



State of New Jersey

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PHILIP D. MURPHY
Governor

Governor's Task Force on EDA Tax Incentives

RONALD K. CHEN, *Chair*

July 9, 2020

The Honorable Philip D. Murphy
Governor of the State of New Jersey
PO Box 001
Trenton, NJ 08625-0001

Dear Governor Murphy:

It is my pleasure and duty to present to you the Third and Final Report of your Task Force on the Economic Development Authority's Tax Incentives, established pursuant to Executive Order 52 (January 24, 2019). Apart from certain administrative and transitional matters that the Task Force will complete in the next few weeks at your direction, I report to you that the work of the Task Force is now complete.

Engaging in this public service has been a notable highlight in my professional experience, and presented rewards and challenges—both anticipated and unexpected—as the Task Force attempted to comply with your charge to “conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and ERG” in order to “inform consideration regarding the planning, development and execution of any future iterations of these or similar tax incentive programs.”

Special Counsel to the Task Force has been comprised of exceptionally able and diverse attorneys, who have made many personal sacrifices and worked doggedly during the past 18 months. I would like to thank each one individually. Thus, my special thanks to: Jim Walden, Esq., Pablo Quiñones, Esq., Milton Williams, Esq., Georgia Winston, Esq., Avni Patel, Esq., Derek Borchardt, Esq., Stephanie Levick, Esq., Jennifer Prevete, Esq., and Marc Armas, Esq. Each has contributed not only their industry, but their considerable intellect and professional skills, and has made my first experience at being a “client” a rewarding and fruitful one.

I am also grateful to Ted Wells, Esq., Yahnnes Cleary, Esq., and the firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, for so ably representing you, me, and the Task Force in the

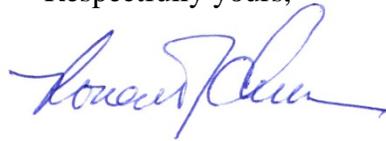
Governor Philip D. Murphy

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civil lawsuit unsuccessfully brought to challenge your authority to order the investigation of the very serious matters contained in our reports.

With the work of the Task Force now completed, I also respectfully invite you to memorialize the completion of my appointment as your delegate pursuant to N.J. Stat. § 52:15-7.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Ronald K. Chen", with a long horizontal flourish extending to the right.

Ronald K. Chen

cc: Matt Platkin, Esq., Chief Counsel to the Governor



State of New Jersey

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TRENTON, NJ 08625-0001

PHILIP D. MURPHY
Governor

Governor's Task Force on EDA Tax Incentives

Established Pursuant to Executive Order No. 52 (Murphy)

Third and Final Published Report

Ronald K. Chen
Chairman

Walden Macht & Haran LLP
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Special Counsel

July 9, 2020

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I. EXECUTIVE SUMMARY

The New Jersey Task Force on the Economic Development Authority's Tax Incentives (the "Task Force") is an advisory body and, pursuant to its mandate, submits this third, and final, report (the "Third Report") to advise the Governor of its key findings and final recommendations. Familiarity with the Task Force's first report (the "First Report"), dated June 17, 2019, and second report (the "Second Report"), dated January 16, 2020, (together, the "Prior Reports") is assumed.

As we have previously described, in January 2018, Governor Philip D. Murphy directed the Office of the State Comptroller to conduct a comprehensive performance audit of the Grow New Jersey Assistance Act ("Grow NJ") and Economic Redevelopment and Growth ("ERG") tax-incentive programs (each, a "Program" and collectively, the "Programs"), and predecessor programs, from 2010 forward to "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." On January 9, 2019, then-New Jersey State Comptroller Philip James Degnan (the "Comptroller") issued his audit report¹ of the State's tax-incentive programs. The Comptroller's audit report revealed, among other things, that the New Jersey Economic Development Authority (the "EDA") had failed to comply with the applicable statutes and regulations and to implement key internal controls for monitoring the performance of tax-incentive beneficiaries. In response to the Comptroller's audit report, Governor Murphy issued Executive Order No. 52 ("EO 52"), which established this Task Force with the following objectives:

1. Conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of the Grow NJ and the ERG tax-incentive programs, including those identified in the Comptroller's audit report, to inform consideration regarding the planning, development and execution of any future structure of these or similar tax-incentive programs; and
2. Hold public hearings and request testimony from individuals who can provide insight into the design, implementation, and oversight of these programs.

Governor Murphy appointed Professor Ronald K. Chen of Rutgers Law School as Chair of the Task Force and also named Professor Chen as his delegate to "perform all of the functions of a duly authorized representative of the Governor" pursuant to N.J. Stat. § 52:15-7, which included the ability to "subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material."² The Task Force generally sought, in the first instance, to obtain information through witnesses' voluntary cooperation, but relied on Professor Chen's subpoena power where necessary.

The Task Force would like to thank the Governor's Office, the EDA, the Business Action Center, the Comptroller, the New Jersey Division of Taxation, the New Jersey Department of the Treasury, the New Jersey Department of Labor, and the numerous companies, individuals, and attorneys who voluntarily cooperated with or assisted the Task Force in performing its work.

¹ A Performance Audit of Selected State Tax Incentive Programs, Jan. 9, 2019.

² See March 22, 2019 Letter from Governor Murphy to Professor Chen.

A. The Task Force Concludes Its Investigation

The Task Force has concluded its in-depth examination of the EDA's administration and implementation of the Programs and will commence the process of orderly winding down its operations. As discussed in the Prior Reports, the Task Force studied the efficacy of the EDA's past and current processes and procedures for administering the Programs and conducted an "end-to-end" review of the EDA's application and approval process, closely studying each phase. Toward this end, we interviewed relevant EDA personnel, as well as real estate brokers, incentives consultants, and employees of Program applicants. We also reviewed hundreds of thousands of EDA's internal documents and documents received from third parties, including real estate brokers, consultants, and Program applicants, and conducted a detailed analysis of numerous tax-incentive applications. Further, since issuing its findings and recommendations in its Prior Reports, the Task Force has worked collaboratively with the EDA to recommend improvements to the EDA's processes.

As part of its investigation of the EDA's administration and oversight of the Programs, the Task Force examined the propriety of tax-incentive applications. Although the Task Force did not review every application under the Programs, we reviewed a broad swath of applications to provide a comprehensive understanding of the myriad issues that affected the EDA's ability to implement and oversee the Programs and ensure company compliance with the Programs' requirements. As a result of its review, the Task Force identified issues with respect to certain companies, which it referred to the EDA and other authorities as appropriate.

The Task Force established the Accelerated Recertification Program (the "ARP") to facilitate a streamlined process of review. During the course of our investigation, we have reviewed the information relating to the 67 companies that participated in the ARP. The Task Force anticipates closing out its review of the ARP companies and issuing additional letters regarding recertification status in the weeks ahead. In addition to the ARP companies, the Task Force reviewed an additional 49 Grow NJ and ERG award recipients as part of its review of the EDA's administration of the Programs.³

In the Prior Reports, we reported on our review of certain issues related to the EDA's oversight and administration of the Programs, including potential conflicts of interest, issues adverse to the public interest, special perks for some companies, and the potential for fraudulent misrepresentations to influence the EDA's processes and decisions. In this Third Report, we further address the role of consultants, as well as the misleading misrepresentations made by certain companies to the EDA regarding their considerations and intentions as to their respective office locations, and their impact on the EDA's administration of the Programs. In addition, the Task Force examines the frequent practice of incentives recipients selling their tax credits to other companies and the secondary market that the transfer of credits creates. The Task Force considers

³ Where Walden Macht & Haran LLP as Special Counsel to the Task Force had a potential conflict of interest regarding a company or award recipient in the Task Force's review of the EDA's administration of the Programs, Walden Macht & Haran LLP had no involvement in such review and Special Counsel Quiñones Law, PLLC was solely responsible for the review.

the interplay of this practice with the EDA’s ability to implement and administer the Programs effectively and efficiently. We address these topics, among others, in this third and final report.⁴

During its 18-month tenure, the Task Force has facilitated several voluntary terminations of incentives awards and has referred others to law enforcement agencies, the EDA, or both. The potential aggregate savings to the State from the voluntary terminations of awards may be up to \$11.5 million.⁵ With respect to the Task Force’s referrals of incentives awards to law enforcement agencies, the EDA, or both, the total amount of these awards exceeds \$578 million. More specifically, the Task Force has referred the following incentives awards to the EDA with recommendations that it consider certain action as it may deem appropriate—including further investigation, potential termination, or otherwise:

- Conner Strong & Buckelew Companies, LLC
- Creative Management Services, LLC (d/b/a “MC²”)
- Holtec International
- Key Food Stores Co-Operative, Inc.
- Lonza America Inc.
- NFI, L.P.
- Rainforest Distribution Corp.
- Safilo USA, Inc.
- Sandoz Inc.
- TDAF I – Pru Hotel Urban Renewal Co., LLC
- The Cooper Health System
- The Michaels Organization, LLC

Further, the Task Force has also issued recommendations to further the goal of improving upon the EDA’s processes to oversee and administer the Programs to best serve the State and its taxpayers.

Given the breadth of its investigation and the completion of its review of the EDA’s administration and oversight of the Programs, subject to certain issues that the Task Force has referred to the EDA for review, as discussed further below, the Task Force has fulfilled its mandate pursuant to EO 52.

⁴ Given the breadth of the Task Force’s investigation and the limitations on the availability of certain information, there were certain issues that the Task Force identified as potentially relevant or otherwise worthy of note but did not ultimately examine in depth.

⁵ When the EDA approves a company for a tax-incentive award of a certain amount, it is not guaranteed that the company will, in fact, ultimately receive tax credits in that amount. Instead, the award represents the maximum value of tax credits that the company may receive depending on the company upholding its obligations under its incentive agreement with the EDA. Therefore, for any awards subject to early termination by the EDA, it is impossible to know the amount of tax credits the company would have received absent the termination—and, by extension, the ultimate savings to the State.

B. Sources of Information

The Task Force's findings are based on evidence and information gathered from myriad sources. The Task Force has worked closely with the EDA, award recipients, and third parties to gather information and documents integral to its investigation. Its primary source of information has been the EDA. Throughout this process, the Task Force has continued to work collaboratively with the EDA to collect, review, and analyze documents, as well as to conduct interviews of EDA personnel to better understand the EDA's protocols. Throughout the course of this investigation, the Task Force obtained from the EDA 1,878,798 pages of materials, including internal policy and process documents and internal and external communications, and conducted 37 interviews of current or former EDA personnel and board members.

The Task Force also requested and obtained documents and information directly from award recipients as part of both the ARP, which is described further below and in the Prior Reports, and its review of companies not participating in the ARP. Its review of these documents led the Task Force to consider the impact and role of third parties, such as consultants and real estate brokers, on an award recipient's application and the veracity and credibility of its representations to the EDA. To further this aspect of its investigation, the Task Force requested documents and other information from consultants, real estate brokers, and firms, which in many instances cooperated with the Task Force and aided its investigation in significant ways. The Task Force appreciates the efforts of all parties who cooperated with the Task Force's information and document requests. Dozens of sources, including individuals, entities, and attorneys for both, provided information to the Task Force in interviews, attorney proffers, written correspondence, or by other means.

Whistleblowers and other witnesses continued to be an additional, and crucial, source of information. Since the Task Force's inception, various individuals and entities with relevant information came forward or were identified as possible sources and provided information and documents relevant to the Task Force's investigation.

C. Principal Findings

In this Third Report, we update the Task Force's findings based on the continued examination since the Prior Reports. The principal, and final, findings contained herein include the following:

1. Professional Consultants Played a Role in the EDA Awarding Tax Credits to Companies That Were Not Actually at Risk of Leaving New Jersey and Which, Therefore, Did Not Qualify for Incentives

When the Grow NJ program was in effect, between 2013 and 2019, the vast majority of companies that applied to the EDA for incentives under the program did not handle the process alone, but rather engaged the services of professional consulting firms. These consulting firms included specialist firms dedicated to incentives programs; larger firms offering a broad spectrum of services, including but not limited to incentives; real estate brokerage firms offering incentives consulting services to complement the primary brokerage role; and law firms that advised clients related to incentives programs. The EDA's senior leadership at times maintained a close relationship with certain consultants who frequently represented companies that appeared before the EDA.

As discussed in Section II below, the Task Force has found that certain consultants played a role in the EDA awarding tax credits to companies that, contrary to the representations in their respective Grow NJ applications, were not actually at risk of leaving New Jersey—and which, therefore, did not qualify for incentives. Specifically, consultants were retained by companies that had already decided to relocate within New Jersey and were on the path to doing so—for example, already negotiating with New Jersey sites to secure new office space—before they first spoke with a consultant about incentives. The consultants failed to advise their client companies that, because they already planned to relocate within New Jersey and their jobs were not at risk of leaving the state, they did not qualify for tax incentives. Instead, after the companies learned from the consultants that they must show the EDA that their jobs are “at risk” in order to qualify for incentives, they proceeded to look at and “consider” out-of-state locations while, in reality, never sincerely considering leaving New Jersey. The EDA ultimately awarded tax incentives to these companies to encourage them to remain in New Jersey rather than leave for another state, although they had not even considered doing so before their incentives consultant was involved in the process.

For example, based on evidence reviewed by the Task Force and discussed below, Safilo USA, Inc. (“Safilo”) was already in advanced negotiations with its preferred relocation site in Secaucus, New Jersey, when the company first discussed with consultants at KPMG the possibility of applying for incentives. At that point in time, Safilo’s real estate search efforts had already been ongoing for almost a year and had focused entirely on New Jersey options. Safilo was already located in New Jersey before its incentives application, and, the evidence shows, it planned to stay in New Jersey. However, after Safilo’s consultants at KPMG advised the company that its jobs had to be “at risk” for it to qualify for incentives, Safilo visited an office complex in New York and requested a lease proposal letter from the site. According to internal Safilo email correspondence, the company considered the New York office complex to be nothing more than an “opportunity to get the NJ State incentives” because the out-of-state site could be used to “convince” the EDA “to pay Safilo in order to retain [its] jobs in NJ.” Safilo’s internal email correspondence further demonstrates that the company was concerned about potential reputational risk related to the incentives application, and yet determined to proceed with the application based on assurances by the KPMG consultants that the EDA was likely to grant the company’s application. Thus, based on the likelihood of a successful application, as Safilo’s consultants at KPMG had assured, there was great upside in proceeding with the application and little downside. Indeed, the EDA overlooked red flags concerning Safilo’s application, failed to discover that the company’s representations concerning the “at risk” nature of its jobs were misleading, and approved the company for up to \$4.5 million in tax credits to encourage it to locate in New Jersey rather than New York—which, the evidence shows, the company would have done irrespective of any incentives.⁶ For the reasons more fully described below, we have referred this application to law enforcement for further investigation.

Safilo’s incentives application, as well as other incentives applications in which consultants played a key role in their clients’ submissions to the EDA concerning the “at risk” nature of their jobs, are discussed further in Section II, below.

⁶ Safilo ultimately did not satisfy the requirements of its incentives agreement with the EDA, and the company’s award expired without Safilo having claimed a tax credit.

2. Grow NJ Applicants Exploited an Office Complex in New York State to Make Misleading Claims to the EDA About the “At Risk” Nature of Their Jobs

Safilo’s Grow NJ application claimed that if the company did not receive incentives to locate in Secaucus, New Jersey, the company intended to relocate to an office complex in New York—specifically, the Blue Hill Plaza complex in the municipality of Pearl River, in Rockland County, New York, which is situated less than a mile from New Jersey’s northern state border. Safilo was not alone in claiming the Blue Hill Plaza as the “alternative site” on its Grow NJ application. In fact, between 2013 and 2019, the EDA approved a total of fifteen companies for tax incentives under the Grow NJ program based on their claims that, absent incentives, they intended to relocate to the Blue Hill Plaza. Unique among real estate options outside New Jersey, no other alternative site so frequently appeared on Grow NJ applications submitted to the EDA during the life of the Grow NJ program.

The Task Force examined why the Blue Hill Plaza was such a frequent alternative site on Grow NJ incentives applications. We found evidence that certain incentives consulting and real estate brokerage firms that worked with Grow NJ applicants were aware of the office complex’s unique status as a frequent alternative site for incentives applications. For instance, according to internal Safilo email correspondence, the company’s consultants at KPMG informed them that the Blue Hill Plaza was “frequently used by the NJ based companies to get state incentives.”⁷ KPMG apparently informed a different client that the Blue Hill Plaza may have even been “overused.”⁸ A real estate brokerage firm, Cresa, sent a memorandum to one of its clients, Sharp Electronics Corporation, advising that the Blue Hill Plaza “has been used as a stalking horse by companies in NJ who are seeking incentives from the State of NJ, but have no plans on leaving the State.”⁹ Given that the Blue Hill Plaza was so close to the New Jersey state border, offered office space at rates less expensive than comparable buildings in northern New Jersey, and often had vacant space to offer, the office complex was a convenient resource for Grow NJ applicants, like Safilo, that exploited it for lease proposals that were not genuinely under consideration but merely intended for use as evidence to show the EDA the purportedly “at risk” nature of the company’s jobs.

The EDA was also aware that the Blue Hill Plaza was a frequent alternative site for Grow NJ applicants. EDA employees told the Task Force that, during internal EDA staff meetings, when someone noted that the Blue Hill Plaza was an applicant’s alternative site, people in the room often groaned and made comments such as “not another one” or “again?” In EDA email correspondence, multiple EDA staff members used terms like “the famous Blue Hill Plaza” and “our favorite Blue Hill Plaza location.” Nonetheless, the EDA’s scrutiny of Grow NJ applications that used the Blue Hill Plaza as the alternative site was not commensurate with the level of skepticism that was warranted, and the EDA overlooked red flags and approved awards for companies that, in reality, had no actual intention to relocate to the Blue Hill Plaza under any circumstances. These issues are discussed in detail in Section II, below.

⁷ See Section II(A)(1) below.

⁸ See Section III(C) below.

⁹ See Section II(B) below.

3. Deficiencies in the EDA's Implementation of the ERG Program

The Task Force identified certain deficiencies in the EDA's implementation and oversight of the ERG program. The Task Force previously examined the effect that insufficient guidance for EDA staff had on the implementation and oversight of the Programs, primarily with respect to Grow NJ. Similar to the EDA's process for the Grow NJ program, ERG EDA Business Development Officers ("BDOs") and underwriters use a checklist to assess whether applicants have submitted all the required materials. However, the Task Force found that the EDA provided little to no written guidance on how to assess or review the materials submitted by applicants. As a result of the lack of centralized guidance for review of projects under the ERG program, there is a risk that ERG BDOs and underwriters could inconsistently assess critical ERG requirements, which could result in inconsistent determinations of whether ERG applicants satisfy the Program's requirements. For example, as discussed further in Section V, the Task Force found that EDA staff at times lacked an understanding of their respective responsibilities for reviewing the required "project financing gap." The ERG statute's definition of "project financing gap" requires the developer to certify that it cannot raise additional capital from other sources on a non-recourse basis, even after good faith efforts. The Task Force found that not all EDA underwriters requested the required certification that the developer had made the required good faith efforts, which was evidenced by the absence of the required certification in certain EDA project files reviewed.

The Task Force also identified deficiencies in the EDA's assessment of the ERG project financing gap requirement. Specifically, the EDA's analysis of the internal rate of return ("IRR") and hurdle rate do not encompass the variety of project types eligible under the ERG program or allow for critical analysis of whether an incentive is necessary. The Task Force found that the EDA did not question the economic analysis as long as the IRR for a project fell below the hurdle rate. For example, the EDA does not analyze whether a project with a 10% IRR without the ERG and a 14% IRR with the ERG would proceed absent the award. The Task Force questions whether there should be an additional layer of analysis to determine the grant's necessity in incentivizing the project.

Finally, the EDA's lack of verification of project costs or capital investment and failure to review critical elements—such as project equity, financing terms, and IRR—can result in improper ERG awards. ERG awards are calculated based on a percentage of a project's estimated costs or capital investment at approval. If the project's post-approval costs, as certified by an independent CPA, are lower than the projected costs pre-approval, the EDA *could* adjust the ERG award downward because the award amount is tied to the total project costs. However, despite the fact that the developer's equity contributions and the components that affect a project's IRR, including a project's proposed sources and uses, incomes, and expenses, are not static and can change after the project's approval, the Task Force found that the EDA does not review these elements post-approval to determine whether adjustments to award amounts were warranted. Moreover, the Task Force did not find any instance where the EDA adjusted an award post-approval to reflect a project's actual costs or capital investment if different than the estimated numbers. However, the Task Force was limited in its ability to review whether certain ERG awards should have been adjusted. As the EDA does not independently verify an ERG project's actual costs post-approval or request documentation to specify final project costs, EDA files reviewed did not consistently contain documents or information reflecting post-approval costs.

4. The Task Force’s ARP Review Identified Additional Deficiencies in the EDA’s Oversight

The Task Force’s ARP facilitated the review of the EDA’s oversight of the Programs with respect to the EDA’s consideration of specific applications and its ultimate approvals and certifications with respect to those applications. Through that review, the Task Force identified additional areas of deficiencies in the EDA’s oversight and administration of the Programs.

In particular, the Task Force observed consistent flaws with the EDA’s collection and maintenance of critical supporting documents for projects within project files. For certain documents critical to the EDA’s analysis of out-of-state locations under Grow NJ—such as a term sheet, lease, contract, letters of intent, offer to purchase, broker request for proposal response, or other proposals for a company’s alternative site—the Task Force identified project files lacking this documentation. In some instances, the Task Force confirmed with the ARP participant directly that the documentation did not exist, and that the EDA had not requested it at the time of application. Regarding the maintenance and organization of the EDA’s files, the Task Force also identified a pattern of poor record-keeping of crucial decision-supporting documents. Specifically, there are certain EDA analysis documents—such as the cost benefit analysis (“CBA”) and jobs report for Grow NJ applicants, the pro forma analysis for ERG applicants, and the net benefit test for both Programs—that help demonstrate an applicant’s compliance with Program requirements. The EDA files for a given award recipient frequently contained multiple copies of these types of decision-supporting documents, without a clear record of why the analysis changed, who had changed it, and which version was the final version supporting the decision to approve or certify.

The Task Force observed instances in which the EDA failed to critically analyze the CBA submitted with an application for a Grow NJ award or failed to critically assess the facts surrounding a company’s material factor representations, such that potential issues that should have been apparent, or at least questioned, upon reasonable inspection were not. For example, under the EDA’s previous policy concerning landlord-offered tenant improvement allowances, money expended by the landlord was included as a “cost” to the tenant-applicant in the CBA, even though the applicant did not pay these costs. In these and other instances, costs were attributed to the New Jersey location that should not have been included.

II. THE ROLE OF PROFESSIONAL CONSULTANTS IN THE EDA AWARDING TAX CREDITS TO COMPANIES NOT ACTUALLY AT RISK OF LEAVING NEW JERSEY

The vast majority of companies that apply to the EDA for tax incentives do not handle the application process alone, but instead engage the services of professional consultants who are experts in business attraction and retention incentives programs like Grow NJ. These consultants, who guide companies through the process of applying for incentives from the EDA and similar authorities in other jurisdictions, are employed by a variety of firms, including:

- Specialist firms that are dedicated, either entirely or principally, to helping their clients in connection with incentives programs. Examples of such specialist firms with clients in New Jersey include Biggins Lacy Shapiro & Co., LLC and WRE Consulting.
- Larger consulting firms that offer professional advisory services in multiple subject areas to a national or international client base, with incentives programs as just one area

of service. Examples of such firms that work with clients in connection with New Jersey incentives programs include KPMG and Ernst & Young.

- Law firms that offer legal services across multiple subject areas in addition to professional services related to incentives programs. Examples of law firms serving clients in connection with incentives in New Jersey include Parker McCay P.A. and Sills Cummis & Gross P.C.
- Real estate brokerage firms that offer incentives consulting to complement the firm's primary brokerage role. Examples of brokerage firms serving clients in connection with incentives in New Jersey include CBRE, JLL, Cushman & Wakefield, and Savills.

These consultants typically advise companies as to the available programs, work with them to prepare their applications, communicate with and appear before the relevant authorities on behalf of the companies, and otherwise offer their expertise to their clients.

In this section, we provide the Task Force's findings concerning the important role of consultants in New Jersey's tax-incentive programs between 2013, when the Economic Opportunity Act dramatically expanded the availability of tax credits from the EDA, and 2019, when the incentives programs expired. For the reasons described below, the Task Force finds that certain consultants played a role in the EDA awarding tax credits to unqualified companies, and the EDA failed to adopt reasonable processes and procedures to be sufficiently "on guard" against such risks.

A. Grow NJ Applicant Companies Submitted Misleading Alternative Site Information to the EDA Following Guidance or Advice by their Retained Consultants

The EDA administered the Grow NJ program in a manner that envisioned applicant companies, prior to submitting their incentives applications, to have undertaken multi-state real estate searches that ultimately led them to consider two or more potential options for their respective relocations: a New Jersey option, which was preferred by the company but more expensive, and at least one alternative option in another state, which was comparable in size but less expensive. With this premise of the company's real estate search having led it to two or more comparable, but differently priced, options, the EDA's award of tax credits under Grow NJ was intended to subsidize the New Jersey option in order to incentivize the company to choose it over the less expensive alternative in another state.

The Task Force, however, has found that the actual site-selection process conducted by many companies awarded Grow NJ incentives did not fit the mold the EDA envisioned. In reality, some companies awarded incentives by the EDA had engaged in real estate searches preceding their applications that were aimed not only at identifying suitable relocation sites, but also specifically at satisfying the EDA's requirement that applicants establish the "at risk" nature of their jobs by submitting documentation of alternative sites purportedly under consideration in other states. That is, some companies first worked to identify the New Jersey location they wanted to actually pursue and then, once those efforts were at or near completion, separately set out to identify the most appropriate alternative site in another state to use for comparative purposes on the planned Grow NJ application. In some of these cases, the company may have, to at least some extent, sincerely considered the out-of-state site as a potential relocation site, even if it was

primarily intended to satisfy the EDA’s alternative site requirement; in other cases, it is clear that the company did not consider the out-of-state site to be a real option in any real sense and, in fact, used it solely to qualify for tax incentives from the EDA.

Some applicants, in the course of our investigation, blamed the EDA for this situation, contending that, under their understanding, the EDA considered alternative sites used on Grow NJ applications to reflect merely “illustrative” or “hypothetical” options the company could possibly consider for its relocation—not necessarily sites that the applicant was actually considering. Generally speaking, we found this position incredible and unsupportable, and we found no one within the EDA who agreed with such a view of the program requirement.

The Task Force has found that, in some instances, professional incentives consultants played a role in search efforts by their client companies that were tailored to Grow NJ requirements. We have previously, both during hearings and in our Prior Reports, explored several examples of pretextual alternative sites. In this Third Report, we examine the role of incentives consultants in this dynamic.

To illustrate the role of incentives consultants, we discuss three case studies below. All three companies ultimately used the same alternative site in New York on their respective Grow NJ applications: the Blue Hill Plaza office complex in the municipality of Pearl River, in Rockland County, New York—a large office complex just across the state border from Bergen County, New Jersey. In fact, the Blue Hill Plaza was a common alternative site on Grow NJ applications—no less than fifteen companies were awarded incentives by the EDA between 2013 and 2019 based on claims that, absent the incentives, they intended to relocate to that New York office complex. However, there is persuasive evidence that at least some of these companies never sincerely considered the Blue Hill Plaza to be a real option, but used it only as a means to qualify for incentives. Also, it bears mention that—for various reasons—six of the companies that were approved for tax incentives while using Blue Hill Plaza as their alternative site are no longer in the Program, representing more than a third of the fifteen Blue Hill applicants in total.

1. Safilo USA, Inc.

Safilo USA, Inc. (“Safilo”) is an Italian eyewear company, which the EDA approved for up to \$4.5 million in incentives under Grow NJ on May 13, 2016.¹⁰ As set out in the narrative below, the principal persons involved in Safilo’s Grow NJ application included the following:

- Roberto Risi (Safilo’s Chief Financial Officer in the United States)
- Gerd Graehsler (Safilo’s Group Chief Financial Officer in Italy)
- Kenneth Kim (Safilo’s Director of Legal and Tax in the United States)
- Carmine Somma (Safilo’s Director of Operations in the United States)
- George Tobjy (retained tax incentives consultant at KPMG)
- Anthony Ceretti (retained tax incentives consultant at KPMG)
- Joshua Cohen (retained real estate broker at Cushman & Wakefield)
- Robert Rudin (retained real estate broker at Cushman & Wakefield)

¹⁰ Safilo voluntarily cooperated with the Task Force’s investigation. Much of the evidence discussed in this section was provided by the company itself.

Prior to the EDA’s incentives award, Safilo’s North American corporate headquarters were located in Parsippany, New Jersey, and the company also had a showroom on Fifth Avenue in New York City. On June 19, 2015, Safilo issued a press release announcing that it planned to relocate the North American headquarters office to a new location, yet to be determined, that would be “closer to New York City and better connect with Safilo’s Fifth Avenue showroom.”¹¹

The company’s headquarters relocation efforts were led by Roberto Risi, who was at the time Safilo’s Chief Financial Officer in the United States. Mr. Risi convened an internal “Relocation Task Force” to plan and facilitate the company’s move.¹² However, all of the relocation team’s decisions had to be approved by Safilo’s leadership in Italy.

From the outset of the office relocation efforts, Safilo planned for its new offices to be in New Jersey, and, therefore, the company limited its search efforts to New Jersey options. Demonstrative of that fact, the documentary evidence available to the Task Force includes the following:

- On March 23, 2015, Mr. Risi sent an update to Safilo’s leadership in Italy, writing that he had spoken with real estate brokers at the CBRE firm, who provided the company with a number of potential real estate options to consider for its office relocation.¹³ Based on those initial options presented by CBRE, Mr. Risi wrote, the Safilo team in the United States had “already selected the top 4”—all in New Jersey: “2 in Secaucus, 1 in East Rutherford, 1 in Jersey City.”¹⁴
- On April 21, 2015, Mr. Risi sent another update to Safilo’s leadership in Italy, writing that he had asked a second real estate brokerage firm, Cushman & Wakefield, to present options for the company in Secaucus and Jersey City.¹⁵ The Cushman & Wakefield team, Mr. Risi wrote, presented the same buildings that CBRE had previously listed.¹⁶
- On June 16, 2015, Safilo executed a contract with Cushman & Wakefield, with Mr. Risi signing on behalf of Safilo.¹⁷ The contract tasked the Cushman & Wakefield brokers with “represent[ing] [Safilo] in connection with the location of property for occupancy by [Safilo] **in New Jersey.**” (Emphasis added).¹⁸ Three days later, on June 19, 2015, Safilo issued the press release described above, announcing that it planned to

¹¹ Exhibit 1.

¹² Exhibit 2.

¹³ Exhibit 3.

¹⁴ Exhibit 3.

¹⁵ Exhibit 3. Mr. Risi wrote that he had also asked the brokers at Cushman & Wakefield to present options in Parsippany, where Safilo’s offices were then located, but the purpose of looking at other sites there was “just to have a sense of the difference in terms of renting cost vs locations closer to NYC.”

¹⁶ Exhibit 3.

¹⁷ Exhibit 4.

¹⁸ Exhibit 4.

relocate the office to a new location that would be “closer to New York City and better connect with Safilo’s Fifth Avenue showroom.”¹⁹

- On June 24, 2015, a Safilo employee wrote to a third party outside the company to notify her that Safilo’s “NJ office will be moving to a new, yet to be determined, location **within NJ**, closer to the city.” (Emphasis added).²⁰
- On September 23, 2015, Studio 1200, an architectural and interior design firm based out of Short Hills, New Jersey, which Safilo was considering retaining in connection with its office relocation, wrote to Safilo: “We appreciate your consideration of Studio 1200 as a potential partner for Safilo’s relocation, and are excited at the prospect of working with you to realize a new headquarters **in New Jersey**.” (Emphasis added).²¹
- Cushman & Wakefield helped Safilo select a project management firm to hire for the office relocation. On September 24, 2015, Cushman & Wakefield sent Safilo a list of project management firms to consider, all of which were located in New Jersey.²² On September 30, 2015, Cushman & Wakefield sent Safilo a draft of a request for proposal (“RFP”) to be sent to the project management firms to solicit proposals from them.²³ The draft RFP stated that Safilo was seeking project management services for the build-out of the company’s new office space in a “to be determined [location] **within Northern New Jersey**.” (Emphasis added).²⁴ The firm that Safilo ultimately selected, VVA Sweett, submitted a response to the RFP, dated October 19, 2015, that offered to provide project management services in connection with Safilo’s plans to “relocat[e] to northern New Jersey.”²⁵

By October 27, 2015, Safilo had narrowed down the potential relocation options to a “shortlist” of four buildings, all in New Jersey—two in Secaucus, one in Lyndhurst, and one in Little Falls.²⁶ Safilo authorized Cushman & Wakefield to start negotiations for potential leases with the four shortlisted sites, and all four sites provided initial proposals by mid-December 2015. After considering the first round of proposals, Safilo chose Secaucus as its preferred location for its new North American headquarters, in part because mass transit options conveniently connected office buildings in Secaucus to Safilo’s showroom in Manhattan. Safilo and its brokers at Cushman & Wakefield proceeded with further rounds of negotiations with both of the buildings in Secaucus that the company had shortlisted.

In early 2016, after selecting Secaucus as the preferred location for the office move, Safilo reached out to George Tobjy, an incentives consultant at KPMG with whom Safilo’s management

¹⁹ Exhibit 1.

²⁰ Exhibit 5.

²¹ Exhibit 6.

²² Exhibit 7.

²³ Exhibit 8.

²⁴ Exhibit 8.

²⁵ Exhibit 9 at 5.

²⁶ Exhibit 10.

had a preexisting relationship, as Mr. Tobjy and his team at KPMG had previously provided consulting services to Safilo in connection with a project in Colorado.²⁷ In early-to-mid 2015, when KPMG was working on the Colorado project and Safilo was beginning to consider a potential future office relocation, the KPMG consultants also preliminarily discussed with Safilo incentives programs in New Jersey for the company to consider. Thus, after Safilo chose Secaucus for its office relocation approximately half a year later, Kenneth Kim, Safilo's Director of Legal and Tax, reconnected with Mr. Tobjy to pursue the possibility for incentives from New Jersey authorities in connection with the project. Mr. Kim wrote to Mr. Tobjy and his KPMG team on January 12, 2016: "It's been a while. Hope you are doing well. FYI, Safilo USA is in the process of relocating to a new location – **most likely to Secaucus**. We would like restart [sic] the process of securing incentives for the upcoming NJ facility change." (Emphasis added).²⁸

Safilo and KPMG proceeded to schedule a call for the morning of January 14, 2016.²⁹ Based on the evidence available to the Task Force, it appears that KPMG advised Safilo during this call that, in order for Safilo to qualify for tax incentives to relocate to its desired site in Secaucus, the company and its brokers would also need to identify an alternative location in another state to cite on the company's Grow NJ application to purportedly show the "at risk" nature of the company's jobs. After the call between Safilo and KPMG concluded, Safilo's Mr. Risi wrote in an email to the company's brokers at Cushman & Wakefield that Safilo's incentives application would need to include information about an "alternative site in NY."³⁰ The following day, Safilo, Cushman & Wakefield, and KPMG had a joint conference call to discuss next steps.³¹ Four days later, on January 19, 2016, one of the brokers at Cushman & Wakefield wrote to Safilo that he had "confirm[ed] two availabilities in Pearl River" that the company could tour.³² Pearl River in Rockland County, New York is home to the Blue Hill Plaza office complex, which Safilo later used as the alternative site on its Grow NJ application. Compared to Secaucus, Pearl River is significantly farther from Safilo's showroom in Manhattan and has fewer transit options.³³

²⁷ Specifically, Safilo had relocated certain warehouse functions from New Jersey to Colorado, and KPMG provided consulting services to the company concerning incentives it might receive from Colorado authorities in connection with the relocation. However, Safilo ultimately chose to proceed with the Colorado project without applying for any such incentives.

