit objectives, as well as internal controls and compliance. Transactions were judgmentally selected for testing. We selected seven GROW grants for testing based on the project location and the grant award amount.

Conclusions

We found that adequate controls were in place to award and administer business incentive program grants in compliance with statutory requirements with the exception of certain procedures used in the award determination for Grow New Jersey Assistance Program grants. We also found that adequate controls were in place to monitor grant recipients for compliance with statutory requirements with the exception of procedures utilized to verify the status of grant eligible retained jobs under the Business Retention and Relocation Assistance Grant Program.

We also made observations concerning enabling legislation for City of Camden projects and the tax credit amounts awarded under the Business Retention and Relocation Assistance Grant Program and the Grow New Jersey Assistance Program.

GROW New Jersey Assistance Program

Documentation of Reported Costs

A business's cost benefit analysis detailing the difference in cost between staying in New Jersey and moving out-of-state needs to be adequately reviewed and verified.

Under most circumstances, to be eligible for tax credits under the Grow New Jersey Assistance Program (GROW), a business must demonstrate to the New Jersey Economic Development Authority (NJEDA), at the time of the application, that existing full-time jobs are at risk of leaving the state or of being eliminated, and that the award of tax credits under the program will be a material factor in the business's decision to retain the jobs or create new jobs in New Jersey. To accomplish this, the NJEDA requires an applicant to submit a cost benefit analysis which details both the costs to continue operations in New Jersey and the lower costs to relocate to proposed out-of-state sites. A review is then completed by the NJEDA staff to substantiate the identified costs before the application is submitted to the NJEDA board for approval.

Pursuant to the New Jersey Economic Opportunity Act of 2013 and as of September 30, 2016, a total of 207 projects have been awarded $3.9 billion under the GROW. We judgmentally selected seven projects to determine if the cost benefit analysis review completed by the NJEDA was adequate. Three of the seven sampled projects were located in the City of Camden and an alternate out-of-state location did not have to be identified, as per statute, for these projects to qualify as discussed later. For the remaining four projects, the reported annual costs to operate in New Jersey totaled $138 million while the reported annual costs to operate at out-of-state locations totaled $101.2 million. Costs totaling $5.6 million that were reported to be the same for both the New Jersey and out-of-state locations were removed for test purposes. We found that adequate documentation was not obtained by the NJEDA to support 11.5 percent of the annual costs tested which included rent, property taxes, and utilities. Similarly, eight percent of the upfront costs tested, including building renovations and equipment purchases, associated with locating the projects in New Jersey or out-of-state were not supported or verified by the NJEDA. In addition, for three of the four projects tested with costs totaling $8.5 million, 86 percent of the reported annual costs, the majority of which represented out-of-state wages to operate at out-of-state locations, were not supported.

The cost benefit analysis is a critical factor in determining whether or not to award tax credits under the GROW. All reported costs associated with locating a proposed project in New Jersey or out-of-state must be verified to ensure a business is seriously considering relocating out-of-state to a lower cost alternative.

Recommendation

We recommend that the NJEDA maintain a more complete file of NJEDA's review of the cost benefit analysis submitted by an applicant for a proposed project. The award of tax credits should not be forwarded to the NJEDA board for approval until the proper supporting documentation has been obtained for all reported in-state and out-of-state project costs and the out-of-state option has been proven to be more economical.

Business Retention and Relocation Assistance Grant Program

Verification

Procedures need to be implemented to verify the existence of at-risk jobs prior to grant approval.

The Business Retention and Relocation Assistance Grant Program (BRRAG) provides a base tax credit amount of $1,500 per job retained for up to six years. If certain criteria are met, the amount per job retained can reach $3,000 per year. In most circumstances, a business will qualify for consideration if it relocates a minimum of 50 full-time jobs from one or more locations in New Jersey to a new business location in New Jersey. A business may remain at a current location if it makes a capital investment equal to the value of the tax credits granted. A business must also demonstrate that the award of tax credits under the program will be a material factor in the business’s decision to retain the jobs in New Jersey and commit to remain in New Jersey for the grant term plus an additional five years.

