Governor's Office *of* Economic Development

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State of Utah

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Salt Lake City, Utah 84114-2310

Dear Mr. Pulsipher,

The Governor's Office of Economic Development (GOED) appreciates the opportunity to respond to Performance Audit No. 14-03, *A Performance Audit of GOED's Corporate Incentives Program*.

The primary program reviewed by your office was the Economic Development Tax Increment Financing (EDTIF) post-performance incentive, which has played an integral role in attracting new commercial projects and corresponding new state revenue to Utah during the last eight years. Since the inception of the EDTIF program, incented companies have created over 12,736 jobs and **contributed over $120 million in net new state revenue to Utah's coffers**.

It [EDTIF] also ensures that the State does not provide a tax credit until a new commercial project has generated new state revenue. In January 2014, certified public accountants with the firm of Haynie and Company found that the **"average new state revenue earned per dollar spent was calculated to be $3.19."**

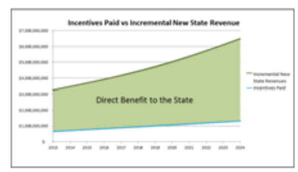
The EDTIF program encouraged businesses to invest in Utah during a period of unprecedented economic challenges and helped the state emerge from the Great Recession stronger than many of its national counterparts. Major companies such as Adobe, Proctor and Gamble and Goldman Sachs have established significant footholds in Utah and dozens of Utah-based companies such as IM Flash Technologies and Edwards Lifesciences have expanded here in part due to the EDTIF program. Those companies, along with many others, helped bring Utah's unemployment rate from a high of 8.3% in 2010 down to today's rate of 3.6%.

The EDTIF program was enacted to "address the loss of prospective high paying jobs, the loss of new economic growth, and the corresponding loss of incremental new state and local revenues by providing tax credits to attract new commercial projects in the state." See Utah Code Ann. §63M-1-2402. The Audit focuses primarily on the creation of jobs and not on the program's other purposes: attracting new commercial projects and increasing state and local revenue. The Audit provides insight within its narrow area of focus and we have adopted and are adopting many of the recommendations your review suggested.

Nearly one-third of the Audit Report's recommendations are directed towards the Legislature and concentrate on the statute establishing the program. Because GOED's role is to carry out the mission given to it by the Legislature, a comprehensive evaluation of the program's effectiveness requires consideration of all its purposes and a few key policy issues.

First, unlike many other states' corporate incentives programs, the Utah State Legislature purposefully established the EDTIF program as tax increment financing rather than as a per-job incentive. This unique structure allows the State to consider not only projected job creation, but also the positive impact of a new commercial project on local and state tax revenues when contemplating a corporate incentive offer. It also ensures that the State does not provide a tax credit until a new commercial project has generated new state revenue.

The EDTIF program has succeeded in its mission to increase incremental state revenue. In January 2014, certified public accountants with the firm of Haynie and Company found that the **"average new state revenue earned per dollar spent was calculated to be $3.19."** Haynie and Company calculated a return on investment of over 3 to 1, year over year in direct Return on Investment. If calculated, the indirect and induced Return on Investment would significantly increase the value of the program. The Haynie report is attached hereto as Appendix A.



EDTIF Potential Benefit to the State

To review this graph, please see page 24.

Second, the Report's narrow focus does not take the context of the Great Recession into account. Legislation establishing the program wisely provided flexibility for adjustments in times of economic hardship. Many of the decisions evaluated in the Report were made in response to the worst global downturn since World War II. The unprecedented economic challenges of the time proved difficult, but with the unique structure of the program, including its flexibility, GOED was able to provide tailored incentives to promote new economic growth in Utah. The EDTIF program's success during this downturn remains evident: Utah's economy has bounced back and unemployment rates are low compared to many of our national counterparts. The Report questions the Legislature's wisdom in creating a dynamic, flexible program. The scope of the Report does not take into account the flexibility that helped Utah weather and overcome the effects of the Great Recession.

The Audit Report excludes references to continuous process improvements made to the program, both throughout its life and in response to issues the Office of the Utah State Auditor (OSA) team raised during the audit period. We note that several redundant findings and recommendations are included in the Audit Report. Additionally, the

Report overstates some findings that only applied to one or a few companies and fails to consider the contextual overlay in these statistically insignificant anomalies.

We recognize that the Auditor, the Legislature and the people of Utah trust our office to be good stewards of state resources, and we take that solemn responsibility seriously. To that end, we continually seek to enhance and strengthen our programs. Based on the review conducted by your office, we are in the process of re-drafting our Administrative Rules and formalizing through policies and procedures a number of practices. We have also revised our standard incentive contract templates to address some of the issues your team identified and we have updated our media releases. We thank you for your suggestions and anticipate these changes will help us continue to achieve the mission given us by the Legislature and to help ensure Utah remains the best managed State in the Nation.

On the following pages, you will find our comprehensive responses to your Findings and Recommendations.

Very truly yours,

Q. Val Hale

Q. Val Hale
Executive Director

Below are our comprehensive responses to your findings and recommendations.

Finding 1: GOED's Undefined Post-Performance Review Process Allows Questionable Corporate Incentive Awards

GOED Response: GOED enters into a contract with each company that receives an EDTIF award. Each contract defines the term of the incentive period, the maximum incentive amount that may be earned over the term, what percentage of the incentive may be claimed year over year and GOED's post-performance review process to determine whether an incented company may qualify for a tax credit in any given year. GOED believes these parameters are well-defined in each contract and that these terms have prevented "questionable" awards.

The tax credit is a rebate on the taxes that the business paid into the State. A company must apply for a tax credit each year throughout the term of the incentive agreement with the State. In order to qualify, the company must demonstrate that it generated incremental new state revenue and that it has not reached the cap, or maximum incentive amount. Typically, the company provides employment records (if job creation is required by the contract)[1] and other evidence of taxes paid. This information is then audited by GOED to determine whether the threshold contractual obligations, such as job creation (FTE creation or headcount) and wage requirements, were met. If the contractual requirements were met and the taxes have been paid, a tax credit will be issued.