²⁸ Exhibit 11. Around this same time, Safilo considered using a different consulting firm instead of KPMG for the New Jersey incentives application. On January 18, 2016, Mr. Kim of Safilo wrote to the other firm: "My name is Kenneth Kim and I'm with Safilo USA, Inc. We are in the process of relocating our NJ office/warehouse from our current Parsippany location **to Secaucus location**." Exhibit 12 (emphasis added).

²⁹ Exhibit 11.

³⁰ Exhibit 13.

³¹ Exhibit 14.

³² Exhibit 15.

³³ Safilo's brokers at Cushman & Wakefield conducted an analysis for Safilo concerning the most preferable geographic locations for its office relocation based on "synergy with the showroom" in Manhattan, talent attraction, and minimal disruption to current employees. The brokers found that Secaucus was the best option based on those parameters. The brokers further found that "North

With these efforts to identify a New York alternative site for Safilo’s Grow NJ application underway, Safilo’s incentives consultant at KPMG, Mr. Tobjy, reached out to New Jersey officials to discuss the upcoming application. On January 22, 2016, Mr. Tobjy notified Safilo that he had spoken with the New Jersey Business Action Center (the “BAC”), the state agency that assisted companies in certain respects relating to their EDA incentives applications.³⁴ During Mr. Tobjy’s call with the BAC, he wrote to Safilo, he explained that Safilo was considering whether to “relocate its headquarters employees to Rockland County [in New York] or keep the operations in Northern NJ.”³⁵

However, despite Mr. Tobjy’s representations to New Jersey officials about Safilo’s purported considerations concerning relocating to New York, internal Safilo email correspondence indicates that the company did not sincerely consider such a relocation to New York to be a real option for the company. On January 26, 2016, Mr. Risi sent an email to Gerd Graehsler, Safilo’s Group Chief Financial Officer in Italy, discussing the company’s conversations with the KPMG.³⁶ Mr. Risi explained in his email that the Grow NJ program, related to which KPMG was advising Safilo, was intended to incentivize companies to remain in New Jersey rather than relocate to another state.³⁷ **Mr. Risi proceeded to explain, apparently referring to the Blue Hill Plaza site in New York, that “in this case we studied with our broker a potential site in NY State which, according to KPMG, is frequently used by the NJ based companies to get state incentives.”**³⁸ Mr. Risi wrote that he was concerned about the possibility that New Jersey officials could deny Safilo’s Grow NJ application and yet the company would stay in New Jersey nonetheless, rather than relocate to New York as claimed on its Grow NJ application, in which case, Mr. Risi wrote, “our image could be damaged.”³⁹ However, Mr. Risi explained, this concern was outweighed by the consultant’s certainty that Safilo would be approved for incentives under Grow NJ, meaning that any such risk was unlikely.⁴⁰ Responding to Mr. Risi’s email, Mr. Graehsler asked, “how do

Bergen”—the New Jersey county just across the state border from the Blue Hill Plaza in New York—“did not fit employee commute pattern [sic] and [was] not desirable for talent attraction and mass transit access into Midtown Manhattan.” Exhibit 16.

³⁴ Exhibit 17.

³⁵ Exhibit 17. Mr. Tobjy also recommended that Safilo’s employees themselves meet with New Jersey officials “to discuss the relocation project and to secure their support” before filing the company’s Grow NJ application, but first, Mr. Tobjy wrote, “we should . . . confirm . . . the information on the NYS alternative property in Rockland County that C&W will be providing.” Exhibit 18.

³⁶ Exhibit 19.

³⁷ Exhibit 19.

³⁸ Exhibit 19. Despite this contemporaneous email, the two principal KPMG consultants on the team that worked with Safilo, George Tobjy and Anthony Ceretti, denied to the Task Force that they had advised Safilo that the Blue Hill Plaza was frequently used as the alternative site on Grow NJ applications.

³⁹ Exhibit 19.

⁴⁰ Exhibit 19. The Task Force spoke with Kenneth Kim, Safilo’s Director of Legal and Tax at the time of the application, who no longer works for Safilo. Consistent with Mr. Risi’s email, Mr. Kim also recalled that the consultants Safilo retained for the incentives application advised the company that EDA’s approval of the application was a “sure thing.”

we prove that we were seriously considering a move outside of NJ? Were any of the building options in NY or other states?”⁴¹ Mr. Risi replied:

The shortlist of option [sic] we had initially was all in NJ.

The option in NY state is only an opportunity to get the NJ State incentives because you can find options in NY State close to the NJ State borderline with much lower rent and some incentives form [sic] NY State that will “convince” the NJ State to pay Safilo in order to retain the jobs in NJ. The proof of our intention, in addition to a declaration of a company officer or CEO that we are ready to move to NY if financially more convenient, will be a business case that KPMG will prepare for us showing the theoretical financial convenience to choose NY State.

At the beginning I was doubtful to pursue this opportunity but KPMG seems to be very optimistic about the likelihood of Safilo being eligible for the NJ Grow incentive program and the partner in charge seems to be one of the most expert in NJ State incentives programs.

The potential downside is that in case the State will not approve the incentives, most probably we will remain in any case in NJ so this could not be ideal from the “image” standpoint but the potential incentive amount in the 10 years is appealing and I wanted to bring up to you for the final decision.

(Emphasis added).⁴²

Three days later, on January 29, 2016, Safilo informed KPMG that the company had decided to “move forward on the Grow NJ incentives.”⁴³ Attached to the email from Safilo to KPMG was an executed contract for KPMG’s consulting services, signed by Safilo’s Chief Financial Officer in Italy, Mr. Graehsler.⁴⁴ The contract stated in its preamble: “Safilo has requested KPMG’s support in applying for and securing business incentives to support its planned State of New Jersey development project.”⁴⁵ The contract was limited in scope to Safilo’s pursuit of incentives from the EDA in connection with the New Jersey relocation, and the contract did not provide for any consulting services related to incentives programs in New York.⁴⁶

⁴¹ Exhibit 19.

⁴² Exhibit 19.

⁴³ Exhibit 20.

⁴⁴ Exhibit 20.

⁴⁵ Exhibit 20.

⁴⁶ Exhibit 20. In an interview with the Task Force, Mr. Tobjy stated that Safilo was not interested in consulting services concerning New York incentives.

Approximately a week later, on February 5, 2016, a Safilo employee on Mr. Risi's internal relocation team toured the Blue Hill Plaza office complex in New York.⁴⁷ On February 10, 2016, Safilo's brokers at Cushman & Wakefield requested a proposal for Safilo to lease space at the office complex.⁴⁸ The Blue Hill Plaza's representatives provided a proposal on February 24, 2016.⁴⁹ This was Safilo's first and only proposal letter from the Blue Hill Plaza.⁵⁰

Although Safilo and its brokers solicited a proposal letter for the company to lease space at the Blue Hill Plaza, the conduct of the company's employees around the same time reflected an assumption that the office would be relocated to Secaucus, and they did not treat a relocation to New York as a possibility. For example, all of the following took place subsequent to Safilo's incentives consultant, Mr. Tobjy, representing to the BAC in January 2016 that Safilo was considering relocating to New York:

- Mr. Risi notified Safilo's senior leadership in January 2016 that he would soon be leaving the company to take a position at a rival eyewear brand. Safilo's leadership decided to relocate an employee based in Italy, Ernesto Frixia, to the United States to substitute for Mr. Risi on a temporary basis. Mr. Frixia planned to live in Hoboken after he arrived in the United States, he wrote in an email on January 26, 2016, in part because he would have a convenient daily commute "**once the office will be in Secaucus.**" (Emphasis added).⁵¹ Mr. Frixia's email did not mention any possibility that the new office would be in New York.
- On January 28, 2016, Mr. Risi, who was still working on Safilo's office relocation at that time, circulated an internal update on the relocation efforts.⁵² In his update, Mr. Risi described Safilo as in the "very final" stage of negotiations with the two preferred buildings in Secaucus.⁵³ He also noted that Safilo was continuing to work with KPMG on "the possibility of having some NJ State incentives linked to the relocation inside the NJ State"⁵⁴ Mr. Risi did not mention any potential New York alternative.
- On February 12, 2016, Mr. Risi wrote an email to Mr. Graehsler reporting that the "first choice" site in Secaucus would likely fall through, so Mr. Risi recommended that the

⁴⁷ Exhibit 21. Following Safilo's tour of the Blue Hill Plaza, one of the office complex's representatives wrote to a colleague: "The tour today was Safilo and they are focused on the Meadowlands to be closer to the city." Exhibit 22. Secaucus is in the Meadowlands region of New Jersey.

⁴⁸ Exhibit 23.

⁴⁹ Exhibit 24.

⁵⁰ By contrast, Safilo engaged in multiple rounds of proposals and counterproposals with the Secaucus sites under consideration.

⁵¹ Exhibit 25.

⁵² Exhibit 26.

⁵³ Exhibit 26.

⁵⁴ Exhibit 26.

company “move forward asap” with the “second choice” in Secaucus.⁵⁵ Mr. Risi did not mention any potential New York alternative.

- On February 29, 2016, a Safilo employee circulated the itinerary for an upcoming visit to the United States by Mr. Graehsler.⁵⁶ It showed that Mr. Graehsler was scheduled to “[v]isit . . . Secaucus potential new Office[.]”⁵⁷ Mr. Graehsler did not visit the Blue Hill Plaza or any other potential relocation site in New York.

For their part, the Blue Hill Plaza’s brokers extended a lease proposal offer to Safilo, but they did not believe that Safilo was seriously considering the New York office complex. Knowing that Safilo was based out of Parsippany and considering options in Secaucus—both of which are to the south of the Blue Hill Plaza’s location in New York—the brokers believed it unlikely that the company was genuinely considering the Blue Hill Plaza as an option.⁵⁸ An employee of the Blue Hill Plaza’s ownership company wrote in an internal email on February 24, 2016, that Safilo was “interested in BHP strictly for a tax incentive play.”⁵⁹

On March 29, 2016, Safilo’s consultants at KPMG filed the company’s Grow NJ application with the EDA.⁶⁰ The application stated that Safilo’s jobs in New Jersey were at risk of being relocated to New York.⁶¹ An attachment to the application stated that Safilo was “currently evaluating” the Blue Hill Plaza office complex in New York for the company’s office relocation, which was a “significantly” less expensive site than Safilo’s preferred location in Secaucus.⁶² Thus, given the “substantial” cost differential between the New York and the New Jersey sites purportedly under consideration, Safilo’s application stated, Safilo was “seeking the support of the EDA through the Grow New Jersey Program to assist in moving forward with a possible New Jersey expansion.”⁶³

Included with Safilo’s application was a CEO certification, as required, attesting that Safilo’s jobs were “at risk of leaving the State” and that retention of the jobs in New Jersey “would not occur but for the provision of tax credits under the [Grow NJ] program.”⁶⁴ Initially, Safilo had planned that Roberto Risi would sign Safilo’s application documents.⁶⁵ However, when the application was ready for filing, Mr. Risi had already left the United States, and so Glenn Rusk,

⁵⁵ Exhibit 27.

⁵⁶ Exhibit 28.

⁵⁷ Exhibit 28.

⁵⁸ The Blue Hill Plaza’s real estate brokers and owners voluntarily provided information to the Task Force through their respective attorneys.

⁵⁹ Exhibit 29.

⁶⁰ Exhibit 30.

⁶¹ Exhibit 30.

⁶² Exhibit 31.

⁶³ Exhibit 31.

⁶⁴ Exhibit 32.

⁶⁵ Exhibit 33.

Safilo's Senior Vice President, Commercial Head of North America, executed the certification in Mr. Risi's stead.⁶⁶

The Task Force spoke with Mr. Rusk by telephone. Mr. Rusk said that he did not recall signing any documents related to Safilo's incentives application, either the CEO certification or any other document, and otherwise had no involvement in the company's application that he could recall. Within weeks of executing the CEO certification for Safilo's Grow NJ application, Mr. Rusk left Safilo to join the same rival eyewear company that Mr. Risi had joined.

On May 13, 2016, the EDA approved Safilo for up to \$4.5 million in tax credits to incentivize the company to retain its jobs in New Jersey rather than relocate them to New York. Mr. Frixia, who had by this time replaced Mr. Risi, sent an email to Safilo's leadership in Italy announcing "with great satisfaction" that the EDA "has approved our Tax incentives application!"⁶⁷ Mr. Frixia added: "This benefit is 100% improvement versus our plans, as was never accounted for."⁶⁸

The Task Force spoke with Mr. Risi, who now lives in Italy, by telephone. Mr. Risi recalled that, during Safilo's real estate search that led the company to Secaucus, the company's internal relocation team had looked at one or more sites in New York, but Mr. Risi did not remember any specific locations. Mr. Risi said that Safilo considered the New York options to be "not viable" for the company because they provided relatively poor access to Safilo's Manhattan showroom and were also inconvenient for Safilo's employees. Thus, Mr. Risi said, the decision to relocate to Secaucus was driven by geographic factors and not by tax incentives. The tax incentives from the EDA, Mr. Risi said, were "not the reason we chose to stay in New Jersey." When asked whether Safilo would have relocated to Secaucus even without incentives, Mr. Risi answered, "most probably yes."

Safilo's attorney submitted a statement on behalf of the company to the Task Force, which is appended to this Third Report as Exhibit 35. It states, in part: "Safilo was advised that in order to qualify for the tax credits, it was necessary to consider properties located outside of New Jersey. The Blue Hill Plaza site, located in New York, was identified by the consultants as a property that satisfied Safilo's relocation requirements. Once identified, Safilo visited the Blue Hill Plaza as a potential relocation site for its move. And, it added the Blue Hill Plaza property to its relocation analysis, comparing the costs and benefits of the Bill Hill Plaza property to the costs and benefits of the New Jersey Secaucus property it was considering. Ultimately, Safilo decided to proceed with relocation to the previously identified Secaucus location. Throughout the application process Safilo acted in good faith, guided by its paid consultants, to comply with all the requirements of the EDA, including the requirement to consider a property outside of New Jersey, as part of its due diligence."

The Task Force spoke with the underwriter at the EDA who processed Safilo's Grow NJ application and recommended that the EDA's Board approve the company for tax incentives. The underwriter told the Task Force that he never had any doubts that Safilo's management was

⁶⁶ Exhibit 33; Exhibit 32.

⁶⁷ Exhibit 34.

⁶⁸ Exhibit 34.

genuinely considering relocating the company to New York if the EDA did not award them incentives to remain in New Jersey.

To summarize, the evidence shows that Safilo already planned to relocate its offices within New Jersey, from Parsippany to Secaucus, before the company started working with incentives consultants at KPMG. Incentives from the EDA were not necessary to induce Safilo to stay in New Jersey, which the company “most probably” would have done irrespective of whether it received an incentives award, according to the principal Safilo employee responsible for the relocation efforts. Nonetheless, Safilo elected to pursue the incentives based, according to the company’s internal email correspondence, on assurances from the consultants at KPMG that the company’s application would likely be granted and, therefore, there was little to no downside, and substantial upside, in proceeding with a Grow NJ application. To qualify for incentives based on an appearance that Safilo’s jobs were “at risk” of being relocated outside New Jersey, the company, apparently following guidance from its consultants, pursued a lease proposal from the Blue Hill Plaza in New York—an office complex that Safilo was not sincerely considering, but, according to internal email correspondence, had used “only [as] an opportunity to get the NJ State incentives.” Thus, Safilo was approved by the EDA for an incentives award for which it did not qualify because its jobs were not actually at risk.

Based on the evidence uncovered during our investigation and discussed above, we find that the EDA applied insufficient scrutiny to Safilo’s claims concerning the Blue Hill Plaza—a site that, as further explained below, the EDA had reason to be skeptical of. Subsequent to the EDA’s approval of Safilo’s application, Safilo failed to satisfy the requirements necessary to maintain the incentives award, and it expired on November 13, 2019, without Safilo having claimed a tax credit. Given that Safilo’s incentives award has already expired, we do not recommend that the EDA take any particular action with respect to the award, but we refer the facts above to the EDA for any further actions that it deems appropriate. Additionally, we have made a referral to a law enforcement agency for further investigation. We note that Safilo, KPMG, Cushman & Wakefield, and CBRE, and the respective counsel for each, all cooperated with the Task Force’s examination of Safilo’s incentives application and provided evidence and information to the Task Force.

2. Lonza America Inc.

Lonza is an international healthcare company. The EDA approved Lonza’s American affiliate, Lonza America Inc. (referred to hereinafter as “Lonza”), for up to \$3.3 million in incentives under Grow NJ on November 14, 2017.⁶⁹ As set out in the narrative below, the principal persons involved in Lonza’s Grow NJ application included the following:

- Anthony Branciforte (Lonza’s Global Head of Strategic Projects)
- Isabelle Wrase (Lonza’s Head of Global Real Estate)
- Dan Breen (retained tax incentives consultant at JLL)
- Angela Carrier (retained tax incentives consultant at JLL)
- John Leubecker (retained real estate broker at JLL)

⁶⁹ Lonza voluntarily cooperated with the Task Force’s investigation and provided information about its incentives application to the Task Force.

Prior to the EDA’s incentives award, Lonza operated three separate business facilities in New Jersey—specifically, in Morristown, South Plainfield, and Allendale—as a result of prior corporate acquisitions. In May 2017, Lonza’s Chief Executive Officer at the time, Richard Ridinger, approved a corporate plan for Lonza to consolidate the three New Jersey facilities into one combined location to serve as Lonza’s North American headquarters.

Internal Lonza documents indicate that, from the outset of Mr. Ridinger’s approval of the consolidation plan in May 2017, the company’s goal was for the consolidated headquarters to be located in Lonza’s building in Morristown, New Jersey.⁷⁰ For instance, slides from an internal Lonza presentation stated that “Mr. R. Ridinger approved . . . [t]o move Allendale and S. Plainfield to Morristown.”⁷¹ The slides also stated that Lonza’s “next steps” would include searching for additional real estate options in Morristown and nearby Parsippany, New Jersey, in order to “create a competitive environment for negotiations” with Lonza’s landlord in Morristown and also to have a “plan B.”⁷² Internal Lonza email correspondence from this time period similarly referred to the company’s plans to consolidate the three offices in New Jersey, most preferably in its existing building in Morristown.⁷³ The Task Force is unaware of any documentary evidence that Lonza considered any locations outside New Jersey for the consolidation during this period.⁷⁴

When Lonza decided to pursue the consolidation of its three New Jersey options in Morristown, it simultaneously decided to pursue incentives from the EDA in connection with the project. Lonza had previously been approved for incentives from the EDA under the prior Business Employment Incentive Program (“BEIP”) and Business Retention and Relocation Assistance Grant program (“BRRAG”) in connection with a prior project, and so the company was aware in May 2017 that it might qualify for additional incentives in connection with the consolidation. Further, internal Lonza documents indicate that Lonza was aware at that time that, in order to qualify for the incentives, it would need to demonstrate to the EDA that the company’s jobs were at risk of being relocated outside New Jersey. The internal presentation slides described above, which discussed Mr. Ridinger’s approval of the consolidation plan, listed as one of Lonza’s “next steps” to “[i]dentify out of state options in order to drive economic incentives from local New Jersey governments[.]”⁷⁵ Internal Lonza email correspondence from this same time period discussed plans to “request a proposal of a site located in NY, which would be helpful for our tax

⁷⁰ At that point in time, Lonza anticipated acquiring a lease at the Morristown facility through a corporate merger, but the transaction had not yet closed. The merger closed and Lonza acquired the lease for the Morristown facility several months later, in July 2017.

⁷¹ Exhibit 36.

⁷² Exhibit 36.

⁷³ Exhibit 37; Exhibit 38.

⁷⁴ Lonza’s attorneys told the Task Force that “New York, Pennsylvania, and New Jersey were all possible options” for the consolidation site, and Lonza’s “search for the right site was never limited to Morristown, nor was it limited to New Jersey.” However, although Lonza may have theoretically been open to considering locations in New York and Pennsylvania if their brokers had presented any such options to them, the documentary evidence available to the Task Force does not show any actual efforts by Lonza or its brokers to search for or consider any real estate options in those states.

⁷⁵ Exhibit 36.

negotiations [sic].”⁷⁶ However, as discussed below, Lonza ultimately did not start its efforts to identify any out-of-state option until the eve of the company’s submission of its Grow NJ application to the EDA.

Shortly after Mr. Ridinger approved the consolidation plan, Lonza executed a contract with the JLL firm for brokerage services “**within northern New Jersey.**” (Emphasis added).⁷⁷ Subsequently, Lonza executed a separate contract for JLL’s in-house incentives consultants to assist with Lonza’s preparation and submission of a Grow NJ application to the EDA.⁷⁸ Neither contract provided for any assistance by JLL in searching for real estate outside New Jersey or applying for incentives in any other state.⁷⁹

During the summer of 2017, Lonza and JLL negotiated lease options with the Morristown building’s landlord. Lonza and JLL also initiated negotiations with a second building in Morristown for purposes of creating negotiation leverage with the first building’s landlord. The company and its brokers did not consider any locations outside New Jersey as potential relocation sites during this period. However, email correspondence shows that they were conscious that, in order to qualify for incentives from the EDA, they would have to identify an out-of-state location at some point prior to submitting the company’s Grow NJ application. For instance, on July 31, 2017, Isabelle Wrase, Lonza’s Head of Global Real Estate, sent an email to the company’s broker at JLL, John Leubecker, listing next steps that Lonza wanted to pursue, including hiring project management, architecture, and engineering firms.⁸⁰ Ms. Wrase added at the end of the email: “Less critical (but obviously important) is . . . [to] solicit proposals from Buildings in New York (**tour probably not necessary**).” (Emphasis added).⁸¹

Two weeks later, Lonza and JLL still had not started any efforts to identify any out-of-state option. On August 14, 2017, John Leubecker, one of Lonza’s real estate brokers at JLL, wrote an email to Dan Breen, the lead JLL incentives consultant, stating: “**Regarding the RFP to an out of state building, should I target anywhere specific (PA or NY). It doesn’t matter to me, but wanted to check with you first.**” (Emphasis added).⁸² Mr. Breen responded: “New York probably makes more sense. It’s closer to their existing site – meaning that it would be less disruptive to the workforce – and there are probably . . . suitable available buildings. We’ve also been able to demonstrate a favorable cost/benefit ratio for NY relative to NJ in the past for Jaguar, Flight Centre and others, so that should work in this case as well.”⁸³ Jaguar Land Rover North America, LLC (“Jaguar”) and Flight Centre Travel Group USA (“Flight Centre”) were former clients of JLL’s to whom the EDA awarded incentives on July 9, 2015 and October 15, 2015, respectively. Both Jaguar and Flight Centre claimed in their respective Grow NJ applications that,

⁷⁶ Exhibit 39.

⁷⁷ Exhibit 40.

⁷⁸ Exhibit 41.

⁷⁹ The contract stated that, “[s]hould [Lonza] elect to pursue incentives other than Grow NJ, JLL will negotiate and implement such programs for a fee based upon the services to be rendered, agreed to by [Lonza], and memorialized as an addendum to this Engagement Letter.” Exhibit 41.

⁸⁰ Exhibit 42.

⁸¹ Exhibit 42.

⁸² Exhibit 43.

⁸³ Exhibit 43.

if they did not receive incentives to remain in New Jersey, they intended to relocate out of state, both to the same site: the Blue Hill Plaza office complex in Pearl River, New York. Lonza would ultimately also use the Blue Hill Plaza as the alternative site for its Grow NJ application, becoming the third client of the JLL consultants to do so.

By September 2017, however, Lonza and JLL had still not started any meaningful efforts to identify any out-of-state option, either in New York or any other state, even though Lonza's internal deadline for submitting the incentives application was only weeks away.⁸⁴ On September 15, 2017, JLL's Mr. Leubecker wrote to Lonza:

Considering the application for the NJ Incentive is in 2 weeks, we need to expedite securing a proposal from an out of state property. I have requested a proposal from a NY property, however, we will need to tour the property in order to make sure we receive it in a timely manner. Can you request that someone from Lonza can [sic] attend a tour on Tue or Wed of Next week? Should only be about 1 or 2 buildings in NY state in close proximity to Allendale. I am going to shoot for Monday, but that may be difficult given the short notice?

(Emphasis added).⁸⁵ Two days later, Anthony Branciforte, Lonza's Global Head of Strategic Projects, replied to Mr. Leubecker that he would attend the tour.⁸⁶

On September 19, 2017, Lonza's Mr. Branciforte and JLL's Mr. Leubecker toured the Blue Hill Plaza in Pearl River, New York.⁸⁷ They did not visit any other sites in New York. This was the first and only time that Lonza looked at a location option outside New Jersey in connection with the company's facility consolidation.

Following the tour, one of the Blue Hill Plaza's brokers at CBRE, Erin Wenzler, sent an internal email to the office complex's other brokers, reporting that the tour "went very well" but Lonza's "timing [was] truly immediate" and the company's broker, Mr. Leubecker, was "going to send the RFP this afternoon."⁸⁸ That was purportedly because, Ms. Wenzler explained, the Lonza employee who visited the Blue Hill Plaza earlier that day planned to fly to Lonza's European headquarters the next week and he "need[ed] to have a proposal in hand to begin working on the

⁸⁴ On September 11, 2017, Lonza's incentives consultant, Mr. Breen, sent an email to the New Jersey Business Action Center (the "BAC"), a state agency that attempts to persuade businesses to locate in New Jersey, including by providing assistance with applications to the EDA for incentives. In his email to the BAC, Mr. Breen wrote that Lonza was considering relocating to "either New Jersey or (more likely) New York, which is better aligned with the 'critical mass' of its existing personnel." Exhibit 44. However, Lonza had not yet looked at any real estate options in New York at that point in time, nor had the company taken any other steps to explore a relocation to New York.

⁸⁵ Exhibit 45.

⁸⁶ Exhibit 45.

⁸⁷ Exhibit 46.

⁸⁸ Exhibit 47.

corporate approval.”⁸⁹ Ms. Wenzler also wrote that she had tried to discuss with Lonza the possibility of qualifying for incentives from New York authorities to relocate to the Blue Hill Plaza, but, she wrote, “based on their timeline, I don’t think they’ll have much time to wait for incentive packages from the various states and [Lonza’s] broker said they weren’t focused on them.”⁹⁰ That plainly was not accurate, given that Lonza and JLL needed a lease proposal from the Blue Hill Plaza to complete the company’s Grow NJ incentives application, which they aimed to submit to the EDA within days.

The Blue Hill Plaza’s brokers sent a lease proposal letter to Lonza on September 21, 2017.⁹¹ JLL proceeded to use the cost terms contained in the letter to prepare the cost comparison between Lonza’s New Jersey and New York sites required for the company’s Grow NJ application. The company and its incentives consultants completed Lonza’s Grow NJ application and submitted it to the EDA on September 29, 2017.⁹²

Lonza’s Grow NJ application stated that the company intended to “either relocate to new space in Pearl River, New York or Morristown, New Jersey.”⁹³ The application further stated that the New York option was less expensive than the New Jersey option and also more convenient, purportedly because Lonza’s workforce lived closer to Pearl River than Morristown.⁹⁴ Therefore, the application stated: “The availability of Grow NJ incentives would help to offset the negative cost and operational ramifications of relocation to New York, and as such would be a material factor in the company’s decision to select a New Jersey location.”⁹⁵

On November 14, 2017, the EDA approved Lonza for up to \$3.3 million in tax credits to incentivize the company to retain its jobs in New Jersey rather than relocate them to New York.

To summarize, the documentary evidence indicates that Lonza did not meaningfully consider a relocation outside New Jersey, but rather, for purposes of qualifying for incentives for the company’s planned consolidation in New Jersey, pursued a lease proposal from one New York

⁸⁹ Exhibit 47.

⁹⁰ Exhibit 47.

⁹¹ Exhibit 48.

⁹² Exhibit 49.

⁹³ Exhibit 49.

⁹⁴ Exhibit 49.

⁹⁵ Exhibit 49. The application also stated that Lonza had requested incentives from New York authorities in connection with a potential relocation to that state. However, such efforts appear to have been both minimal and immaterial to Lonza’s considerations. Lonza did not communicate with any New York authorities directly. JLL made an anonymous call to New York authorities to inquire into the potential benefits that the company could receive if it relocated to the state. The email correspondence between Lonza and JLL that the Task Force has reviewed does not include any discussion of New York incentives. The Task Force is unaware of any evidence that Lonza seriously considered the availability of incentives from New York authorities as a factor in its considerations.

alternative site on the eve of the company’s Grow NJ application.⁹⁶ Further, it appears from the available documents that the decision to pursue a lease proposal from the specific site in New York, the Blue Hill Plaza, may not have been based on Lonza’s actual needs for its office location, but rather based on JLL’s experience with prior clients that successfully used the same site to receive incentives from the EDA. Thus, the JLL consultants appear to have facilitated Lonza’s application for incentives based on the supposed “at risk” nature of the company’s jobs when, in fact, the evidence available to the Task Force does not suggest that Lonza ever seriously considered leaving the state.

Based on the evidence uncovered during our investigation and discussed above, we find that the EDA applied insufficient scrutiny to Lonza’s application. The Task Force initially contacted Lonza related to its incentives application in October 2019. Lonza voluntarily cooperated with the Task Force’s inquiry and provided evidence and information to the Task Force over a period of months. In March 2020, Lonza communicated to the EDA that it intended to withdraw from the Grow NJ program because the company would be unable to meet certain requirements applicable to its award as a result of a corporate restructuring. We refer the facts above to the EDA for any further action it deems appropriate in view of the current status of Lonza’s application. Additionally, we have made a referral to a law enforcement agency for further investigation. We note that, in addition to Lonza, both JLL and CBRE, and the respective counsel for each, cooperated with the Task Force’s examination of Lonza’s incentives application and provided evidence and information to the Task Force.

3. MAC Trailer Leasing, Inc.

MAC Trailer Leasing, Inc.—which does business under the name “PLM”—is a trailer leasing company, which the EDA approved for up to \$2.9 million in incentives under Grow NJ on December 8, 2015.⁹⁷ As set out in the narrative below, the principal persons involved in PLM’s Grow NJ application included the following:

- Robert Sukovich (PLM’s Chief Financial Officer)
- Joe Lacy (retained tax incentives consultant at Biggins Lacy Shapiro & Co., LLC)
- Edward Duenas (retained real estate broker at Cushman & Wakefield)

PLM applied to the EDA in 2015 for tax incentives to relocate within New Jersey, from Montvale to Newark. In its Grow NJ application, PLM represented that, if it were not approved for Grow NJ incentives, it intended to relocate to the Blue Hill Plaza office complex in New York instead of Newark. PLM worked with a consultant, Joe Lacy at the Biggins Lacy Shapiro & Co., LLC (“BLS”) consulting firm, to prepare its incentives application. Both PLM and BLS

⁹⁶ Lonza’s attorneys claimed to the Task Force that Lonza “took seriously its analysis of alternate sites” and, specifically, was “open to considering” the Blue Hill Plaza “depending on the economics.” However, the Task Force did not find any evidence to support Lonza’s claim and, indeed, the documentary evidence contradicts it. In addition to the documentary evidence described above, it is also notable that, although Lonza conducted multiple internal financial analyses related to the consolidation project, not one of the analyses included financials related to the Blue Hill Plaza option.

⁹⁷ PLM voluntarily cooperated with the Task Force’s investigation. Much of the evidence discussed in this section was provided by the company itself.

voluntarily cooperated with the Task Force and provided information concerning PLM's application. Robert Sukovich, PLM's Chief Financial Officer at the time of the application, and now the company's Chief Compliance and Administrative Officer, and Mr. Lacy both met with the Task Force for voluntary interviews. However, Mr. Sukovich's and Mr. Lacy's responses to the Task Force's questions concerning the facts underlying PLM's application differed in certain key respects. The Task Force's analysis is based on its review of relevant documents, which were obtained from multiple sources, including PLM itself, and further information provided by Mr. Sukovich and Mr. Lacy in their respective interviews. When the information provided by Mr. Sukovich and Mr. Lacy differed, both versions are described below.

In 2014 and through early 2015, PLM worked with real estate brokers at Cushman & Wakefield to negotiate with the company's landlord to extend the lease on its office space in Montvale, New Jersey, which was expiring. However, on February 12, 2015, PLM learned that the landlord refused to extend the company's lease beyond the end of the year, meaning that PLM had under ten months to relocate its offices.

PLM and its brokers at Cushman & Wakefield proceeded immediately to search for relocation options. According to Mr. Sukovich, he and two others at PLM—the company's Chief Executive Officer, Keith Shipp, and the Human Resources Director, Nancy Kovar—managed the company's office relocation, all working with PLM's brokers at Cushman & Wakefield. On February 13, 2015, one day after PLM learned that its landlord would not extend the lease, Cushman & Wakefield provided PLM with a market survey report for "Montvale and surrounding area."⁹⁸ The report provided information concerning eleven properties for PLM to consider.⁹⁹ Ten were in New Jersey, and one—the Blue Hill Plaza office complex—was in New York.¹⁰⁰

Mr. Sukovich told the Task Force that, after receiving the market survey report, PLM visited several of the New Jersey properties that were listed—but not the sole New York option, the Blue Hill Plaza. Following the visits, PLM was interested in two of the New Jersey properties, one in Montvale and another in nearby Park Ridge.¹⁰¹ PLM had Cushman & Wakefield reach out to representatives for both New Jersey sites in March 2015 to initiate negotiations for a potential lease. PLM did not pursue any of the other sites listed in the market survey—including the Blue Hill Plaza. Mr. Lacy was not yet involved in PLM's relocation efforts.

PLM's negotiations with the two New Jersey sites continued for several months, but then PLM changed direction. According to Mr. Sukovich, PLM wanted to improve its ability to attract talent, and to do so, the company's management decided to prioritize access to public transit at its new office location. That led PLM to consider more urban options, which afforded mass transit access that was not available at the suburban locations the company had previously been considering.

⁹⁸ Exhibit 50.

⁹⁹ Exhibit 50.

¹⁰⁰ Exhibit 50.

¹⁰¹ According to Mr. Sukovich, PLM was already familiar with both of the buildings. The Montvale building was just across the street from PLM's existing offices. The Park Ridge building had housed PLM's offices before the company relocated to Montvale.

On July 10, 2015, Cushman & Wakefield sent PLM a market survey report listing real estate options in Newark.¹⁰² According to Mr. Sukovich, the company’s management was excited by the idea of relocating to Newark, both because of the benefits a Newark office would present in terms of public transit access and also because of the city’s recent strides in revitalization. On July 15, 2015, the Cushman & Wakefield brokers led Mr. Sukovich and Mr. Shipp on a tour of Newark properties to consider for PLM’s office relocation. The tour was a positive experience and presented several options that PLM wanted to pursue, including the Three Gateway Center (or “Gateway 3”) building, which was adjacent to the Newark Penn Station—a major transit hub. According to Mr. Sukovich, PLM was solely focused on Newark at that time, and it was no longer considering the suburban choices in the Montvale area that it had previously pursued.

The day after the Newark tour, PLM’s broker at Cushman & Wakefield introduced PLM to Mr. Lacy, an incentives consultant, to discuss the Grow NJ program.¹⁰³ Prior to the introduction to Mr. Lacy, PLM’s management had no experience with incentives programs, either in New Jersey or elsewhere. According to Mr. Sukovich, he and Mr. Shipp both had a general understanding that incentives programs existed across the country, but they were unaware of the details concerning any specific programs and the requirements to qualify and, prior to meeting Mr. Lacy, did not know whether PLM’s relocation to Newark would qualify the company for incentives.

After the broker at Cushman & Wakefield introduced PLM to Mr. Lacy, PLM’s management had an initial call with him. Mr. Lacy told the Task Force that he recalled someone from PLM—he did not recall who participated in the call—communicating that PLM was considering relocating to Newark, but sites there were expensive and that was a “major” hurdle for the company, and PLM was therefore also considering suburban options around the Montvale area, including sites across the state border, in Rockland County, New York. According to Mr. Lacy, “all of PLM’s options were on the table” at the time of the initial call he had with the company. Mr. Sukovich did not recall the initial call with Mr. Lacy. However, as described above, Mr. Sukovich told the Task Force that PLM’s sole interest at this time was Newark and the company was no longer considering any suburban options for the relocation, either in New Jersey or New York.