An approved award of tax credits will be adjusted downward if a business does not maintain 100 percent of the incented retained jobs during the grant term and 80 percent of the incented retained jobs during the additional five-year commitment duration. In order to verify these requirements, the New Jersey Economic Development Authority (NJEDA) requires the business annually certify the number of grant-eligible retained jobs that are currently filled along with the name, address, and hire date of the employees filling the positions as of the submission date. However, the NJEDA does not perform additional procedures to verify this information or require a similar certification to be submitted prior to NJEDA board approval. The award of tax credits at the time of the board’s approval is primarily based on the number of at-risk jobs specified by the business in the grant application.

Using the approval date and grant award amount as criteria, we judgmentally selected seven of the 85 businesses that were awarded a BRRAG grant for testing and found that four did provide a list of employees filling grant-eligible retained jobs as of the board approval date although they were not required to. For the year in which the grant was approved, we matched the employees reported to be filling the grant-eligible retained jobs to the Employer Report of Wages Paid maintained by the New Jersey Department of Labor and Workforce Development (NJDOLWD) and found that three of the four businesses had numerous employees with no earnings. According to NJDOLWD records, the average quarterly employment of the three businesses was between 26 and 38 employees less than reported by the businesses and incentivized by the NJEDA.

Monitoring

Procedures that monitor businesses for compliance with grant terms need to be strengthened.

As previously mentioned, a business must maintain 100 percent of the incented retained jobs during the grant term or their award will be adjusted downward. Using NJDOLWD records for the years in which the tax credits were issued, we also found that the average quarterly employment for four of the seven businesses reviewed was between 4.25 and 15 employees less than reported by the businesses and incentivized by the NJEDA. The businesses' awards, however, were not adjusted.

Our review of another business that received a BRRAG grant in 2009 for retaining 500 full-time positions disclosed that 52 of the 500 employees reported to be filling the positions as of December 31, 2009 only had earnings in the fourth quarter of 2009. We could not determine if the 52 employees were replacements, seasonal hires, or regular new hires employed at the end of the year just to fulfill the grant conditions since the employee list received for 2009 only contained the names and titles of 500 individuals. More detailed records that identify each approved grant eligible position by title and the names and employment dates for all employees filling such positions should be required for verification purposes. The NJEDA should also define the time period that each grant eligible position needs to be filled during the year to qualify.

Although the NJEDA is no longer accepting applications for assistance under the BRRAG program, executed grants are still ongoing and the Grow New Jersey Assistance Program is now providing similar tax credits for job retention and creation in New Jersey. As such, the NJEDA needs to strengthen procedures to verify recipient compliance throughout the entire grant period and ensure the efficient use of taxpayer dollars.

Recommendation

We recommend the NJEDA implement procedures to verify the existence of reported at-risk jobs prior to board approval. We further recommend the NJEDA implement procedures to verify that the incented retained jobs have been maintained throughout the commitment duration as required. Records maintained by the New Jersey Department of Labor and Workforce Development could be used for verification purposes. In addition, we recommend the NJEDA obtain more detailed information for each incented full-time job that was reported to be at risk of leaving the state. The information, which should be required prior to board approval and throughout the grant duration, should include a list of grant eligible positions by title and the names and employment dates for all employees filling such positions during the year. The NJEDA should also define the time period a qualified full-time position needs to be filled to qualify for the full annual incentive.

Observations

GROW Tax Credits for the City of Camden Projects

Increasing grant caps disproportionate to jobs created

The Grow New Jersey Assistance Program (GROW) provides tax credits to businesses of up to $15,000 annually for each eligible new or retained full-time job depending on location and designation. However, businesses with projects located in Camden can receive significantly higher tax credits since the city qualifies under the Municipality Rehabilitation and Economic Recovery Act (MRERA).