In stating that GOED "allowed questionable corporate incentive awards," the audit focuses on the job creation and wage criteria in a few of GOED's contracts.

With respect to job creation, the enabling legislation requires simply that an incented company "bring new incremental jobs to Utah." See Utah Code Ann. §63M-1-2404. "New incremental jobs" are defined in statute as those that are "created in addition to the baseline count of employment positions that existed …before the new commercial project." Utah Code Ann. §63M-1-2403. While the statute only requires "new incremental jobs," GOED's policies additionally require a new commercial project to forecast the creation of at least 50 incremental jobs to qualify for an incentive. And, while the statute defines "high paying jobs" as those that "compare favorably" against the average wage of the community where the jobs exist, GOED's policy is to require that an urban job pay at least 125% of the county average wage. This wage is required in the aggregate and on average and includes company-contributed health benefits.

In Finding 1, OSA's assertion that Company A failed to meet its contractual requirements is based on a misunderstanding of the multi-step EDTIF annual review process. The process is explained below.

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[1] In the early years of the program, job creation was not always included as a contractual requirement, however, incremental new state revenue always has been.

[2] Note that Tanner reviewed 64% of all GOED payouts, and all payments referenced by OSA in this report.

[3] Only one rural project out of 127 companies/144 approved projects projected wages below 100% of the rural

GOED's annual review permits combining full time equivalents (FTEs) that fill the same position over the course of the year and annualizing wages to account for jobs created throughout a given contract year. Combining FTEs into one job protects the program from overstating new jobs created. Annualizing new jobs added during the year accounts for growth of a company hiring throughout the year and equalizes the wage data collected to actual performance.

GOED does not combine FTES or annualize jobs in every review. As demonstrated in the multi-tiered process below, if a company meets its contractual requirements in Step 1, the review does not continue for additional analysis, such as the combining of FTEs or annualization of wages. If the company does not appear to meet its obligation on first review, the review continues through the multi-step process until a conclusion is reached regarding compliance.

Company A met both the statutory and contractual criteria for its incentive. However, GOED had to go past Step 1 to the multi-step process to confirm that the criteria were met. The table below demonstrates the process that GOED followed to conclude that Company A exceeded the wage criteria by $1,438.13 and met the FTE requirement.

Job and Wage Criteria Multi-Tiered Validation Process

Description	Average Wages	Above or (Below) Wage Requirement	Required Jobs	Total Wages	Comments
Company A	**$ 33,594**		**59**		**Contract Annual Criteria**
"Raw" Grand Totals	$ 24,092	$ (9,502)	79	$ 1,903,280	Company Submitted ADP Reports
After Step 1 of combining of replacement positions. 37 FTE combined to 19 positions	$ 31,721	$ (1,872)	60	$ 1,903,280	Step 1: Combine FTEs to one job that replaced another. This is done by ensuring that employees have contiguous termination and hire dates, combined months employed is between 9 to 12 months and that individual hours per week are greater than or equal to hours specified in contract FTE definition and have the same department and similar position titles.
After Step 2 of Annualizing	$ 35,032	$ 1,438	60	$ 2,101,913	Step 2: annualize the new jobs added during the year that a full annual wage was not reported.
No need to continue with Step 3 company qualifies in step 2	n/a	n/a	n/a	n/a	Step 3: If allowed by contract add the actual company contributed medical benefits to individual wages.
No need to continue with Step 4 company qualifies in step 2	n/a	n/a	n/a	n/a	Step 4: This is a bottom up analysis considering all individual records of the jobs file and qualifying on an individual basis.

Although the multi-step review process is part of GOED's performance review, contractual performance is typically demonstrated in the first step of review and additional analysis is not required. The table below shows that of all 183 payments made by the program, only 19 payments were issued after additional analysis.

Total Number of Payments	183	$ 58,486,835
Number of Payments Based on Wage Data that includes: Combining Jobs, Disquaification, or Addition of Health Benefits	19	$ 7,539,043
% that Require Additional Analysis	10.4%	12.9%

With respect to Company B, while it is true the Company either met its contractual wage or its contractual FTE requirement, OSA fails to report that GOED reduced the incentive amount by 68% to correspond to the company's performance, and that Company B only received one incentive payment of $12,714. GOED acknowledges that Company B's incentive could have been better documented and is implementing policies and procedures to ensure better documentation in the future.

With respect to Company C, GOED required the company to create 14 FTEs that met the wage criteria set forth in the contract (approximately $52,020/year). During the years in question, the company did perform: more than 14 FTEs were created that met the wage requirements, as well as several other jobs that were below the wage requirement set forth in the contract. Due to the additional jobs created by Company C, the average wages for Company C did not meet the $52,020 threshold. However, GOED used its statutory discretion to incent the company based on its meeting the actual performance requirements of 14 FTEs that met the wage criteria (instead of using the average) per the terms of the contract. GOED made this decision during the worst period of the economic downturn and with the knowledge that even the lower paying jobs would "assure adequate employment for, and the welfare of, Utah's Citizens." Utah Code Ann. §63M-1-2402.

Economic conditions are not stagnant and GOED appreciates the discretion that the Legislature built into the Statute so GOED can respond to market conditions. Company D should be lauded as an example of how this flexibility allowed GOED to attempt to create more value for the state of Utah. Company D was originally approved for an incentive with a wage requirement of 175% of the average county wage. The company expanded in Utah and created jobs that paid 168% of county average wage. The company asked GOED if it could still claim its incentive. Rather than turning this company away for creating jobs paying 168% of Salt Lake County average, GOED used its discretion to create more value for the state. Through a process that went through a public Board meeting, GOED adjusted the contractual wage requirement to the program minimum requirement of 125% in exchange for requiring the company to **hire an additional 50 employees** and **reduced the overall incentive amount by $3,000,000.**

In all four of the businesses criticized in Finding 1, only one annual payment to each company was questioned. In the event any audit or review identifies an incorrect payment, GOED contracts allow for adjustments to future payments to offset an overpayment. The contracts also contain a recapture provision that survives three years after the term of the contract expires. So even after the maximum incentive is reached, a "look back" period allows GOED to adjust and recapture if errors are made.