PLM and BLS executed a contract for incentives consulting services.¹⁰⁴ The scope of the contract was limited to PLM’s anticipated Grow NJ application.¹⁰⁵ The contract did not provide for any consulting services related to any New York incentives programs.¹⁰⁶ Additionally, the contract provided that BLS would be compensated by PLM, on a “success fee” basis, only if the EDA approved PLM’s application for Grow NJ incentives.¹⁰⁷ The Task Force asked Mr. Lacy why the contract was limited to New Jersey incentives—and did not provide for the preparation of an application under any New York incentives programs, or for any compensation upon a successful application for New York incentives—if PLM was considering potential relocation

¹⁰² Exhibit 51.

¹⁰³ Exhibit 52.

¹⁰⁴ Exhibit 53.

¹⁰⁵ Exhibit 53.

¹⁰⁶ Exhibit 53.

¹⁰⁷ Exhibit 53.

options in both New Jersey and New York. Mr. Lacy responded that although he believed PLM was considering New York options, the company's "focus" was on Newark, and he therefore drafted the contract to reflect that focus. Mr. Sukovich, however, told the Task Force that, to his recollection, PLM was not interested in exploring New York incentives programs because it was not considering relocating to New York at that time.

Mr. Sukovich told the Task Force that, although he did not recall the specific time, at some point during or after the initial call with Mr. Lacy, he came to understand that, for PLM to qualify for tax incentives under Grow NJ, in addition to PLM's preferred site in Newark, the company would also require an alternative option in another state to demonstrate that its New Jersey jobs were "at risk."¹⁰⁸ PLM did not yet have any such alternative site, as it was focused on Newark. On July 29, 2015, Mr. Sukovich wrote to the brokers at Cushman & Wakefield: "Keith [Shipp (PLM's Chief Executive Officer)] and I talked again with Joe Lacy and we've decided to retain him as our Incentive Consultant. **As part of our initial steps, Joe suggested we request from C&W a market study of Rockland County office properties.**" (Emphasis added).¹⁰⁹ Mr. Sukovich told the Task Force that he understood that the purpose of this request was to identify an out-of-state alternative site in order to qualify for Grow NJ incentives in connection with PLM's anticipated move to Newark.

Two days later, on July 31, 2015, the Cushman & Wakefield brokers provided PLM with the requested market survey report for Rockland County, New York.¹¹⁰ However, the report listed only one property: the Blue Hill Plaza—which Cushman & Wakefield had presented to PLM in its original February 13, 2015 market survey, and which the company had previously chosen not to pursue.¹¹¹

There was also a potential issue with the Blue Hill Plaza: Mr. Lacy had warned PLM's management that the Blue Hill Plaza had been used as an "alternative site" multiple times by other companies to qualify for Grow NJ incentives, making the EDA more skeptical of companies that claimed to be considering relocating there. Thus, after receiving Cushman & Wakefield's information on the Blue Hill Plaza for the second time, Mr. Shipp of PLM wrote to the brokers: "[BLS] said we should look at properties other than Blue Hill. Please look at other space"¹¹²

On August 3, 2015, Mr. Lacy sent an email to PLM and recommended that the company apply for incentives from New York authorities, explaining: "As this will be primarily a retention project, a higher lift for the EDA as we discussed, I recommend we commence discussions with both NY and NJ in parallel. . . . On the NY side, I'll want to brief the [New York] Empire State

¹⁰⁸ Three days after the initial call between PLM's management and Mr. Lacy, an employee of PLM's parent company wrote to PLM's real estate broker at Cushman & Wakefield and asked, "How did the conference call go regarding Grow NJ? Any chance for PLM to get a benefit?" "Yes," the broker responded, but the extent of the benefit depended on several factors. The broker added: "They also need to have an alternative to move the jobs out of state." Exhibit 54.

¹⁰⁹ Exhibit 55.

¹¹⁰ Exhibit 56.

¹¹¹ Exhibit 56.

¹¹² Exhibit 57. Mr. Shipp's email mistakenly referred to BLS as "the law firm." In fact, BLS is not a law firm, and Mr. Lacy is not a lawyer.

Development team and file a preliminary application. This will allow them to consider and issue a proposal, which will be critical to establishing a competitive financial gap between NJ and NY.”¹¹³ Mr. Lacy told the Task Force that he believed PLM was interested in relocating to New York and, as such, wanted to consider incentives from New York authorities to mitigate the costs of such a relocation. He denied recommending that PLM apply for New York incentives in order to bolster the company’s claim to the EDA that New Jersey was at risk of losing PLM’s jobs to New York. Mr. Sukovich, on the other hand, told the Task Force that, at that time, PLM still had no interest in relocating to anywhere in New York. The only New York option that PLM’s brokers had identified by the time Mr. Lacy recommended that PLM apply for New York incentives was the Blue Hill Plaza, which Mr. Lacy had warned may cause problems with the EDA if used on PLM’s Grow NJ application. Later in the day, however, after Mr. Lacy recommended that PLM apply to New York authorities for incentives, Cushman & Wakefield sent PLM a new market survey report with additional New York properties, other than the Blue Hill Plaza.¹¹⁴

Despite Mr. Lacy’s advice that the EDA might have concerns about the Blue Hill Plaza, PLM decided to visit the office complex. The company visited the Blue Hill Plaza on August 13, 2015. According to Mr. Sukovich, once the company finally visited the New York office complex, although it previously had not been interested in the site, he found it to be a “great” option and considered it a “viable” alternative to Newark. This was the first time in PLM’s site-selection process that the company considered any New York location as a potential relocation site, according to Mr. Sukovich. However, the Gateway 3 building in Newark remained PLM’s preferred choice. After visiting the Blue Hill Plaza, Mr. Sukovich wrote an email to PLM’s broker at Cushman & Wakefield later that day and instructed him to pursue a lease proposal from the site.¹¹⁵ On August 24, 2015, the Blue Hill Plaza’s representatives provided a proposal letter for PLM to lease 12,994 sq. ft. of space in the office complex.¹¹⁶ After receiving this initial proposal letter from the Blue Hill Plaza, however, PLM did not proceed with any further rounds of negotiations.

On September 20, 2015, Mr. Lacy sent an email to the Cushman & Wakefield broker, asking: “[I]s there any way to secure less space at BHP, closer to the 11,500 they are taking at 3 Gateway? Assuming not, but figured I would ask.”¹¹⁷ Mr. Lacy told the Task Force that the EDA would be concerned when an applicant’s site in New Jersey and its out-of-state alternative site did not present an “apples-to-apples” comparison, and he thus thought that EDA would view PLM’s application more favorably if the space offered in Gateway 3 and the Blue Hill Plaza were closer in size. Mr. Sukovich told the Task Force that PLM did not ask Mr. Lacy to make the request of Cushman & Wakefield and he did not understand the purpose of it. It does not appear that Cushman & Wakefield ultimately requested that the Blue Hill Plaza’s representatives provide a revised offer for less space.

¹¹³ Exhibit 58.

¹¹⁴ Exhibit 59.

¹¹⁵ Exhibit 60.

¹¹⁶ Exhibit 61.

¹¹⁷ Exhibit 62.

On September 30, 2015, BLS submitted PLM’s Grow NJ application to the EDA.¹¹⁸ The application claimed that PLM’s jobs in New Jersey were at risk of being relocated to New York.¹¹⁹ More specifically, the application stated that PLM was “considering a relocation to space within Blue Hill Plaza in Rockland County New York” and, further, that PLM had “engaged the State of New York in discussions around potential incentives for relocating to Blue Hill Plaza.”¹²⁰ On December 8, 2015, the EDA approved PLM for up to \$2.9 million in tax credits to incentivize it to relocate to Gateway 3 in Newark rather than the Blue Hill Plaza in New York.

To summarize, even if PLM did sincerely consider its alternative site to be a real option for the company’s relocation, PLM’s incentives application presents a noteworthy case study in how the company came to consider the site. There is evidence that PLM’s jobs were not “at risk” before PLM’s brokers at Cushman & Wakefield introduced the company to an incentives consultant, Mr. Lacy of BLS. Both PLM’s Mr. Sukovich and BLS’s Mr. Lacy told the Task Force that PLM eventually considered the Blue Hill Plaza site in New York to be a “viable” option. However, according to Mr. Sukovich, PLM was already focused on Newark for its relocation when it was referred to Mr. Lacy, who led the company to also look at New York options, in addition to Newark, in order to demonstrate to the EDA that PLM’s jobs were “at risk.” Under Mr. Sukovich’s telling (as described above, Mr. Lacy’s recollection of the facts is different), PLM’s facts appears to present an example of how consultants can help to create the appearance of an “at risk” factor for companies, as necessary to qualify for Grow NJ incentives, even when there previously had been none.

Two other aspects of PLM’s Grow NJ application warrant note. The first relates to PLM’s classification under the Grow NJ program as a “logistics” company. PLM qualified for Grow NJ benefits only if it could be classified as a “logistics” company, but the EDA underwriter assigned to process PLM’s application believed that PLM “clearly” did not qualify as one. The underwriter told the Task Force that, after he reported the issue to his supervisor, EDA’s senior leadership assumed responsibility of the matter and, following a consultation with an industry expert, decided to classify PLM as a “logistics” company, thereby allowing its Grow NJ application to proceed. The underwriter, who is no longer employed by the EDA, reported to the Task Force that he “never understood” the decision and felt “irked” by it. The issue was complicated by the fact that the Grow NJ statute does not define the “logistics” concept—or any of the other “targeted industries” under the Program—resulting in ambiguity concerning the scope of companies that qualify. The Task Force previously noted this issue in Section VI(D) of the First Report.

The second issue relates to PLM’s disclosure to the EDA of the company’s legal history. In connection with its Grow NJ application, PLM disclosed to the EDA that PLM’s parent company in Japan, Marubeni Corporation, had been held responsible for criminal conduct in two separate U.S. court proceedings, both for illegal bribes Marubeni employees paid to foreign government officials. In the first case, Marubeni paid a \$54.6 million fine and entered into a deferred prosecution agreement with the U.S. Justice Department in 2012 related to bribing Nigerian government officials. In the second case, Marubeni pleaded guilty in 2014 to bribing Indonesian government officials, for which Marubeni agreed to pay a fine of \$88 million. After

¹¹⁸ Exhibit 63.

¹¹⁹ Exhibit 63.

¹²⁰ Exhibit 64.

PLM disclosed this criminal history in its application, the EDA employee responsible for legal reviews, Marcus Saldutti, reached out to PLM's consultant, Joe Lacy. The email correspondence suggests that Mr. Saldutti attempted on his own to identify mitigating factors to present to the EDA's Board to favor the approval of PLM's application, with Mr. Saldutti himself suggesting facts that he believed would help PLM. For instance, Mr. Saldutti asked Mr. Lacy to confirm that PLM "operate[d] independently" from the parent company, explaining: "What I'm trying to get at is whether or not the parent has direct or indirect influence on [PLM]. The Board and the AG's office will be more at ease with the knowledge that [PLM] operates independently from Marubeni in Japan. **I wish to show that prohibited conduct in general is not likely to be spurred by the offshore parent.**" (Emphasis added).¹²¹ Mr. Lacy responded: "I think the answer here . . . is yes, PLM operates independently from Japanese parent, correct[.]"¹²² Mr. Saldutti also wrote to Mr. Lacy: "I'm presuming all of the individuals involved in the criminal activity were terminated?"¹²³ Mr. Lacy does not appear to have responded to the question. Internal PLM correspondence indicates that, in fact, some but not all of the employees involved in Marubeni's criminal conduct were terminated—others still remained at the company.¹²⁴ Nonetheless, Mr. Saldutti wrote incorrectly in his memorandum presented to the EDA's Board: "Also worthy of consideration is that all of the employees involved in the prohibited conduct were terminated"¹²⁵

Both of these issues are emblematic of the cultural environment at the EDA previously discussed in Section IV of the Task Force's Second Report, in which the EDA at times strove to approve applications for tax incentives, even if doing so meant stretching program requirements or giving short shrift to red flags or problems with applications.

The Task Force initially contacted PLM related to its incentives application in October 2019. PLM voluntarily cooperated with the Task Force's inquiry and provided evidence and information to the Task Force over a period of months. During PLM's engagement with the Task Force, PLM voluntarily terminated its Grow NJ award in December 2019. PLM represented to the Task Force that the company withdrew from the Grow NJ program because it was ultimately unable to create the requisite number of jobs needed to receive tax credits.

B. Grow NJ Applicants Exploited the Blue Hill Plaza to Qualify for Tax Incentives from the EDA

Each of the three companies discussed above appears to have first set out on the path of relocating within New Jersey and to seek incentives in connection with such relocation, and only later, apparently based on advice from their professional consultants, looked at a New York alternative site in order to create the appearance that their jobs were "at risk." Furthermore, all three companies appear to have been guided in varying ways by their respective incentives consultants and real estate brokers to use the same New York alternative site to qualify for tax incentives from the EDA: the Blue Hill Plaza in New York.

¹²¹ Exhibit 65.

¹²² Exhibit 65.

¹²³ Exhibit 66.

¹²⁴ Exhibit 66.

¹²⁵ Exhibit 67.

The Blue Hill Plaza office complex, comprising two separate office buildings, is situated less than a mile from New Jersey’s northern state border with New York and offers office space at rates less expensive than most comparable buildings in northern New Jersey.¹²⁶ Safilo, Lonza, and PLM were not the only companies that used lease proposals from the Blue Hill Plaza to qualify for incentives from the EDA. Between 2013 and 2019, the EDA approved fifteen companies for tax incentives under the Grow NJ program to encourage them to locate their jobs in New Jersey rather than the Blue Hill Plaza in New York, as summarized in Table 1 below. Unique among real estate options outside New Jersey, no other alternative site so frequently appeared on Grow NJ applications submitted to the EDA during the life of the Grow NJ program.

Table 1: Companies Approved by EDA for Grow NJ Tax Incentives Based on Blue Hill Plaza Alternative Site, 2013 to 2019.¹²⁷

Company	Pre-Award Location(s)	Project Location	Real Estate Broker	Consultant	Date and Amount of Award (Millions)
IDT Corporation	Essex County, New Jersey	Essex County, New Jersey	Cushman & Wakefield	Reed Smith LLP	\$24.3m (12/10/2013)
SUEZ Water ¹²⁸	Bergen County, New Jersey	Bergen County, New Jersey	NAI James E. Hanson	None	\$5.5m (4/8/2014)
Advanced Plasma Therapies ¹²⁹	Mercer County, New Jersey	Mercer County, New Jersey	CBRE	Sills Cummis & Gross P.C.	\$1.7m (3/12/2015)
Groupe SEB	Essex County, New Jersey	Morris County, New Jersey	Savills Studley	Franzini Consulting	\$1.9m (5/15/2015)
Jaguar Land Rover	Bergen County, New Jersey	Bergen County, New Jersey	JLL	JLL	\$26.6m (7/9/2015)

¹²⁶ James Tully, the principal real estate broker who represents the Blue Hill Plaza, stated to the Task Force through his counsel that the Blue Hill Plaza is approximately ten to fifteen percent less expensive than comparable buildings in northern New Jersey.

¹²⁷ We do not suggest that all fifteen companies chose the Blue Hill Plaza in order to aid their applications for New Jersey tax incentives, or that all fifteen were encouraged to do so by their consultants. Some of these companies voluntarily provided evidence to the Task Force that tended to show that they, with at least some level of sincerity, considered the site as a potential relocation option. The available evidence concerning others was too limited or unclear to provide a sufficient basis for the Task Force to reach a conclusion on the issue. The reader should not infer any conclusions about any company that are not explicitly set out in this Third Report.

¹²⁸ The company was formerly known as “United Water.”

¹²⁹ Advanced Plasma Therapies withdrew from the Grow NJ program in 2016 after communicating to the EDA that the company decided to pursue a short-term lease option instead.

Hudson Group Retail ¹³⁰	Bergen County, New Jersey	Bergen County, New Jersey	Cassidy Turley ¹³¹	New York Grant Company	\$5.5m (9/10/2015)
Flight Centre Travel Group	Bergen County, New Jersey	Bergen County, New Jersey	JLL	JLL	\$7.6m (10/15/2015)
PLM ¹³²	Bergen County, New Jersey	Essex County, New Jersey	Cushman & Wakefield	Biggins Lacy Shapiro & Co.	\$2.9m (12/8/2015)
Sharp Electronics Corporation	Bergen County, New Jersey	Bergen County, New Jersey	Cresa	Biggins Lacy Shapiro & Co.	\$6.9m (4/12/2016)
Safilo ¹³³	Morris County, New Jersey	Hudson County, New Jersey	Cushman & Wakefield	KPMG	\$4.5m (5/13/2016)
Bauer Media Group ¹³⁴	Bergen County, New Jersey	Bergen County, New Jersey	Cushman & Wakefield	WRE Consulting	\$2.2m (10/12/2017)
Konica Minolta Business Solutions	Bergen County, New Jersey and Connecticut ¹³⁵	Bergen County, New Jersey	Cushman & Wakefield	KPMG	\$29.4m (11/14/2017)
Lonza ¹³⁶	Morris, Bergen, and Middlesex Counties, New Jersey	Morris County, New Jersey	JLL	JLL	\$3.3m (11/14/2017)
Unique Designs	New York City, New York	Hudson County, New Jersey	Cushman & Wakefield	Sills Cummis & Gross P.C.	\$10.1m (9/13/2018)

¹³⁰ Hudson Group Retail withdrew from the Grow NJ program in 2016 after communicating to the EDA that the costs of complying with program's requirements outweighed the benefits of the company's future tax credits.

¹³¹ Cassidy Turley was later acquired by DTZ, which, in turn, was acquired by Cushman & Wakefield. The principal broker at Cassidy Turley who represented Hudson Group Retail in connection with its relocation or expansion is now employed by Cushman & Wakefield.

¹³² PLM withdrew from the Grow NJ program in December 2019. Although PLM's withdrawal letter to the EDA did not communicate a reason for the company's withdrawal, PLM represented to the Task Force that the company was unable to create the requisite number of jobs needed to receive tax credits.

¹³³ Because Safilo failed to satisfy certain requirements necessary to maintain its incentives award, the award expired in November 2019.

¹³⁴ Bauer Media Group withdrew from the Grow NJ program in 2019 after communicating to the EDA that its headcount had decreased.

¹³⁵ Konica Minolta's project was based on consolidating employees divided between separate offices in New Jersey and Connecticut into one office, either in Bergen County, New Jersey or the Blue Hill Plaza in New York.

¹³⁶ Lonza communicated to the EDA in March 2020 that it intended to withdraw from the Grow NJ program because, as a result of a corporate restructuring, the company would be unable to meet certain requirements applicable to its award.

MC ²	Rockland County, New York	Bergen County, New Jersey	Cushman & Wakefield	Sills Cummis & Gross P.C.	\$2.3m (12/11/2018)
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The Task Force sought to investigate why the Blue Hill Plaza office complex in New York, unique among real estate options outside New Jersey, so frequently appeared as the alternative site on Grow NJ incentives applications. On the one hand, given that the Blue Hill Plaza was so close to the New Jersey state border, offered office space at rates less expensive than comparable buildings in northern New Jersey, and included certain features and amenities that tenants may consider attractive, there are natural reasons companies may have considered the office complex for their relocations. On the other hand, the fact that multiple Grow NJ applicants that used the Blue Hill Plaza as their alternative site worked with the same incentives consulting and real estate brokerage firms raises questions. Indeed, the consultants themselves were apparently aware the Blue Hill Plaza had been used multiple times as an alternative site on incentives applications: there is evidence that KPMG informed two separate clients that the Blue Hill Plaza was “frequently used”¹³⁷ or even “overused”¹³⁸ as an alternative site by Grow NJ applicants; BLS warned a client that the EDA might be skeptical if it identified the Blue Hill Plaza as an alternative site, since it had been used multiple times by other companies;¹³⁹ and a real estate brokerage firm, Cresa, sent a memorandum to one of its clients, Sharp Electronics Corporation, advising that the Blue Hill Plaza “has been used as a stalking horse by companies in NJ who are seeking incentives from the State of NJ, but have no plans on leaving the State.”¹⁴⁰ The evidence further shows that some Grow NJ applicants that used the Blue Hill Plaza as their alternative site did not sincerely consider the office complex to be a real option, but used it only as a means of qualifying for incentives from the EDA. However, the precise role that consultants played in these companies choosing to exploit the Blue Hill Plaza for purposes of qualifying for incentives—and whether consultants intentionally steered their clients to the Blue Hill Plaza because of its history of providing lease proposal offers to companies applying for incentives from the EDA—cannot be definitively determined based on the documents available to the Task Force.

1. The Blue Hill Plaza’s Owners and Brokers Believed That Companies Exploited the Site to Make “Incentives Plays” in New Jersey

Both the owners of the Blue Hill Plaza and the office complex’s real estate brokers from CBRE (which represented the office complex in its negotiations with potential tenants) believed that certain of the companies that approached the Blue Hill Plaza and claimed to be interested in potentially relocating to the office complex were, in truth, hoping only to obtain a lease proposal

¹³⁷ See the discussion of Safilo in Section II(A)(1) above, and particularly Exhibit 19 (Safilo email stating that the company “studied with our broker a potential site in NY State which, according to KPMG, is frequently used by the NJ based companies to get state incentives”).

¹³⁸ See the discussion of Konica Minolta Business Solutions USA, Inc. in Section III(C) below.

¹³⁹ See the discussion of PLM in Section II(A)(3) above, and particularly Exhibit 57 (PLM email stating that BLS “said we should look at properties other than Blue Hill”).

¹⁴⁰ Exhibit 68.

to use to show New Jersey authorities that their jobs were “at risk.”¹⁴¹ However, while the Blue Hill Plaza’s owners and brokers suspected that companies exploited the office complex to make “incentives plays” in New Jersey, they did not definitively know when this occurred. According to the CBRE brokers who represented the Blue Hill Plaza, potential tenants were consistently “poker faced” and appeared to be genuinely interested in the Blue Hill Plaza irrespective of whether they truly were interested. The brokers therefore attempted to discern for themselves whether potential tenants were sincerely interested in the Blue Hill Plaza or were looking at the office complex only to make an “incentives play” in New Jersey. In making these assessments, the brokers considered whatever information was available to them, including their observations of company representatives during their visits to the Blue Hill Plaza.¹⁴²

For example, Erin Wenzler, a member of the CBRE broker team that represented the Blue Hill Plaza, wrote the following internal email after a tour of the office complex by Jaguar Land Rover North America, LLC (“Jaguar”) on April 24, 2015:

We just finished the tour, I’m not giving it much validity at this point. They were 15 minutes late. There was only one person from the tenant company. The tenant said almost nothing while [its real estate broker, David Stifelman at the JLL firm] rattled off technical building systems questions the entire time. It seemed [Stifelman] was just showing off and I doubt the client understood anything because he didn’t ask any questions. [Stifelman] also refused to look at any of the amenities because they were on a tight schedule, but didn’t even allow the client the opportunity to say he would like to look quickly. They were here for all of 15 minutes.¹⁴³

¹⁴¹ Attorneys for both the Blue Hill Plaza’s owners and brokers voluntarily provided information to the Task Force in response to its inquiries.

¹⁴² James Tully, the lead broker on the CBRE team that represented the Blue Hill Plaza, was quoted in a 2019 newspaper story as stating that potential tenants “often . . . ha[d] no intention at all of relocating to the Blue Hill” and “the decision . . . ha[d] already been made before they ever tour[ed] the Blue Hill Plaza.” See Nick Corasaniti and Matthew Haag, *How One Address Led to a \$100 Million Tax Credit Scheme*, N.Y. TIMES, Sept. 24, 2019, <https://www.nytimes.com/2019/09/24/nyregion/nj-tax-break.html>. However, Mr. Tully’s attorney reported to the Task Force that Mr. Tully had mistakenly worded his statements to the newspaper too strongly. The attorney explained that Mr. Tully never knew with certainty whether a potential tenant was sincerely interested in the Blue Hill Plaza because companies and their brokers did not disclose their intentions to him. Therefore, the attorney said, Mr. Tully should have provided that caveat to his statements to the press. Even so, documents provided to the Task Force by CBRE show that Mr. Tully and the other brokers working with him were often conscious of the possibility that companies were using the Blue Hill Plaza merely for “incentives plays” in New Jersey. The brokerage team’s internal emails included multiple conversations in which—similar to the emails concerning Jaguar’s site visit described herein—the brokers discuss whether a potential tenant was sincerely considering the Blue Hill Plaza or only using it for an “incentives play.”

¹⁴³ Exhibit 69.

Ms. Wenzler added in follow-up emails that the Jaguar representative and the company’s broker, Mr. Stifelman, “were both dressed down” and “didn’t have tour books which is unusual.”¹⁴⁴ Another of the Blue Hill Plaza’s brokers at CBRE, Sarah Jones-Maturo, responded: “Sounds like an incentives play to me.”¹⁴⁵ James Tully, the head of the broker team at CBRE, wrote: “Consistent with Erin’s evaluation of their tour . . . I believe this is a naked incentive move.”¹⁴⁶

Although Jaguar appeared to the CBRE brokers to be using the Blue Hill Plaza to make a “naked incentive move” in New Jersey, the Blue Hill Plaza’s owners nonetheless decided to make a proposal to Jaguar to lease space at the office complex. Jaguar did not wait for the proposal, however. On April 30, 2015—less than a week after Jaguar and the company’s broker toured the Blue Hill Plaza—Jaguar submitted its Grow NJ application to the EDA, claiming that the company was considering leaving New Jersey and relocating to the Blue Hill Plaza in New York. Jaguar did not receive an actual proposal letter from the Blue Hill Plaza until almost a week after that, on May 5, 2015. The EDA ultimately approved Jaguar for up to \$26.6 million in incentives to remain in New Jersey rather than relocate to the Blue Hill Plaza.

Mr. Tully communicated to the Task Force, through his attorney, that his broker team at CBRE spent “a lot of time and energy” working to secure tenants for the Blue Hill Plaza, and Mr. Tully was “disappointed” that brokers representing companies exploiting the Blue Hill Plaza for “incentives plays” in New Jersey were not “straight” with him.

2. The EDA Was Aware of the Blue Hill Plaza’s Frequent Use by Grow NJ Applicants but Overlooked Red Flags and Continued to Approve Applications

The Blue Hill Plaza’s status as a frequent alternative site for Grow NJ applicants did not escape the notice of the EDA, whose senior leadership noted as early as 2013 that the office complex in New York “keeps coming up as a competition site.”¹⁴⁷ In December of that year, the EDA’s senior leadership tasked several staff members with investigating “why [the Blue Hill Plaza] is always an option but our applicants never choose it as their site.”¹⁴⁸ Three EDA employees visited the Blue Hill Plaza and observed, as one of the EDA employees interviewed by the Task Force described it, a large office complex with plenty of vacant space, near the state border, and in a somewhat “neglected” condition—but not so “dilapidated” that they doubted companies would sincerely consider relocating there.¹⁴⁹ The EDA employees reported back to the Authority’s senior leadership that the Blue Hill Plaza appeared to be a plausible relocation option for incentives applicants.

After that early investigation in 2013, EDA staff continued to see the Blue Hill Plaza reappear on multiple Grow NJ applications as an alternative site. Several EDA employees reported to the Task Force that, during internal EDA staff meetings, when someone noted that the Blue Hill

¹⁴⁴ Exhibit 70; Exhibit 71.

¹⁴⁵ Exhibit 69.

¹⁴⁶ Exhibit 72.

¹⁴⁷ Exhibit 73.

¹⁴⁸ Exhibit 73.

¹⁴⁹ According to that employee, the Blue Hill Plaza’s condition improved over the years following 2013, and as it did, there were fewer apparent vacancies in the office complex.

Plaza was an applicant's alternative site, people in the room often groaned and made comments like "not another one" or "again?" Another EDA employee reported to the Task Force that one person at the EDA would "break into song" (he did not recall the particular song but thought it was related to "Pearl River") whenever the Blue Hill Plaza came up in staff meetings. Documentary evidence shows that EDA employees and others made similar comments over email correspondence and in internal documents, including the following:

- In early 2015, an EDA underwriter sent an internal email related to IDT Corporation's Grow NJ application, noting that "the alternate site is **the famous Pearl River.**" (Emphasis added).¹⁵⁰
- In early 2016, a second EDA underwriter referred to "**the famous Blue Hill Plaza** in Pearl River, NY" in an email to Safilo's incentives consultants at KPMG about the company's application. (Emphasis added).¹⁵¹
- In early 2015, when Hudson Group Retail's application was pending, a third EDA employee wrote in an internal memorandum summarizing the application: "And YES the Pearl River location [of Hudson Group Retail's alternative site] is **our favorite Blue Hill Plaza location.**" (Emphasis added).¹⁵²
- In anticipation of its Grow NJ application, PLM reached out to the New Jersey Business Action Center ("BAC") in late 2015. A BAC employee forwarded information about PLM to the EDA, writing: "Looks like the company wants to move from Montvale, Bergen Co. to Gateway 3 in Newark. **Old Faithful ... Blue Hill Plaza** in Rockland, NY is our competition." (Emphasis added. Ellipses in original.)¹⁵³

Although the EDA was undoubtedly aware of the Blue Hill Plaza's status as a frequent alternative site claimed by Grow NJ applicants, EDA employees who spoke with the Task Force provided different and conflicting information about how the EDA treated applications by companies that used the Blue Hill Plaza as their alternative site. Some employees reported that EDA staff widely viewed the Blue Hill Plaza skeptically and applied heightened scrutiny to applications that used it as the alternative site. One EDA employee told the Task Force (and documentary evidence substantiates) that he visited the Blue Hill Plaza on multiple occasions over multiple years to attempt to confirm that the office complex actually had available space to offer, as claimed by Grow NJ applicants. Another EDA employee recalled that, on one occasion, Tim Lizura, the EDA's President and Chief Operating Officer, said that he had told a consulting firm that it should stop submitting incentives applications to the EDA that used the Blue Hill Plaza as the alternative site.¹⁵⁴ However, other EDA employees interviewed claimed that they did not view

¹⁵⁰ Exhibit 74.

¹⁵¹ Exhibit 75.

¹⁵² Exhibit 76.

¹⁵³ Exhibit 77.

¹⁵⁴ The Task Force found this EDA employee to be generally credible. However, we did not find independent corroboration of the employee's claim concerning Mr. Lizura's communications with the consultants.

the Blue Hill Plaza skeptically or treat it differently from any other alternative site, and they were unaware of anybody at the EDA who did.

In either case, it appears that the EDA overlooked issues related the Blue Hill Plaza alternative site that should have been readily apparent. For example, there was a period in late 2017 when the EDA had three separate simultaneously pending Grow NJ incentives applications from three different companies, all of whom claimed that, if not approved for tax incentives to remain in New Jersey, they intended to relocate to overlapping space in the Blue Hill Plaza. Bauer Media Group USA, LLC (“Bauer Media”) submitted its application to the EDA on September 1, 2017; Konica Minolta submitted its application on September 21, 2017; and Lonza submitted its application on September 29, 2017. All three companies had proposals from the Blue Hill Plaza’s brokers to occupy space on the sixth floor of the same building in the office complex.¹⁵⁵ The Task Force confirmed with the Blue Hill Plaza’s representatives that the sixth floor was not large enough for all three of the companies to occupy it—thus, it was not possible for all three to accept their lease offers and relocate to the identified space in the Blue Hill Plaza. However, it does not appear that anybody at the EDA, including the EDA underwriters responsible for processing the applications, noticed that the three companies were citing the same space within the same building in their simultaneously pending applications, and, therefore, nobody inquired whether it would have been possible for more than one of the companies to relocate there. The EDA underwriter who was assigned to both of Bauer Media’s and Konica Minolta’s applications indicated in an interview with the Task Force that he did not recall being aware that both companies used the same alternative site. The underwriter assigned to Lonza’s application similarly indicated in her interview that she did not recall being aware of Lonza’s alternative site overlapping with any other applicant’s site. Thus, with the EDA apparently unaware that the companies could not possibly all relocate to their claimed alternative site, it approved all three applications. The EDA approved Bauer Media’s application on October 12, 2017, and approved both Konica Minolta’s and Lonza’s applications at the same board meeting on November 14, 2017. The EDA collectively approved the three companies for up to approximately \$35 million in tax incentives to remain in New Jersey rather than relocate to the Blue Hill Plaza in New York.

Based on the information the Task Force reviewed, it does not appear that the EDA ever rejected an incentives application for reasons related to the Blue Hill Plaza alternative site. Every company that cited the Blue Hill Plaza as the alternative site on its Grow NJ application between 2013 and 2019 was either approved for tax incentives by the EDA or was rejected or withdrew its application for reasons unrelated to the Blue Hill Plaza alternative site.

¹⁵⁵ On August 25, 2017, the Blue Hill Plaza’s brokers provided Bauer Media with an offer to lease “approximately 30,000-35,000 RSF” “on the 6th floor” of 2 Blue Hill Plaza. On September 21, 2017, the Blue Hill Plaza’s brokers provided Lonza with an offer to lease “[a]pproximately 45,000 (+/-10%) Rentable Square Feet (RSF) on the sixth floor” of 2 Blue Hill Plaza (among other space). On October 5, 2017, the Blue Hill Plaza’s brokers provided Konica Minolta with an offer to lease “[p]ortions of the . . . sixth (6th) floor[]” of 2 Blue Hill Plaza (among other space). Notably, Konica Minolta did not seek the proposal from the Blue Hill Plaza’s brokers until after it had already submitted its Grow NJ application to the EDA and the EDA’s staff asked to see the company’s proposal to lease space at the Blue Hill Plaza.

C. The EDA Failed to Guard Against the Risk of Improper Conduct by Incentives Consultants

Consultants played an important role in helping their clients navigate complex program requirements. However, the evidence shows that some consultants also played a role in helping companies that did not qualify for incentives to obtain them, in some instances based on false or misleading representations concerning the risk that the company might otherwise locate in another state. In addition, as discussed in Section VII(C) of the Task Force’s Second Report and in Section III(A) of this Third Report, it appears that one consultant fabricated and altered documents before submitting them to the EDA on multiple occasions. Moving forward, the EDA should be mindful of these facts in evaluating applications and claims regarding alternative sites.

In that respect, it warrants noting that the EDA has in some instances had a close relationship with incentives consultants who frequently represented companies that appeared before the EDA. For example, on September 20, 2013, shortly after the EOA 2013 was enacted, the EDA’s then President and Chief Operating Officer, Tim Lizura, and a private consultant, Kevin Sheehan of the Parker McCay P.A. firm, conducted a joint presentation of the EOA 2013’s changes to New Jersey’s incentives programs. The presentation was hosted at Rowan University’s South Jersey Technology Park by a business development organization, the Entrepreneurs Forum of Southern New Jersey, and was attended by members of the public who paid a small fee to attend. The joint presentation by the EDA’s most senior executive and the private consultant included PowerPoint slides with both of the EDA’s and Parker McCay’s respective logos. The final slide, which also bore the EDA’s logo, listed Mr. Sheehan’s email address and phone number and invited those who wanted “additional information” to “please contact [him].”¹⁵⁶

More generally, even when the EDA’s relationship with consultants was not to the same extent illustrated by the example above, the Task Force observed that the EDA’s “getting to yes” internal culture, discussed in Section IV of the Task Force’s Second Report, often extended to the consultants representing incentives applicants. In some cases, email correspondence between the EDA and consultants reflected a mindset in which the EDA and the consultants were on the same “team,” with the award of tax credits as their common goal.¹⁵⁷ In fact, however, the EDA and the consultants have materially different roles and motivations. Consultants are paid by their client companies to lobby for incentives for them, without competing interests. On the other hand, although the EDA is tasked with promoting economic development in New Jersey, it also has a duty to the taxpayers to safeguard public funds from improper expenditure—so its goal of providing tax incentives to keep or bring jobs to the State is balanced by its duty to make sure that incentives applications are granted only where appropriate. An overly close relationship between the EDA and consultants risks overemphasizing the first goal at the expense of the latter duty.