The GROW legislation provides for eligible businesses with projects in Camden to receive between $20 million and $350 million in tax credits over a grant term of ten years. The amount of tax credits is dependent on the level of capital investment and the number of full-time jobs that are new to Camden. Five specific funding tiers are identified. A business that creates between 35 and 69 full-time jobs new to Camden and makes a capital investment of at least $5 million is capped at $20 million in tax credits over the grant term while a business that creates 250 or more full-time jobs new to Camden and makes a capital investment of at least $30 million is capped at $350 million in tax credits over the grant term. However, the required increase in jobs and capital investment from tier one, which has the $20 million cap, to tier five, which has the $350 million cap, does not appear to warrant the corresponding increase in tax credits. Our review of one business that was awarded a ten-year grant of tax credits totaling $107 million to relocate 250 full-time employees from a municipality located less than 20 miles from Camden demonstrates this point. In accordance with the GROW legislation, the total tax credits awarded to the business over the 10-year term would have been limited to a maximum of $50 million if they created between 150 and 249 full-time jobs new to Camden. However, by planning to bring 250 full-time jobs new to Camden, the business' award of tax credits was increased by $57 million to $107 million and fell below the maximum allowable award of $350 million. In addition, the award of tax credits would have been limited to a maximum of $37.5 million over the grant term if the business met certain requirements and relocated the 250 employees to any other municipality in New Jersey.

The GROW legislation provides significantly larger tax credit amounts for qualified projects located in Camden including the potential for a business to receive an additional $300 million in tax credits over the grant term for increasing the number of new jobs they are creating in Camden, by one, from 249 to 250 as explained above. The rationale behind a tax credit funding methodology that allows for such an increase should be questioned and revisited as it may not be in the best interest of the state.

Calculating Net Benefit

Using Corporate Business Tax revenue in determining net benefit for proposed intrastate relocations to Camden may be questionable.

For most businesses, to be eligible for tax credits under the Grow New Jersey Assistance Program (GROW), a proposed project must yield a net positive benefit to the state of at least 110 percent of the requested tax credit amount. However, for projects located in the City of Camden (Camden) and pursuant to the Municipality Rehabilitation and Economic Recovery Act (MRERA), a project's net benefit to the state only has to equal 100 percent of the requested tax credit allocation. In addition, a business only has to demonstrate, at the time of the application, that the award of tax credits under the program is a material factor in the decision to make a capital investment and relocate to Camden, the only municipality currently qualifying under MRERA. There is no requirement to claim that the jobs are in danger of leaving the state or being eliminated.

The economic impact model utilized by the NJEDA to measure a project's net benefit uses multipliers from the Regional Input-Output Modeling System database, published by the United States Department of Commerce, and econometric analysis developed by a contracted vendor. This model estimates both direct and indirect impacts on both a one-time and ongoing basis. The state's Corporation Business Tax (CBT) is part of the ongoing annual taxes used in the net benefit calculation for all projects excluding non-profit entities.

Of the $3.9 billion that has been awarded under the GROW through October 7, 2016, $1.2 billion is for 20 projects located in Camden. As previously mentioned, we judgmentally selected seven GROW projects for review including three projects located in Camden. The EDA estimated the net benefit for one of the sampled Camden projects to be $249,000 over a 35-year period. This company, which relocated part of their operations from a New Jersey municipality located less than 20 miles away, received an award of $107 million for retaining 250 employees and proposing to make a capital investment of $146.4 million. The estimated ongoing CBT revenue used in the net benefit calculation totaled $2.7 million annually. If the CBT revenue, which the state was already receiving anyway, was removed from the net benefit calculation, the net benefit over 35 years would have been negative $32.6 million according to the NJEDA's net benefit model. The NJEDA claimed that the company had jobs at risk because a federal contract would not have been obtained without the GROW tax credits which allowed for a lower bid. The NJEDA also claimed that the project will generate additional taxable income in New Jersey above what is currently produced. Although we agree acceptable under these circumstances, including CBT revenue in the model used by the NJEDA to measure the net benefit of other proposed Camden projects might not yield the intended benefits if a New Jersey based applicant is simply relocating to Camden with no additional CBT revenue resulting.

Mismatching time periods

Commitment duration can be satisfied before net benefits are realized.

For most projects, the net benefit to the state is based on the benefits generated during the first 20 years following the project's completion. However, for projects located in the City of Camden (Camden) and pursuant to the Municipality Rehabilitation and Economic Recovery Act (MRERA), the net benefit to the state can be calculated during a period of up to 35 years following the completion of the project, as determined by the NJEDA.