In sum, GOED disputes the finding that its process allows questionable awards. To the contrary, GOED believes that its flexible process allows it to adjust awards to market conditions, and that its multi-tiered review process ensures that companies receive the incentives to which they are entitled, and that overpayments or errors can be recaptured and resolved.

Recommendation 1: We recommend that the Governor's Office of Economic Development formally create a written process for how all future post-performance corporate incentive reviews should be conducted.

Since the inception of the EDTIF program, GOED has adhered to the review process standards set forth in statute (Utah Code Ann. §63M-1-2404 - 2405) and its own internal standards as outlined in each EDTIF agreement. Furthermore, GOED has consistently used an Audit Procedures guide to ensure that each disbursement met the statutory and contractual standards found in the standard GOED contract template. GOED is currently in the process of formalizing additional audit procedures as formal policies and procedures.

Moreover, third party independent reviews performed on the program, as required by statute, have found awards under the annual review process to be appropriate. A review performed this year found no questionable awards, with the exception of one business that was underpaid, by $2,000.00[2]. Tanner and Company performed the third party independent analysis.

The adjustment and recapture provisions explained above provide another avenue to ensure that there are no "questionable awards."

Recommendation 2: We recommend Governor's Office of Economic Development clearly document criteria used to assess company performance and how the company met those requirements to justify an award payout.

GOED Response: As stated above in Finding 1 Recommendation 1, GOED is currently in the process of formalizing additional audit procedures as formal policies and procedures and appreciates the suggestion and opportunity to improve.

It may be helpful to provide some general context on the relationship between GOED and incented companies. That relationship is premised on the idea that if a company creates new jobs and generates new tax revenue in Utah, the Company may claim a tax credit.

In performing the annual audit as described previously, GOED documents all verification of the company submitted data and makes any adjustments to the annual request for a rebate that might not be consistent with data received from the other outside verification sources, such as the Utah Tax Commission and the Department of Workforce Services.

Workforce Services' record reviews were added in response to a 2007 Audit from the Office of the Legislative Auditor General. In *A Performance Audit of the Governor's Office of Economic Development Report 2007-04*, OLAG recommended: "in our opinion, detailed company payroll reports form the clearest evidence of jobs meeting the incentive requirements. Optimally, there should also be a source of independent verification, for example a report from the Department of Workforce Services (DWS)."

From 2008-2013 these reviews and reports were documented in Excel spreadsheets, printed and saved in hard copy files. Starting in 2014 the annual reports began to be submitted online through our customer relationship management (CRM) system and all notes and adjustments that justify payments are documented and accessed through that system going forward.

OSA is incorrect in asserting that GOED's lack of documentation allows GOED to "recalculate(s) company data until the corporate incentive payment can be justified." First, the multi-tiered process explained above ensures that deserving companies get their credits, not that undeserving companies can sneak

[2] Note that Tanner reviewed 64% of all GOED payouts, and all payments referenced by OSA in this report.

through. Second, the number of actual tax credits issued belies this claim. Of the total potential tax credits authorized by the GOED Board through 2012, there could have potentially been 344 tax credits issued. Of those potential 344 tax credits, GOED actually issued 183 tax credits, or 53.2%, based on performance. Thus, only about half of the payments claimed to date have been verified by GOED and paid. GOED acknowledges that OSA correctly identified one instance where either the contractual wage or jobs criteria were not met, Company B. In that instance, Company B received a partial incentive for partial performance.

Recommendation 3: We recommend that the Governor's Office of Economic Development only consider new employee wages to determine if a company qualifies for a corporate incentive award.

GOED Response: With regard to EDTIF legislation, "new incremental job" has always been defined as "employment positions created in addition to the baseline count of employment positions that existed within the business entity before the new commercial project." Utah Code Ann. § 63M-1-2403. GOED has always sought to evaluate new employee wages based on that statutory requirement/definition.

To the extent feasible, GOED only considers incremental employee wages to determine if a company qualifies for a corporate incentive award. However, there are certain instances where it is not possible to clearly determine which wages are incremental.

GOED uses data from DWS to verify wage and job requirements. DWS data shared with GOED is only available for whole companies and is not broken down by individual employee. Therefore, in order to verify company reported data with DWS' data, GOED's practice has been to look at the company wages as a whole in instances where it is not feasible to separate out the incremental employees.

GOED takes exception to OSA's claim that there was "insufficient documentation" to fully evaluate wage data. While OSA focused primarily on information provided from the customer relationship management (CRM) system GOED is currently using in Beta (not final) form, GOED uses additional information to verify wage data, including company records, which OSA questions as verifiable due to the source. However, the Office of Legislative Auditor General's 2007 audit suggested using this very approach. In this instance GOED has followed the recommendation of OLAG, but welcomes specific suggestions on how to receive even more verifiable data.

Recommendation 4: We recommend that the Governor's Office of Economic Development issue corporate incentive awards to only companies that fulfill their contractual obligations.

GOED Response: GOED, again, disagrees with the insinuation that GOED incents companies who fail to meet their contractual obligations. As explained in Finding 1, GOED has been amenable to modifying incentives to respond to market conditions or in situations where a modification will benefit Utah and its citizens. Please see Finding 1, Recommendations 1-3 above for further explanation and reasoning.