Since the Economic Opportunity Act’s enactment in 2013, New Jersey’s issuance of tax credits has dramatically increased, with the State approving companies for billions of dollars in incentives awards. There were multiple causes for the expansion, as the Task Force has discussed in its prior reports, including changes to the incentive programs brought about by the EOA 2013

¹⁵⁶ Exhibit 78.

¹⁵⁷ See, for example, Section II(A)(3)’s discussion of communications between the EDA’s Marcus Saldutti and PLM’s incentives consultant, Joe Lacy.

and failures by the EDA to sufficiently scrutinize applications. We add to this list of causes the consultants, who also played a role, as their advice to clients effectively steered incentives to companies that were not actually considering relocating outside New Jersey prior to the consultant’s intervention—and, thus, did not need incentives to affect their location decision.

III. THE EDA REQUIRED COMPANIES SEEKING INCENTIVES TO BRING JOBS TO NEW JERSEY TO SATISFY REQUIREMENTS NOT MANDATED BY THE GROW NJ STATUTE

The EDA required companies applying for incentives under Grow NJ to demonstrate that their jobs were “at risk” by putting forth evidence of an alternative site in another state that was comparable in size but less expensive than the company’s preferred location in New Jersey and also under consideration for the company’s relocation. The EDA uniformly applied this “alternative site” requirement both to companies that were seeking incentives to keep their jobs in New Jersey and to companies that were seeking incentives to relocate jobs from outside New Jersey into the state—in both cases, under the EDA’s practices, the company must put forth evidence of an alternative site in another state. However, as the Task Force previously noted in Section VII(D)(1) of the Second Report, the Grow NJ statute did not require this uniform application of the “alternative site” requirement to both categories of applications. With respect to companies seeking incentives to relocate jobs from outside New Jersey into the state, the Grow NJ statute does not explicitly set forth how the EDA should determine whether there is a “risk” that, absent incentives from New Jersey, the company may choose to locate in another state.¹⁵⁸

Through its review of numerous incentives applications, the Task Force has found that the alternative site requirement as applied by the EDA was ill-suited to the realities of the site-selection process undertaken by certain companies, but particularly for companies seeking to relocate into New Jersey from another state. Furthermore, the EDA’s manner of administering the alternative site requirement with respect to companies relocating into New Jersey failed to advance the Grow NJ program’s aims in several respects, which we discuss below.

To demonstrate flaws in the EDA’s application of the alternative site requirement to companies relocating into New Jersey, we discuss three case studies below. First is Key Food Stores Co-Operative, Inc. (“Key Food”), a cooperative of independently owned supermarkets, which the EDA approved for up to \$4.9 million in tax incentives to relocate from Staten Island,

¹⁵⁸ The “alternative site” requirement was based on a provision in the Grow NJ statute stating that, when a company applied for incentives to relocate from one site within New Jersey to another, the EDA “shall require the business to submit . . . as part of its application . . . a full economic analysis of all locations under consideration by the business . . . and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist.” N.J. Stat. § 34:1B-244(d). The Grow NJ statute did not apply this same requirement to companies applying for incentives to relocate into New Jersey from outside the state. As we explained in in Section VII(D)(1) of the Second Report, for companies applying for incentives to relocate into New Jersey, the Grow NJ statute “is entirely silent as to how the EDA should conduct its ‘at risk’ analysis. . . . [T]he statute does not direct the EDA to consider any particular documents at all.” The EDA nevertheless elected to extend the requirement to both categories of applications alike.

New York City to Old Bridge, New Jersey.¹⁵⁹ When Key Food first applied to the EDA for Grow NJ incentives, the company explained that, although the lease on its existing headquarters office space in Staten Island would not expire for several more years, the company had outgrown the location and, therefore, wanted to relocate to a new building in New Jersey, where the company would approximately double its office space. Key Food’s application stated that, if denied tax credits from the EDA to subsidize the company’s expansion in New Jersey, Key Food would instead suffer through several more years of cramped space in Staten Island and then, when its lease there was closer to its expiration, determine its expansion plans. Despite this explanation of Key Food’s needs for incentives to move its jobs into New Jersey, EDA staff rejected Key Food’s application on the basis that Key Food had failed to present an alternative site in New York that was sufficiently comparable to Key Food’s proposed New Jersey site. While rejecting the application, an EDA employee invited Key Food to find an alternative real estate option for the company in New York that was comparable to the New Jersey option and to reapply. Key Food’s incentives consultant, Susan Harte, then employed by CBRE, griped that the EDA “seem[ed] much more focused on just having an audit worthy application than the actual likelihood a company would or would not make the move.”¹⁶⁰ Days later, Key Food submitted a new Grow NJ application to the EDA, this one claiming that if Key Food were denied incentives to relocate into New Jersey, the company instead planned to extend its existing lease in Staten Island and also enter into a new lease for expansion space in the neighboring building, thereby giving the company a total square footage in Staten Island that was close to the New Jersey option’s amount. Based

¹⁵⁹ Key Food was represented before the EDA by the same incentives consultant—Susan Harte, at the time CBRE’s Director of Location Incentives—as Rainforest Distribution Corp., a Grow NJ beneficiary that was discussed in Section VII(C) of the Task Force’s Second Report. As discussed therein, the Task Force found that Ms. Harte undertook certain deceptive conduct with respect to Rainforest Distribution Corp.’s Grow NJ application. Therefore, the Task Force carefully scrutinized Key Food’s application to determine whether it involved similar issues. Both Key Food and CBRE voluntarily cooperated with the Task Force’s inquiry and provided documents and information. The Task Force requested to speak with Ms. Harte about her involvement in Key Food’s application. Ms. Harte’s attorneys declined the Task Force’s request to speak with her directly but offered to answer questions on her behalf. The Task Force reiterated its request to speak with Ms. Harte directly, rather than indirectly through her attorneys, but they again rejected the request. To provide Ms. Harte’s purported perspective concerning Key Food’s application, Ms. Harte’s attorneys submitted a letter to the Task Force, which is appended as Exhibit 79. This letter discusses certain of the documents reviewed by the Task Force and discussed in this Third Report below, but it fails to address some of the problematic language in those documents that is highlighted herein. Ultimately, based on the limited evidence available to the Task Force, we found significant red flags that Key Food’s application to the EDA may have involved potentially material misrepresentations or deceptive conduct, as further discussed below, but we have been unable to resolve all such issues based on the available evidence. The discussion of Key Food’s application in this section of the Third Report is not a comprehensive record of all facts concerning the application, but is rather limited to those facts most pertinent to the EDA’s treatment of companies that seek incentives to relocate jobs from outside New Jersey into the state.

¹⁶⁰ Exhibit 80.

on this new narrative, which now included “comparable” alternative scenarios in New Jersey and New York, the EDA approved Key Food’s application for incentives.

The second case study is Creative Management Services, LLC (which does business under the name “MC²”), which applied to the EDA in 2018 for tax incentives to relocate from Chestnut Ridge, New York—where the company’s headquarters offices were then located—to Paramus, New Jersey. The company represented in its application that if it was not approved for Grow NJ incentives, it intended to relocate to a site in New York instead of New Jersey. However, there is evidence that MC² engaged in certain efforts with respect to the New York site that, as more fully described below, were geared toward generating documentation necessary for the EDA application and not necessarily toward advancing the company’s genuine relocation efforts or interests. Nonetheless, the EDA approved MC² for up to \$2.3 million in tax credits to incentivize it to relocate to Paramus rather than New York.

The third case study is Konica Minolta Business Solutions USA, Inc. (“Konica Minolta”), which the EDA approved for up to \$29.4 million in tax incentives to relocate certain jobs from Connecticut to New Jersey. Prior to Konica Minolta’s application, the company retained incentives consultants from KPMG, who helped Konica Minolta analyze its opportunities for incentives in both New Jersey and New York. Based on KPMG’s analysis and its own internal financial analyses, Konica Minolta determined that relocation of the jobs into New Jersey with tax credits from the EDA was financially preferable to relocation to New York with incentive benefits from that state’s authorities. Konica Minolta conducted a baseline assessment of relocating to New York. However, Konica Minolta’s analysis focused more on comparing incentives opportunities between New Jersey and New York than it did on comparing specific real estate options in the two states. When the EDA asked Konica Minolta to submit evidence of the company’s lease offer for a specific site in New York, the company had no such documentation to provide—it had considered multiple locations in New York and the incentives opportunities that could be attached to them, but it had not negotiated for an actual lease proposal with any specific site in New York. After the EDA asked Konica Minolta to produce a lease proposal for a specific site in New York, Konica Minolta negotiated for such an offer, which it then provided to the EDA. Based on this supplemented submission of a lease proposal for an alternative site in New York, the EDA approved Konica Minolta’s application for incentives to locate the jobs in New Jersey.

Following discussion of these three companies below, we provide findings and analysis concerning the EDA’s application of the alternative site requirement to companies seeking incentives to bring jobs to New Jersey from outside the state.

A. Key Food Stores Co-Operative, Inc.

1. Background

As set out in the narrative below, the principal persons involved in Key Food’s Grow NJ application included the following:

- Sharon Konzelman (Key Food’s Chief Financial Officer)
- Paul Gelardi (Key Food’s Manager of Contracts and Compliance)
- Susan Harte (retained tax incentives consultant at CBRE)
- Wesley Moore (retained real estate broker at CBRE)
- Joseph Sarno (retained real estate broker at CBRE)

- Eric Brown (retained project manager at CBRE)
- David Samber (retained independent consultant)

In 2018, Key Food’s headquarters office was located at 1200 South Avenue in Staten Island, New York City. Although Key Food’s lease for that office space would not expire until December 31, 2021, by 2018 the company had already started to outgrow the space and was considering options for a potential early lease termination and relocation. Key Food was interested in exploring options across the state border, in New Jersey, near the company’s existing location in Staten Island.

Key Food’s management met with representatives of CBRE on May 30, 2018, to hear the firm’s pitch for professional services to facilitate a potential office relocation. At the meeting, CBRE proposed an “integrated brokerage/consultative approach” in which the firm would offer Key Food a suite of real estate brokerage, project management, and incentives consulting services in connection with its office relocation.¹⁶¹ The CBRE team would include Joseph Sarno and Wesley Moore providing real estate brokerage services, Eric Brown providing project management services, and Susan Harte providing incentives consulting services.¹⁶² The presentation boasted that Ms. Harte, then CBRE’s Director of Location Incentives, had a “100% Board Approval Success Record for \$248M GROW NJ Grants Since 2014.”¹⁶³

CBRE’s presentation to Key Food included information about various real estate options in New Jersey for the company to consider, as well as an estimate of the tax credits that Key Food could potentially receive from the EDA (up to \$3.6 million) as incentives to relocate to one of the specific New Jersey sites included in the presentation, an office building located at 100 Matawan Road in Old Bridge, New Jersey.¹⁶⁴

Following the pitch, Key Food decided to retain CBRE to pursue a relocation into expanded space in New Jersey, subsidized by tax credits from the EDA. Key Food and CBRE entered into a contract, dated June 19, 2018, which tasked CBRE with “find[ing], negotiat[ing], and secur[ing] premises in the State of New Jersey as per [Key Food’s] requirements.”¹⁶⁵ Key Food and CBRE also entered into a separate contract, dated July 18, 2018, under which CBRE would “negotiate and secure an Incentive package” for Key Food in connection with the company “relocating its offices and approximately 90 employees to a site in New Jersey[.]”¹⁶⁶

¹⁶¹ Exhibit 81.

¹⁶² Exhibit 81. CBRE’s presentation slides listed Eric Wagner as the firm’s project manager. However, after Key Food retained CBRE, Eric Brown provided the project management services to the company.

¹⁶³ Exhibit 81.

¹⁶⁴ Exhibit 81. The mailing address for 100 Matawan Road lists Matawan, New Jersey. However, the building is technically in Old Bridge Township, New Jersey.

¹⁶⁵ Exhibit 82.

¹⁶⁶ Exhibit 83.

2. Key Food's and CBRE's Aborted Attempts to Identify a Less Expensive Alternative Scenario in New York For the Company's Grow NJ Application Narrative

With the contracts signed, CBRE started to pursue potential real estate options in New Jersey for Key Food's relocation. After considering a number of New Jersey sites, Key Food settled on the building that was initially included in the CBRE pitch presentation, 100 Matawan Road in Old Bridge, New Jersey, as its preferred relocation choice. Thus, the CBRE brokers negotiated with the building's representatives for a lease proposal for Key Food.

Meanwhile, as the company's efforts to pursue a New Jersey site were underway, CBRE's Wesley Moore wrote an email to Key Food on August 2, 2018 to explain that, in addition to negotiating a lease for the New Jersey site, it was also necessary to identify an alternative location in New York in order for the company to qualify for incentives under Grow NJ:

In order for us to qualify for the Grow NJ grant we need to have a viable option for your [sic] to stay in NY that is cheaper. We can get proposals from the landlords in your area for expansion space or look for an option that can accommodate the entire 30,000 SF. This shouldn't require much work on your part but we may need to spend some time looking at a few options in Staten Island, once we do that we can get a few proposals and show we have other options.

(Emphasis added).¹⁶⁷

Thus, although Key Food's goal was to relocate into New Jersey, and the company had retained CBRE with that aim, Key Food and CBRE proceeded to explore Staten Island expansion options to use as the alternative scenario on the company's Grow NJ application.¹⁶⁸ Over the next several months, Key Food and CBRE proceeded to identify at least two potential options to use on the company's incentives application, both of which had Key Food retaining part of its operations at their existing location, at 1200 South Avenue, and also expanding into additional space:

- First, CBRE identified available expansion space in Staten Island in an office building located at 1150 South Avenue—immediately next door to Key Food's existing offices at 1200 South Avenue. CBRE obtained a proposal for Key Food to lease the expansion space in the neighboring building on September 5, 2018.¹⁶⁹

¹⁶⁷ Exhibit 84.

¹⁶⁸ Key Food's counsel contended in a letter to the Task Force that, notwithstanding the language of the CBRE broker's email, Key Food and CBRE explored real estate options in New York for purposes of "the Grow NJ program *and* to identify local options for viable, affordable space for Key out-growing then current New York space." (Emphasis in original).

¹⁶⁹ Exhibit 85. Internal documents show that, in addition to proffering 1150 South Avenue as an expansion option, CBRE and Key Food also raised the possibility of proposing that the company relocate its entire operations there. This option appears to have been subject to only limited consideration, however.

- Second, Key Food’s landlord at its existing offices at 1200 South Avenue offered the company additional space in the building on the second floor (Key Food’s existing offices were on the first floor), as the current tenant on the second floor planned to vacate in the next year. Key Food obtained the expansion proposal from its landlord on October 11, 2018.¹⁷⁰

Internal documents show that, as CBRE and Key Food undertook these efforts to pursue Staten Island expansion options, cost was an issue. Specifically, Key Food’s desired location in Old Bridge, New Jersey was less expensive than the expansion options in Staten Island. Obviously, Key Food could not qualify for incentives to relocate to New Jersey unless New Jersey was the more expensive option. Thus, as demonstrated by the documents described below, CBRE and Key Food appear to have made efforts to revise the costs of the respective New Jersey and New York options to satisfy this requirement.

Eric Brown, the CBRE team’s project manager, was responsible for preparing a budget for Key Food that estimated the costs of its various relocation or expansion options. On November 16, 2018, Mr. Brown sent Ms. Harte, the team’s incentives consultant, an early draft of Key Food’s budget, which provided estimated costs for both New Jersey and Staten Island.¹⁷¹ On November 20, 2018, Ms. Harte responded: “I’ve been reviewing the budget- thanks for getting this to me. I think we are going to have to tweak it though”¹⁷² She added in a follow-up email: “[W]e want NJ to be more expensive”¹⁷³ It does not appear that Mr. Brown responded.

Almost two weeks later, on December 3, 2018, Ms. Harte wrote to the CBRE team and asked to schedule a call to discuss Key Food’s budget.¹⁷⁴ Mr. Brown, the project manager, responded: “As far as the budget goes, I think the more important conversation is to really understand what they would do in their existing location. . . . I want to understand that as it will have a big impact on the budget.”¹⁷⁵ Ms. Harte wrote that, because she understood that Key Food intended to do little if any work to its existing Staten Island space, “we just need to adjust down all the categories on the column of stay in place....”¹⁷⁶ Mr. Brown replied to Ms. Harte: “**I will do whatever you would like for me to do. Without understanding the scope I am blindly adjusting numbers without substantiation.**” (Emphasis added).¹⁷⁷

Ms. Harte responded with a lengthy email explaining that it was necessary for Mr. Brown’s budget for Key Food to show that the New Jersey site was more expensive than the New York alternative so that the company could qualify for incentives from the EDA:

Eric

¹⁷⁰ Exhibit 86.

¹⁷¹ Exhibit 87.

¹⁷² Exhibit 88.

¹⁷³ Exhibit 88.

¹⁷⁴ Exhibit 89.

¹⁷⁵ Exhibit 89.

¹⁷⁶ Exhibit 89.

¹⁷⁷ Exhibit 89.

To recap the purpose- in order for Key Foods to get the incentives, we have to prove that the incentives were a “material” factor in their decision-making process. We need to show that the cost of doing the Project in NJ is more expensive then [sic] doing the Project in NY and that is why we need to have the incentives- to level the playing field. In order to make this point, we have to present a comparative cost analysis of both the ongoing operational costs (rent, labor, utilities etc) AND the one- time up front costs of both locations so that we can show that the NJ option is more expensive. In this analysis, I have to have “back-up” collateral for every assumption. So, if we say the total cost of construction, or furniture or IT- is \$X on the comparative analysis- I have to present- where I got that number from. In this case, it will be from the estimated project budget which needs to be prepared by a professional PM or architect- this is the purpose and this is why we need to keep the costs as low as possible on the NY scenario. While NJEDA understands at this point these are all estimates- they need to be based in as much accuracy as we can get at this time. So, let’s assume that Key will not make ANY expenditures for their existing space- and only in the expansion space.....and that is the part I need you to adjust accordingly as it is now,except [sic] for actual construction,- you have all the other costs the same for both locations.¹⁷⁸

A little over an hour later, Ms. Harte wrote to Mr. Brown again: **“So are we good and can you adjust those numbers or do we need to schedule a call to discuss?”** (Emphasis added).¹⁷⁹ Mr. Brown responded: “I will work to start adjusting these numbers for you this week.”¹⁸⁰ (It hardly requires mention that adjusting the figures used in the incentive application’s cost-benefit analysis without a good faith basis—which are a fundamental component of the EDA’s considerations—for the purpose of “gaming” the application is highly problematic and likely unlawful.)

Four days later, on December 7, 2018, Ms. Harte wrote to Mr. Brown again: “Am I going to get that budget today?”¹⁸¹ Mr. Brown responded and said that he was working on the revised budget.¹⁸² Mr. Brown circulated a revised budget later that day, after which the CBRE team proceeded to discuss and make further revisions to decrease the projected costs of the Staten Island alternative.

Internal CBRE and Key Food email correspondence like that described above and other similar correspondence the Task Force has reviewed raise significant questions about the cost figures that CBRE and Key Food ultimately included in the company’s Grow NJ application. The

¹⁷⁸ Exhibit 89.

¹⁷⁹ Exhibit 90.

¹⁸⁰ Exhibit 90.

¹⁸¹ Exhibit 91.

¹⁸² Exhibit 92.

Task Force has been unable to determine based on the available evidence, which includes significant informational gaps, whether the cost figures ultimately included in Key Food’s Grow NJ application were submitted in good faith.¹⁸³

At some point in December 2018, when CBRE and Key Food were attempting to create a sufficient cost differential between the company’s New Jersey relocation and the Staten Island expansion alternative, they decided to change their strategy. On December 12, 2018, Ms. Harte wrote in an email to one of Key Food’s managers: **“Since we are changing the narrative now to not include SI as part of the Project- we don’t have to worry about upping the NJ costs anymore.”** (Emphasis added).¹⁸⁴ Under the new “narrative” for Key Food’s incentives application that CBRE and Key Food decided to adopt, Key Food would no longer claim to the EDA that its purported alternative to relocating to New Jersey was to expand into additional space in Staten Island, as it had been planning to claim, but would instead tell the EDA that the company intended to simply stay in place throughout the remainder of the lease at its current Staten Island location, not expand in any manner, and then decide what to do when closer to the lease’s December 31, 2021 expiration date. According to an email from Ms. Harte, the reason that CBRE and Key Food decided to change the “narrative” in this manner was because “the economics [did not] work.”¹⁸⁵ Even with CBRE’s and Key Food’s efforts to find ways to modify the cost figures included in the application so that Key Food’s relocation to New Jersey would appear to be more expensive than the alternative scenario in Staten Island, Ms. Harte wrote in her email, **“it was still coming up as NJ being cheaper”** (Emphasis added).¹⁸⁶

¹⁸³ During its review of Key Food’s incentives application, the Task Force found, among other things, that Key Food’s incentives consultant, Ms. Harte, submitted at least one fabricated document to the EDA to purportedly substantiate certain of the costs relevant to Key Food’s application. The cost information contained in the false document, however, was not materially inaccurate. Thus, it appears that Ms. Harte’s submission of the false document to the EDA was not intended to deceive with respect to material facts but may have simply been a “shortcut” in providing required documentation. As noted above, Ms. Harte declined to speak with the Task Force about Key Food’s application, so we did not have the opportunity to question her about the facts relevant to this issue.

¹⁸⁴ Exhibit 93.

¹⁸⁵ Exhibit 94.

¹⁸⁶ Exhibit 94. Key Food’s counsel claimed to the Task Force that Ms. Harte’s email was “not accurate.” According to Key Food, the “narrative” did not change because Key Food’s New Jersey option was more expensive than the Staten Island alternative option, as Ms. Harte wrote in her email, but rather because Key Food’s “space needs changed.” Ms. Harte’s attorneys wrote to the Task Force in the letter attached as Exhibit 79 that they were “unable to identify support for Ms. Harte’s comment that the New Jersey location was consistently less expensive.” However, their letter offers no explanation for why Ms. Harte wrote the purportedly “unsupported” statement about the New Jersey and Staten Island comparative costs in her email. Key Food’s and Ms. Harte’s submissions to the Task Force on this point raise more questions than they answer.

3. The EDA's Rejection of Key Food's First Grow NJ Application

Key Food and CBRE filed the company's Grow NJ application with the EDA on December 20, 2018.¹⁸⁷ The application claimed that as a result of Key Food's recent growth, the company's offices in Staten Island—where the company had 18,552 sq. ft. of space—were “cramped at capacity” and the company, therefore, was considering relocating to a new building, located at 100 Matawan Road in Old Bridge, New Jersey, where it had an offer to lease 37,442 sq. ft. of space.¹⁸⁸ The application provided the following narrative:

Key Food's headquarters currently occupies 18,552SF in Staten Island. Due to its growth over the last few years to 92 employees, the company's office is cramped at capacity and there is no suitable expansion option within its building. Therefore, the company is considering relocating its headquarters to larger space in a building in New Jersey, where it could alleviate the cramping and have room to accommodate future growth. However, its Staten Island lease does not expire until the end of 2021, and it is very unlikely that a sub lessee could be found for such a short term. As a result, if the company relocates, it would be required to pay approximately \$2M in rent to its Staten Island landlord over the next three years in addition to the rent for a new, NJ office.

In addition, if Key Food were to relocate to New Jersey, it would have to spend approximately \$4M in capital investment and equipment to build out and furnish new space. The company also recognizes that under the terms of the GROW NJ Program, a recipient may not sublet its Qualified Business Facility. So, even though Key Food does not immediately need the full 37KSF in the NJ building, it would have to occupy and carry the rent on the total space, which adds \$250,000 more in occupancy costs to what it is paying now. Altogether, the capital improvements, additional rent and lease termination costs make NJ about \$7.7M more expensive over a 10-year term than a stay in place scenario. In addition to these hard costs, the company expects there to be other costs (which cannot currently be accurately determined) such as severance pay for employees not willing to relocate and costs associated with replacing them. For all these reasons, without a GROW NJ award, a NJ relocation would not economically [sic] viable. Therefore, the award of a GROW NJ grant is a material factor in the company's relocation decision and would not happen without it.¹⁸⁹

Thus, while claiming that there was “no suitable expansion option within [Key Food's] building” in Staten Island, the application's narrative omitted that Key Food had, in fact, received

¹⁸⁷ Exhibit 95.

¹⁸⁸ Exhibit 95.

¹⁸⁹ Exhibit 95.

an offer from its landlord to lease additional expansion space on the second floor of the building. The application also did not disclose that Key Food had received an offer to lease additional expansion space in the neighboring building in Staten Island.

On December 24, 2018, an EDA employee wrote to Ms. Harte: “What is the alternate scenario? The Application . . . paint[s] the picture that the company is out of space in its current spot and needs to expand. But if NJ is not selected, they will not expand at all?”¹⁹⁰ Ms. Harte responded: “If Key doesn’t move to NJ now with the help of a GROW NJ grant, it will just stay put and as is - and it will wait 3 years until it’s lease is up and decide then if they will expand and renew at their current building or what other options they may have.”¹⁹¹

Reviewing Key Food’s application and Ms. Harte’s correspondence about the company’s intentions, EDA staff doubted the propriety of awarding incentives to a company, like Key Food, that was not choosing between two comparable options but was rather considering, on the one hand, relocating to space in New Jersey that would be double the size of the company’s current offices, or, on the other hand, simply remaining in the company’s current location and not expanding at all. EDA staff noted that in such circumstances, the company’s former option (relocate to New Jersey) was not comparable to, and would inevitably be more expensive than, the latter option (do nothing), thereby arguably confounding the notion that tax credits were necessary to incentivize the company to make the more expensive choice.¹⁹²

On January 15, 2019, Ms. Harte advocated for Key Food’s application in an email to the EDA: “I know this doesn’t really fit the ‘usual’ model for an apples to apples comparison- but in the real world companies face decisions that aren’t apples to apples. However- I think GRoW [sic] was really created for a purpose like this- which is to incentivize a company to come to NJ that but for the incentives would not be an option. This would be a new HQ - all new jobs to the state- so hopefully NJ will want them!”¹⁹³

On January 18, 2019, Ms. Harte wrote to her CBRE colleagues Wesley Moore and Joseph Sarno that the feedback she had received from the EDA on Key Food’s Grow NJ application “was not great.”¹⁹⁴ She explained: “They have not said no- but I’d rather not give them the opportunity and I feel like instead of trying to rationalize with them about how companies in the real world

¹⁹⁰ Exhibit 96.

¹⁹¹ Exhibit 96. Several weeks later, on January 14, 2019, a different EDA employee wrote to Ms. Harte and again asked her to explain Key Food’s intentions. Ms. Harte responded with a similar explanation, writing that Key Food “would like to expand” but had no “viable option” to do so in Staten Island, so, if denied tax incentives to relocate to New Jersey, the company would “just stay put for now and see if in two years there is some expansion space in their building.” Exhibit 97. Of course, in reality, Key Food did not actually have to wait and see whether there was “some expansion space in their building” in Staten Island; as described above, the company had, in fact, already secured a proposal letter from their landlord to expand onto the second floor of their building.

¹⁹² For an example of internal EDA correspondence conveying concerns about the propriety of Key Food’s application, see Exhibit 98.

¹⁹³ Exhibit 99.

¹⁹⁴ Exhibit 100.

don't make apples to apples decisions- it might be best to just to go back and give them some apples.”¹⁹⁵ Ms. Harte proposed that Key Food reapply to the EDA for Grow NJ incentives, but this time provide a different narrative concerning the company's intentions for its alternative option in the event it would be denied incentives to relocate to New Jersey.¹⁹⁶ Rather than stay in its current offices and not expand, as Key Food had claimed in the first application were its intentions, the company should claim in the new application, Ms. Harte proposed, that it would expand into additional space in Staten Island if denied incentives to relocate to New Jersey.¹⁹⁷ “[I]f NJ is insisting we show we have an option- we can present them then with that option It seems they are just extremely focused now on checking off boxes regardless of the rationale of a move.”¹⁹⁸

The following day, on January 19, 2019, Ms. Harte wrote to Key Food's management to explain the EDA's concerns about the company's application and her proposal that Key Food reapply to the EDA with a different narrative.¹⁹⁹ Ms. Harte also wrote that she had already started to work on modifying the costs for the respective New Jersey and New York options to endeavor to increase the former and decrease the latter.²⁰⁰ She added that the EDA “seem[s] much more focused on just having an audit worthy application than the actual likelihood a company would or would not make the move.”²⁰¹

4. Key Food's Preparation of a Second Grow NJ Application with a New and Different Narrative

On January 21, 2019, Ms. Harte wrote in an email to the EDA that, although it was not disclosed on Key Food's initial Grow NJ application, the company had in fact explored an expansion option in Staten Island in August of 2018.²⁰² At that time, she wrote, the company had considered the expansion option to be “not suitable.”²⁰³ Thus, Ms. Harte wrote, if Key Food were not approved by the EDA for incentives to relocate to New Jersey, then, as described in the company's Grow NJ application, “it would just wait [and] re-evaluate their NY options in the beginning of 2020- closer to its lease termination.”²⁰⁴ Since then, however, Ms. Harte claimed, “Staten Island has become even more cramped and the company does not believe now it can wait two years for an expansion as originally planned.”²⁰⁵ As a result, she wrote, the company had come to believe that an expansion in Staten Island “would be the best and most cost-effective alternative if it does not get approved for a GROW NJ award.”²⁰⁶ Ms. Harte attached to her email Key Food's proposal letter for the expansion space at 1150 South Avenue in Staten Island, a budget

¹⁹⁵ Exhibit 100.

¹⁹⁶ Exhibit 100.

¹⁹⁷ Exhibit 100.

¹⁹⁸ Exhibit 100.

¹⁹⁹ Exhibit 80.

²⁰⁰ Exhibit 80.

²⁰¹ Exhibit 80.

²⁰² Exhibit 101.

²⁰³ Exhibit 101.

²⁰⁴ Exhibit 101.

²⁰⁵ Exhibit 101.

²⁰⁶ Exhibit 101.

prepared by CBRE for the expansion, and a form comparing the costs of the company's New Jersey site to the new Staten Island expansion alternative.²⁰⁷

EDA staff and Ms. Harte proceeded to have a call about Key Food's application on January 22, 2019.²⁰⁸ The Task Force is unaware of any written record of the discussion that took place during the call between Key Food's incentives consultant and the EDA. However, based on subsequent email correspondence related to the call, it appears that EDA staff told Ms. Harte that Key Food's Grow NJ application was still unacceptable, even with the revisions to the application, because the EDA did not consider certain costs that Ms. Harte had listed in Key Food's application to be valid. Absent those costs, the costs of Key Food relocating to New Jersey were comparable to the costs of the company's claimed Staten Island expansion option, defeating the justification for incentives. Following the call, Ms. Harte wrote an email to the EDA complaining about the decision.²⁰⁹ Her email noted that, in order to increase the cost differential between Key Food's New Jersey and New York options, Key Food was "going back to the landlords to see if they can get a better deal for a NY expansion and renewal."²¹⁰ An EDA employee responded:

We agree this would be a great win for NJ as they are all new high paying jobs, but the analysis must make sense especially in our current environment with audits and how the program and EDA is [sic] perceived by folks down the street. As discussed, if the company can provide a viable out of state option, we would reevaluate another application submission since the project scope would have materially changed from the first submission. We would likely be able to count the previous app fee but I would have to confirm that.

(Emphasis added).²¹¹

CBRE and Key Food set to work to revise the cost figures. CBRE's Mr. Sarno wrote that he would reach out to the representatives for the Staten Island "space next door" to negotiate to "get the rent down."²¹² Ms. Harte and Key Food's Chief Financial Officer, Ms. Konzelman, corresponded in a series of emails about ways to modify the cost figures.²¹³ Ms. Harte wrote, apparently referring to EDA staff: "The guys I am working with actually do want this to work= but they are strapped by some of these rules by management- I think if we can technically get over the hump of NJ being more expensive they will give it to us."²¹⁴

On January 27, 2019, Ms. Harte wrote to Key Food: "NJEDA requires me to do a whole new application for the changes we are making to our original submission (I was able to get them

²⁰⁷ Exhibit 101.

²⁰⁸ Exhibit 102.

²⁰⁹ Exhibit 103.

²¹⁰ Exhibit 103.

²¹¹ Exhibit 103.

²¹² Exhibit 104.

²¹³ Exhibit 105.

²¹⁴ Exhibit 105.

to waive the fee!) and I have completed that now.”²¹⁵ She proceeded to explain revisions she had made to Key Food’s alternative scenario, including revisions to the amount of square footage that Key Food’s application claimed the company would occupy in Staten Island, which, because the lease cost was calculated on a per sq. ft. basis, resulted in a corresponding cost decrease.²¹⁶ Ms. Harte also wrote to Key Food the following note concerning what the company would “need to say” to the EDA about its Staten Island expansion option in order for the alternative scenario to “hypothetically . . . make sense”:

My only glitch I see here is the fact that the existing lease does only have 2 years left- so Key would need to say, that if it were going to do the SI expansion- it would end up renewing where it is- which I think hypothetically would make sense. I do think these revisions put us at a better than 50/50 for approval-- I think they’d like to get us there-but we just have to be solid with their checking of the boxes which we have technically done- we are not exactly apples to apples but closer than we were.²¹⁷

Shortly after Ms. Harte sent the email quoted above, advising that Key Food would “need to say” to the EDA that it planned to renew the lease at its existing building in addition to entering into a new lease for the space in the neighboring building, Key Food’s consultant David Samber wrote to Ms. Harte: “On the issue of the existing Staten Island lease, if NJEDA were to reject the application Key should not be restricted in how they solve their real estate needs. This is a big move for the company and they would love to come to NJ but don’t know if it’s fair to ask them to limit their real 2021 real estate options as a condition of making this application.”²¹⁸ Ms. Harte replied: **“Yes of course! NJED [sic] would not attempt at all to follow that - I know companies (not my clients) who didn’t get the incentives and went to NJ anyway. It’s all a lot of BS to be honest with all these hypotheticals - I mean they don’t even calculate escalations in the rent. It’s all about optics.”** (Emphasis added).²¹⁹

Ms. Harte submitted Key Food’s second Grow NJ application to the EDA on January 29, 2019.²²⁰ Rather than claim that, if Key Food did not relocate to New Jersey, the company’s alternative plan was to delay expansion and simply remain in its current offices in Staten Island until closer to lease expiration, as the company’s first Grow NJ application claimed, the second application claimed instead that Key Food’s alternative plan was to expand into the neighboring Staten Island building:

Key Food’s headquarters currently occupies 18,552SF in Staten Island. Due to its growth over the last few years to 92 employees, the Company’s office is cramped at capacity and there is no suitable expansion option within its building, so, the Company is considering

²¹⁵ Exhibit 106.

²¹⁶ Exhibit 106.

²¹⁷ Exhibit 106.

²¹⁸ Exhibit 107.

²¹⁹ Exhibit 107.

²²⁰ Exhibit 108.

leasing an additional 12,000SF at 1150 South Avenue, right next door.

Alternatively, the Company could relocate its headquarters to a larger single space in a building in Matawan, New Jersey, where it could alleviate the cramping and have room to accommodate its expected future growth. However, if the Company relocates, it would incur approximately \$1.7M in lease termination costs as its current lease does not expire until the end of 2021. Additionally, Key would need to maintain a small office in Queens, NY for employees and amenities to service a group of stores that it is in the process of acquiring as a Matawan office (58 miles from Queens) would be too far for client suppliers and employees to travel to (as opposed to the 34 miles from its current Staten Island HQ).

Key also estimates it would need to pay severance and rehiring cost to replace several key employees that reside in Long Island as it is unlikely they would be willing to commute to Matawan.

Finally, if Key Food were to relocate to New Jersey, it would have to make approximately \$4M in capital investments to equip and build out the space. The Staten Island expansion space option is currently built out as open space, so very little renovation would be required and because of the open plan, the space can accommodate a higher density than in NJ where executive offices, conference rooms and other amenities must be built.