The commitment duration for all businesses receiving an award under the GROW is 1.5 times the eligibility period which is limited to a term of not more than 10 years, therefore the maximum commitment duration for any business receiving an award under the GROW is 15 years. Conversely, as described above, the net benefit for a proposed project is calculated between a 20 and 35-year period depending on location. This scenario, especially for projects in Camden, leaves the state vulnerable and potentially incapable of recognizing any net benefit if a business decides to relocate out-of-state soon after the commitment duration is met.

Tax Credit Amounts

As previously mentioned, the Business Retention and Relocation Assistance Grant Program (BRRAG) provides up to a $3,000 tax credit per job retained. The BRRAG legislation, however, does not base the tax credit amount on the wage level of the retained job. As a result, the tax benefit to a business is the same for both a high paying retained job and a retained job that pays the minimum wage. Conversely, the benefit to the state can be heavily impacted by the overall wage level of the incented retained jobs. Our review of two companies who were both awarded a grant of tax credits under the BRRAG illustrates this point.

- Company A was awarded a grant of tax credits totaling $750,000 in 2009 for retaining 500 full-time jobs. Using data obtained from the New Jersey Department of Labor and Workforce Development, we determined that 367 of the 500 reported employees worked in all four quarters of 2009 earning an average salary of $24,352. The tax credit awarded on the 367 positions totaled $550,500. The estimated gross income tax received, however, on the 367 positions totaled only $151,000 collectively resulting in an unfavorable difference to the State of $399,500. The single tax rate was used to determine the gross income tax estimate.

- Company B was awarded a grant of tax credits totaling $436,500 in 2012 for retaining 291 employees. A total of 278 of the 291 employees worked in all four quarters of 2012 earning an average salary of $133,054. The tax credit awarded on the 278 positions totaled $417,000. However, the total estimated gross income tax received on the 278 positions was $1.76 million providing a positive direct benefit to the state of $1,343,000.

As previously mentioned, the NJEDA is no longer accepting applications for assistance under the BRRAG program. Job preservation and creation is now encouraged through the Grow New Jersey Assistance Program (GROW). For the most part, the GROW provides a base tax credit amount of between $500 and $5,000 per year for each qualifying new or retained full-time job depending on location. If certain criteria are met, the amount per job can reach $15,000 per year. Similar to the BRRAG, the tax credit amount is not based on the wage level of the retained job although a bonus can be awarded if the average of all eligible new and retained full-time jobs exceeds a statutory defined level.

Although an approved project's total net benefit is measured by many factors other than gross income tax, the state can substantially increase its benefit by offering a tiered level of tax incentives under the GROW that are commensurate with the wage level of the new or retained full-time job and the corresponding income taxes generated. For example, a position being paid the minimum wage should not be incentivized at the same level as a higher paying job.

New Jersey Economic Development Authority

January 13, 2017

David J. Kaschak
Assistant State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
PO Box 067
Trenton, NJ 08625-0067

Dear Mr. Kaschak,

Please find attached the New Jersey Economic Development Authority's management response to the December 21, 2016 audit report of Selected Incentive Programs.

Sincerely,

Melissa Orsen

Melissa Orsen
Chief Executive Officer

Attachment
C: Laurence M. Downes, Acting Chairman
David R. Huber, Audit Committee Chair

New Jersey Economic Development Authority
Management Response

The New Jersey Economic Development Authority (NJEDA) welcomes the opportunity to respond to the December 21, 2016 audit report prepared by the Office of the State Auditor concerning Selected Incentive Programs of the NJEDA.

The NJEDA has been administering incentive programs on behalf of the State of New Jersey for over two decades. While these 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 due diligence in recommending projects to its Board, ensuring every project approved is done so in strict compliance with statutes and regulations.

The NJEDA's response is focused on the recommendations contained within the audit report that are related: 1) to the retention of documentation of reported costs under the Grow New Jersey Assistance Program (Grow NJ); and 2) verification and monitoring related to the Business Retention and Relocation Assistance Grant Program (BRRAG). The NJEDA will not address the additional observations included in the audit as it is the purview of the Legislature to consider any statutory changes.

As noted by the Office of the State Auditor, a nonstatistical sampling approach was used, and therefore, cross-portfolio extrapolations cannot be made. Our response instead focuses on some of the important distinctions that must be understood in evaluating program administration. With that said, the NJEDA has and continues to be open to recommendations to further strengthen our administration of incentive programs.