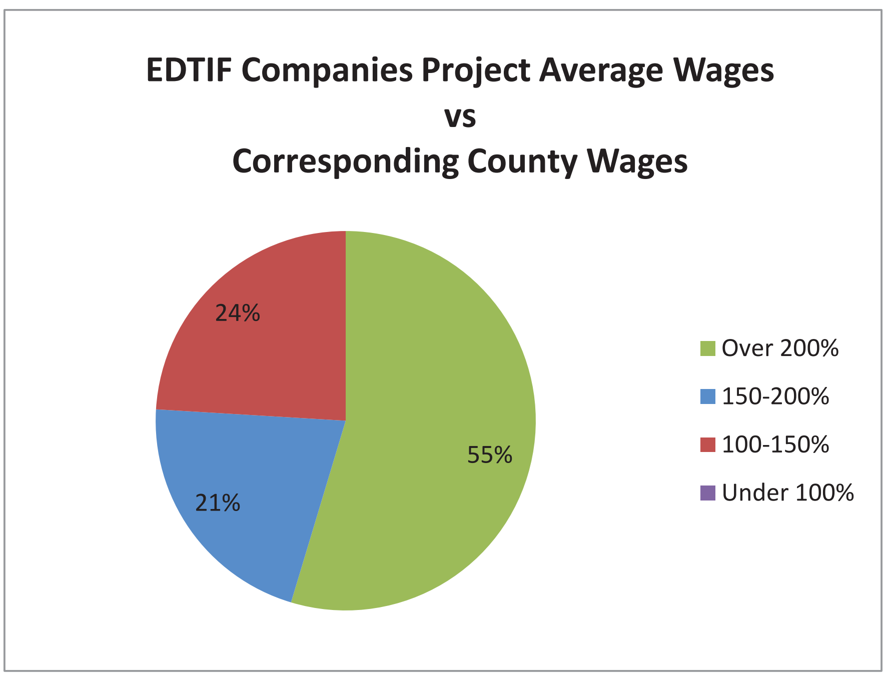
Recommendation 5: We recommend that the Governor's Office of Economic Development incent only jobs whose wages "compare favorably against the average wage of a community in which the employment position will exist."

GOED Response: Pursuant to Utah Code Ann §63M-1-2401 *et. seq*., GOED incents "new commercial projects." In any "new commercial project," there will be a variety of employment positions created. The EDTIF statute requires all new projects to create "new incremental jobs" (those above the baseline). OSA confuses this requirement with GOED's discretion to require a project to create "high paying jobs" (those that "compare favorably" with community averages). "Incremental jobs" are required in an incentive, "high paying jobs" are not.

While "high paying jobs" are not required, GOED does impose the requirement on many companies. As defined by statute, a "high paying job" means, "the annual wages of employment positions in a business entity that compare favorably against the average wage of a community in which the employment positions will exist." Utah Code Ann. §63M-1-2402(4)(a). OSA has interpreted the term "compares favorably" to mean "exceed." However, if the Legislature had intended the statute to read "exceed" it could have used that phrase rather than the more flexible term, "compares favorably." GOED disagrees with OSA's interpretation of that term.

As the governmental entity that administers the program, GOED has used its discretion to interpret the term "compares favorably" to mean, in general, a 125% aggregate average wage threshold for projects in urban counties and 100% for projects in rural counties. These aggregate averages include benefits. These self-imposed practices generally exceed other intermountain states' wage requirements.

GOED has accomplished the legislature's mission to attract jobs whose wages "compare favorably. " The average wage has been increasing across the state as shown in Figure 3.1 of OSA's report. Moreover, 76% of all disbursements made by GOED have been claimed by companies whose average project wage is greater than 150% of the required benchmark excluding benefits. The graph below shows the average wages of "new commercial projects" that have actually received an incentive payment compared to their corresponding county wage.



Of the 183 incentive payments, 55% went to companies whose total average project wages exceeded 200%, 21% went to companies whose total average project wage exceeded 150% and 24% went to companies whose total average project wage exceeded 100%. No payments were made to companies whose total average project wage did not exceed 100%.

OSA mentions Company B and C as examples of incenting jobs whose wages don't "compare favorably," but that is not an accurate portrayal. GOED does not incent jobs; it incents new commercial projects that have a mix of employment opportunities.

GOED disagrees with the OSA's report that GOED "rationalized" an incentive to Cmpany C. GOED used its multi-tiered review, as described in Part 1. While the process GOED uses to determine average wage is not prescribed in statute, it has been detailed through consistent practice. Combining FTE positions and annualizing wages are "common sense adjustments" that account for job creation by an incented company throughout the year and the nature of an FTE. As mentioned previously, GOED incents new commercial projects, not jobs. The nature of new commercial projects is such that they will create a mix of employment opportunities, from executive or management positions to blue collar positions, all of which provide value to communities and generate new revenue for the state.

Additionally, the enabling legislation sought to provide "a cooperative and unified working relationship between state and local economic development efforts." Utah Code Ann. §63M-1-2402. GOED believes that local communities are best situated to advise GOED on which projects it considers to "compare favorably." GOED has never incented a project without local support.

Recommendation 6: We recommend that the Governor's Office of Economic Development refrain from retroactively lowering company wage or job requirements.

GOED Response: Please see our introductory comments to this Finding related to Company D. Through a public process that went through an open GOED Board meeting, GOED adjusted Company D's contractual wage requirement to the program requirement of 125% in exchange for requiring the company to **hire an additional 50 employees** and **reduced the overall incentive amount by $3MM**, thereby creating additional value for the State. The OSA's recommendation would prevent GOED from adjusting incentives for the benefit of Utah's citizens.

Finding 2: Unverifiable Jobs Data Prevent GOED From Validating Performance for Some Companies

GOED Response: The OSA takes issue with GOED's practice of allowing a new commercial project to lease employees through a professional employer organization, or "P.E.O." While the statute contemplates that employees of a "new commercial project" may be employed by an entity other than the "business entity" claiming the tax credit, GOED ensures that any leased employee is dedicated full-time to the new commercial project by requiring the submission of employee records from the P.E.O. prior to issuing a tax credit that includes any portion of employee wage withholding tax.

Recommendation 1: We recommend that the Legislature determine whether an incented company should be allowed to include contractors as part of the company's commitment to creating new jobs.

GOED Response: The Legislature has determined that the use of leased employees is allowed per the statute. In Utah Code Ann. § 63M-1-2403(8)(a)(iii) the term "business entity" is not included in the wage withholding section of the statute and requires only that an employee be an employee of the new commercial project. Aside from the actual language of the statute, GOED believes that the Legislature did not intend for a governmental entity to dictate to private businesses how to run their operations. If a company finds it more efficient and cost effective to lease employees or use a professional employee organization, GOED does not believe it is in a position to discourage this practice, nor that the Legislature prefer it do so. However, as set forth above, GOED does require verification of the leased or PEO jobs prior to approving an incentive amount. In any case, very few incented companies use PEOs, as illustrated below.