Altogether, the capital improvements, additional Queen's [sic] rent, severance and lease termination costs make NJ about \$4.7M more expensive over a 10-year term than a Staten Island expansion. A GROW NJ award of an estimated \$4M would essentially put NJ on par with NY option and help cover the additional costs. Without a GROW NJ award, a NJ relocation would not be economically viable. Therefore, the award of a GROW NJ grant is a material factor in the Company's relocation decision and would not happen without it.²²¹

On February 14, 2019, the EDA underwriter assigned to Key Food's application wrote to Ms. Harte that, following an internal discussion at the EDA, Key Food was requested to "provide a written narrative as to why an expansion scenario in NY was not included in the first application and is now included in the revised application. . . . [W]hat changed? Please include discussion around the thought process in attaining a NY RFP for 12,000 Sq. Ft. in August of 2018, not including it as a viable option in the original application and then including it in the revised

²²¹ Exhibit 108.

application.”²²² In another email, the EDA underwriter added that the explanation “will need . . . to come from the Company[.]”²²³

Ms. Harte and Key Food’s management proceeded to work on an explanation to provide the EDA for the company’s changed narrative. Ms. Harte wrote to Key Food’s management: “I think instead of saying that we changed our minds that we really can’t deal with the cramped conditions etc... it would be more palatable to blame it on the ‘planned’ acquisition of these three new stores....let me know if that works.”²²⁴ Ms. Harte proposed a statement to submit to the EDA claiming that Key Food had acquired three new stores since the company submitted its first Grow NJ application to the EDA, “which means it must expand in order to accommodate this new acquisition as there is simply no more expansion space in its existing office.”²²⁵ Therefore, Ms. Harte’s proposed statement claimed, the company’s expansion into the neighboring building, discussed in Key Food’s second Grow NJ application, had become “the only viable alternative.”²²⁶

Key Food’s Ms. Konzelman responded to Ms. Harte that it was “not the acquisition of the 3 stores that [was] exacerbating [Key Food’s] space constraints” but rather the company’s expansion into Florida and certain technical projects that required space for IT workers.²²⁷ Ms. Harte replied: “Even better!”²²⁸

Ms. Harte and the Key Food team continued to revise the company’s written narrative to submit to the EDA. After a series of revisions, the team completed a letter, signed by Key Food’s Chief Executive Officer, Dean Janeway, and its Chief Financial Officer, Sharon Konzelman, which explained that at the time of Key Food’s first Grow NJ application, Key Food was “not prepared to commit to lease [the neighboring building expansion] space if [the company was] turned down by NJEDA.”²²⁹ Since then, however, Key Food had decided to hire new employees to work on, first, the company’s expansion to Florida and, second, a computer network development project.²³⁰ As a result of those planned new hires, Key Food’s letter explained, the company now had “no choice” but to expand.²³¹ Thus, as explained in Key Food’s second Grow NJ application, if the company were denied tax incentives from the EDA, it intended to expand into the neighboring building in Staten Island.²³² Ms. Harte sent the letter from Key Food’s executives to the EDA on February 19, 2019.²³³

²²² Exhibit 109.

²²³ Exhibit 109.

²²⁴ Exhibit 110.

²²⁵ Exhibit 110.

²²⁶ Exhibit 110.

²²⁷ Exhibit 110.

²²⁸ Exhibit 110.

²²⁹ Exhibit 111.

²³⁰ Exhibit 111.

²³¹ Exhibit 111.

²³² Exhibit 111.

²³³ Exhibit 112.

On February 25, 2019, Ms. Harte emailed Key Food’s management that she had “[g]reat news!!!!”²³⁴ She had just heard from the EDA, she wrote, that Key Food was almost “home free” and its application was likely to be approved.²³⁵ Key Food’s Ms. Konzelman forwarded Ms. Harte’s email to the company’s Chief Executive Officer, Mr. Janeway, and commented: “Never expected this!!!!”²³⁶

On March 12, 2019, the EDA approved Key Food for up to \$4.9 million in tax incentives to relocate to New Jersey rather than to expand in Staten Island. Thus, the apparent work to “craft” a narrative to assuage EDA’s concerns, and “back into” an approval, succeeded.

Based on the evidence outlined above, we have referred Key Food’s application to law enforcement and have recommended that the EDA further investigate Key Food’s application and decline to certify the company for any further tax credits pending such investigation. We note that, although Key Food voluntarily cooperated with the Task Force’s investigation and provided information and evidence to the Task Force, its submissions did not resolve the issues described above.

B. Creative Management Services, LLC

Creative Management Services, LLC (which, as noted above, does business under the name “MC²”) is a brand marketing agency.²³⁷ The EDA approved MC² for up to \$2.3 million in incentives under Grow NJ on December 11, 2018. As set out in the narrative below, the principal persons involved in MC²’s Grow NJ application included the following:

- Bill Medve (MC²’s Chief Financial Officer)
- Ted Zangari (retained tax incentives attorney at Sills Cummis & Gross P.C.)
- Cecilia Lassiter (retained tax incentives attorney at Sills Cummis & Gross P.C.)
- Dylan Tusinac (retained real estate broker at Cushman & Wakefield)
- Robert Rudin (retained real estate broker at Cushman & Wakefield)
- Radha Kalaria (retained architect at Studio Eagle)

In early 2018, MC²’s lease on its headquarters office space in Chestnut Ridge, New York was approaching expiration, and, although MC² had the option of renewing the lease in Chestnut Ridge, the company was interested in exploring potential relocation sites in New Jersey that were less expensive and could afford the company better transit access to New York City than its existing offices.

After MC² engaged real estate brokers from Cushman & Wakefield in April 2018 to assist with the company’s real estate search, MC² and the brokers proceeded to explore site options in New Jersey. At an early stage of these search efforts, it is unclear precisely when, Cushman &

²³⁴ Exhibit 113.

²³⁵ Exhibit 113.

²³⁶ Exhibit 114.

²³⁷ MC² and the law firm that represented the company before the EDA, Sills Cummis & Gross P.C., both voluntarily cooperated with the Task Force’s investigation. Much of the evidence discussed in this section was provided by MC² and its lawyers.

Wakefield informed MC² that the company could potentially qualify for incentives from New Jersey authorities if it chose to relocate to New Jersey.

Internal email correspondence indicates that by May 21, 2018, MC² and Cushman & Wakefield had narrowed down the site options and were “focus[ing] on” a few sites in Paramus, New Jersey.²³⁸ At least one of the options in Paramus was less expensive than MC²’s existing site in Chestnut Ridge, even without taking incentives into account. MC² and the brokers did not look at any site options outside New Jersey.²³⁹

As MC² focused on Paramus as the preferred relocation site, MC²’s brokers at Cushman & Wakefield introduced the company to Ted Zangari of Sills Cummis & Gross P.C. (“Sills Cummis”), who was described by the broker’s introductory email as “the premier benefits consultant in the state.”²⁴⁰ On May 23, 2018, Cushman & Wakefield wrote to MC² to schedule a time “for a call with Ted Zangari at Sills Cummis – to discuss New Jersey state incentives for moving into NJ.”²⁴¹ MC² and Cushman & Wakefield proceeded to have an initial call with Mr. Zangari on May 30, 2018.²⁴²

Based on the evidence available to the Task Force, it appears that MC²’s call with Mr. Zangari on May 30, 2018 led the company to look for a real estate option outside New Jersey, in addition to the sites that MC² was considering in Paramus, to serve as a less expensive alternative site for MC²’s Grow NJ application.²⁴³ On the date of the call with Mr. Zangari, MC² was already scheduled to tour two additional sites in New Jersey, both in Hackensack, two days later, on June 1, 2018. The purpose of this tour, the company’s brokers at Cushman & Wakefield had explained, was so that, in addition to MC²’s preferred site in Paramus, the company would also have “a second building option” in order to “create leverage in [the] negotiations when [they] trade paper on the unit [they] wish to pursue.”²⁴⁴ After the call with Mr. Zangari on May 30, 2018, concluded, the

²³⁸ Exhibit 115.

²³⁹ Additionally, it appears that MC² communicated to certain third parties during this time period that the company’s aim was to relocate into New Jersey. Because MC² and its brokers at Cushman & Wakefield were in the process of searching for real estate options in New Jersey, the brokers introduced MC² to architectural firms that the company could use later for the planned office relocation. In introducing the firms, Cushman & Wakefield emphasized that they were all “controlled by New Jersey based principles [sic].” Exhibit 116. After MC² requested that the architectural firms submit proposals to work with the company, one of the firms, Studio Eagle, submitted its proposal on April 24, 2018. Under the “Project Understanding” heading, Studio Eagle’s proposal memorandum stated: “MC² is looking to relocate to Bergen County New Jersey[.]” Exhibit 117 at 6.

²⁴⁰ Exhibit 116.

²⁴¹ Exhibit 118.

²⁴² Exhibit 119.

²⁴³ The Task Force spoke with both Mr. Zangari and Bill Medve, the MC² employee who participated in the call with Mr. Zangari. Both stated that they did not recall the call. Therefore, the Task Force’s analysis is based on the email correspondence described herein.

²⁴⁴ Exhibit 120. Another document in the Task Force’s possession suggests that MC² did not use either of the Hackensack sites for purposes of negotiation leverage, but instead switched to a different site in Upper Saddle River, New Jersey for such purposes. *See* Exhibit 121.

brokers added a third site—this one in New York—to the June 1, 2018 tour itinerary: the Blue Hill Plaza office complex.²⁴⁵ In the calendar invitation for the tour, after descriptions of the two Hackensack sites that the company would visit first, the brokers wrote the following explanation to MC² for the third stop at the Blue Hill Plaza:

In addition, our call with Ted Zangari went well. However, we are going to need a comparable NY option to apply for the NJ Grow Program to create a sense of state competition. Ted stated that we need to get as far along as proposals/LOI with this option. We have an appointment at 1 Blue Hill Plaza, Pearl River, NY at 11:30 AM to visit a sublease option that can accommodate our requirement.

(Emphasis added).²⁴⁶ Based on the evidence available to the Task Force, this appears to be the first time that any “NY option” was mentioned in connection with MC²’s office relocation. As described above, the search prior to this point was limited to New Jersey options.

MC² and its brokers visited the Blue Hill Plaza on June 1, 2018. Specifically, they visited space at the office complex that was already leased to an existing tenant, ACORD Corporation, which was searching for a third party to sublease its space. This was the MC²’s first and only visit to the Blue Hill Plaza. It was also the only site in New York that the company visited or considered in any manner.

On June 7, 2018, MC²’s Chief Financial Officer, Bill Medve, wrote to Mr. Zangari that the company’s board had given “the green light” to proceed with the office relocation efforts.²⁴⁷ Mr. Medve wrote that the company had “looked at several acceptable spaces in both NY and NJ” and, after considering the relative benefits of each, decided to pursue a relocation to Paramus, New Jersey and an application for “NJ tax incentives.”²⁴⁸

MC² retained Mr. Zangari and his firm, Sills Cummis, to assist the company with its Grow NJ application. Under the letter agreement between MC² and Sills Cummis, dated June 11, 2018, Sills Cummis was tasked with “represent[ing] [MC²] in pursuing a financial incentives package from the State of New Jersey”²⁴⁹ The agreement did not provide for any services related to incentives from New York authorities in connection with a potential relocation by MC² to the Blue Hill Plaza in New York. MC² did not take any steps to pursue or analyze incentives opportunities from New York authorities.

By September 4, 2018, MC²’s negotiations with its preferred site in Paramus had progressed to the point that the company’s brokers at Cushman & Wakefield and the building’s representatives were “finalizing terms on [the site].”²⁵⁰ The parties reached a final agreement by September 11, 2018, and the Chief Executive Officer of MC² and the Senior Vice President of

²⁴⁵ Exhibit 120.

²⁴⁶ Exhibit 120.

²⁴⁷ Exhibit 122.

²⁴⁸ Exhibit 122.

²⁴⁹ Exhibit 123.

²⁵⁰ Exhibit 124.

Leasing at the Paramus building’s ownership company both signed a letter of intent for MC² to lease space in the building.²⁵¹

With the letter of intent for the Paramus building signed, it remained for MC² to secure a lease proposal for the company’s alternative site. Although MC²’s deadline for submitting its Grow NJ application based on its internal timeline was approaching, MC² had not yet secured a lease proposal from the New York alternative site, which was necessary for the company’s anticipated Grow NJ application. MC²’s brokers at Cushman & Wakefield had requested a sublease proposal from ACORD Corporation, the Blue Hill Plaza tenant, in June 2018, but the company had still not made a sublease offer.²⁵² On September 11, 2018—the same day that the letter of intent for the Paramus site was signed by MC² and the landlord—MC²’s brokers wrote to ACORD Corporation’s brokers concerning the Blue Hill Plaza sublease: “I know it has been some time, but this has started to be considered a serious option in our process. Could you please respond to the following RFP. Thanks again.”²⁵³

ACORD Corporation provided a sublease proposal to MC² the following day.²⁵⁴ However, because the proposed sublease term was for less than four years, MC²’s attorney, Mr. Zangari, advised the company that the sublease would be inadequate for comparative purposes on the Grow NJ application, as MC²’s proposal for the Paramus site was for a lease term of eleven years and extendable for an additional five year renewal term.²⁵⁵ Mr. Zangari recommended that MC² seek “a proposal from the prime landlord for the rest of the 15 year comparative two state analysis...”²⁵⁶

On September 20, 2018, MC²’s brokers at Cushman & Wakefield sent a request to the Blue Hill Plaza’s brokers for MC² to lease space at the Blue Hill Plaza directly from its owners.²⁵⁷ MC²’s brokers proposed that the Blue Hill Plaza’s owners release ACORD Corporation from the remainder of its lease and, in turn, directly lease ACORD Corporation’s space to MC².

Three days later, on September 23, 2018, MC²’s brokers emailed the Blue Hill Plaza’s brokers about the proposal: “Following up on this. Do you think we will have a response this week?”²⁵⁸ The Blue Hill Plaza’s brokers responded: “We will need a bit more time, this is a complicated deal with three parties involved. Please let your client know we are working on it.”²⁵⁹ Internally, MC²’s team conferred on how to “expedite [the] process” given the need to submit MC²’s Grow NJ application to the EDA “ASAP.”²⁶⁰

The next day, on September 24, 2018, MC²’s brokers sent the Blue Hill Plaza’s brokers a revised request for a lease proposal, this one asking for different space at the office complex than

²⁵¹ Exhibit 125.

²⁵² Exhibit 126.

²⁵³ Exhibit 127.

²⁵⁴ Exhibit 128.

²⁵⁵ Exhibit 129.

²⁵⁶ Exhibit 129.

²⁵⁷ Exhibit 130.

²⁵⁸ Exhibit 131.

²⁵⁹ Exhibit 131.

²⁶⁰ Exhibit 131.

the company had requested four days earlier.²⁶¹ The ACORD Corporation space that MC² had pursued first was on the fifteenth floor of the complex's office tower, 1 Blue Hill Plaza. MC²'s revised request asked instead for space on the sixth floor of the complex's shorter building, 2 Blue Hill Plaza, which was vacant at that time and could therefore be leased directly to MC² without a third party's involvement in the transaction. MC² had never visited the space on the sixth floor of 2 Blue Hill Plaza that its brokers asked for in the revised request, and the Task Force is unaware of any evidence that MC² took any steps to assess the suitability of the space in the revised request.²⁶²

The Blue Hill Plaza's brokers provided a proposal four days later, on September 28, 2018.²⁶³ Cushman & Wakefield forwarded the proposal to MC², writing in their cover email: "This will serve as our out of state alternative for the NJEDA incentives."²⁶⁴

As soon as MC² received the lease proposal for the Blue Hill Plaza on September 28, 2018, the company and its retained professionals quickly pulled together the remaining items needed to finalize MC²'s Grow NJ application before its submission to the EDA. The architecture firm working with MC² on the relocation, Studio Eagle, had previously prepared a budget, dated August 28, 2018, for design and construction management services in connection with MC²'s anticipated new office space in Paramus.²⁶⁵ However, Studio Eagle had not yet prepared a budget for any similar services for the Blue Hill Plaza, which would be needed for the Grow NJ application to demonstrate to the EDA the cost differential between the two purportedly competing sites. Thus, after receiving the proposal letter for the Blue Hill Plaza on the morning of September 28, 2018, MC², the attorneys at Sills Cummis, the brokers at Cushman & Wakefield, and the architects at Studio Eagle scheduled a conference call for 4:00 PM that afternoon.²⁶⁶ The subject line for the email inviting the parties to the conference call was "MC2 NJEAD [sic] requirement related to budget – URGENT[.]"²⁶⁷ Later that day, at 5:52 PM, Studio Eagle circulated a budget for the Blue Hill Plaza.²⁶⁸ The cover email from Studio Eagle attaching the budget stated: "**As discussed this budget is strictly for purposes of assisting with NJEDA application. Studio Eagle has not verified existing site conditions and therefore cannot be held accountable to fulfill this fit out until completion of due diligence review and design development.**" (Emphasis added).²⁶⁹

²⁶¹ Exhibit 132.

²⁶² MC²'s attorneys at Sills Cummis represented to the Task Force that the space requested in MC²'s September 20 and 24 letters had changed because the company "had narrowed down the square footage it would need."

²⁶³ Exhibit 133; Exhibit 134.

²⁶⁴ Exhibit 134.

²⁶⁵ Exhibit 135; *see also* Exhibit 136.

²⁶⁶ Exhibit 137.

²⁶⁷ Exhibit 137.

²⁶⁸ Exhibit 137.

²⁶⁹ Exhibit 137. Studio Eagle's pitch deck that the architecture firm presented to MC² at the outset of the engagement explained that Studio Eagle's usual approach was to do a "test fit" (essentially, a preliminary floorplan) for properties the company was considering before preparing budgets,

Less than an hour later, at 6:37 PM, Sills Cummis submitted MC²'s completed Grow NJ application to the EDA, attaching as evidence of the company's alternative site the proposal letter for the company to lease space at the Blue Hill Plaza and the budget from Studio Eagle to fit out the space.²⁷⁰ The application stated that, with MC²'s lease on its current office space expiring and the company considering relocation sites in both Paramus, New Jersey and Pearl River, New York, the company's jobs were at risk of being located in New York rather than New Jersey.²⁷¹ The application further stated that MC² found the Blue Hill Plaza "attract[ive]" for several reasons, including the office complex's shuttle service to train and bus stations, the "turn-key" condition of the property, and its "desirable on-site amenities."²⁷²

On October 1, 2018, an EDA employee wrote to MC²'s attorneys at Sills Cummis to ask for additional information and documents, including "[p]ost renovation floor plan[s] . . . for both sites[.]"²⁷³ Sills Cummis forwarded the EDA's request to MC², which, in turn, forwarded it to Studio Eagle.²⁷⁴ Studio Eagle had already created a floorplan design for the Paramus site, but it had not created one for the Blue Hill Plaza. Studio Eagle responded to MC² that it would "target to finish [the work] by end of this week[.]"²⁷⁵ Three days later, the architects completed and circulated a floorplan design for the Blue Hill Plaza, and Sills Cummis submitted it to the EDA.²⁷⁶

On December 11, 2018, the EDA approved MC² for up to \$2.3 million in tax credits to incentivize it to relocate to Paramus rather than the Blue Hill Plaza in New York.

Based on the evidence outlined above, the Task Force has serious questions about the propriety of MC²'s incentives application in the particular respects discussed. We have referred MC²'s application to law enforcement and have recommended that the EDA further investigate MC²'s application and decline to certify the company for any further tax credits pending such investigation. We note that, although both MC² and its attorneys at Sills Cummis voluntarily cooperated with the Task Force's investigation, provided information and evidence to the Task Force, and produced witnesses for the Task Force to interview, the submissions did not adequately resolve all issues related to the application.

which, the architects explained, ensured that "our budgets are based on verified data." Exhibit 117 at 29-30. In this case, however, Studio Eagle did *not* conduct a test fit of the Blue Hill Plaza space before it prepared the budget "strictly for purposes of assisting with [MC²'s] NJEDA application." Studio Eagle *did* conduct a test fit later (after the EDA requested that MC² provide floorplans, as described herein). MC²'s attorneys at Sills Cummis claimed to the Task Force that, although Studio Eagle was unwilling to "be held accountable to fulfill" the work set out in the budget on the day that MC² submitted its Grow NJ application, September 28, 2018, Studio Eagle subsequently indicated that it would satisfy the budget. However, the Task Force has not seen documentary evidence that substantiates this contention.

²⁷⁰ Exhibit 138.

²⁷¹ Exhibit 139.

²⁷² Exhibit 140.

²⁷³ Exhibit 141.

²⁷⁴ Exhibit 141.

²⁷⁵ Exhibit 141.

²⁷⁶ Exhibit 141; Exhibit 142.

C. Konica Minolta Business Solutions USA, Inc.

As described below, there is evidence that Konica Minolta *did* consider potentially relocating its jobs to New York, but the company did surprisingly little diligence on the suitability of its purported New York site, and, as noted earlier, it was one of three companies that proposed relocation in the same specific floor within Blue Hill Plaza.

Konica Minolta, a multinational technology company, resulted from the merger of formerly separate Japanese corporations Konica and Minolta.²⁷⁷ Prior to the 2003 merger, Konica's United States headquarters were in Windsor, Connecticut, and Minolta's were in Ramsey, New Jersey. After the merger, the combined company considered consolidating the two offices in a single location in New Jersey. Because of the complexities and costs involved, the consolidation in New Jersey was continuously delayed. It was not until late 2015 that Konica Minolta started to take serious steps toward consolidation.

In late 2015, Konica Minolta's executive leadership received an invitation from the New Jersey Business Action Center ("BAC") to attend an "Executive Briefing" event at the Liberty Science Center in Jersey City. At the event, which was held on October 7, 2015, the BAC presented information about New Jersey's incentives programs and the benefits that companies could receive if they remain in New Jersey rather than relocate to another state. Konica Minolta was interested and invited a BAC representative to meet with the company in its Ramsey offices to further discuss incentives opportunities. Konica Minolta had several additional meetings with officials from the BAC and the EDA in early-to-mid 2016.

Meanwhile, Konica Minolta spoke with the company's longstanding real estate brokers at Cushman & Wakefield about the potential consolidation project and the company's discussions with New Jersey officials. Cushman & Wakefield "strongly recommended" that Konica Minolta retain the services of professional consultants to assist with the incentives application.²⁷⁸ Based on Cushman & Wakefield's recommendation, Konica Minolta spoke with their auditors at KPMG, who introduced the company to KPMG's incentives consulting team led by George Tobjy (whose work on behalf of another client, Safilo, is detailed in Section II(a)(1), above).

Konica Minolta employees met with Mr. Tobjy and his KPMG team in July 2016 to explain the office consolidation project. Although the company's primary goal was to consolidate the offices in Ramsey, New Jersey, the Konica Minolta employees told Mr. Tobjy during the meeting that the company was also interested in exploring a relocation to New York and, therefore, wanted to consider potential incentives opportunities in both states. Incentives programs in New York were on Konica Minolta's radar because, on prior occasions in 2014 and 2015, a former New York elected official had spoken to Konica Minolta about potentially relocating to New York and the benefits that could be available to the company if it did so. Thus, Konica Minolta formally engaged KPMG in September 2016 for consulting services relating to incentives programs in both New Jersey and New York.

²⁷⁷ Konica Minolta voluntarily cooperated with the Task Force's investigation. Much of the evidence discussed in this section was provided by the company.

²⁷⁸ Exhibit 143.

Konica Minolta asked the KPMG consultants for advice about how to maximize the incentives the company may receive from New York authorities, including whether specific locations within the state could boost a possible incentives award. As Konica Minolta described it in an email to KPMG, Konica Minolta was “looking [to] [KPMG] to propose sites/areas in NY for [the company’s] alternative location **based on NY Incentives available.**” (Emphasis added).²⁷⁹ For instance, on August 8, 2016, Konica Minolta asked the KPMG consultants about “potential benefits to re-locating to an area close to certain universities in NY – something about building on property offered by the university??”²⁸⁰ However, the KPMG consultants explained that Konica Minolta would not likely be able to receive benefits under the New York program in question, and so, without any incentives to do so, Konica Minolta did not focus its real estate search efforts on locations within the proximity of any universities in New York.²⁸¹ In this fashion, the location options that Konica Minolta considered were driven in large part by the possible incentives attached to those locations.

On August 12, 2016, the Cushman & Wakefield brokers presented Konica Minolta with a listing for the property in New York that was later used as the alternative site on the company’s Grow NJ application: the Blue Hill Plaza office complex in Pearl River, New York. According to Konica Minolta’s attorneys, at some point around this time—it is unclear precisely when—a Konica Minolta employee mentioned the Blue Hill Plaza to KPMG, which, in turn, cautioned Konica Minolta that the Blue Hill Plaza had been used multiple times as the alternative site on prior Grow NJ applications by other companies, and so the site may have been “**overused**” for purposes of a Grow NJ application.

The Task Force has reviewed an internal Konica Minolta document from September 2016 that indicates the company was concerned about potential “overuse” of the Blue Hill Plaza on Grow NJ applications, but the document does not indicate how Konica Minolta learned that other companies had used the office complex as the alternative site on their respective Grow NJ applications. According to Konica Minolta’s attorneys, the relevant Konica Minolta employee recalled that one of the KPMG consultants (she did not recall specifically which one) informed her of the Blue Hill Plaza’s “overuse.” However, Mr. Tobjy, the lead KPMG consultant who worked with Konica Minolta, told the Task Force that he was unaware of the Blue Hill Plaza’s use as an alternative site by prior companies and denied that he had communicated such facts to Konica Minolta. He also stated that he was confident that none of his other KPMG colleagues had done so, either. Attorneys for KPMG represented to the Task Force that Anthony Ceretti, the next most senior consultant on the KPMG team, likewise denied any communications with Konica Minolta related to this issue.

Notwithstanding KPMG’s denials during our investigation, Konica Minolta acted in reliance on its understanding—which is confirmed by the documentation above—by directing Cushman & Wakefield to search for additional sites in New York, *other than* the Blue Hill Plaza, that could satisfy Konica Minolta’s requirements, but the brokers were unable to identify another site that was preferable.

²⁷⁹ Exhibit 144.

²⁸⁰ Exhibit 145.

²⁸¹ Exhibit 145.

In September and October 2016, KPMG conducted an incentives feasibility analysis for Konica Minolta, examining the comparative scope of benefits potentially available in both New Jersey and New York. KPMG’s incentives feasibility analysis was based on assumptions that, in New Jersey, the company would consolidate in its existing Ramsey location, and, in New York, the company would relocate to the Blue Hill Plaza. Additionally, KPMG had discussions on Konica Minolta’s behalf with officials in both New Jersey and New York related to the company’s incentives opportunities. As KPMG provided information to Konica Minolta about its incentives opportunities in both states, the company asked numerous questions of the KPMG consultants about the amount of incentives the company may qualify for and how to maximize the possible benefits, and Konica Minolta incorporated the information into its internal financial analyses.

After KPMG presented the incentives analysis to Konica Minolta, the company learned, among other things, that its potential benefits in New Jersey could be increased if the company chose to relocate to a “port district” rather than consolidate in Ramsey. Armed with that information, Konica Minolta instructed its brokers at Cushman & Wakefield to start searching for properties in a New Jersey port district.²⁸² As such, Konica Minolta continued its efforts to search for potential sites based, in substantial part, on the incentives attached to those locations. This was true of Konica Minolta’s site considerations in New Jersey and also, as described above, in New York.

An internal Konica Minolta email from October 18, 2016, providing a status update on the company’s considerations, stated that Konica Minolta had met with KPMG and discussed “incentives for moving Corporate Headquarters and Windsor employees to Pearl River, NY” as well as incentives for a few different New Jersey options.²⁸³

On November 7, 2016, a Konica Minolta employee emailed the brokers at Cushman & Wakefield that he and two colleagues wanted to set up a visit to “see the inside of the Pearl River property on Veterans Memorial Drive”—that is, the Blue Hill Plaza.²⁸⁴ Konica Minolta and the brokers visited the site on November 9, 2016. After the visit, however, the company and its brokers did not initiate negotiations for a potential lease at the office complex—which is a relevant fact for reasons that will be described below.

Following the visit to the Blue Hill Plaza, Konica Minolta continued to consult with KPMG about the nuances of New York’s incentives programs. For instance, on November 10, 2016—the day after the Blue Hill Plaza site visit—a Konica Minolta employee emailed KPMG to ask, among other questions, whether the primary New York incentives program imposed a capital expenditure requirement, similar to the Grow NJ program in New Jersey.²⁸⁵

Also on November 10, 2016, Konica Minolta asked Cushman & Wakefield to conduct an analysis of distance and commute time for the company’s employees with respect to both the current Ramsey, New Jersey site and the contemplated Blue Hill Plaza in New York.²⁸⁶ The

²⁸² Exhibit 146.

²⁸³ Exhibit 147.

²⁸⁴ Exhibit 148.

²⁸⁵ Exhibit 149.

²⁸⁶ Exhibit 150.

analysis that Cushman & Wakefield ultimately produced for the company showed that the Ramsey location was closer to most employees' homes, but only by a few miles.

On November 29, 2016, Konica Minolta sent KPMG an internal analysis by the company of the financials of various New Jersey options, subsidized by incentives from the EDA, versus the Blue Hill Plaza, subsidized by incentives from New York authorities. KPMG had provided the information about incentives opportunities to Konica Minolta, and the company incorporated such information into its own financial analysis. Commenting on Konica Minolta's internal analysis, Mr. Tobjy, the KPMG consultant, observed that New Jersey, rather than New York, presented the "clear cost saving options."²⁸⁷ Konica Minolta and KPMG met to discuss the financial analysis of the company's options in the two states.

In December 2016, Konica Minolta communicated to KPMG that it had decided, based on the comparative financial analysis, to apply for incentives under the Grow NJ program, and not under any New York incentives programs. The company's Grow NJ application would request incentives to subsidize the consolidation project in Ramsey, New Jersey, and the Blue Hill Plaza in New York would serve as the alternative site on the incentives application. Although Konica Minolta decided in December 2016 to pursue Grow NJ incentives, for internal reasons unrelated to the incentives process, its application was delayed and ultimately was not filed with the EDA until September 21, 2017.

Between November 9, 2016, when Konica Minolta visited the Blue Hill Plaza, and September 21, 2017, when Konica Minolta submitted its Grow NJ application to the EDA almost a year later, the company did not make any efforts to pursue an actual lease proposal for the New York office complex, nor did it conduct any other sort of suitability analysis as far as we are aware. As described above, when Konica Minolta assessed a potential relocation to New York, it focused primarily on the incentives opportunities in the state and on how various geographic areas within the state lined up with the company's objectives, and dedicated relatively less attention to *specific* real estate options within New York. Moreover, because its application was delayed from the time it decided to pursue New Jersey incentives, in December 2016, to the time of its application in September 2017, it presumably had no reason to continuously check on the continued availability of space in the Blue Hill Plaza (although there is evidence that the company confirmed the availability of the Blue Hill Plaza space at least once, in March 2017²⁸⁸). Thus, based on the documentary evidence available to the Task Force, it appears that one Konica Minolta employee involved in the office consolidation project was unsure around the time of its incentives application in September 2017 whether the Blue Hill Plaza even still had available space to offer the company. As the company's Grow NJ application was being finalized, a Konica Minolta employee internally asked his colleague, "**What do we do if that Orange/Rockland county space has been leased already[?]**"²⁸⁹ (In fact, about a week prior, Konica Minolta's real estate brokers at Cushman & Wakefield had reached out to the Blue Hill Plaza's brokers and confirmed that the office complex had sufficient available space for Konica Minolta—and it did.²⁹⁰)

²⁸⁷ Exhibit 151.

²⁸⁸ Exhibit 152.

²⁸⁹ Exhibit 153.

²⁹⁰ See Exhibit 154.

When KPMG submitted Konica Minolta’s Grow NJ application to the EDA on September 21, 2017, the only documentation of the Blue Hill Plaza alternative site was a listing for the office complex. That was not enough to satisfy the EDA’s alternative site requirements, however, because even though Konica Minolta had sincerely assessed a potential relocation to New York, the manner in which it had done so did not lead to the type of documentation the EDA required for companies to establish that the award of tax credits would be a “material factor” in the decision to move to New Jersey. Later in the day after Konica Minolta submitted the application, an EDA employee emailed the company’s consultants at KPMG and asked for documentation of the company’s lease proposal for the “alternate NY location.”²⁹¹ Konica Minolta and KPMG had no such lease proposal to produce, which the KPMG consultants disclosed to the EDA, contending that, based on their understanding of the Grow NJ program, Konica Minolta was not required to provide a lease proposal in support of Konica Minolta’s showing that tax incentives were a “material factor” in the company’s location decision. After a series of discussions about the alternative site documentation requirements between KPMG and the EDA, including the EDA’s senior leadership, KPMG agreed to seek to obtain a response to a request for proposal (“RFP”) from the Blue Hill Plaza and, once a response was received, would submit it to the EDA. Konica Minolta’s brokers at Cushman & Wakefield contacted the Blue Hill Plaza’s brokers on Konica Minolta’s behalf and sent them an RFP for space at the office complex. The Blue Hill Plaza’s brokers provided a lease proposal on October 5, 2017, and KPMG, in turn, submitted it to the EDA.

On November 14, 2017, the EDA approved Konica Minolta for up to \$29.4 million in tax incentives to consolidate its offices in New Jersey rather than to relocate to the Blue Hill Plaza in New York.

Although there is substantial evidence, described above, that Konica Minolta extensively considered a potential relocation to New York, our review raised some concerns: (a) Konica Minolta initially submitted its application for a Grow NJ award without a response to an RFP or similar documentation indicating that it was seriously considering the site, which, by 2017, EDA required as proof of an alternative site; (b) Konica Minolta’s Blue Hill Plaza site identified the same space that was used as an alternative site by two other Grow NJ applicants at the same time (in September 2017); and (c) we were not satisfied with certain of KPMG’s assertions during the investigation. Nevertheless, the fact remains that Konica Minolta did generally conduct meaningful diligence about the financial implications of a move to New York, which is well

²⁹¹ Exhibit 155. Specifically, the email from the EDA employee requested an “LOI” (an acronym for “letter of intent”) for the New York alternative site. KPMG interpreted the email to mean that the EDA was requesting a letter signed by both Konica Minolta and the Blue Hill Plaza’s landlord, which KPMG understood would indicate a meeting of the minds between the parties on the key terms of a deal and a real intention to enter into a binding contract. KPMG protested to the EDA that such a signed letter of intent for the Blue Hill Plaza would be inappropriate when Konica Minolta’s primary preference, as indicated by the Grow NJ application, was to consolidate in New Jersey, and the Blue Hill Plaza was the company’s secondary alternative option. The EDA agreed and required Konica Minolta to submit evidence of a proposal letter for space at the Blue Hill Plaza, but not a signed letter of intent.

documented. Accordingly, we leave it to the EDA to determine whether additional investigation of Konica Minolta’s application is merited by the facts outlined above.

D. Findings Concerning the EDA’s Alternative Site Requirements as Applied to Companies Relocating into New Jersey

Incentives under Grow NJ are not an entitlement available to all companies that locate in New Jersey, but rather are intended to incentivize companies faced with a true relocation choice to choose New Jersey. Thus, it is necessary that the EDA have some mechanism to distinguish, on the one hand, companies truly faced with such a choice (and which therefore may require incentives to choose New Jersey) from, on the other hand, companies that will inevitably relocate into New Jersey irrespective of any incentives to do so (and which therefore should not receive unnecessary tax credits). However, the case studies discussed above demonstrate that the specific manner in which the EDA applied the “alternative site” requirement was poorly suited to the task. In different respects, the “alternative site” requirement, as administered by the EDA, was both underinclusive and overinclusive.