Grow New Jersey Assistance Program
Documentation of Reported Costs

- Office of the State Auditor Recommendation: "We recommend that the NJEDA maintain a more complete file of NJEDA's review of the cost benefit analysis submitted by an applicant for a proposed project."

- NJEDA Action: The Office of the State Auditor utilized a sample of four Grow NJ projects in its review, representing less than two percent of the program portfolio. For these four projects, we thank the auditors for confirming that 88.5 percent or $211.7 million of $239.2 million of the annual costs tested were adequately documented; and, that 92 percent or $123.6 million of the $134.4 million of the upfront costs tested were supported or verified. Consistent with our commitment to the highest level of due diligence and fiduciary oversight, the NJEDA will act to retain more complete files, ensuring all relevant costs related to Grow NJ projects have documentation of support. For example, if an Internet search is used to determine the cost of rent in a particular location, a printout of the search will now be placed in the appropriate file.

The NJEDA acknowledges that Grow NJ is complex and nuanced. As such, we would like to take the opportunity to provide an overview of what administration of the program entails, specifically addressing practices related to our review of the cost benefit analysis (CBA) submitted by applicants.

Grow NJ is the State's main job creation and retention incentive. Grow NJ is performance-based, meaning that to receive the approved benefit, projects must complete capital investments and hire and/or retain employees. No financial assistance is provided to a company up front and until NJEDA receives independent CPA certification of actual capital investment and jobs are created or retained. Grow NJ is a formula-driven program, with financial parameters firmly established by statute. The NJEDA reviews applications to ensure eligibility in accordance with the statute and program rules. Eligibility includes: a location in a qualified incentive area; meeting or exceeding the employment and capital investment requirements; and, demonstrating that the award of the tax credit is material to the company's decision to remain or locate in the State.[1] As part of the way materiality is demonstrated by the applicant, applications must:

1. Include a certification from the applicant's Chief Executive Officer (CEO) that: a) existing full-time jobs are at risk of leaving the State or being eliminated; b) the job creation or retention would not occur but for the Grow NJ award; and, c) all representations contained within the application are accurate[2] ;
2. Demonstrate that the capital investment and the resultant creation or retention of eligible positions will yield a net positive benefit of at least 110% of the requested tax credit amount (100% in Camden); and,
3. Demonstrate that the award of the tax credit is a material factor in the company's decision.

While the statute relies on the CEO certification as the overarching determinant to ensure material factor[3], another element of the material factor determination is based on a review of the CBA submitted by applicants.[4] For the New Jersey location and the alternative location or locations, the document includes location information, one-time upfront costs (i.e. land or building acquisition, machinery and equipment acquisition, employee and company relocation/moving costs), and ongoing annual costs (i.e. rent, real estate taxes, payroll, property insurance, electricity, building maintenance, and other project- or location-specific information). In every case, a new real estate decision is being made by the applicant based on these and other factors, as well as the award of tax credits.

Due to the NJEDA's significant transactional experience over the last two decades, and more recently through its evaluation of over 200 Grow NJ applications, we can unequivocally state that the central cost drivers of a business's location decision are payroll and real estate expenses, both of which are higher in New Jersey than in most locations outside of the state. New Jersey's high costs have been widely recognized in various studies. The U.S. Commerce Department's Bureau of Economic Analysis released price-adjusted estimates of personal income for states and metropolitan areas for 2008 to 2012 and ranked New Jersey as one of the top five most expensive states to live in[5]. A recent study conducted by

---

[1] For those companies considering a location in either Camden or Atlantic City, business's must certify that the tax credits are a material factor in its decision to locate the project to the specific municipality as opposed to the State.
[2] Per N.J.S.A. 34:1B-244, if the CEO certification is found to be willfully false, the NJEDA may revoke any award of tax credits in their entirety, in addition to any other criminal or civil penalties that the business and the officer may be subject to.
[3] All of the files, including those reviewed by the auditors, contained the CEO certification.
[4] Note that while the CBA is only a statutory requirement for projects involving intra-State job transfers, the NJEDA views the CBA as a useful document to review and compare costs and therefore requires all applicants to submit this document.
[5] https://www.bea.gov/newsreleases/regional/rpp/rpp_newsrelease.htm

24/7 Wall St. ranks New Jersey's cost of living as the third highest in the nation and 14 percent higher than the typical state[6].