Total Number of Companies Approved for Incentives by GOED Board to Date	127
Number of Companies that Use Leased Employees	6
% that Use Leased Employees	4.7%

Recommendation 2: We recommend that the Governor's Office of Economic Development create a reliable verification process for any newly created jobs used to receive an incentive award.

GOED Response: It has been GOED's practice to calculate incremental revenue based on jobs that can be verified. The OSA questions GOED's ability to verify jobs that are managed by a PEO instead of directly by the company, and cites companies E and F as examples. OSA's assumptions about the number of verifiable jobs in Companies E and F are incorrect. OSA only relies on jobs that are reported to GOED by DWS. But the other claimed jobs, per OLAG's audit recommendations, were also independently verified by GOED through the submission of documentation between the business entity and the PEO. The jobs that were not reported by DWS were reported and verified through some of the most reputable professional employee organizations in the world. While GOED believes that the threat of inaccurate information is extremely low given the reputation of the companies, in response to this audit, GOED has modified its contracts to require a signed certificate of compliance as an additional tool to discourage misrepresentation and thanks OSA for providing this suggestion.

Finding 3: GOED Progressively Reduced Wage Requirements for Incented Companies

GOED Response: For years, the minimum program requirements have remained the same: that a new commercial project's jobs pay an aggregate average of 125% of the urban county wage and 100% of the rural county wage. This has not changed or been reduced. There have only been two changes to the program requirements: the first was to migrate from a median county benchmark to an average county benchmark, which had the effect of *increasing* the wage requirements, and the second was to allow company contributed health benefits to count towards the wage requirement. It serves to reiterate that these are self-imposed requirements not mandated by statute.

While the program requirements have not changed, GOED has standardized its contract language to conform to the minimum program requirements, as opposed to negotiating the requirements on a per contract basis. GOED standardized the contracts in an effort to be more consistent, transparent and to streamline performance reviews.

GOED has achieved the legislature's mission to "create higher paying jobs that will lift the wage levels of communities in which those jobs are created." Utah Code §63M-1-2402(1)(c). As the incented companies fulfill their contractual obligations and bring both incremental and high paying jobs to Utah, one should expect that the average county wages would increase. GOED is pleased that OSA's data proves that this is so.

GOED does not dispute the data in Figure 3.2 of OSA's report, only the analysis. Figure 3.2 represents averages of averages and does not reflect the actual wage against which GOED benchmarks a given project. Furthermore, as GOED has previously stated, the EDTIF is not a "per job" incentive, and incentive disbursements are awarded based on the revenue created by a new commercial project.

Recommendation 1: We recommend that the Governor's Office of Economic Development perform an economic analysis consisting of a cost-benefit analysis to determine the appropriate wages at which urban and rural companies should be incented.

GOED Response: GOED constantly strives to improve its processes and programs and will continuously evaluate the program's non-statutory requirements, in light of both the economic climate and competitive incentives offered by other states.

Recommendation 2: We recommend that the Legislature clearly define the minimum threshold for newly created high paying jobs must meet to receive a corporate incentive award.

GOED Response: Of course, the Legislature has the ultimate discretion to decide whether it wants to migrate towards a more defined program. However, as mentioned previously, GOED's current practice is actually more conservative than the statutory requirements implemented by other intermountain states, as demonstrated by the graph below. To promote public input on this requirement, GOED will publish a re-draft of its Administrative Rules formalizing this practice.

State	Statutorily Defined Wage Criteria?	Wage Criteria Definition	Forbes "Best State For Business" Rankings
Arizona	Yes	100%	**24**
Colorado	Yes	100%	**5**
Idaho	Yes	100%	**25**
Nevada	Yes	100%	**36**
New Mexico	Yes	$40,000/year for "Rural" $60,000/year for "Urban"	**45**
Utah	No	Internal Policy: 100% in Rural* 125% in Urban*	**3**
Wyoming	N/A	N/A	**23**
** Includes Company Contributed Health Benefit Premiums*			

GOED disagrees with OSA's criticism that GOED progressively lowered its criteria, when simultaneously comparing those self-imposed guidelines against states with less prescriptive requirements. Also, as mentioned before, GOED relies on the flexibility provided by the Legislature to adjust to varying economic conditions. The flexibility the Legislature wisely built into the Statute allowed Utah to include company-contributed health benefits to successfully promote investment in Utah during a period of unprecedented economic turmoil and uncertain healthcare regulation, which also furthered the legislative mission of assuring "adequate employment for, and the welfare of, Utah citizens."