First, the EDA’s requirements were underinclusive to the extent that they led the EDA to reject incentives applications even when a company had sincerely explored locating its jobs in another state, albeit in such a manner that did not result in the generation of documentation necessary to satisfy the EDA’s specific requirements related to an alternative site. For example, the Konica Minolta case study illustrates how a company may conduct a deliberative process that includes consideration of multiple states but does not focus on real estate options. Based on the Task Force’s review of the available evidence, it appears that Konica Minolta sincerely assessed the availability of incentives in both New Jersey and New York, and those efforts led the company to conclude that the former state was preferable to the latter for the company’s consolidated office location. Konica Minolta’s considerations, as demonstrated by the evidence, satisfied the Grow NJ program’s *statutory* requirements for granting incentives to companies relocating out-of-state jobs into New Jersey (which, again, are less specific than those for in-state applicants): the award of tax credits was clearly a “material factor” in Konica Minolta’s decision to relocate the jobs to New Jersey (instead of New York, as Konica Minolta had alternatively considered), and its projected new full-time jobs in New Jersey would not have occurred “but for the provision of tax credits” under Grow NJ.²⁹²

However, because Konica Minolta’s analysis focused on the available incentives in New Jersey and New York—and determined that the former were preferable to the latter—Konica Minolta did not reach advanced stages of pursuing a specific real estate option in New York and, therefore, did not have a lease proposal in hand for any New York site before the company submitted its Grow NJ application to the EDA. As a result, even though Konica Minolta had, in good faith, assessed a potential relocation to New York through the lens of incentives opportunities, the company failed to satisfy the EDA’s requirement that applicants produce certain documentation, such as a lease proposal, relating to their alternative site. The EDA did not allow Konica Minolta’s Grow NJ application to proceed until the company initiated lease negotiations with the Blue Hill Plaza office complex in New York and obtained a lease proposal for the site. This is despite the fact that Konica Minolta had sincerely considered moving its jobs to another

²⁹² See N.J. Stat. § 34:1B-244(a)(4), (d).

state, satisfied the statutory requirements for incentives, and, more fundamentally, submitted an application that fit within the purpose of the Grow NJ program—to promote economic development in New Jersey.

Second, the EDA’s requirements were overinclusive to the extent that the EDA approved incentives applications submitted by companies that had not seriously considered their purported alternative site but had rather pursued it primarily, if not solely, in order to produce documentation for the EDA. For these companies, the EDA’s alternative site requirement did not serve as a meaningful test of whether the company was facing a true location decision (and therefore may require incentives to choose New Jersey), but merely created a “paperwork hurdle” for the companies to overcome. Based on the evidence available to the Task Force, Key Food appears to be illustrative. As described above, Key Food retained CBRE to help the company relocate from Staten Island to New Jersey. This goal—relocation into New Jersey—was clear. However, at the outset of the engagement, one of the CBRE brokers emailed Key Food’s management to explain that, in addition to securing the New Jersey site that would ultimately become Key Food’s new headquarters, the company also needed to identify a separate alternative site in New York (“a viable option . . . in NY that is cheaper”) so that the company could “qualify for the Grow NJ grant.” Highlighting the apparent lack of any real interest by Key Food in actually considering New York options, the CBRE broker assured Key Food that the work necessary to identify an alternative site in New York for the Grow NJ application “shouldn’t require much work on [Key Food’s] part.”

The MC² case study also appears to show efforts intended primarily if not solely to generate documentation to satisfy the EDA’s alternative site requirements. MC² visited a certain space at the Blue Hill Plaza office complex in New York and started to pursue a lease proposal for that space. However, as described above, when MC²’s deadline for applying for Grow NJ incentives was approaching in September 2018, the company did not yet have adequate documentation concerning the Blue Hill Plaza to submit to the EDA. Apparently in order to expedite acquiring such documentation, MC²’s brokers revised their request to the Blue Hill Plaza and requested a lease proposal for a different space in the office complex that MC² had not yet seen. Then, MC²’s architects rushed to prepare a budget for fitting out the Blue Hill Plaza space, specifying that the budget was intended “strictly for purposes of assisting with NJEDA application” and that the architects refused to “be held accountable to fulfill” the work set out in the budget at the rates listed until they further assessed the project.

These facts suggest that the EDA’s alternative site requirement was ineffective at satisfying its presumed purpose of establishing the “at risk” nature of an applicant company’s jobs. Based on the evidence reviewed by the Task Force, it appears that Grow NJ applicant companies and the third parties working with them could easily generate documentation sufficient to satisfy the EDA’s alternative site requirements even when the company’s actual consideration of the alternative site as a relocation option was limited, nonexistent, or insincere.

Furthermore, the Task Force has found that the EDA in some cases accepted documentation of alternative sites in factual circumstances that undermined the presumed purpose of the alternative site requirement—that is, establishing the bona fide nature of the tax incentives on the applicant’s decision to favor New Jersey as opposed to the out-of-state location. For example, as described above, when Key Food first submitted its Grow NJ application to the EDA, it did not include an alternative site in the application that satisfied the EDA’s requirements. EDA

staff rejected Key Food’s application due to the lack of an adequate alternative site, but then essentially invited Key Food to reapply. In such circumstances, it seems readily apparent that a company’s reapplication with an alternative site may say less about the company’s actual intentions to locate outside New Jersey than they do about the company’s desire to receive incentives from the EDA. Similarly, when Konica Minolta submitted its application to the EDA, the company did not have documentation of a lease offer for its alternative site in New York. Konica Minolta obtained such a lease offer only after the EDA asked it to. These facts give color to Susan Harte’s statement to Key Food, described above, that the EDA **“seem[ed] much more focused on just having an audit worthy application than the actual likelihood a company would or would not make the move.”**²⁹³

For the reasons described above, the Task Force finds that the specific manner in which the EDA applied the alternative site requirement to companies seeking incentives to relocate into New Jersey—narrowly and inflexibly focused on the documentation related to the applicant company’s purported out-of-state site—failed to advance the aims of the Grow NJ program. The Task Force reiterates its recommendation, stated in the Second Report, that the EDA consider whether its analysis of the “at risk” nature of an applicant company’s jobs should differ for intra-state and inter-state relocations. For companies seeking to relocate jobs into New Jersey from outside the state, the EDA may consider a more flexible analysis than previously applied and which appropriately takes into account circumstances, such as those illustrated by Konica Minolta, when a company may be faced with a true location decision, albeit not one that generates the specific documentation the EDA previously required. The Task Force also reiterates its recommendation, stated in the Second Report, that the EDA consider ways to improve its “material factor” evaluations, including for companies seeking incentives to relocate into New Jersey. The EDA’s analysis of location documents submitted by incentives applicants should not be treated as a “box checking” exercise, but rather as a means, among others, of determining the actual risk that a company may not locate in New Jersey if not provided with incentives to do so.

IV. ADDITIONAL DEFICIENCIES IN THE EDA’S OVERSIGHT OF THE MATERIAL FACTOR REQUIREMENT RELATING TO HOLTEC INTERNATIONAL’S AWARD

The Task Force has previously addressed oversight failures with respect to the EDA’s approval of a \$260 million award under Grow NJ to Holtec International (“Holtec”). In this section, we discuss an additional oversight failure in connection with the Holtec award; specifically, the EDA failed to request supporting documentation for representations that Holtec

²⁹³ We reiterate our admonition in the Second Report that “the shortcomings we perceive in the EDA’s analysis does not exculpate any company that may have misrepresented its relocation intent to the EDA in order to qualify for tax incentives. It is not a defense to public program fraud that the program imposes unwise qualifying criteria.”

had made regarding its alternative site in South Carolina, including the cost of that site, under circumstances in which it should have been readily apparent that such a request was warranted.²⁹⁴

As set forth below, to support its application for an incentive award, Holtec claimed that it had two incentive offers pending from the State of South Carolina. The first offer concerned a site we refer to herein as the “Savannah River Site” in South Carolina. However, any such offer regarding the Savannah River Site location appears to have been stale by the time Holtec submitted its application to the EDA. The second offer concerned a shipyard in Charleston, South Carolina. However, Holtec has recently confirmed that it only engaged in oral discussions regarding the possibility of such an offer from South Carolina and did not have a binding offer regarding the shipyard pending at the time it applied to the EDA. Nevertheless, the EDA’s Board, in voting to approve Holtec’s award, relied on Holtec’s representations regarding its purported South Carolina alternatives and the cost of the Charleston, South Carolina alternative.

A. Factual Background Regarding Holtec’s Application and Alternative Site

Since at least 2012, Holtec was exploring potential development of small modular nuclear reactor (“SMR”) technologies at a new facility at the Savannah River Site near Aiken, South Carolina.²⁹⁵ On March 19, 2013, Holtec announced that it had partnered with an entity called NuHub (a consortium of business developments leaders that sought to promote nuclear energy development in South Carolina) and the State of South Carolina to compete in bidding on a Department of Energy grant to support Holtec’s proposed SMR development at the Savannah River Site.²⁹⁶ At the same time that Holtec was pursuing these efforts in South Carolina, it was also exploring what incentives might be available to it if it, instead, constructed a new facility in

²⁹⁴ Additional EDA oversight failures with respect to Holtec’s award specifically have been addressed in previous Reports of the Task Force. The Task Force’s First Report addressed how the EDA failed to identify that Holtec, which received a \$260 million Grow award, had been debarred by the Tennessee Valley Authority. First Report at 44-45. As discussed in the Task Force’s Second Report, Holtec benefited from the phantom tax provision added to EOA 13, which Kevin Sheehan of Parker McCay proposed, for the specific purpose of increasing the size of Holtec’s award. Second Report at 34-38. Although Parker McCay was counsel to Holtec, Holtec maintains that it was not the company’s idea to propose this provision and that it did not have any input in drafting it.

²⁹⁵ Holtec Press Release, Holtec Partners with NuHub to Compete for \$452M DOE Grant for Deployment of SMR-160 in South Carolina, May 14, 2012, *available at* <https://holteciinternational.com/2012/05/14/holtec-partners-with-nuhub-to-compete-for-452m-doe-grant-for-deployment-of-smr%E2%80%90160-in-south-carolina/>.

²⁹⁶ NuHub Press Release, NuHub, State of South Carolina Announce Exclusive Partnership with Holtec International to Compete for Up To \$226M Department of Energy Award, *prnewswire.com*, March 19, 2013, *available at* <https://www.prnewswire.com/news-releases/nuhub-state-of-south-carolina-announce-exclusive-partnership-with-holtec-international-to-compete-for-up-to-226m-department-of-energy-award-198968741.html>.

Camden, New Jersey. Notwithstanding, on December 16, 2013, Holtec announced that it had lost the bidding for the Department of Energy grant.²⁹⁷

On January 20, 2014, Holtec submitted its application to the EDA seeking a \$260 million Grow NJ award.²⁹⁸ Holtec was represented by Kevin Sheehan and Phil Norcross of Parker McCay. Holtec's application stated that New Jersey was in competition with three other states for Holtec's new facility: South Carolina, Pennsylvania and Ohio.²⁹⁹ Holtec submitted with its application a memorandum entitled, "Why Expand Holtec International in New Jersey?"³⁰⁰ The memorandum described Holtec's consideration of the merits of locating its facility in each of the four states.³⁰¹ The memorandum described South Carolina as "the most aggressive and generous suitor," and added that "NuHub[] has been working hard to woo Holtec to the state."³⁰² This appeared to be a reference to Holtec's partnership with NuHub to bid on the Department of Energy grant, which by this time had failed.³⁰³

The memorandum further stated that "Holtec has discussed constructing a new 650,000 sq. ft. [facility] in Charleston, South Carolina. South Carolina will give Holtec the land."³⁰⁴ The memorandum added, "South Carolina offers cheap labor rate, a ready-to-use Charleston shipyard with an excellent harbor and a union-free labor pool."³⁰⁵ On January 30, 2014, an EDA staff member submitted a completed EDA Bonds & Incentives Request for Application Review form regarding Holtec's application, which stated in part, "Company looking to build a new facility over the next few years. The GROW is important because the CEO has meet [sic] with the Governor or [sic] South Carolina in June to discuss a possible move to Charleston, SC since SC is offering to give them an entire shipyard in Charleston for free."³⁰⁶

Holtec ultimately settled on Charleston, South Carolina as its alternate location. The documents in support of Holtec's approval included, among others, an EDA CBA form, a

²⁹⁷ Holtec Press Release, Holtec's Small Modular Reactor Program Will Proceed without DOE's Funding, December 16, 2013, *available at* <https://holtecinternational.com/2013/12/16/holtecs-small-modular-reactor-program-will-proceed-without-does-funding/>.

²⁹⁸ Exhibit 156.

²⁹⁹ Exhibit 156.

³⁰⁰ Exhibit 157.

³⁰¹ The memo also stated that Holtec had explored locating its facility in Delaware, but Holtec's application to the EDA only listed South Carolina, Pennsylvania, and Ohio as the states that Holtec was considering in addition to New Jersey.

³⁰² Exhibit 157.

³⁰³ By agreement effective May 15, 2014, Holtec terminated its arrangement with NuHub to compete for the Department of Energy grant. Exhibit 158. Accordingly, Holtec's collaboration with NuHub ended after it submitted its EDA application in January 2014 but prior to the EDA Board's vote to approve Holtec's award on July 10, 2014.

³⁰⁴ Exhibit 157.

³⁰⁵ Exhibit 157.

³⁰⁶ Exhibit 159.

confidential memorandum of analysis, and a project summary memorandum. We closely reviewed each.

The CBA listed land acquisition costs for Holtec’s Camden, New Jersey and Charleston, South Carolina locations, and the form indicated that Holtec would acquire its Charleston location at no cost.³⁰⁷ A footnote at the bottom of the CBA stated that Holtec “will not have to pay for land in [its] South Carolina alternative as shown in this analysis.”³⁰⁸ The confidential memorandum of analysis included a section entitled “Material Factor,” which stated that the Grow award “is a material factor because . . . absent incentives Camden is the more expensive option for the company. . . . Holtec management has represented that South Carolina would convey the land to Holtec for no cost”³⁰⁹ The project summary memorandum contained a section entitled “Material Factor/Net Benefit,” which stated that “Charleston, South Carolina is a lower cost option for the facility and consequently Holtec is requesting an incentive . . . to locate the project in Camden.”³¹⁰ On July 10, 2014, the EDA Board voted to approve Holtec for a \$260 million award.³¹¹

On May 1, 2019, *The New York Times* published an article regarding Holtec’s Grow award.³¹² Among other findings, the article reported that “the mayor of Charleston at the time, Joseph P. Riley Jr., said in an interview that he had never heard of Holtec exploring a move there. The Charleston Regional Development Alliance, which recruits companies to the region, said it was also unaware of the company weighing a move there.”³¹³

Between January 2020 and May 2020, Special Counsel to the Task Force engaged in phone calls and written follow-up requests to Holtec’s outside counsel to identify precisely what offer, if any, was pending for Holtec from the State of South Carolina. In recent months, Holtec has cooperated in the Task Force’s investigation and produced documents in response to Task Force requests. In early May 2020, the Task Force issued targeted follow-up requests to Holtec to

³⁰⁷ Exhibit 160.

³⁰⁸ Exhibit 160.

³⁰⁹ Exhibit 161.

³¹⁰ Exhibit 162. As was the case with many projects that the Task Force reviewed, *see infra* Section VII, the EDA’s file for Holtec contained alternate versions of the project summary memorandum, confidential memorandum of analysis, and CBA. The alternate versions have slightly different figures than those in the versions cited herein; however, these alternate versions contained the same statements that Holtec would receive land in South Carolina at no cost.

³¹¹ Exhibit 163.

³¹² Nick Corasaniti and Mathew Haag, *The Tax Break Was \$260 Million. Benefit to the State Was Tiny: \$155,520*, N.Y. TIMES, May 1, 2019, <https://www.nytimes.com/2019/05/01/nyregion/nj-tax-break-kevin-sheehan.html>.

³¹³ Nick Corasaniti and Mathew Haag, *The Tax Break Was \$260 Million. Benefit to the State Was Tiny: \$155,520*, N.Y. TIMES, May 1, 2019, <https://www.nytimes.com/2019/05/01/nyregion/nj-tax-break-kevin-sheehan.html>.

respond to specific examples of representations that it made to the EDA that South Carolina had offered to give it an entire shipyard in Charleston for free, and other similar representations.

On June 8, 2020, the Task Force received a letter from Holtec’s outside counsel enclosing additional documents.³¹⁴ The letter defended the propriety of the EDA’s award to Holtec. Regarding Holtec’s purported South Carolina options, the letter stated, “One of the discussed options was that Holtec construct its facility on part of the Savannah River Site. As part of that proposal, Holtec would have been required to build the facility and create certain jobs, but **would not have had any upfront costs to acquire or lease the land.**”³¹⁵ The letter did not indicate whether this offer was affected by Holtec’s failure to win the bidding for the Department of Energy grant to support Holtec’s proposed Savannah River Site development, which predated Holtec’s submission of its application to the EDA. To date, the Task Force has not seen any evidence confirming that Holtec had an offer of free land at the Savannah River Site that was pending at the time that Holtec submitted its application to the EDA.

Regarding Holtec’s purported Charleston, South Carolina option, the letter stated that “Holtec was also discussing a possible option where it would develop a dilapidated shipyard in Charleston, which property would be made available to Holtec at no upfront cost for the land.”³¹⁶ The letter stated that these were “oral conversations” that were apparently “never reduced to any written promise or binding representation from the State of South Carolina.”³¹⁷ Holtec thus has conceded that it did not have a pending offer of a free shipyard in Charleston at the time that it submitted its application to the EDA. Holtec’s June 8, 2020 letter to the Task Force argued that Holtec’s representations regarding its purported South Carolina offers were “legally irrelevant” because, as a proposed Camden, New Jersey project, Holtec was not required to prove that its jobs were “at risk,” but instead had only to prove that the award of the incentives was a “material factor” in Holtec’s decision to locate in Camden, New Jersey.³¹⁸

As an initial matter, misrepresentations in application submissions are significant regardless of whether they are “legally irrelevant,” particularly given that Holtec’s CEO certified the accuracy of the representations contained in Holtec’s application.³¹⁹ Moreover, the forgoing evidence indicates that, in the course of applying for a Grow NJ award, Holtec may have mischaracterized its failed partnership with NuHub to bid on the Department of Energy grant as a current, viable alternative option. Further, Holtec has conceded that it misrepresented “oral conversations” regarding a potential offer of a free shipyard in Charleston, South Carolina as a valid, binding offer pending at the time that Holtec submitted its application to the EDA. The EDA’s CBA, Bonds & Incentives Request for Application Review, confidential memorandum of analysis, and project summary memo concerning Holtec’s application indicate that the EDA Board to some extent relied on Holtec’s misrepresentations regarding its purported South Carolina

³¹⁴ Exhibit 164.

³¹⁵ Exhibit 164 (emphasis added).

³¹⁶ Exhibit 164.

³¹⁷ Exhibit 164.

³¹⁸ Holtec’s letter makes certain legal arguments concerning the Grow NJ program’s statutory requirements. The Task Force previously addressed substantially similar legal arguments advanced by a different party in Section VII(A)(2) of the Second Report.

³¹⁹ Exhibit 165.

alternatives in reaching its conclusion that Holtec’s Grow NJ award was a material factor in its determination to locate in New Jersey. Given the EDA’s lack of diligence into the offer available to Holtec in South Carolina, the EDA apparently was unaware that this offer was not binding.

We have referred this evidence regarding Holtec’s application and alternative site to the appropriate authorities for further investigation.

V. THE ERG PROGRAM

Pursuant to its mandate, the Task Force has undertaken a review of the EDA’s ERG Program. As with the Grow NJ program, the Task Force closely reviewed the ERG statute and regulations and analyzed the efficacy and efficiency of the EDA’s application, administration, and oversight of the ERG program. Below, we report on our analysis, observations, and findings.

At the outset, it is important to recognize that ERG and Grow NJ are fundamentally different programs. A core goal of the Grow NJ program is to incentivize the creation and preservation of jobs in New Jersey that are at risk of being relocated to another state.³²⁰ By contrast, the ERG program, which has no minimum jobs requirement, was intended to “encourag[e] redevelopment projects in qualifying economic redevelopment and growth grant incentive areas . . . through the provision of incentive grants to reimburse developers for certain project financing gap costs.”³²¹

Moreover, although the Grow NJ program requires projects to certify that the tax incentive is a material factor and/or the but-for cause of the project, the ERG program does not have a similar requirement in either its statute or its regulations.³²² As discussed below, the definition of “project financing gap,” which is a required component of the ERG program, implies that the grant should be necessary to incentivize development.³²³ However, based on our review of the ERG program’s design and the EDA’s oversight and implementation of ERG, the Task Force found that the EDA does not always critically assess whether an ERG grant is necessary to incentivize any given

³²⁰ N.J. Stat. § 34:1B-244(a). Additionally, unlike a Grow NJ tax credit, a commercial ERG grant is subject to annual appropriation by the State Legislature. N.J. Admin. Code § 19:31-4.1(c).

³²¹ N.J. Stat. § 52:27D-489e(a).

³²² The ERG program does require certain projects to certify “that the project is at risk of leaving the State or not being located in the State and that the project would not occur but for the provision of the incentive grant under the program.” N.J. Admin. Code § 19:31-4.6(a)(5); *see also* N.J. Stat. § 52:27D-489c (defining “project financing gap” to include “the amount by which total project cost exceeds the cost of an alternative location for the out-of-State redevelopment project”). However, according to an EDA underwriter, this requirement does not apply to the vast majority of ERG projects. Neither the underwriter nor the Task Force identified a project that submitted this certification, although the Task Force notes that only the regulation, and not the statutory language, excludes from this requirement “final point of sale retail businesses, including, but not limited to, retail, educational, hospital, and hotel projects.” N.J. Admin. Code § 19:31-4.2.

³²³ In particular, the statutory definition of “project financing gap” refers to “the part of the total project cost, including return on investment, that remains to be financed *after all other sources of capital have been accounted for*” and assumed that the developer, “after making all good faith efforts to raise additional capital, certifies that *additional capital cannot be raised from other sources on a non-recourse basis.*” N.J. Stat. § 52:27D-489c (emphases added).

redevelopment project. As a result, where an ERG grant was not necessary to encourage a project in the incentive area, the EDA may have sometimes distributed funds for a project even though it likely would have occurred regardless of the grant.

A. Overview of the ERG Program

The ERG program was designed to offer three types of project incentive grants: (1) residential, (2) commercial, and (3) mixed-use parking.³²⁴ Residential and mixed-use projects can qualify for tax credits under the Program; however, for commercial ERG projects, the New Jersey State Treasurer annually reimburses the award recipient based on the incremental State revenues directly realized from businesses operating at the project site, until the total award amount is reimbursed.³²⁵

The EDA has described ERG as a program “for developers and businesses to address revenue gaps in development projects, defined as having insufficient revenues to support the project debt service under a standard financing scenario. It can also apply to projects that have a below market development margin or rate of return.”³²⁶ The latter scenario focuses on the developer’s profits from the project, rather than the funds necessary to complete the project. As discussed below, the ERG statute and regulations set forth an over-arching requirement for the Program, called the “project financing gap,” which is defined, in relevant part, as “the part of the total project cost, including return on investment, that remains to be financed after all other sources of capital have been accounted for[.]”³²⁷ Once the EDA determined that a gap existed, the EDA could generally approve an ERG award that provided assistance of up to 20% of the total eligible development costs.³²⁸ Where certain additional criteria were met, the EDA could approve a grant that represents up to 40% of the eligible development costs.³²⁹

Certain requirements are common to all three types of ERG projects. We address these below, and then address the separate criteria that must be met for each project type.³³⁰

³²⁴ The total amount of credits that could be approved by the EDA for qualified residential and mixed-use parking projects was \$823 million. N.J.S.A. § 52:27D-489f.

³²⁵ N.J. Stat. § 52:27D-489f.

³²⁶ *Economic Redevelopment and Growth (ERG) Program*, NJEDA, Last Visited on June 26, 2020, https://www.njeda.com/large_business/economic_redevelopment_growth.

³²⁷ N.J. Stat. § 52:27D-489c; N.J. Admin. Code § 19:31-4.2.

³²⁸ N.J. Admin Code § 19:31-4.7(d).

³²⁹ N.J. Admin Code § 19:31-4.7(d). In particular, an additional percentage of development costs is eligible for projects located in a Garden State Growth Zone, which includes Atlantic City, Camden, Passaic, Trenton, and Paterson. N.J. Admin Code § 19:31-4.7(d).

³³⁰ By the end of 2019, the EDA had approved four mixed-use ERG projects, none of which had been certified to receive any credits. Given the limited number of mixed-use ERG projects, this analysis focuses primarily on residential and commercial ERG projects. Generally, a project is characterized as mixed-use where the parking component of the redevelopment project constitutes 51 percent or more of: (1) the total square footage of the entire project; (2) the estimated revenues of the entire project; or (3) the total construction cost of the entire project. N.J. Stat. § 52:27D-489c.

1. General Requirements of the ERG Program

An “applicant” is defined under the ERG statute as a “developer proposing to enter into a redevelopment incentive grant agreement” with the EDA for purposes of an ERG project.³³¹

The primary requirement of the ERG program is the existence of a project financing gap, which is the part of the project costs that remains to be financed after all other sources of capital have been accounted for.³³² “Other sources of capital” include, but are not limited to, developer or other contributed capital or equity and available investor or financial entity capital or loans.³³³ The developer must contribute at least 20% of the total project cost with its own capital. The developer must also certify that it cannot raise additional capital from other sources on a non-recourse basis after it made all good faith efforts to do so.³³⁴ The reference to “non-recourse basis” typically refers to a loan secured by collateral (such as property or rent rolls) but with no recourse (or a right to recover) against the borrower beyond the pledged collateral in the event of default.

During an interview with the Task Force, one EDA underwriter explained that the concept of a “project financing gap” could be “misleading” in the sense that, despite the statutory language, an ERG award was not necessarily intended to close a developer’s actual funding gap—that is, where a developer has insufficient capital to complete the project. As explained by the EDA underwriter, projects could have all the necessary funds to complete the project but nevertheless have an internal rate of return (“IRR”) gap, where the IRR measures the developer’s return on its investment in the project. Thus, as described in more detail below, the EDA evaluated an ERG application by using economic models to assess the developer’s financing structure and verify

³³¹ N.J. Stat. § 52:27D-489c. The term “developer” is defined as “any person who enters or proposes to enter into a redevelopment incentive grant agreement pursuant to the provisions of section 9 of P.L.2009, c. 90 (C.52:27D-489i), or its successors or assignees, including but not limited to a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project. A developer also may be a municipal redeveloper as defined herein or Rutgers, the State University of New Jersey.” N.J. Stat. § 52:27D-489c.

³³² N.J. Stat. § 52:27D-489c; N.J. Admin. Code § 19:31-4.2. The full statutory definition states that a project financing gap means:

- a. the part of the total project cost, including return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; and
- b. the amount by which total project cost exceeds the cost of an alternative location for the out-of-State redevelopment project.

³³³ N.J. Stat. § 52:27D-489c; N.J. Admin. Code § 19:31-4.2.

³³⁴ N.J. Admin. Code § 19:31-4.2 (“project financing gap” definition).

“financial need,” which typically referred to the developer not getting a sufficient return on its investment. In other words, the “gap” could be an alleged insufficiency of profit.

As an additional requirement, the developer must not have commenced any construction on the redevelopment project prior to applying for a grant, although the EDA has the ability to waive this requirement.³³⁵ Project construction has “commenced” if the project has received site plan approval and started site preparation or utility installation.³³⁶ However, if the developer plans to undertake the project in phases, the developer may apply for an ERG grant with respect to phases for which construction has not yet commenced, even if earlier phases of the project have commenced. According to one EDA underwriter, the ERG project American Dream/Xanadu is the “poster child” example for the EDA waiving the requirement that construction not yet have commenced. The American Dream project commenced in the early 2000s, years before the EDA approved a \$390 million ERG grant for the project in 2013.³³⁷ The underwriter explained that the EDA waived the non-commencement requirement because it reached a consensus that the project would not be able to move forward without the ERG grant.

The initial ERG application is based on estimated project costs.³³⁸ If the application is approved, prior to the first disbursement of funds for commercial ERG projects, the developer must submit satisfactory evidence of actual project costs, as certified by a CPA.³³⁹

Finally, as with the Grow NJ program, the EDA imposes various fees in connection with the application for, approval of, and issuance of ERG awards, including fees associated with requests for modifications and extensions of time to demonstrate compliance.³⁴⁰

2. Additional Requirements for Residential Projects

Residential projects are defined as redevelopment projects that are predominantly residential or dormitory units for purchase or lease. Developers of residential projects consisting of newly constructed residential units must reserve at least 20% of the residential units constructed for occupancy by low or moderate income households.³⁴¹ Certain residential projects have a

³³⁵ N.J. Admin. Code § 19:31-4.3(a)(2).

³³⁶ N.J. Admin. Code § 19:31-4.3(a)(2).

³³⁷ Exhibit 166.

³³⁸ See N.J. Admin. Code § 19:31-4.4(b)(9).

³³⁹ N.J. Admin. Code § 19:31-4.8(b)(7).

³⁴⁰ N.J. Stat. § 19:31-4.5. Though not set forth in detail here, ERG projects also have requirements relating to minimum environmental and sustainability standards for the project’s facility and to prevailing wage and affirmative action requirements for the project’s construction. See N.J. Admin. Code § 19:31-4.2; N.J. Admin. Code § 19:31-4.8(b)(9); N.J. Admin. Code § 19:31-4.8(b)(4); N.J. Admin. Code § 19:31-4.12. Moreover, projects must be located in qualifying incentive areas. N.J. Admin. Code § 19:31-4.2.

³⁴¹ N.J. Stat. § 52:27D-329.9 (20% requirement); N.J. Stat. 52:27D-304. “Low income housing” and “moderate income housing” are defined by statute and depend on the gross household income, compared to other households of the same size in the same area. N.J. Stat. § 52:27D-304. The project also must typically comply with affordability controls as required under the rules of the Council on Affordable Housing. N.J. Admin. Code § 19:31-4.3(a)(3).

minimum project cost that must be met, ranging from \$5,000,000 to \$17,500,000, generally based on project location.³⁴² An approved grant term is up to ten years.³⁴³

Individual residential awards are capped at \$40 million if the project is located in a deep poverty pocket or distressed municipality,³⁴⁴ or \$20 million if located in any other ERG incentive area.

3. Additional Requirements for Commercial Projects

Commercial projects may involve retail, office, and/or industrial uses for purchase or lease. The total annual percentage amount of reimbursement may not exceed an average of 75% of the annual incremental state revenues, and an average of 85% of the project's annual incremental revenues in a Garden State Growth Zone.³⁴⁵ An approved grant term is up to twenty years.³⁴⁶

Commercial projects have no minimum project cost requirements. However, unlike for residential ERG, there is a net benefit requirement for commercial ERG projects. Under the EDA's net benefit analysis, the project must produce a net positive economic benefit to the State, equal to no less than 110 percent of the amount of grant assistance that the EDA provides.³⁴⁷

B. Overview of the ERG Application and Post-Approval and Certification Processes

The Task Force examined how potential ERG projects proceed through the EDA, from the pre-application stage through the post-approval stage. This Third Report does not repeat here the ERG processes that are indistinguishable from the path of Grow NJ projects discussed in the Task Force's previous reports, but instead only identifies significant differences or issues unique to the ERG program.

1. ERG Pre-Approval Application Process: Business Development

As discussed, with respect to the Grow NJ program in the Task Force's First Report, potential ERG grant applicants learn of EDA tax-incentive programs and make initial contact with

³⁴² N.J. Stat. § 52:27D-489c.

³⁴³ N.J. Admin. Code § 19:31-4.2 (defining "eligibility period").

³⁴⁴ "Deep Poverty Pocket" means "a population census tract having a poverty level of 20 percent or more, according to the 2010 U.S. Census, and which is located within the incentive area." N.J. Admin. Code § 19:31-4.2. "Distressed Municipality" means "a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 *et seq.*), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 *et seq.*), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located." N.J. Admin. Code § 19:31-4.2.

³⁴⁵ N.J. Admin. Code § 19:31-4.10(a). The revenues include those "directly realized from businesses operating on or at the site of the redevelopment project..." See N.J. Admin. Code § 19:31-4.10(a).

³⁴⁶ N.J. Admin. Code § 19:31-4.2 (defining "eligibility period").

³⁴⁷ N.J. Admin. Code § 19:31-4.6(b).

the EDA through various intermediaries. However, unique to ERG applicants, many residential ERG projects that qualify for assistance from the New Jersey Housing and Mortgage Finance Agency (“NJHMFA”) first apply for financial assistance through the NJHMFA and are referred to the EDA through that channel.

Before a developer applies for an ERG grant, the developer or its agent typically meets with members of the EDA’s Business Development team. During these meetings, EDA BDOs endeavor to understand the parameters of the proposed ERG project and determine whether the project needs an ERG award to support the project. During an interview with the Task Force, a BDO Program Manager indicated that many potential ERG applicants ultimately did not apply for an ERG award after initial meetings with the EDA.

Once the application is submitted through the EDA’s electronic application system, a BDO is assigned, generally based on location and capacity. The BDO gathers and conducts an initial review of the required application materials to look for any “red flags.” According to a BDO Program Manager, a “red flag” includes any indication that the project had already committed to moving forward and breaking ground, which would suggest that the project did not need an ERG grant to incentivize the project. Furthermore, BDOs are expected to conduct internet searches to assess whether an applicant has disclosed all relevant legal issues. In general, however, BDOs are not responsible for evaluating the applicant’s financial information or cost proposals, which are under the purview of the EDA’s underwriting team. Once the BDO has completed his or her review of the application file, the BDO transmits the application file, along with a checklist identifying any missing or forthcoming application materials, to the assigned underwriter.

2. ERG Pre-Approval Application Process: Underwriting

As with Grow NJ, underwriters of ERG projects are responsible for conducting due diligence and vetting an application to ensure the Program requirements have been met. For ERG, the underwriters assess whether the project financing gap requirement has been met through use of what the EDA calls the “pro forma analysis.” This analysis helps identify the project’s IRR, both with and without the ERG grant. Applicants submit to underwriters the required pro forma in Excel format. The pro forma contains information about the economics relating to the project, including its proposed sources and uses, income, and expenses.

Underwriters convert this submission to an EDA template categorizing the proposed project costs in three separate buckets: (1) eligible hard costs (*e.g.*, bricks and mortar), (2) eligible soft costs (*e.g.*, certain services, such as engineering or professional services), and (3) non-eligible costs (*e.g.*, the developer fee). The underwriter examines the pro forma to confirm that the proposed sources and uses are considered eligible pursuant to the EDA’s standards. Underwriters also assess the “reasonableness” of the proposed costs, typically by comparing the price per square foot of the proposed project against similar projects in the area. For commercial ERG projects, using the EDA’s cost template and a project’s estimated costs, the underwriter calculates the IRR. The underwriter also uses independent software to confirm the applicant’s initial projection of the IRR.

The underwriter compares the projected IRR with and without the ERG to the “hurdle rate,” which is determined by a financial model created by the EDA’s consultant, Jones Lang LaSalle (“JLL”). The hurdle rate represents an investment rate of return established by JLL’s model based

on certain factors, including zip code, industry class, and economic disadvantage of an area.³⁴⁸ The applicability and use of the hurdle rate model have evolved over time, particularly with respect to affordable residential projects, as described below. In interviews with the Task Force, EDA underwriters confirmed that when a project's IRR with the ERG award falls below the "hurdle rate," the project is considered eligible for an ERG award. In other words, the JLL model produces a threshold rate of return guideline for each project. If the IRR with the ERG is equal to or below the guideline, the project is eligible. If the IRR with the ERG exceeds the guideline, the ERG award amount could be adjusted downward; otherwise the project would be considered ineligible.

In addition to analyzing the project financing gap as described above, underwriters also review the project's ownership structure; a market feasibility study for the proposed use of the project; budgets relating to projected costs; and documentation supporting the project's equity sources and/or debt funding sources for the project. ERG underwriters explained that the market feasibility study provided information about the project's industry, the need for the type of project, proposed employment figures, the population growth of the proposed location, and the location's need for the project. Commercial projects also require the submission of a net benefit test, similar to the requirement featured in the Grow NJ program, which shows that the project is anticipated to result in a net benefit to the State in terms of new tax revenue.³⁴⁹ Specifically, the project must produce a net positive economic benefit to the State, equal to no less than 110 percent of the amount of grant assistance that the EDA provides.³⁵⁰

a) Alternative Analysis for Residential Projects

Because the majority of residential ERG projects often receive financial assistance from the NJHMFA as well, the EDA works with NJHMFA and heavily relies on NJHMFA's due diligence process to review a residential ERG project applicant.³⁵¹ According to ERG underwriters, the EDA tries to use NJHMFA's due diligence and underwriting as much as possible, including its third party market appraisal and study. According to one underwriter, where NJHMFA is involved in a residential project, the EDA underwriter's primary role is to assess the eligibility of the project's proposed sources of financing.