Within this context, the NJEDA undertakes the highest level of due diligence to understand and compare locations proposed by applicants. This is achieved through direct discussions with the applicant to understand their representations, utilizing third party information, when available, and other fact checking practices. Staff spends significant time becoming familiar with a project, reviewing facts, and verifying costs at the time of recommendation/approval. When New Jersey is competing against a location where certain cost attributes are equal or similar, staff discounts those costs entirely as they are not a determining factor in the business's location decision. This common-sense approach to reviewing an applicant's CBA relies on rational decision-making, rooted in NJEDA's expertise and the widely-reported costs of doing business in New Jersey, particularly payroll and real estate expenses, compared to other states. It is important to note that the CBA itself does not dictate the size of the Grow NJ award (award calculation is statute driven) or detract from the performance-based mechanisms built into the program that must be met to receive the annual tax credit.

NJEDA is committed to successfully administering the State's incentive programs to attract and retain businesses and jobs and ensure New Jersey remains competitive in an increasingly global marketplace. As such, it is worth pointing out a key consideration that underlies many economic development programs - direct outreach to competing states for verification purposes could put New Jersey in a weaker position as it is likely to prompt more competitive offers from those alternative states, perversely resulting in a loss of businesses and jobs from New Jersey. The NJEDA will continue to undertake and document its due diligence related to out-of-state costs while ensuring New Jersey's competitive position in business attraction and retention is not impaired.

Business Retention and Relocation Assistance Grant Program

Verification

- Office of the State Auditor Recommendation: "We recommend the NJEDA implement procedures to verify the existence of reported at-risk jobs prior to board approval."

- NJEDA Action: This is not applicable as the Business Retention and Relocation Assistance Grant Program (BRRAG) program has expired and applications are no longer being accepted. In accordance with the Economic Opportunity Act of 2013, P.L. 2013, c. 161 and effective September 18, 2013, the EDA ceased accepting applications for assistance under BRRAG. All pending applications submitted for approval under this program were acted on by December 31, 2013.

Monitoring

- Office of the State Auditor Recommendation: "We further recommend the NJEDA implement procedures to verify that the incented retained jobs have been maintained throughout the commitment duration as required."
- Office of the State Auditor Recommendation: "In addition, we recommend the NJEDA obtain more detailed information for each incented full-time job that was reported to be at risk of leaving the state. "

[6] http://247wallst.com/special-report/2016/10/17/states-where-poverty-is-worst-than-you-think/4/

- NJEDA Action: While BRRAG is no longer an active program, the EDA continues to monitor a portfolio of 37 BRRAG projects to ensure compliance; note, only five are currently eligible to receive tax credit benefits. However, the EDA continues to administer Grow NJ, which has a current portfolio in excess of 200 projects, and is similar in concept to BRRAG as it provides incentives for retained jobs. We have taken steps to strengthen compliance monitoring for Grow NJ as it relates to retained jobs, informed in part by the recommendations put forth by the Office of the State Auditor; specifically, the NJEDA now requires that all applicants under Grow NJ with existing New Jersey-based operations submit their most recent Employer Report of Wages Paid (WR-30) maintained by the New Jersey Department of Labor and Workforce Development, as well as a newly created "Grow NJ Employee Information Worksheet," a required document for all Grow NJ applicants. These documents are required at the time of application and annually as part of the certification process.

As noted above, while the recommendations from the Office of the State Auditor are directly related to NJEDA's administration of BRRAG, we would like to take the opportunity to provide an overview of compliance monitoring related to Grow NJ.

Due to New Jersey's evolving sophistication as it relates to the administration of tax incentives, the statute governing Grow NJ includes safeguards at both the application and certification stage, designed to ensure that the incentive is material to an applicant's location decision, and that the provision of approved tax credits commences only after a project has certified that they have satisfied specific legislative requirements.