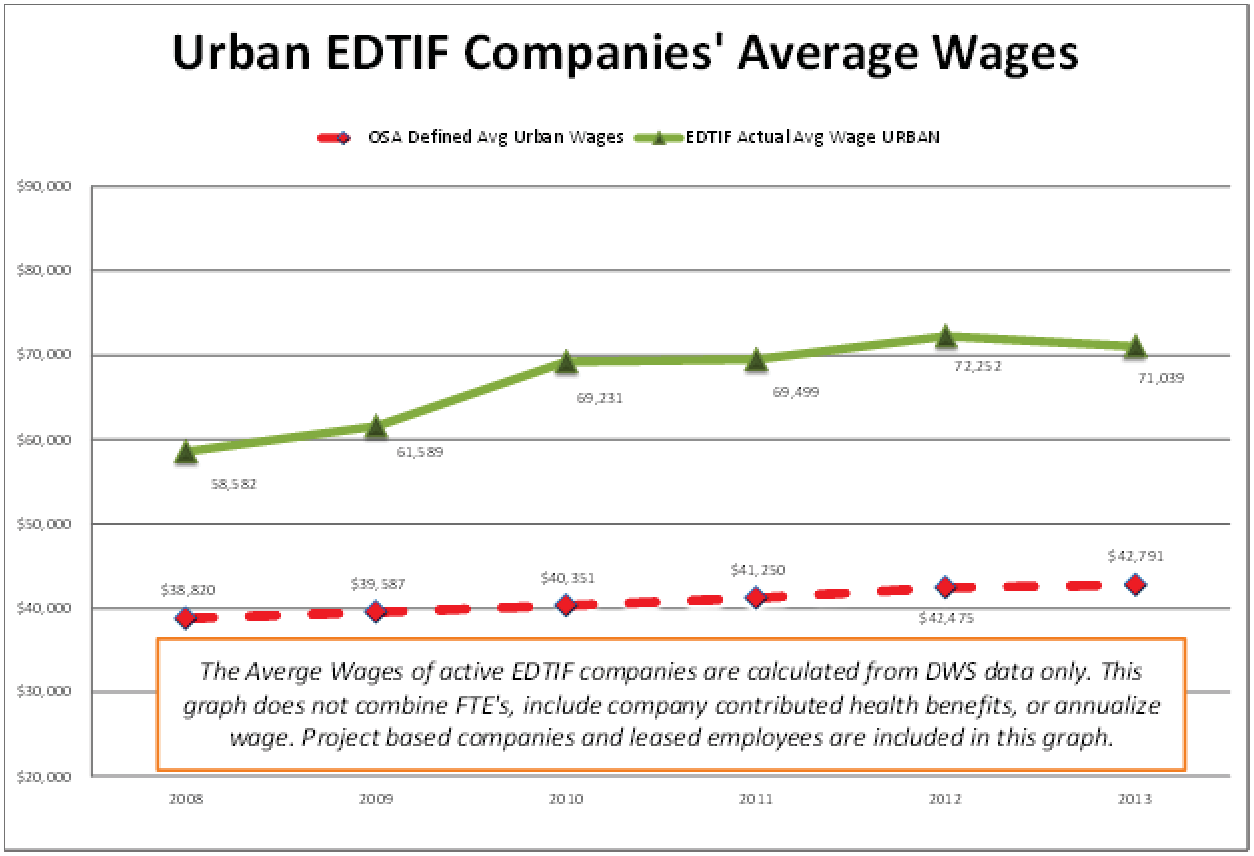
Moreover, Figure 3.1 of OSA's report is inaccurate because OSA has recalculated median wages and converted them to average wages. The data is also inaccurate as the contractual wage requirements for 2008-2010 include a mix of percentages of average and median wages that differ from project to project. In any event, Figure 3.1 highlights GOED's effort to be more consistent in recent years.

Finding 4: GOED Incents Jobs that Pay Below the Wage Requirements

GOED Response: The OSA takes issue with GOED's practice of requiring a new commercial project's high paying jobs to average in the aggregate 125% of the county average wage (or 100% in rural counties), including benefits. This practice is appropriate given that the program was established by the Legislature as tax increment financing and not as a per jobs incentive. As mentioned previously, GOED does not incent jobs, but rather it incents new commercial projects that typically have a mix of employment opportunities but that must generate tax increment in order to receive an incentive. GOED self-imposes a hiring requirement on new commercial projects for them to qualify for a tax credit in a given year, but incents the company based on the revenue added to the State's coffers after the revenue has been recognized.

Recommendation 1: We recommend that the Governor's Office of Economic Development only incent jobs that pay a wage exceeding the community average wage, thus lifting the wage levels of the state's communities.

GOED Response: This recommendation is reiterated in Finding 1, recommendations 4, 5, and 6. In Figure 3.2 of the OSA Report shows that the average urban county wage is increasing; accomplishing the Legislature's mission to: "provid(e) tax credits to attract new commercial projects in economic development zones in the state." (Utah Code Ann. § 63M-1-2402(2)(a)) Further, verifiable data indicates that incented projects' average wages exceed the urban average. The graph below shows the average wage of all EDTIF companies in urban areas compared to the average wages of urban areas.



You can see companies that have received incentives from the State perform well above the urban area average and that the EDTIF company wages are lifting the county wages year over year.

Recommendation 2: We recommend that the Governor's Office of Economic Development issue an annual report to the Legislature that discloses the wages paid for newly created jobs receiving the incentive.

GOED Response: GOED produces an annual report for the Legislature per Utah Code Ann. § 63M-1-2406, and would be willing to provide data, by industry, that shows the average wage for companies receiving the tax increment incentive should the Legislature demonstrate an interest in this information.

Finding 5: Inclusion of Company-Paid Health Benefits Inflates Wages

GOED Response: This finding is a reiteration of Finding 1, Recommendation 5 and other recommendations throughout the Report. As stated previously, GOED began including company contributed health benefits to promote benefited jobs surrounding the Affordable Care Act discussion and to spur additional new commercial projects as Utah headed into the global downturn. This decision was made in consultation with members of the GOED Board. This use of discretion, given the economic climate, was made to accomplish the legislative mission to attract new economic growth and may be modified as economic conditions continue to improve or if obviated by changes in health care law.

The OSA takes issue with including benefits as part of overall "wages" because the Department of Workforce Services does not publish an average wage including benefits. Recognizing that the comparison is not strictly equal, we would note that increasingly companies report the total compensation, including benefits, when posting job openings. Even the State of Utah uses this calculation in responding to public records requests for its employee wage information. Despite this difference of opinion in whether total compensation should be included in GOED's decision matrix, it is important to note that the projected aggregate average wages of all new commercial projects incented in urban counties exceeded the county average **without benefits**.[3]

Recommendation 1: We recommend the Governor's Office of Economic Development only include employee wages, and not employer-paid health benefits, when determining whether the company's new incremental jobs meet the average county wage criteria.

GOED Response: Employer contributed health benefits are a factor both during the initial qualification of a company for an incentive award and during the annual compliance period. Companies originally seeking an EDTIF award must project that on average and in the aggregate the proposed jobs pay 125% of the county average wage, including health benefits. Once an EDTIF has been offered, an incented company must meet the contractual job and wage requirements each year. While GOED by practice (in its multi-tiered review, explained in Finding 1) would count employer contributed health benefits towards a company's performance wage requirements, to date there has only been one tax credit issued that utilized health benefits as part of the post-performance wage calculation. On average, the companies that GOED incents have an average wage of 158% above the Salt Lake County wage, excluding benefits.

The OSA uses Companies G and H as examples of wage inflation. However, OSA misstates the actual projections of these companies, which demonstrate that without health benefits, the companies both projected average aggregate annual wages of 100% or more.

