



December 10, 2021

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

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

Dear Ms. Tierney:

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

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

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

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

independent DOLWD data;

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

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

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

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

Over the past four years, the NJEDA has undergone a fundamental transformation from a transaction-oriented bank to a comprehensive economic development agency, with a particular focus on innovation, small business and economic diversification. We have

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

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

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

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

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

#### Response to Recommendation 7

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

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

- there is a 10% or 25% change in the project's cap expenditure or reported jobs, which is the current policy;
3. A sampling will be conducted on previous annual certification submissions; and
  4. Actual job certification and capital expenditure data will be used to reassess the Net Benefit of the project.

### Response to Recommendations Deemed "Not Implemented"

#### *Recommendations 8 and 9*

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

#### *Recommendation 20*

In its 2019 report, OSC recommended that the NJEDA develop a methodology to better justify fees charged in connection with tax credit programs, a recommendation we accepted and implemented for new programs authorized under the Economic Recovery Act of 2020. For example, with regard to the Emerge NJ tax credit program, we undertook a comprehensive in-depth analysis of our administrative costs and used that analysis to create a new methodology for calculating fees. That fee methodology was incorporated into proposed rules that were approved by NJEDA Board on May 12 and became effective on May 20, 2021. Those Emerge program rules were just one set of rules adopted to implement OSC's recommendation. This methodology was

incorporated into several sets of program specific rules that have been proposed and/or adopted this past year,<sup>1</sup> and this new methodology will be incorporated in all new rule proposals going forward. It would be impractical to seek to retroactively change the application fees charged for programs for which we are no longer accepting new applications, such as Grow NJ. However, we will evaluate the cost/benefit impact of a potential rule amendment to incorporate our new fee methodology into annual certification and other ongoing fees for these legacy programs.

### Response to Select Recommendations Deemed “Partially Implemented”

#### *Recommendations 5, 10 and 15*

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

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

### Response to Select Review of Initial Audit Exceptions

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

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

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

### Conclusion

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tim Sullivan', with a long horizontal flourish extending to the right.

Tim Sullivan  
Chief Executive Officer

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