While most of the underwriting process set forth in this section applies to both commercial and residential projects, since August 2014, a different methodology has applied to EDA's review

³⁴⁸ Exhibit 167. The Task Force notes that the hurdle rate model has evolved over time.

³⁴⁹ The application of the net benefit test may not be probative for all projects since the benefits of some projects might have been realized in the State even without the ERG grant. *See* W. Irving, *et al.*, *Review of Grow New Jersey and Economic Redevelopment and Growth Programs ("Bloustein Report")*, July 2018, at 48-49.

³⁵⁰ N.J. Admin. Code § 19:31-4.6(b).

³⁵¹ Regarding the EDA's reliance on NJHMFA for the underwriting of the majority of residential projects, the EDA should consider establishing a clearer delineation between its duties and those of the NJHMFA, to ensure accountability for the approval of residential ERG projects for EDA tax credits. Given that the NJHMFA's tax credits and underwriting process are not within the scope of the Task Force's review, the Task Force does not comment any further on which agency should be responsible for which portion of underwriting; rather, the Task Force observes that the current split of review complicates the EDA's accountability for the oversight of the ERG program.

of the project financing gap for the majority of residential ERG projects. In August 2014, in consultation with the NJHMFA, the EDA proposed to the EDA Board a policy memorandum that revised the ERG methodology for analyzing residential projects applying for assistance jointly from NJHMFA and the EDA.³⁵² The memorandum proposed a shift away from the IRR calculation model because “some affordable residential developers will often decide on undertaking a project based primarily on the development fee (leaving the equity and equity returns to the low income housing tax credit investors).”³⁵³ Accordingly, the new analysis for these projects would “utilize development fees as a percentage of total development costs as a means to determine if a project has a funding gap[.]” and a project would be ineligible for an ERG grant if it was projected to receive the entire 15% allowed developer fee within 5 years without the ERG award.³⁵⁴

An EDA underwriter responsible for residential ERG projects explained that affordable housing was a niche industry in which developers would not make substantial revenues on rent, which must be kept at affordable levels. According to the underwriter, the previous IRR model simply “did not make sense” as applied to these types of projects.

3. ERG Post-Approval and Certification Process

For all approved ERG projects seeking to claim the first year of an incentive or a reimbursement, developers must submit certain materials for the EDA’s review and approval. These materials include, among other things: (1) a project cost statement that provides satisfactory evidence of the actual eligible project costs certified by a public accountant; (2) a certificate of occupancy; (3) a certification from the applicant indicating whether it is aware of any event of default; and (4) a tax clearance certificate not more than 180 days old. However, residential and commercial ERG projects undergo slightly different processes during post-approval and certification. The process for each is outlined below.

a) Commercial ERG Projects

Once the EDA Board approves a commercial ERG project, the Closing Services department contacts the Division of Taxation to obtain a Letter of Approval from the Treasurer evidencing Treasury’s corresponding approval of the grant. Closing Services will not issue the Commitment Letter until it receives Treasury’s Letter of Approval.

Closing Services then forwards a Commitment Letter to the applicant for execution. The Commitment Letter sets forth additional conditions that the awardee must meet, including evidence of site control and site plan approval, copies of any necessary State and federal permits, local planning and zoning board approvals, and other financing commitments, including evidence that the applicant will contribute capital or equity greater than or equal to 20% of the eligible project costs.

A Post-Approval Officer (“PAO”) oversees and works with the awardee during the post-approval phase. During this period, the awardee must submit project status updates every six

³⁵² Exhibit 168.

³⁵³ Exhibit 168.

³⁵⁴ Exhibit 168.

months until all the conditions are satisfied. When the project is completed, the awardee must submit the materials identified above before it can receive its first reimbursement payment.

Once the Post-Closing Incentives Officer deems these submissions satisfactory, the EDA will issue a certification memorandum to the Division of Taxation. Taxation calculates the initial payment and annual reimbursement payment based on the Eligible Revenues collected (*i.e.*, incremental revenues generated by the project), subject to certain limits. Commercial ERG projects are not subject to annual certification by the EDA; rather, the awardee submits annual reports to the Division of Taxation for review and calculation of the annual disbursement. Commercial ERG projects continue to provide annual reports to the Division of Taxation until the awardee has received the full ERG award amount or the maximum 20-year term has elapsed.

b) Residential ERG Projects

Once the EDA Board approves a residential ERG project, Closing Services sends the award recipient a letter advising of the approval fee amount due to the EDA and requests any additional documentation required prior to issuance of a Commitment Letter. After the recipient returns the fee and signed letter to the EDA, Closing Services prepares a Commitment Letter for the recipient's execution. The Commitment Letter provides terms and conditions under the Program and sets a date for the approval's expiration.

One year after the date of Board approval, the recipient must submit "Progress Information" to the PAO, which includes evidence of site plan approval, site control, required permits, and financing commitments for all funding services. The recipient is also required to provide a project status update to the PAO, who monitors the project until completion.

In addition to the materials identified above, residential projects must also provide documentary evidence that a deed restriction has been recorded against each residential component and that the project complies with N.J. Admin. Code 19:31-4.3(a)(3), the requirement that at least 20 percent of the residential units constructed for occupancy are reserved for low or moderate income households. Once the EDA is satisfied that the project has met its requirements, it notifies the Division of Taxation through an approval memorandum and recommends the issuance of an overall tax credit certificate.

To receive its annual tax credit, within 120 days of the conclusion of the project's tax privilege period, the awardee must submit documentary evidence that the deed restriction continues to be recorded against each residential component, evidence that the residential units of the project are not being used for non-residential purposes, evidence that the project continues to set aside at least 20% of the residential units for low or moderate income households, and an updated Tax Clearance certificate. If a residential ERG award recipient is also receiving financial assistance from the NJHMFA, the NJHMFA will also monitor the project and notify the EDA to the extent any default arises. Upon annual certification by the EDA, the Division of Taxation will issue one-tenth of the awardee's total ERG award.

C. Deficiencies in the EDA's Implementation of the ERG Program

The Task Force identified certain deficiencies in the EDA's implementation and oversight of the ERG program. These deficiencies are discussed below.

1. Lack of Written Policies, Procedures, and Training for ERG Processes

The Task Force previously examined the effect that insufficient guidance for EDA staff has on the implementation and oversight of the Programs, primarily with respect to Grow NJ. Similar to the EDA's process for the Grow program, ERG BDOs and underwriters use a checklist to assess whether applicants have submitted all the required materials. However, the Task Force found that the EDA provided little to no written guidance on how to assess or review the materials submitted by applicants.³⁵⁵ As early as 2012, the EDA gradually developed certain memoranda that would become EDA policy and formal written guidance for the staff. However, there is no comprehensive manual or training regarding the examination of an ERG project and how EDA personnel should apply policies when assessing ERG applications. One EDA employee attributed this lack of a comprehensive guide to the method by which the EDA examines ERG projects, which relies on complex spreadsheets and formulas. Furthermore, as with the Grow NJ program, the Task Force found that the effect of the EDA's lack of written policies and procedures was, at times, exacerbated by its failure to comprehensively train staff while onboarding or on an ongoing basis. Each of the employees interviewed by the Task Force confirmed that he or she did not have formal training on the ERG program requirements and that they learned "on the job."

As a result of the lack of centralized guidance for review of projects under the ERG program, there is a risk that ERG BDOs and underwriters could inconsistently assess critical ERG requirements, which could result in inconsistent determinations of whether ERG applicants satisfy the Program's requirements. Specifically, the Task Force found that EDA staff at times lacked an understanding of their respective responsibilities for reviewing certain program requirements. For example, the underwriters diverged in their view of how to analyze the required certification referenced in the definition of "project financing gap." Specifically, the ERG statute's definition of "project financing gap" requires the developer to certify that it cannot raise additional capital from other sources on a non-recourse basis, even after it made all good faith efforts to do so.³⁵⁶ In the first instance, not all EDA files contained the required certification that the developer had made the required good faith efforts. Moreover, even where the certification requirement was followed, underwriters struggled to assess whether projects met this requirement. In one instance, one underwriter commented that it was difficult to prove the truth of the certification, so it was considered more of a "make everyone feel good statement." Another underwriter stated that the underwriter would pursue additional diligence, including phone calls with the project's lender, when the underwriter suspected the loan-to-income ratio was low. However, the EDA files do not always reflect this type of due diligence, nor was there a set standard guiding when such additional diligence should be done. The underwriter explained that there were many variables affecting the reasonableness of a loan-to-income ratio, and so it was difficult to draw a bright-line ratio to trigger additional due diligence. Inconsistent review of critical requirements—such as whether a project meets its "project funding gap" requirement—could impact the EDA's proper administration of the Program, in particular its obligation to ensure that only eligible companies are receiving tax incentives.

³⁵⁵ Exhibit 169; *see also* First Report at 39 (discussing inconsistent understanding among underwriters regarding the ERG checklist of required materials to be submitted to underwriting).

³⁵⁶ N.J. Stat. § 52:27D-489c; N.J. Admin. Code § 19:31-4.2 ("project financing gap" definition).

The Task Force identified a similar lack of understanding related to the application of ERG’s net benefit test for commercial ERG projects. Although an ERG award is not directly tied to the project’s net benefit to the State, a net benefit test showing the expected benefit to the state is a requirement for commercial ERG projects and may be a limiting factor on the award amount. However, the EDA’s lack of written policies resulted in an inconsistent understanding of what types of jobs could be included in the net benefit test calculation required for commercial ERG projects. At least one ERG underwriter indicated that only permanent jobs, such as full-time retail positions—and not construction jobs or part-time jobs—could be included, while another underwriter stated that both construction and full-time jobs were included. This inconsistent approach toward calculation and assessments could result in different underwriters coming to varied conclusions regarding a project’s eligibility.

2. The Project Financing Gap Analysis Does Not Fit All Types of ERG Projects and Was Adapted Through Policy Memoranda, with Little Transparency

The ERG program encompasses a variety of project types that arguably have different purposes and require different analyses—an issue that the EDA recognized and responded to over time. In particular, the EDA instituted a substantial change to the underwriting of the majority of residential ERG projects through policy memoranda submitted to the EDA Board for approval during 2014.³⁵⁷ As described above, in August 2014, the EDA, in consultation with the NJHMFA, proposed to the EDA Board that, rather than using the typical IRR analysis, an analysis of the project’s development fee should be used for residential projects approved for certain low income housing tax credits through NJHMFA.

Additionally, the August 2014 memorandum proposed that projects approved for a specific tax credit through NJHMFA, known as the 9% Federal Low Income Housing Tax Credit, should be ineligible for an ERG grant.³⁵⁸ Generally, the Low Income Housing Tax Credit Program is a federal low-income housing tax credit program that the NJHMFA administers on behalf of the IRS.³⁵⁹ The 9% credit can cover roughly 70% of the project’s total development cost. According to one underwriter the Task Force interviewed, projects approved for this 9% tax credit received a substantial amount of low-income subsidies, and so there was a risk that these projects would be over-compensated with an ERG grant. The EDA memorandum was approved in its entirety during the August 2014 EDA board meeting.³⁶⁰ However, the policy relating to the 9% tax credit was amended less than four months later to provide that the previously excluded projects would still

³⁵⁷ Exhibit 168; Exhibit 170.

³⁵⁸ The memorandum stated: “In the event that a project receives approval from HMFA for a 9% tax credit, then for the purposes of the Residential ERG State Tax Credit, that project will be [sic] deemed likely to be completed without the award of ERG and thereby not eligible for further support.” Exhibit 168.

³⁵⁹ *Low Income Housing Tax Credit Program Summary*, https://www.state.nj.us/dca/hmfa/media/download/tax/tcap/tc_tcap_summary_oversightcommittee.pdf.

³⁶⁰ Exhibit 171.

be eligible for an ERG grant provided they could demonstrate a project financing gap under the EDA's development fee analysis.³⁶¹

The EDA thus prescribed new policies that would substantially affect the guidelines and analyses governing eligibility for the ERG program and submitted them for approval by EDA's Board. By employing this approach, the EDA essentially changed how it analyzed the eligibility of residential ERG projects in a piecemeal fashion and through internal memoranda that were not widely published. Although this method permitted the EDA to implement changes that were arguably needed, the EDA did so without the benefit of public input, including by those knowledgeable of these types of developments. The EDA may have achieved additional clarity in the requirements for residential ERG grants—and transparency about those requirements—if the policy adjustments had been proposed through a more prominent change to the EDA's ERG regulations. Pursuant to New Jersey's Administrative Procedure Act, adoption or amendment of any rule is subject to a notice and comment process, which would have facilitated transparent discussion by interested persons about the policies. This would have been particularly useful with respect to the 9% tax credit provision, which was almost immediately repealed, apparently because the EDA determined that it did not need to be excluded in the first instance.³⁶²

3. The EDA's Project Financing Gap Analysis Does Not Allow for Critical Analysis of Whether an ERG Incentive Is Necessary

Based on an examination of previously approved ERG projects and interviews with EDA employees, the EDA's IRR and hurdle rate analyses may not promote a critical assessment of whether ERG awards are necessary to complete a project as opposed to desired to increase the profitability of a project to investors. Underwriters asserted that the EDA's economic modeling *should* respond to the question: "would this project occur, even without the ERG award?" The Task Force found, however, that in practice, the EDA did not question the economic analysis as long as the IRR fell below the hurdle rate.

For example, the EDA does not analyze whether a project with a 10% IRR without the ERG and a 14% IRR with the ERG would proceed absent the award. One underwriter acknowledged that, in such a case, the project developer would have to accept a lower level of return or find a replacement mechanism to boost their return outside of the EDA to reach the 14% IRR. However, prudence would dictate an additional layer of analysis to determine the grant's necessity in incentivizing the project. Certainly, a developer would prefer to obtain a 14% IRR by using the state as an interest-free source of financing, but the extent of a project's profitability does not necessarily equate with the necessity of an ERG award to complete the project. Some investors would be perfectly satisfied with an IRR of 10%.

In sum, although the EDA's methodology attempts to remove subjectivity from the process of evaluating eligibility for ERG grants, it is not clear whether it does so at the expense of serious inquiry regarding whether the ERG grant is required to incentivize a project. When asked how to

³⁶¹ Exhibit 170; Exhibit 172. Tim Lizura received at least one complaint relating to this policy, which asserted that the EDA was "under the misconception that that[] 9 % litc deals do not have gaps, in fact all 9% deals have gaps, and their underwriting using a 15% developer fee is not appropriate." See Exhibit 173.

³⁶² See N.J. Stat. § 52:14B-4.

assess whether an IRR was reasonable, one underwriter commented that developers have their own metrics, and that the EDA staff was not in a position to determine the appropriate level—thus, the EDA uses economic models to do so. Absent a more critical inquiry, it is possible that, in some instances, ERG grants were awarded merely to subsidize developer profits on projects that would have occurred regardless of the ERG awards.

4. Lack of Verification of Project Costs or Capital Investment Risks Improper ERG Awards

As described above, ERG awards are calculated based on a percentage of a project's estimated costs or capital investment at approval. If the project's costs as certified by an independent CPA post-approval is lower than the projected costs pre-approval, the EDA *could* adjust the ERG award downward because the award amount is tied to the total project costs.³⁶³ However, at the post-approval stage, the EDA does not independently verify the project's costs, instead relying on the CPA that the project retained. Potential deficiencies, and recent improvements, regarding the oversight of the capital investment requirement are discussed in the Task Force's Second Report and apply to the capital investment requirement under ERG as well as under Grow NJ.³⁶⁴ One underwriter suggested that the underwriter would not know whether a project's costs were unreasonable in any event, and therefore did not make efforts to assess whether certain costs—*e.g.* construction costs—for a particular applicant's project were comparable to project costs for other construction in the same area. A post-approval supervisor similarly stated that it was difficult to assess what costs were reasonable, other than evaluating the cost per square foot. In other words, staff did not attempt to evaluate whether costs had been inflated or mischaracterized as eligible at the certification stage. If costs were inflated to meet the capital investment that the project had predicted at the approval stage, this could result in a higher award than the project had ultimately earned, since the award amount is tied to the project's capital investment.

5. Critical and Variable Elements at Approval—Such as the Project's Equity, Financing Terms, and IRR—Are Not Reviewed Post-Approval

Unlike the project costs described above, after the EDA Board approves a project, the EDA never again reviews certain variable elements of a project. As set forth above, to qualify for an ERG award, a project must contribute equity equaling at least 20% of the project costs. Moreover, underwriters must also evaluate whether a project financing gap exists, based on whether the project's IRR was less than the hurdle rate. To facilitate the underwriter's review of these aspects, applicants provide documentation concerning their equity contributions and proposed financing terms. However, the developer's equity contributions and the components that affect a project's IRR—including a project's proposed sources and uses, income, and expenses—are not static and may change after the project's approval.

³⁶³ N.J. Stat. § 52:27D-489i. In practicality, this adjustment occurs because the ERG award amount approved has a cap based on a percentage of total project costs. Where the project costs upon completion are lower than were anticipated at approval, the award amount does not reach that cap, and the project instead receives a lower award amount, lessened based on the actual project costs. The Task Force identified a handful of projects for which this adjustment occurred.

³⁶⁴ Second Report, at 76-77.

In other words, because the EDA never re-examines the representations regarding the project's equity sources and financing after approval, if the project later receives more favorable financing, a project could receive a higher benefit from the ERG award than warranted. This is particularly so for commercial projects that do not receive additional assistance from and report to other agencies, such as the NJHMFA, and rely on other, negotiated financing sources instead. Moreover, for commercial projects, where the project's IRR must be less than the hurdle rate, post-approval changes to a project's financing and market conditions could affect whether the IRR remains less than the hurdle rate, or increases above the hurdle rate. The EDA does not reassess whether the IRR has increased above the hurdle rate. Thus, to the extent that a project's potential returns and profits increased, or the market became more favorable to the awardee, a project could potentially receive an ERG award it no longer qualified for or needed to complete the project. Regarding this issue, one underwriter provided the example of projects located in Jersey City, noting that such projects' IRRs would have risen during the past several years because rents have escalated in the area, which means the project developer would need to contribute less equity and incur less debt for the project. In other words, the developer would benefit from the economics of the marketplace that took place between project approval and project completion. EDA staff was not aware of any circumstances in which an ERG project's IRR would be re-calculated after approval.

Given the EDA's ability to adjust awards downward if a project's costs are less than anticipated at certification than they were at approval, it seems worthwhile to consider a process that would examine these other variable components that are reviewed only once, when a project is approved. However, despite the benefit to reviewing ERG awards post-approval—to ensure that the EDA is not providing projects with an unneeded financial benefit—one post-approval manager thought that it could be unfair to reduce an award if a project re-financed under more favorable terms several years after approval. That post-approval manager also raised the question of when and how often the EDA should review financing terms in order to balance the EDA's fiduciary duty to the State's taxpayers with fairness to the awardee.

D. Conclusion of the Task Force's Examination of the ERG Program

Although the deficiencies identified in connection with the Task Force's examination of the EDA's oversight for the ERG program raise fewer concerns than those identified for the Grow NJ program, the Task Force believes that some of these deficiencies reflect additional flaws with the EDA's policies and processes. Moreover, some of these deficiencies still raise concerns regarding the unnecessary expenditure of taxpayer funds to incentivize projects that may have occurred regardless of the grant. While, as a general matter, the EDA has taken important steps to improve its review of grant applications and the administration of awards for its Programs, the Task Force provides several recommendations in this Report that may specifically improve the EDA's administration of the ERG program.

VI. THE USE AND TRANSFER OF TAX CREDITS AND THE POTENTIAL EFFECTS ON THE STATE'S BUDGET

The Task Force has examined a practice that affects the incentives framework and creates a secondary market for taxpayer-funded incentives: the transfer and sale of awarded tax incentives. The vast majority of credit recipients under the Grow NJ and residential ERG programs do not use the tax credits that they are awarded, but instead sell them to other entities. The process of

transferring or selling credits involves coordination between the EDA and the New Jersey Division of Taxation (“Taxation”) within the Department of the Treasury (“Treasury”).³⁶⁵

The laws governing the Programs permit award recipients to transfer all or part of their credits to other entities in exchange for payment and with few limitations. The Task Force has conducted a review of the practice of transferring tax credits to identify any potential issues that the practice poses to the EDA’s oversight of compliance with the Programs’ requirements and how it may affect an underlying goal of the Programs—to incentivize specific businesses to develop within the State or to bring jobs to the State.

More generally, the volume of tax credits issued, the sales of credits, and the manner in which credits are sold raise questions regarding the long-term effect on the State’s budget, given that when a company uses a tax credit, it subtracts the amount of that credit from a State revenue stream. Transferability complicates prediction efforts relating to the State’s annual budget because the lack of data regarding transfers results in an inability to fully track transferred credits and to anticipate when a purchasing entity will use the credit.

Below, we describe the process governing the transfer and sale of tax credits and certain policy considerations raised by the practice.

A. Process and Policy Considerations Underlying Transfers of Tax Credits

Generally, an incentive program featuring transferable tax credits allows a company that receives an incentive award to sell its excess tax credits, particularly where the company receives more in credits than what it actually owes in taxes.³⁶⁶ The Programs here are no exception. Both Grow NJ and ERG—with the exception of commercial ERG projects—provide that certain award recipients may sell or transfer all or part of their award.³⁶⁷ Transferable tax credits can help businesses that the State seeks to incentivize but that have little or no tax liability to the State.³⁶⁸ According to discussions with employees at the EDA and Treasury, approximately 70% to 80%

³⁶⁵ Based on interviews with an EDA Director of Incentives Relationship Management, Susan Greitz, the Task Force understands that a “transfer” or “sale” of a credit (used synonymously) is distinguishable from the “allocation” of a credit. A transfer must comply with statutory requirements, including minimum consideration. By contrast, an allocation involves any alternative distribution method for a credit, as permitted by law, and is not subject to the same statutory obligations that apply to a transfer. This section focuses on transfers rather than allocations.

³⁶⁶ The Pew Charitable Trusts, *Reducing Budget Risks (“Pew Report”)*, Dec. 1, 2015, at 15, <https://www.pewtrusts.org/en/research-and-analysis/reports/2015/12/reducing-budget-risks>.

³⁶⁷ Transferability is not applicable to recipients of commercial ERG grants because commercial ERG awards provide annual payments to award recipients, rather than tax incentive credits.

³⁶⁸ *Pew Report*, at 15. As set forth in the *Pew Report*, companies that benefit from transferable tax credit programs include startup companies, which may not yet be turning a profit, among others. *Pew Report*, at 15.

of all tax credits are transferred.³⁶⁹ However, as discussed below, the current transfer process affords limited transparency to the State, and its tax-payers, of the ultimate beneficiary and user of the transferred tax incentives.

1. The Transfer Process and Eligibility of the Purchaser

The EDA established policies that delineate the process for a tax credit award recipient to transfer or sell all or a portion of its annual award. As a threshold matter, an award recipient cannot receive or transfer its annual credit unless it has satisfied the requirements and obligations under the Program. As part of the transfer, the original award recipient agrees to waive its right to claim the amount of credit transferred against its own taxes.³⁷⁰ The purchaser or assignee of the credits is subject to the same limitations and conditions on the use of the credits that would have applied to the original award recipient.³⁷¹

A tax credit recipient must apply to Taxation and the EDA to transfer part or all of its credit.³⁷² The award recipient must submit to the EDA a transfer application, a buy/sell agreement with the credit purchaser, tax clearance certificates for both the seller and purchaser, and a transfer fee. The buy/sell agreement can provide for the buyer's purchase of all of the awardee's credits for the entire term or a part of the total credits awarded.³⁷³ However, even where a buyer intends to purchase the entire amount of credits awarded, the transfer process must occur on an annual basis because the credits issue annually throughout the award term (assuming the recipient continues to meet its obligations). Each year, the award recipient must report to the EDA that it met its Program obligations and then include an "intent to transfer" form for that year. The EDA's fees for transferring tax credits include an initial \$5,000 fee and a \$2,500 fee, per buyer, for each additional request made annually.³⁷⁴ The EDA's Incentives Officers review the materials submitted for a transfer of tax credits. If the Incentives Officer determines that the transfer documents are acceptable and all requirements—*i.e.*, that the applicant company and/or buyer provided tax clearance certificates, the EDA transfer fees, and the NJ Tax ID for any buying entity—have been met, the Officer drafts a memorandum from the EDA to Taxation, memorializing that the EDA has conducted its review and that it approves the transfer.³⁷⁵ These procedures and requirements apply to initial transfers only. In other words, the procedures and requirements do not apply where the original tax-credit purchaser subsequently sells a credit to another party.

³⁶⁹ See also New Jersey Department of the Treasury News Release, *NJ Treasury Launches New Online Portal to Transform the Issuance and Monitoring of Tax Incentives*, July 2019, <https://www.state.nj.us/treasury/news/2019/07032019.shtml> (stating that over 70% of tax credits have been transferred).

³⁷⁰ N.J. Admin. Code § 19:31-18.13(a); N.J. Admin. Code § 19:31-4.11(b).

³⁷¹ N.J. Admin. Code § 19:31-18.13(a); N.J. Admin. Code § 19:31-4.11(b).

³⁷² N.J. Admin. Code § 19:31-18.13(a); N.J. Admin. Code § 19:31-4.11(b); Exhibit 174 (Grow NJ Tax Certificate Transfer Procedures_NJEDA00008148_image).

³⁷³ The minimum amount permitted for a transfer is \$25,000. N.J. Stat. § 34:1B-248; N.J. Admin. Code § 19:31-18.13.

³⁷⁴ Exhibit 174.

³⁷⁵ Exhibit 174.

Although the EDA ensures that the award recipient, *i.e.*, the tax-credit seller, has met all of the Program obligations for that year, a credit purchaser need not meet any Program requirements and may very well have been ineligible for the program in the first instance. Generally, any entity may purchase a credit, regardless of its financial stability, the nature of its business, its standing with the State of New Jersey, or any other factors, provided that Taxation does not identify any outstanding tax liability. After Taxation receives the EDA’s credit transfer memorandum and paperwork, Taxation checks for any outstanding and due tax liability of the buyer and, if there is none, issues a tax credit certificate to the buyer.

a) Liability of the Transferee or Purchaser

Although there are few limitations on an award recipient’s ability to transfer tax credits, the ultimate obligations to comply with the Program requirements remain with the original award recipient. Likewise, liability for any failure to comply with Program requirements remains with the original award recipient. By regulation, if any portion of the tax credits becomes subject to recapture, the EDA “will pursue recapture from the business and not from a tax credit transfer certificate purchaser.”³⁷⁶ Accordingly, if at any point the EDA determines that an award recipient should not have received an annual credit or should have received a smaller amount of credit, the EDA must pursue the improperly issued credit amount from the original award recipient only and not from the purchaser of that annual credit.

b) Policy Considerations Related to the Transfer of Tax Credits

Although New Jersey’s tax-incentive programs prior to the EOA 2013 permitted transfers of tax credits, the EOA 2013 and its subsequent amendments expanded award recipients’ ability to transfer their credits to ultimate end-users with Corporate Business Tax or Insurance Premium Tax liability. For example, the amendments set forth in the Economic Opportunity of 2014 (“EOA 2014”) reduced the minimum amount of credit that could be transferred from \$100,000 to \$25,000, in an effort to make credit transfer certificates “more widely available.”³⁷⁷ In addition, although the minimum consideration, or payment, for a tax credit remained 75 cents on the dollar under EOA 2013,³⁷⁸ EOA 2013 provided that the 75 percent minimum consideration no longer applies to Grow NJ credits where the sale or assignment of a credit is made to an affiliate of the grant recipient, “irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement.”³⁷⁹

The Task Force initially explored the policy behind transferable tax credits during the Task Force’s First Public Hearing, on March 28, 2019, through testimony from Josh Goodman, a Senior Officer in the areas of Economic Development and State Fiscal Health at the Pew Charitable Trusts.³⁸⁰ During his testimony, and during an additional interview with the Task Force, Mr.

³⁷⁶ N.J. Admin. Code § 19:31-18.10(b)(3) (providing required terms for the incentive agreement for Grow NJ awards).

³⁷⁷ Statement to Assembly, No. 3213.

https://www.njleg.state.nj.us/2014/Bills/A3500/3213_S1.PDF.

³⁷⁸ N.J. Stat. § 34:1B-248.

³⁷⁹ N.J. Stat. § 34:1B-248. This particular change became effective on January 16, 2018, after an amendment during 2017. P.L. 2017, c.313.

³⁸⁰ See Hr’g Tr. (Mar. 28, 2019) at 190:11-193:21.

Goodman elaborated upon the process and consequences of tax-credit sales. Although the original award recipient is the intended beneficiary of any particular tax-incentive program, when it sells its tax credits, it does not receive the full value of those tax credits because it typically sells the credits at a discount, or less than 100% return on the dollar.³⁸¹ Moreover, credits may also be sold to entities that would have been ineligible for the Programs if they had applied for an award.³⁸²

B. Statutory and Regulatory Changes to EOA 2013 That Affect the Use of Tax Credits

For Grow NJ awards, the regulations provide broad timelines for both the transfer and use of a tax credit. The tax certificate holder has the option to transfer the tax credit beginning on the date the tax certificate is issued and until three years after that date.³⁸³ For example, if a company receives its tax credit certificate on March 1, 2015, it may transfer that credit at any time between that date and March 1, 2018. Moreover, after amendments to the EOA in 2017, both the award recipient and the transferee have the ability to carry forward the amount of an unused credit for the twenty successive tax periods after issuance before the credit expires.³⁸⁴

The regulations also expressly permit unlimited subsequent transfers of Grow NJ credits.³⁸⁵ According to the regulations, a transferee can carry out a subsequent transfer provided it gives notice to Taxation and the EDA.³⁸⁶ However, based on Task Force interviews with representatives of the EDA and Treasury, the State does not track, and is not aware of, transfers beyond the initial transfer until the new purchaser attempts to redeem the credit. In other words, if Company A sold its tax credit to Company B, and Company B then sold that credit to Company C, only the first transfer from Company A to Company B would be tracked. The tax credit certificate must physically change hands from Company B to Company C, and when the second buyer, Company C, redeems the certificate, the previous transfer is noted on the certificate. In addition, certain statutory requirements apply only to the initial transfer of a credit and not to subsequent transfers.³⁸⁷ Because of the extended period of time provided to use or transfer credits and the near-unfettered ability to transfer credits, it is difficult for the State to anticipate what entities will come forward to use credits. In other words, after the first sale, the State of New Jersey—as of today—has no way of knowing who actually holds the tax credits awarded under EOA 2013 and will not know until the tax-credit holder seeks to apply the credits to a liability.

³⁸¹ See Hr'g Tr. (Mar. 28, 2019) at 191:19-192:13.

³⁸² See Hr'g Tr. (Mar. 28, 2019) at 192:3-192:13.

³⁸³ N.J. Admin. Code § 19:31-18.9(c) (regarding Grow NJ). The initial holder may also use the credit during the tax period for which it was issued or carry it forward for the next 20 successive tax periods, after which the credit expires. N.J. Admin. Code § 19:31-18.9(c).

³⁸⁴ N.J. Stat. § 34:1B-247(c)(1).

³⁸⁵ N.J. Admin. Code § 19:31-18.13(d). The provisions relating to ERG grants are silent on this topic.

³⁸⁶ N.J. Admin. Code § 19:31-18.13(d).

³⁸⁷ N.J. Admin. Code § 19:31-18.13(b), (d). For example, the 75 percent minimum consideration requirement does not apply to subsequent transfers.

C. The Cumulative Effect of the Transferability of Tax Credits

Since the enactment of EOA 2013, it has become increasingly important to study and understand the effect that tax credits will ultimately have on New Jersey's revenues and budget. One reason for the increased importance is sheer increase in the volume of credits approved, when compared to the previous programs that existed before the EOA 2013.³⁸⁸

Between the removal of caps that limited the cost of the Programs and the lack of restrictions on credit transfers, the unpredictability of the Programs' impact on the State's efforts to forecast its fiscal year and budget has become more acute. Significantly, the EOA 2013 removed the predecessor programs' spending caps for Grow NJ, which had provided that (1) the value of all incentive credits against tax liabilities in any fiscal year would not exceed \$150,000,000, and (2) the combined value of all credits approved by the EDA under the Urban Transit Hub and Grow NJ tax incentive programs would not exceed \$1,750,000,000.³⁸⁹ In other words, although the laws governing the previous programs imposed limits on the amount of credits that the EDA could approve under the programs, which provided for at least some predictability, the EOA 2013 largely removed those caps. In other words, a fiscal spigot was turned on, which closed only with the expiration of the Programs.

The volume of credits aside, the broad permissions governing how and when recipients may use the tax credits further complicate the tax credits' fiscal impact. As set forth in a report from the Pew Charitable Trusts, "[o]ne reason some incentives can have a long and uncertain fiscal impact is that the programs include carryforward provisions, which allow companies to save up tax credits after they are issued and redeem them years later."³⁹⁰ The *Pew Report* emphasized that, "[g]enerally the longer a business can carry forward an incentive, the harder it will be for state officials to predict the timing of the costs to the state."³⁹¹

The Task Force discussed these issues with several individuals from Treasury, who confirmed that, since EOA 2013, it has been difficult to anticipate how tax credits will affect the State's fiscal year and budget prediction efforts. As explained to the Task Force, when an award recipient sells a tax credit, the recipient essentially receives a "backdoor grant," or a cash commodity. The State, in turn, must treat that tax credit as a liability to the State. The State does not control the credit after its sale and does not know who might attempt to use the credit and when.

The Task Force also understands that the State cannot accurately predict which revenue streams will decline in any given year, and by how much, as a result of tax credits. In New Jersey, tax credits primarily flow to and affect three different tax revenue streams for the State: (1)

³⁸⁸ Compare *Bloustein Report*, at 1 n.2 (describing that, pre-EOA 2013, the EDA approved 34 Legacy Grow and Legacy ERG projects for a total of over \$1 billion in tax credits) with *Bloustein Report*, at 5 (describing for EOA 2013 projects between December 2013 and August 2017, the EDA approved 227 awards worth over \$4.4 billion).

³⁸⁹ Compare P.L. 2011 c. 149 with P.L. 2013, Chapter 161 (amending N.J. Stat. § 34:1B-247). The EOA 2013 kept a \$600,000,000 cap on total ERG awards. N.J. C.52:27D-489f https://www.njleg.state.nj.us/2012/Bills/PL13/161_.PDF.

³⁹⁰ *Pew Report*, at 11.

³⁹¹ *Pew Report*, at 13.

corporate business tax; (2) business tax on banks and financial institutions; and (3) insurance premium tax. Beginning approximately two to three years ago, parallel with the first influx of annual awards certified under the EOA 2013's Programs, the State has seen an erosion of its insurance premium tax base that it did not anticipate.³⁹²

However, Treasury has been working to increase the oversight and monitoring of tax credit transfers, including by creating a web-based portal to track the lifespan of tax credits. During summer 2019, Treasury announced a new tracking system to monitor the sale of corporate tax breaks, called the New Jersey Electronic Credit Evaluation, Records, and Transfer System ("NJ eCERTS").³⁹³ The system was a joint effort between Treasury's divisions of Taxation and Revenue and Enterprise Service, along with the state Office of Information Technology. Based on its interviews with Treasury personnel, the Task Force understands that the new tracking system will assist in the Department's efforts to: (1) reduce the reliance on paper tracking; (2) account for the universe of outstanding tax credits as part of the State revenue calculations; and (3) facilitate budget forecasting. It will also represent the first time that transfers beyond an initial sale will be tracked, although the system will not have data regarding subsequent transfers that occurred in the years before the system was implemented. Although, for confidentiality reasons, the individual tracking information will not be accessible to the public, the increased availability of annual data will allow the State to better understand, and respond to, the effect of the tax credits on revenue streams. This Third Report includes several recommendations regarding how to facilitate these important efforts.