Below are the projections for Company G and Company H that were approved by the GOED Board.

Company G

State of Utah Incentive Application - County Wage Criteria Estimate*

Calendar Year**	2012	2013	2014	2015	2016	2017
Employees (total annual as of December 31)	10	30	50	70	85	100
Wages, Salaries, & Bonuses (paid as of December 31)***	$462,250	$1,428,353	$2,452,005	$3,535,791	$4,422,265	$5,358,744
Average Wages, Salaries, & Bonuses (paid as of December 31)	$46,225	$47,612	$49,040	$50,511	$52,027	$53,587
Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$115,563	$357,088	$613,001	$883,948	$1,105,566	$1,339,686
Average Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$11,556	$11,903	$12,260	$12,628	$13,007	$13,397
Total Average Wage Including Health Benefits	$ 57,781	$ 59,515	$ 61,300	$ 63,139	$ 65,033	$ 66,984
Projected County Average Wage	$ 43,468	$ 44,772	$ 46,115	$ 47,499	$ 48,924	$ 50,391
Min. county wage requirement	**125%**					
Company Wages Excluding Benefits as a % of the Projected County Average Wage	106%	106%	106%	106%	106%	106%
Company Wages Including Benefits as a % of the Projected County Average Wage	133%	133%	133%	133%	133%	133%

* Urban Counties (Weber, Davis, Salt Lake and Utah) must be at least 125% of the Projected County Average Wage including Health Benefits each year

Rural Counties must be at least 100% of the Projected County Average Wage including Health Benefits each year

[3] Only one rural project out of 127 companies/144 approved projects projected wages below 100% of the rural county average without the inclusion of the employer paid health benefits. This project was supported with a significant local incentive and is located in a county that continues to struggle with economic growth.

Company H

State of Utah Incentive Application - County Wage Criteria Estimate*

Calendar Year**	2013	2014	2015	2016	2017	2018	2019	2020
Employees (total annual as of December 31)	50	113	176	203	233	268	308	308
Wages, Salaries, & Bonuses (paid as of December 31)***	########	$5,130,548	$8,220,278	$9,736,919	########	########	$16,181,797	$16,667,251
Average Wages, Salaries, & Bonuses (paid as of December 31)	$44,000	$45,320	$46,680	$48,080	$49,522	$51,008	$52,538	$54,114
Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$603,771	$1,471,693	$2,465,400	$3,037,725	$3,726,276	$4,285,217	$4,928,000	$5,236,000
Average Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$12,000	$13,000	$14,000	$15,000	$16,000	$16,000	$16,000	$17,000
Total Average Wage Including Health Benefits	$56,000	$ 58,320	$ 60,680	$ 63,080	$ 65,522	$ 67,008	$ 68,538	$ 71,114
Projected County Average Wage	$44,407	$ 45,739	$ 47,111	$ 48,525	$ 49,980	$ 51,480	$ 53,024	$ 54,615
Min. county wage requirement	125%							
Company Wages Excluding Benefits as a % of the Projected County Average Wage	100%	100%	100%	100%	100%	100%	100%	100%
Company Wages Including Benefits as a % of the Projected County Average Wage	126%	128%	129%	130%	131%	130%	129%	130%

Calendar Year**	2021	2022	2023	2024	2025	2026	2027
Employees (total annual as of December 31)	308	308	308	308	308	308	308
Wages, Salaries, & Bonuses (paid as of December 31)***	$17,167,268	$17,682,286	$18,212,755	$18,759,137	$19,321,912	$19,901,569	$20,681,125
Average Wages, Salaries, & Bonuses (paid as of December 31)	$55,738	$57,410	$59,132	$60,906	$62,733	$64,615	$67,147
Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$5,236,000	$5,236,000	$5,236,000	$5,236,000	$5,236,000	$5,236,000	$5,236,000
Average Benefits - Company Contributed Health Premiums (excluding health, vision, etc.)	$17,000	$17,000	$17,000	$17,000	$17,000	$17,000	$17,000
Total Average Wage Including Health Benefits	$ 72,738	$ 74,410	$ 76,132	$ 77,906	$ 79,733	$ 81,615	$ 84,147
Projected County Average Wage	$ 56,253	$ 57,941	$ 59,679	$ 61,470	$ 63,314	$ 65,213	$ 67,170
Min. county wage requirement							
Company Wages Excluding Benefits as a % of the Projected County Average Wage	100%	100%	100%	100%	100%	100%	100%
Company Wages Including Benefits as a % of the Projected County Average Wage	129%	128%	128%	127%	126%	125%	125%

* Urban Counties (Weber, Davis, Salt Lake and Utah) must be at least 125% of the Projected County Average Wage Including Health Benefits each year
Rural Counties must be at least 100% of the Projected County Average Wage Including Health Benefits each year

As these tables demonstrate, the projected wages exceeded 100% of the county average without benefits. By GOED's definition 100% "compares favorably". While the projections were at 100% or more of the county average, Company G's *actual* performance far exceeded the county average, paying on average $119,000.

Company G Exceeds Wage Projection by $61,000 in 2012

Company	County Average Wage	Average Wage Requirement	2012 ACTUAL Average Wage (w/o benefits)
Company G	$ 43,457	54,321	**$ 119,532**

To date, Company H has not applied for or received a tax credit.

Recommendation 2: We recommend that whenever the Governor's Office of Economic Development chooses to use additional criteria in assessing company performance, it use equivalent metrics to assess the company's compensation with average county compensation.

GOED Response: While GOED again recognizes that a total compensation comparison is not strictly the same as a wage-to-wage comparison, there is value in calculating benefits packages, especially so long as the underlying wage compares favorably to the county average wage. As stated previously, the State of Utah acknowledges the value of total compensation, and when GRAMA requested to produce compensation information, reports wages including the value of benefits packages.

Further, as mentioned previously in Finding 5, Recommendation 1, this practice was put into place to respond to the very real and challenging economic climate of the time, and GOED will consider modifying it if economic conditions continue to improve or if changes to health care law obviate this need.