At the application stage, this includes the legally binding certification from the applicant's CEO that the application has been reviewed and the information submitted and representations contained therein accurately portray the facts of the location decision. At the certification stage, Grow NJ tax credits are certified for use annually and proportionally based on actual job performance (retention and/or creation) during that year; companies must submit a certification of costs (capital investment) at project completion as certified by an independent CPA, as well as a certification of jobs from the Chief Financial Officer. Additional performance-based requirements include maintaining the project employment for 1.5 times the period in which the business receives the tax credit, and maintaining a minimum of 80 percent of the Statewide full-time workforce from the last tax period prior to the grant approval (as evidenced through annual reporting requirements).

The NJEDA is confident in the existing safeguards, as well as its due diligence over the term of an approved project; however, we remain committed to the highest level of fiduciary oversight. As such, we have taken additional steps to further strengthen verification and monitoring related to Grow NJ applicants, and as applicable, to existing BRRAG portfolio companies submitting their annual compliance reports.

As recommended by the Office of the State Auditor, the EDA now requires that all applicants under Grow NJ that currently have New Jersey-based operations submit the most recent WR-30 maintained by the New Jersey Department of Labor and Workforce Development. While the WR-30 will provide a check for EDA as it verifies statewide employment figures, the form lists all employees at all New Jersey locations, including part-time and temporary positions, and offers no distinction between these categories.

As the Grow NJ incentive is only available to support full-time positions and the award itself is based on jobs at the qualified business facility, the NJEDA has taken an additional step by creating a "Grow NJ Employee Information Worksheet," which is now a required document to be submitted by all Grow NJ applicants. The worksheet requires applicants to provide the following information: employee name; title; date of hire; current location; current salary; employing entity; employment status (W-2, 1099, PEO, etc.); hours worked per week; hours spent at the qualified business facility per week; and a "yes" or "no" related to health benefits offered. The WR-30 and "Grow NJ Employee Information Worksheet" are required at application, and annually as part of the certification process.

- Office of the State Auditor Recommendation: The NJEDA should also define the time period a qualified full-time position needs to be filled to qualify for the full annual incentive.

- NJEDA Action: As BRRAG and Grow NJ have completely different statutory requirements for verifying the existence of reported incented full-time jobs, it is overbroad in this instance to conclude that recommendations relative to BRRAG to verify recipient compliance apply to Grow NJ. Per N.J.A.C. 19:31-18.3, under Grow NJ, full-time employment is determined as the average of the monthly full-time employment for the tax period.

As it relates to monitoring compliance of the BRRAG portfolio, under the earliest version of the BRRAG program, companies were required to submit documentation annually which provided a snapshot of the year's employment; however, to bolster the monitoring and verification process, the NJEDA currently requires companies to submit documentation annually that provides a month by month accounting of incented positions and employees (the "job log"). This job log includes hire date, salary, and titles, and includes the annualized salary based on the employee's current projected yearly salary in each month.

The NJEDA reviews the information in the job log to verify that the positions listed and the requisite employees that fill those positions qualify as full-time, and are therefore eligible for the full annual incentive. This approach allows the EDA to protect against incenting jobs that do not qualify as full-time and ensures that companies remain in compliance during their grant term. To further strengthen the monitoring and verification process, the EDA will utilize the newly required WR-30 reports as a double check against the annual BRRAG reports submitted by companies.

As the agency charged with administering the State's business incentive programs, the NJEDA takes its fiduciary responsibility very seriously and our obligation to protect the public interest continues to be our primary focus. As evidenced by reforms and improvements that have been implemented over the years in our incentive programs, the NJEDA consistently reviews best practices and utilizes its transactional experience to improve and strengthen policies and processes where the statute allows.

With these recommendations from the Office of the State Auditor, we are pleased to continue this practice by ensuring all files for Grow NJ projects retain documentation of support for all relevant costs, and by requiring new documentation to enhance verification and monitoring of the BRRAG and Grow NJ portfolios. We are also pleased to share that we have established an internal auditor function for our incentive programs that will serve to provide an ongoing review of our application processes and procedures. Additionally, at the certification stage, we have secured an independent group of Certified Public Accountants that will be tasked with performing "spot" audits on the information submitted to the EDA from companies as they seek to initially certify job and capital investment numbers and as they submit annual reports over the life of incentive agreement.