VII. THE REVIEW OF THE EDA'S ADMINISTRATION OF TAX-INCENTIVE AWARDS

The Task Force examined the EDA's administration of awards to tax-incentive recipients to assess compliance with the Programs' requirements. To facilitate this review, and as discussed in depth in its Prior Reports,³⁹⁴ the Task Force devised the ARP to provide a streamlined approach for companies that voluntarily cooperated with the Task Force. The Task Force's ARP facilitated the review of the EDA's oversight of the Programs with respect to the EDA's consideration of specific applications and its ultimate approvals and certifications with respect to those applications. The Task Force greatly appreciates the level of cooperation it received from the ARP participants, their counsel (where retained), and their voluntary production of information and documents.

³⁹² See New Jersey Department of the Treasury News Release, *Treasurer Muoio Announces State Revenue Projections are up for FY19 and FY20, Allowing \$250 Million in Property Tax Relief to Roughly A Million Residents*, May 14, 2019,

<https://www.nj.gov/treasury/news/2019/05142019a.shtml> ("The Insurance Premiums Tax (IPT) is also under-performing. Payments around the March 1 due date are down 14.2 percent from last year and further weakness is expected from the June 1 payments. . . . It is important to note that insurance companies are the largest purchaser of EDA tax credits in the credit transfer market, acquiring about half of all credits sold, which holds down growth in this revenue source.").

³⁹³ New Jersey Department of the Treasury News Release, *NJ Treasury Launches New Online Portal to Transform the Issuance and Monitoring of Tax Incentives*, July 2019,

<https://www.state.nj.us/treasury/news/2019/07032019.shtml>.

³⁹⁴ First Report at 65-69; Second Report at 6-7.

For companies that chose not to participate in the ARP, or if the Task Force determined a company was ineligible, the Task Force applied a broader request and review process. To be clear, the Task Force made no conclusions and drew no inferences based on a company's decision not to participate in the ARP. The Task Force recognizes that each company is uniquely positioned and has varying interests and goals. Therefore, to gather the information necessary for its analysis, the Task Force issued broad document and information requests to the companies outside of the ARP. To the extent that companies were non-responsive or otherwise non-cooperative with the Task Force, Professor Chen, as authorized pursuant to N.J. Stat. § 52:15-7, issued subpoenas in certain instances.

Below we provide an update regarding the ARP review process and the findings from that process, followed by a discussion of the jobs' verification process. We also outline the conclusion of the ARP process, which includes the creation of a memorandum of understanding between the Task Force and the EDA.

A. The Task Force's ARP Process and Findings

As of the date of this Third Report, of the 96 companies that were invited to participate in the ARP, 67 companies pursued participation in the ARP, while 29 companies remained outside of the ARP process.³⁹⁵ Of the companies that remained outside of the ARP process, certain companies did not qualify because either "red flags" or threshold issues had been identified through document review and interviews, while other companies declined to participate in the ARP. Of the ARP companies that participated in the ARP, the Task Force has begun to group the companies into three distinct categories: companies for which we have sufficient information to confirm satisfaction of the ARP requirements, but-for the jobs component, which is subject to the EDA's review ("A Group"), companies we explicitly declined to re-certify ("B Group"), and companies for which we had insufficient information to make a determination or are still otherwise subject to placement in A Group or B Group ("C Group"). The EDA will be made aware of the status of each company, and we recommend that the EDA conduct additional investigation of the B and C Groups as needed.

The Task Force is preparing to provide closing letters to ARP participants to notify them of their status with respect to recertification. The closing of the Task Force's review with respect to Grow NJ participants is set forth in more detail below.

1. The ARP Process

The ARP requirements and process are described in detail in the First Report.³⁹⁶ However, we note that, as part of the ARP's goal to narrow the scope of information requested, the Task Force limited its requests for documents to the extent feasible. Accordingly, the Task Force collected and reviewed documents from the EDA and the companies, publicly available information, and, at times, documents produced by third parties. The Task Force also urged companies to self-report to the Task Force and to take immediate steps to repay or forfeit any improperly received tax-incentive benefits if it determined at any time that information provided

³⁹⁵ See Appendix A and Appendix B.

³⁹⁶ First Report at 65-69.

to the EDA could not in good faith be verified or that the company was otherwise non-compliant with the terms of its tax-incentive award.

The Task Force recognized that there were variances in what the EDA had required of companies throughout the Programs' existence. The Task Force attempted to account for these variances in its review so as to not unnecessarily penalize companies that complied with all requirements that existed at the time of approval or certification.

Moreover, given the EDA's general approach to legal disclosure (*i.e.*, even where legal proceedings were disclosed and relevant, the EDA only rarely considered disqualifying companies from participation in the Programs), the Task Force focused on undisclosed civil matters implicating fraud or criminal prosecutions. However, where applicable, the Task Force provided ARP companies with an opportunity to address any undisclosed legal matters. When appropriate, the Task Force alerted the EDA to such legal disclosure issues for the EDA's own consideration.

The final component of the ARP review for Grow NJ participants involves verifying the number of reported jobs, which, for the reasons described below, will be completed by the EDA. When the Task Force concludes its review of all ARP components (but for the jobs verification component) for a particular company, it will send a letter to each ARP participant, either confirming the company's satisfaction of the ARP requirements (subject to the EDA's review of the jobs requirement, discussed below), or noting the Task Force's inability to confirm that the company satisfied the ARP requirements due to an insufficiency of information.

2. ARP Findings

After reviewing the files associated with award recipients participating in the ARP, the Task Force observed several patterns of inconsistent or insufficient information throughout the EDA's oversight of the awards. The Task Force discussed issues relating to the EDA's oversight of one ARP participant's award, Rainforest Distribution Corp., at length in its Second Report. However, throughout the ARP review process, the Task Force observed additional flaws in the EDA's oversight, including (1) a failure to require important information from companies or, (2) as part of the CBA, mistakenly attributing costs to New Jersey sites that should not have been included. As a result of these oversight flaws, the EDA did not consistently determine that applicants were fully eligible for the awards that they were granted. In several additional instances, the Task Force observed gaps in information because the EDA did not require certain information from companies at the time of approval or certification. These issues are explored below.

a) Oversight Failures in the EDA's Collection and Maintenance of Company Files

For each ARP participant, the Task Force reviewed the EDA-produced electronic file containing the documents associated with that company. As a matter of good policy, the file should contain certain documents that include the information necessary to support satisfaction of the Programs' requirements and that enable effective subsequent audits. However, the Task Force found many instances that certain documents were absent from the EDA's company file. At times, when the Task Force asked ARP participants about the missing information directly, the ARP participant would confirm that the EDA had never requested the documentation but provided it to the Task Force for its review. In other instances, the ARP participant confirmed that the requested

documentation did not exist. This was particularly true with smaller companies, which often lacked comprehensive or coherent document-retention policies.

As one example, the Task Force sought to examine a term sheet, lease, contract, letters of intent, offer to purchase, broker request for proposal response, or other proposals for a company's alternative site. This type of documentation serves as some evidence that an applicant under the Grow NJ program had an available out-of-state location and often includes important details regarding that location, such as lease or price terms and the specifications and dimensions of the location. Several ARP participants confirmed to the Task Force that they did not have any of these documents for the alternative site identified in its application.

The Task Force also sought to examine the designs, layouts, floor plans, or other documents and records created prior to or contemporaneously with the company's consideration of the alternative site. This type of documentation is arguably necessary where a company has a bona fide intent to relocate to an alternative site, to allow the company to assess the suitability of the site and for the company to prepare for use of the space. Moreover, without this documentation, it would have been difficult for the EDA to assess whether the company had sufficiently planned for the use of the alternative site as part of a meaningful relocation plan. However, the Task Force identified several instances where these documents were not present in the EDA file, and ARP participants later confirmed that they had no such documentation.

In one instance, a company, Pollaro Custom Furniture, Inc., provided insufficient information to support that it seriously considered leaving its New Jersey site for an alternative site in North Carolina. The company submitted only publicly available information to substantiate the availability and suitability of the alternative site, including internet printouts. The company did provide a floor plan that purports to be for the North Carolina alternate, but we could not substantiate its provenance. An EDA underwriter, David Sucsuz, raised his concern that the company did not provide sufficient documentation to the EDA Program Manager of Community Development and other EDA officials.³⁹⁷ The Task Force found that this concern was also documented in EDA pipeline notes related to the company's application. However, although EDA personnel noted this deficiency, the Task Force found no evidence that the EDA requested further documentation to verify that the company was seriously considering its purported alternative site and that it was available or suitable. Despite the lack of documentation to support this company's application, the EDA approved a total Grow NJ award in the amount of \$2,212,500.

As an additional example, the Task Force sought to examine underlying documents that supported the line-item costs provided in each CBA. For the Grow NJ program, the EDA underwriters use the CBA to assess a company's representation that the New Jersey location is more expensive than the alternative location, and therefore, tax credits are necessary to incentivize the company to locate in New Jersey. Many EDA files lacked backup documentation or corroboration from a third party, independent of the applicant, to support the line-item costs in the

³⁹⁷ As discussed in the First Report, Mr. Sucsuz filed a complaint against the EDA, in which he made allegations that the EDA improperly awarded incentives to certain companies without sufficient documentation to satisfy the requirements under the Programs. *See* First Report at 35-38.

CBA.³⁹⁸ Although supporting documentation for proposed costs may take more than one form, the Task Force found that in instances where the EDA did not request or closely examine supporting documentation, certain line-item costs on the CBA were uncorroborated or unjustified, as discussed further below. Without backup documentation or corroboration by an independent third party, there was little to prevent an applicant from misrepresenting or selecting costs that would best support its application, as one applicant discussed in this Third Report, Key Food, may have done, as further discussed in Section III(A), above. A consistent requirement for documentation and independent corroboration can reduce the risk of such misrepresentation. Ultimately, where line-item costs are uncorroborated or unjustified, the representation that the company's New Jersey site was more expensive than the alternative site may be inaccurate or wholly fabricated. However, we note that after an audit by the Office of Legislative Services in January 2017, the EDA has since implemented additional requirements concerning the CBA, including with respect to required documentation, and that many ARP participants' applications predated these changes.³⁹⁹

Regarding the maintenance and organization of the EDA's files, the Task Force also identified a pattern of poor record-keeping of crucial decision-supporting documents. Specifically, there are certain EDA analysis documents that help show that an applicant or award recipient has met program requirements. These documents include the CBA and jobs report for Grow NJ applicants, the pro forma analysis for ERG applicants, and the net benefit test for both Programs.⁴⁰⁰ The EDA files for a given award recipient frequently contained multiple copies of these types of decision-supporting documents. However, the various versions of the analyses lacked corresponding explanations to indicate why the analyses had changed. Even more important, the EDA files also consistently failed to clearly identify the final versions of the analyses that ultimately supported the decision to approve an award or issue a certification. In some instances, even the ARP participants struggled to identify the version on which the EDA ultimately relied.

For the CBA in particular, the Task Force observed several instances in which the underwriters altered the line-items of CBAs the applicants provided to the EDA without communicating those changes to the applicants or clearly identifying which version of the CBA would be the final version supporting the application's approval. According to the EDA's director of bonds and underwriting, the EDA's current policy is that underwriters should not change the CBA themselves but should instead inform the applicant to make changes as needed.

To permit an efficient subsequent audit, it is necessary to clearly maintain and identify the analyses upon which the EDA relied, and to have a clear record between the EDA and the applicant. These inconsistencies among the EDA's files undermine subsequent audits and

³⁹⁸ For example, if a CBA contains a line-item for building renovation costs, the Task Force examined whether the proposed costs were corroborated by a construction estimate from a contractor or architect, rather than just proposed by the applicant, who may be motivated to ensure that New Jersey is more expensive than the alternative site.

³⁹⁹ As discussed during the Task Force's October 2019 public hearing, the EDA conducted an internal audit during 2018 in response to the OLS audit, which identified continued deficiencies with the EDA's documentation for the CBA. Public Hr'g Tr. (Oct. 17, 2019) 261:16 – 286:9.

⁴⁰⁰ The net benefit test is relevant for commercial ERG projects specifically.

compromise the integrity of the EDA’s decision-making process because it is impossible to determine which representations supported a project’s approval.

b) Oversight Failures in the EDA’s Examination of the CBA

The Task Force observed instances in which the EDA failed to critically analyze the CBA submitted with an application for a Grow NJ award, such that costs were attributed to the New Jersey location that should not have been included. Such critical analysis must necessarily be part of any EDA determination that the applicant has made out a prima facie case of eligibility.

In one of these instances, the oversight was in connection with the EDA’s policy concerning landlord-offered tenant improvement allowances. Generally, a tenant improvement allowance represents a certain amount of money that a landlord is willing to expend for renovation or construction costs on behalf of a tenant, as part of the tenant’s move to that location. At times, the allowance amount is amortized or included in the tenant’s rent payment. When examining the file for one ARP participant, Insight Catastrophe Group, LLC, we identified that a cost of \$433,000 was attributed to the New Jersey location for “building renovation,” notwithstanding the fact that the landlord—not the company—would be expending this amount as part of a tenant improvement allowance.⁴⁰¹ In other words, the landlord’s spending of these funds at the New Jersey location was included in the CBA as a “cost” incurred by the applicant, who was not expending these funds. For this particular project, the EDA was fully aware that the landlord would be expending these funds, which it still permitted to be counted in the project’s CBA.⁴⁰²

We asked two current EDA employees about the EDA’s policy approach to incorporating a landlord-offered tenant improvement allowance into the CBA. We learned that, historically, the EDA included landlord-offered tenant improvement allowances in applicants’ project “costs” on the CBA, even though the landlord would expend these funds and not the tenant-applicant. However, under the EDA’s current approach, the EDA “backs out” the cost of a landlord-offered tenant improvement allowance from a CBA, so that the allowance amount is a negative line item. Although it is unclear when this policy changed, one underwriter suggested it would have been sometime during 2014 or 2015, which appears to be corroborated by EDA communications from 2015.⁴⁰³ However, the EDA employees were not aware of any record documenting the policy change. More practically, the Task Force cannot identify any justification for why funds expended by the landlord would have ever been attributed as a “cost” incurred by the applicant-tenant.⁴⁰⁴ Based on the Task Force’s review of this particular file, it appears that if the \$433,000 landlord tenant improvement allowance had been backed out of the CBA, which is how the EDA currently treats such allowances, the New York location potentially could have been more expensive than the New Jersey location over ten years but not over fifteen years.⁴⁰⁵

⁴⁰¹ Exhibit 175.

⁴⁰² Exhibit 176.

⁴⁰³ Exhibit 177.

⁴⁰⁴ Even in scenarios where the landlord deducted the allowance amount from the applicant’s rent payments, that cost would have already been incorporated into the CBA’s line-item for rental costs.

⁴⁰⁵ In the final CBA, New Jersey was \$392,005.14 more expensive over 10 years, and \$481,777.23 more expensive over 15 years; however, it is unclear whether the alternative site’s building renovation costs also included a tenant improvement allowance. Exhibit 175.

In another instance, the EDA failed to question whether costs included on the CBA would, in fact, be incurred by the applicant. In our review of one ARP participant’s file, Jimmy’s Cookies LLC, we identified that the CBA attributed an ongoing annual cost of \$457,500 to the New Jersey location as “health insurance,” for the cost of the company providing health insurance to its employees. We requested additional information regarding the company’s actual costs for its employees’ health insurance because, although the Grow NJ Program requires award recipients to “offer” health insurance to all employees, it does not mandate that all employees actually use the health insurance. We confirmed that the amount the company pays annually for health insurance is \$60,000—far less than the \$457,500 identified in the CBA. The company, which did not have assistance from counsel when it prepared its application, was not aware when it applied for tax incentives that the requirement to “offer” health insurance did not mean to “pay for” health insurance for all of those employees. Although even without the additional health costs, New Jersey was still more expensive than the alternate location, it is unclear why the EDA did not question this component of the CBA.

We recognize that the review process may raise a multitude of unique issues, including issues beyond those identified in this Report, and not every application may be amenable to a standardized method of evaluation. But the CBA determination is generally critical to Grow NJ, and there must be uniformity, consistency, and rigor in that determination.

The EDA may avoid inconsistent treatment and mistakes in evaluation by documenting such issues and actively providing guidance to its staff regarding the same. All too often, as in the examples above, it did not.

c) Oversight Failures in the EDA’s Examination of the Material Factor Analysis

As set forth in the Task Force’s Second Report, the Task Force observed a systemic issue with the EDA’s administration of the Programs, with respect to a culture where the EDA consistently sought to “get to yes” with applicant companies.⁴⁰⁶ In one specific instance, EDA staff raised concerns regarding a project’s application to the EDA for additional financing assistance simultaneous with the same project’s application for a Grow NJ award. Despite these concerns, the EDA, including Tim Lizura, worked with the company, Frederick Goldman, Inc., to ensure it could receive both the Grow NJ award and the additional financing it sought from the EDA.

Specifically, the company, through a special purpose entity formed to acquire the New Jersey location, sought a tax-exempt bond and direct loan from the EDA to finance its purchase of its New Jersey location that would be subject to the Grow NJ award. In internal communications, several EDA employees raised concerns that if the company was seeking financing for the New Jersey location, the company had already decided to move to New Jersey.⁴⁰⁷ At the time these

⁴⁰⁶ Second Report at 2, 9-10.

⁴⁰⁷ On October 9, 2015, the Director of Bonds and Incentives at the EDA, wrote to Tim Lizura: “I don’t think this works as we need the Grow to not have site control but we need site control to move forward even with a preliminary bond approval. Also, I thought this applicant has already

concerns were raised, the EDA had approved the company's initial application for a Grow NJ award and was considering the company's request to modify the project location; however, the company later elected to terminate its original Grow NJ award and submitted a new application.⁴⁰⁸ As discussed by the EDA employees, for the approval of a bond, the EDA Board would typically require the bond applicant to demonstrate control of the site subject to the bond. On the other hand, for a Grow NJ award, if the company had already committed to the site such that it had control of it, that pre-commitment would undermine the company's representation that the grant was a material factor in its decision to locate to the site. Special Counsel interviewed an underwriter who worked on the project and who also explained that the simultaneous application for financing could raise concerns regarding the applicant's financial ability to undertake the project. The same underwriter did recall being uncomfortable with Frederick Goldman's simultaneous applications to the EDA.

While the documentary evidence does not reflect further deliberations among the EDA employees, ultimately, the applicant was approved for the additional financing only after the applicant was approved for a Grow NJ award, so that the applicant could qualify for both the Grow NJ award, as well as the requested bond and loan. Obviously, the EDA's examination of the Programs' requirements, including the material factor analysis, should include a critical assessment of whether the requested financial assistance is necessary to incentivize the project, and should avoid helping applicants to potentially game the system.

B. The Jobs Certification and Verification Process

As the Task Force began its work, it recognized that the jobs certification element was particularly complex, and its review posed certain challenges. The Task Force engaged the EDA to better understand its own review process, including efforts to create a more effective process.

1. The EDA's Current Jobs Review Process

The jobs requirement is a major component of the Grow NJ program, and, given that the vast majority of awards are directly tied to the number of jobs, it is crucial that the EDA accurately account for those jobs. The primary risk of an inaccurate job certification is that a company will

committed to the new site." Exhibit 178. On October 7, 2015, an EDA program manager separately wrote: "I believe the issue here would be tripping up 'Material Factor' for the Grow. One could argue that if you are seeking financing on the NJ location then you have made a decision already to move into the NJ site." Exhibit 179. An EDA underwriter replied: "I am inclined to agree With the inclusion of a GrowNJ contingency clause, the purchase contract for the new site is the document evidencing that the applicant both does, and does not have site control. As such, I would not currently be comfortable working toward approval of both the modification and the bond simultaneously." Exhibit 179.

⁴⁰⁸ On April 30, 2015, the company originally applied for a tax incentive award to relocate its New York headquarters to Secaucus, New Jersey, which the EDA approved on June 9, 2015. Exhibit 180. When issues arose regarding the original project site, the company submitted a modification application to change the project location to a new site located in Secaucus, New Jersey. Exhibit 181. Subsequently, on November 3, 2015, the company elected to terminate the original tax incentive award and submit a new tax incentive application for the new Secaucus project site and an increase in the number of proposed new jobs. Exhibit 182.

receive a higher credit amount than it should; the Program was intended to reward companies only if they bring or keep the promised number of jobs in the State.

Historically, the EDA's staff sampled the jobs that award recipients reported, meaning that, at most, they cross-checked a sample of employees listed in the employee log submitted by the company to the EDA against the WR-30 form provided by the company to the Labor Department to confirm consistency of information. The WR-30 form is a required form, to be filled out by the company and submitted to the Department of Labor in connection with unemployment insurance. In 2019, the EDA implemented a new process for verifying eligible employees. Now, the EDA utilizes a database that automatically cross-checks every employee listed in the company's jobs reported to the EDA against WR-30 data identifying the company's employees. The EDA obtains this WR-30 data in a format that permits this automation pursuant to a memorandum of understanding between the Department of Labor and the EDA.⁴⁰⁹ The Task Force has now had an opportunity to examine the initial results of the EDA's new jobs review process and its efficacy. The Task Force observed that the EDA's changed process and increased diligence was a vast improvement from previous years, during which the EDA's process was limited to a "spot check" to confirm that the jobs that companies reported were accurate and eligible.

The EDA anticipated that it would review the annual job numbers reported by over 100 companies for the 2018 tax year. Beginning with the review of the 2018 tax year, which took place during 2019 and proceeded into this calendar year, the EDA's annual review process has involved (1) an in-depth examination of the jobs that companies reported compared to the WR-30 data, as described above; (2) site visits for companies with specific bonuses, where bonuses are tied to characteristics of the facility, for example; and (3) a review of all applicable bonuses based on jobs numbers. Although the EDA's review is ongoing, as of the end of March 2020, the EDA had certified at least 55 companies to receive some amount of annual tax credit, although as discussed below, some awards have been adjusted downward.⁴¹⁰ Moreover, to ensure that previous years of jobs reporting were properly awarded, the EDA is also devising a methodology for conducting a "look back," or retroactive, review of selected companies' previous years' jobs certifications, where such review is appropriate. Through this retroactive review, the EDA would seek to review previously reported jobs for accuracy, based on certain risk criteria devised by the EDA, with input from the Task Force.

The Task Force understands that, to date, the EDA has not identified instances of a company substantially misreporting its eligible jobs such that it appeared that the company was attempting to misrepresent its annual eligibility for the Program.

⁴⁰⁹ The EDA's changes to the jobs review process are discussed in more detail in the Second Report, at 77-82.

⁴¹⁰ The Task Force notes that, according to the EDA, some companies undergoing review for their 2018 tax credit have not been responsive to EDA requests for additional information. Companies that fail to respond to EDA requests may eventually be in default for that particular year, and therefore ineligible to receive that year's annual credit.

2. Award Reductions and Issues Raised Through Enhanced Review

A company receives credit only for jobs that are eligible pursuant to the Grow NJ program's criteria. The EDA's more thorough review of all jobs reported for the 2018 tax year has led to the exclusion of certain jobs that companies reported. This resulted in a downward adjustment of the overall awards and/or the annual credits for several projects.

Generally, to be an eligible employee under the Grow NJ Program: (1) the employee must work full-time, which means at least 35 hours per week; (2) a minimum 80% of the employee's work time must be spent at the qualified business facility, which is the location that was identified in the company's application and is the subject of the company's award; and (3) the company must offer the employee health benefits.⁴¹¹ The EDA now requires companies to report the name of each eligible employee and affirmatively represent that each employee's work is consistent with the three criteria identified above.

In reviewing companies' jobs certification pursuant to its enhanced review process, the EDA identified several instances in which companies reported employees as "eligible" that did not fit the above criteria or that worked for less than a full quarter per year. According to the EDA, some companies' failure to satisfy the criteria resulted from their misunderstanding of an exception to the required criteria known as "customary industry practice." This exception is set forth within the definition of full-time employee in the statute, which states that a full-time employee is a person "who is employed by a business for consideration for at least 35 hours a week, **or who renders any other standard of service generally accepted by custom or practice as full-time employment.**"⁴¹²

Under this exception, the EDA has taken the position that not all of the three criteria set forth must be met if the industry custom does not follow those criteria—for example, if it is an industry custom that full-time employees do not always work at least 35 hours per week, then the EDA would not hold a company in that industry to that particular requirement. For a company to use this exception, however, the EDA must have agreed at the time that the EDA Board approved the project that the exception applied, as stated in the Grow NJ regulations.⁴¹³ Thus, as a member of EDA's senior leadership team explained to the Task Force, the EDA's agreement that the exception applied would be noted in either the memorandum to the EDA board provided just prior to an application's approval or in the company's Incentive Agreement with the EDA. Accordingly,

⁴¹¹ N.J. Stat. § 34:1B-243.

⁴¹² N.J. Stat. § 34:1B-243 (emphasis added).

⁴¹³ See N.J. Admin. Code § 19:31-18.2 ("To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, **or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business facility, as determined by the Authority in its sole discretion** based on the characteristics of the employee's job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located." (emphasis added)).

some companies may not count certain jobs that they intended to receive credit for, and their awards would be adjusted downward to include only the jobs that were truly eligible.

C. The Conclusion of the ARP and the Memorandum of Understanding Between the Task Force and the EDA

As the Task Force's investigation evolved, so did the ARP process. In particular, as the Task Force began its ARP review, it recognized the need for a robust process to review the "jobs" component of the Grow NJ program. Based on its examination of the EDA's current review process of the jobs requirement, the Task Force determined that it would avoid duplicative efforts by conducting a more focused review of the EDA's administration of the ARP recipients' awards—that did not include verifying individual companies' jobs certifications. Accordingly, the Task Force and the EDA have entered into a memorandum of understanding ("MOU"). Pursuant to the MOU, the EDA will complete the jobs verification component of the review, including for the ARP. To assist the EDA in its review, the Task Force may share with the EDA payroll and other jobs data regarding the ARP participants. More broadly, the Task Force may share additional information relating to tax-incentive recipients' (including those recipients outside of the ARP) compliance with program requirements, as the Task Force deems appropriate to further its mandate under EO 52. In support of this cooperation, the Task Force recognizes that additional information gathered by the Task Force could strengthen the EDA's administration of the Programs, to the benefit of award recipients and the State's taxpayers.

As set forth in the Task Force's Second Report and in this Third Report, the Task Force has observed improvements to EDA's diligence and review process for examining satisfaction of the jobs requirement. As discussed above, in the last year, the EDA undertook the enormous effort of verifying every job submitted against an independent source, *i.e.*, WR-30 data provided by the Department of Labor. Given the EDA's meaningful improvements to the jobs review process, the Task Force determined that there would be increased benefits and efficiencies if it cooperated with the EDA in this area. Pursuant to the MOU, for the Grow NJ program, all ARP participants that satisfy the Task Force's requirements under the ARP will be deemed to have completed the ARP upon the EDA's verification of jobs for the 2018 tax year.

Ultimately, the EDA will draw its own inferences regarding the facts underlying any given award and retains full discretion to make decisions concerning tax-incentive recipients. However, the goal of our cooperation with the EDA is to ensure confidence in the EDA's evaluation or re-evaluation of award compliance while avoiding the duplication of efforts.

VIII. RECOMMENDATIONS

Executive Order No. 52 called for the Task Force to offer advice concerning the future of New Jersey's tax-incentive programs. In its Prior Reports, the Task Force offered 17 recommendations related to the design, implementation, and oversight of the Programs. As the Task Force's work remains ongoing, we offer additional recommendations below based on the findings discussed in this Third Report. With the addition of these recommendations, the Task Force considers its recommendations complete.

These recommendations supplement the first 17 recommendations previously offered in the Task Force's Prior Reports:

Recommendation 18: As discussed in Section II of this Third Report, the Task Force has found that professional consultants who have represented companies applying to the EDA for tax incentives have inappropriately caused their clients, who were not previously considering locating outside New Jersey prior to the consultant’s involvement, to also look at an out-of-state alternative location in order to create an “at risk” factor where there previously was none and, therefore, to qualify for tax incentives from the EDA. The EDA has historically had a close relationship with these and other consultants. The Task Force recommends that the EDA consider reexamining its relationship with the consultant community and consider options to hold consultants accountable for improper conduct. The EDA may consider requiring consultants that appear before the EDA to execute agreements to adhere to a code of ethical conduct—similar to how company executives are currently required by the EDA to execute certifications prior to the company’s award of tax credits. Any such code of ethical conduct should require that consultants refrain from dishonest or deceptive conduct and, more specifically, refrain from advising companies to undertake site-selection processes that are designed not to identify genuine relocation options but rather to create the misleading appearance that New Jersey is “at risk” of losing the company’s jobs to another state.⁴¹⁴ Consultants that violate such ethical rules should be subject to sanction by the EDA, including debarment in appropriate cases.

Recommendation 19: The Task Force’s investigation has shown that tax credits under the Grow NJ program—which are intended to incentivize companies to locate in New Jersey rather than another state—too often went to companies whose jobs were never actually at risk. This was the result of multiple factors, including the willingness of companies to misrepresent their relocation intentions to the EDA, the conduct of professional consultants in facilitating the companies in doing so, the deficiencies of the EDA in evaluating applications, and the inherent pressures on the EDA to award tax credits, which the EDA is statutorily empowered to issue in unlimited amounts, free from the constitutional and other constraints applicable to other state benefits that require the expenditure of public funds (as discussed in Section IV of the Second Report). In consideration of this reality, the Task Force recommends that any future tax-incentive program that replaces Grow NJ should have upper limits, or caps, on the amount of tax credits that the EDA may issue. Limits on the maximum amount of tax credits that the EDA may issue would require the EDA to make tough choices as to how to allocate scarce resources and, as such, promote greater discipline in the EDA’s evaluation of applications. This, we believe, would increase the likelihood of tax credits effectively serving their intended purpose of incentivizing companies faced with true location choices to choose New Jersey, as the Grow NJ program was designed to do—rather than providing an unnecessary “bonus” for companies that intend to locate in New

⁴¹⁴ Of course, consultants who are also lawyers would be bound by the Rules of Professional Conduct, including RPC 3.3 (Candor Toward the Tribunal) and RPC 4.1 (Truthfulness in Statements to Others). The Task Force’s review has revealed, in practice, a significant overlap in the role of a non-lawyer “tax incentives consultant” and that of a lawyer giving advice on relevant law. While it is beyond the scope of our charge to inquire into possible issues of the unauthorized practice of law, which are within the jurisdiction of the Supreme Court, we do note the need for a set of ethical rules analogous to the Rules of Professional Conduct to protect the public interest. *See generally* Opinion 730 of the Supreme Court Advisory Committee on Professional Ethics (Supreme Court may prohibit a non-lawyer from engaging in conduct that is the practice of law, if doing so is in the public interest.), <https://www.njcourts.gov/notices/2015/n151215g.pdf>.

Jersey irrespective of whether they receive any state subsidies to do so, which Grow NJ has effectively done.

Recommendation 20: The Task Force observed several substantial shifts in the EDA's analysis of ERG applications. These changes typically took place through formal policy memoranda, authored by EDA staff and presented to the EDA Board for approval. At times, it was unclear whether the changes to the ERG review process stemmed from a lack of clarity in the statute or to regulations governing the ERG program or from other deficiencies in the EDA's oversight of ERG program. The Task Force recommends that when the EDA seeks to implement changes that implicate the eligibility requirements for obtaining tax incentives, it implement those changes by the formal rule-making process where possible.⁴¹⁵ This would help promote additional transparency into the Programs, allow interested parties to comment through a public forum, and shed light on whether particular policy changes necessitate legislative or regulatory reform.

Recommendation 21: The Task Force's review of the ERG program found that the EDA relies heavily on economic modeling to determine the project financing gap requirement. The Task Force recommends additional evaluation of the effectiveness and continued use of this modeling, particularly because EDA staff confirmed a lack of critical analysis regarding the necessity of the grant for any given project and the awarding of ERG grants to projects that did not lack sufficient funding.

Recommendation 22: The Task Force observed that the ERG certification process involved relatively little evaluation of whether the facts supporting the approval still held true at the time that the project was completed. Although the EDA approved ERG grants based on a particular IRR, it performed no review of whether the project's IRR had increased by completion for any reason, including additional equity sources or changes in market conditions. The Task Force recommends that, if an ERG project was approved based on particular assumptions, the EDA assess whether those assumptions are accurate at the time of certification, and to otherwise adjust awards downward to avoid providing projects with unnecessary additional funds.

Recommendation 23: The Task Force observed that, for both Grow NJ and ERG, the EDA relied on certifications from third party CPAs, which were retained by the award recipient, to assess whether capital investment or project cost requirements had been met. However, even well-intentioned CPAs are not necessarily equipped to assess which project expenditures meet the EDA's definition of eligible expenses. Accordingly, the Task Force recommends that the EDA explore the retention of in-house sources of real estate development expertise who can better assess the information presented by CPAs for any issues concerning eligible costs.

Recommendation 24: The Task Force's investigation indicates that the tax credits issued under the Programs pose challenges to the ability to accurately forecast how the tax credits will affect the State's annual fiscal status. To facilitate State efforts to forecast the budget and anticipate the use of unapplied tax credits, there should be more reasonable limitations on the transfer of tax credits and the use of transferred credits. While transferable tax credits can appropriately facilitate a benefit to companies that the State seeks to incentivize, the Programs

⁴¹⁵ Indeed, such a formal rule-making process may in some circumstances be required under the New Jersey Administrative Procedure Act. *See Metromedia, Inc. v. Director, Div. of Taxation*, 97 N.J. 313 (1984).

should prioritize the credits' more immediate use by, and transfer to, entities that intend to apply the credits in the nearer-term. For example, there could be limits on the number of transfers permitted per credit, as well as stricter limits on the amount of time a credit holder has to apply the credit. Moreover, the Task Force recommends consideration of, at a minimum, a variable or soft cap with respect to the total amount of credits that can be claimed on an annual basis.

Recommendation 25: The Task Force has found a lack of transparency regarding the ultimate users of the tax credits, in part because of a historic inability to track the transfers of credits beyond an initial purchase. Although the State is increasing its oversight and monitoring in this area, the Task Force also recommends that appropriate legislation or regulations permit the EDA to require and publish information about the sale price of tax credits as well as the buyers and sellers, including their beneficial owners, for every transfer or sale so that the public is better informed about the distribution of taxpayer funds through the Programs.

Recommendation 26: Throughout its review of both the Grow NJ and ERG programs, the Task Force identified patterns of deficiencies in the EDA's record-keeping process, particularly with respect to analyses that are determinative of project approvals. For Grow NJ, the Task Force found that the EDA project files it reviewed often contained multiple versions of the project's CBA and net benefit test, with incremental changes and without a clear audit trail of which changes were made, who made them, and why they were made. A similar pattern of deficiency appeared for ERG files with respect to the pro forma analysis and net benefit test. In many instances, it was not possible for the Task Force to determine which version of an analysis was the final version that supported the project's approval. The Task Force recommends that the EDA implement a record-keeping requirement that permits any outside reviewer to conduct effective examinations. This requirement would promote transparency and accountability in the EDA's decision-making process and promote the effectiveness and efficiency of any future audits of the EDA.

Recommendation 27: Given the lengthy award and commitment periods under the Programs, the Task Force's work, and the work of other audits, such work could be facilitated by better record retention by all involved parties, including the award recipients. The Task Force observed that many companies no longer had records relevant to its award application, particularly smaller companies, which often lacked document-retention policies. Accordingly, the Task Force recommends that subsequent tax-incentive programs require that companies preserve all documentation related to its application and award for the duration of its award or its commitment period, whichever is longer.

IX. CONCLUSION

Apart from certain open administrative and transitional matters that the Task Force will complete in the next few weeks at the direction of the Governor, this Third Report concludes the substantive work of the Task Force.

We are grateful for the opportunity that Governor Murphy has afforded us to serve him and the State of New Jersey in connection with the Task Force's important mission. We earnestly hope the results of our complex investigation will serve as building blocks for greater stewardship over future tax-incentive programs.