Finding 6: Insufficient Statute, Rules, Policy Threaten the Integrity of the Corporate Incentives Process

GOED Response: GOED takes exception to OSA's inclusion of "insufficient statute" as a finding. Only the Legislature can draft and pass statute. As recommended by OSA, GOED is in the process of revising its Administrative Rules and formalizing practices through written policies and procedures, but setting policy through statute is solely within the purview of the Legislative Branch, not the Executive Branch and is therefore outside of GOED's control.

Recommendation 1: We recommend that the Legislature clearly define key terms and concepts that influence the amount of corporate incentives given to companies, including:

a. High paying jobs
b. New incremental job growth
c. Competition with other states for company relocation
d. Appropriate length and amount of rebate rates
e. Urban versus rural county designation
f. Significant purchases from Utah vendors

GOED Response: The Legislature has already defined a, b, and f in Statute, see Utah Code Ann. §63M-1-2403. GOED is in the process of rulemaking to define c, d, and e, which will allow public comment on those important concepts.

Recommendation 2: We recommend that the Governor's Office of Economic Development develop and follow written policies and procedures that establish minimum performance standards for companies applying for and receiving corporate incentives.

GOED Response: As stated previously in response to other similar recommendations, GOED appreciates the recommendation and is in the process of formalizing policies and procedures that it had been using internally by practice.

Recommendation 3: We recommend that the Legislature specify the length of time the Governor's Office of Economic Development should be allowed to incent a "new incremental" job.

GOED Response: This recommendation misunderstands the distinction between a per jobs incentive (which typically only classifies a new job as "new" for a specified time period) and a tax increment financing program, which by its nature considers a "new" job to be one that is incremental above the baseline, even if the job is the same, year after year. See Utah Code Ann. §63M-1-2403.

The example used by OSA of Company I demonstrates why GOED's more flexible tax increment financing program works better than a "per jobs incentive" to compete in the business environment GOED must navigate on a daily basis. Company I was an extremely competitive incentive process, and although the company did not project hiring after five years, GOED felt it was in the best interest of the taxpayers to extend the term to persuade Company I to commit to moving its operations to the state, as opposed to taking all of its operation and revenue elsewhere.

Figure 6.3 of OSA's Report is not representative of GOED's current practice, which requires an incented company to contractually commit to creating at least 50% of their projected jobs year over year to qualify for an annual incentive. The projections portrayed in Figure 6.3 reflect the projections that were used in six of GOED's contracts from 2008-2010 (three of which have since undergone amendments that changed their requirement to GOED's current standard). Since 2011 GOED has followed the aforementioned policy that requires companies to hire at least 50% of their projected FTEs to qualify for a revenue based incentive. GOED requires 50% of projected hires to allow for companies to be optimistic in their projections, while at the same time acknowledging that projections are simply a forecast and that businesses change over time in response to a number of market and economic factors.

In any event, incented companies are motivated to meet and exceed their job projections, as a significant portion of the incentive value is in the wage withholding taxes paid by their employees. If a company only hires 50% of its projected hires, the actual incentive awarded is correspondingly calculated and reduced.

It serves to note that GOED's contracts have improved over time, where the current practice requires more job creation than the previous practice.

Recommendation 4: We recommend that the Legislature periodically determine when the current allowance of an incentive of up to 30 percent of new incremental revenue for 20 years is appropriate to accomplish the mission of economic development.

GOED Response: Since the beginning of the program, GOED has only applied the maximum percentage rate and term for six companies. GOED's practice is to reserve the maximum term and percentage for projects that include relocation of a headquarters location, significant capital investment, significant job number projections with high associated wages, strong local support and an ability for the new commercial project to complement an existing strategic cluster or attract additional non-incented companies into the state. GOED has been very judicious in granting maximum incentives. Over the life of the program, the average rebate is 23.8% and the average term is 11 years. The chart below shows that GOED has used the discretion from the legislature very conservatively.

Total Number of Companies Approved for Incentives to Date	127
Total Number of Companies Approved for 20 Year 30% Incentives	6
% of Companies Approved for 20 Year 30% Incentives	4.7%

Recommendation 5: We recommend that the Governor's Office of Economic Development ensure that contracts comply with statute and accomplish the intent of the corporate incentives program.

GOED Response: Pursuant to UCA §63M-1-2404(3) GOED may enter into agreements with a recipient of an EDTIF. All agreements must be entered into with complete adherence to state and federal laws and regulations. Since the inception of the program, all agreements have been drafted to reflect total adherence to the laws and regulations governing it or such agreements have been amended if any provision is found to be to the contrary. GOED, through the assistance of OSA, has identified two early contracts that contained statutory errors. Both contracts are being amended to correct the error. As shown below, however, OSA misstates the existence of two contractual provisions leading to an incorrect assertion that the agreements violate statute.

A) OSA misstates the law and/or contractual provisions leading to an incorrect assertion that the agreements entered into violate the statute.

First, OSA misstates the existence of two contractual provisions leading to an incorrect conclusion that the agreements have been written contrary to statute. The first misstatement comes from OSA's assertion that the agreements allow for jobs that pay below the average county wage to count toward a company's overall eligibility for the tax credit. This is a misstatement that leads to an incorrect finding and recommendation for two reasons: 1) the statute has no wage requirement for a new commercial project to be eligible for a tax credit; and 2) the statute does not require a job be paid above the county average wage. The eligibility requirements such as the wage requirement are self-imposed by GOED. These requirements are currently outlined in each agreement and are included in GOED's current re-draft of its Administrative Rule for the EDTIF program.

1) *The statute has no wage requirement for a new commercial project to be eligible for a tax credit*.

The statute governing the EDTIF program remains silent on a definition of "wages" and does not provide wage criterion for eligibility in the program. See Utah Code Ann. §63M-1-2401 *et. seq.* The statute does require that all new commercial projects create "new incremental jobs," which is defined separately from "high paying jobs." However, the definition of "new incremental jobs" does not mention "wages" as any aspect of its definition nor does this definition offer what "wages" comprise of; it is, however, a requirement for eligibility.

OSA states in its Audit Report that agreements do not conform to statute because the agreements allow for "incenting jobs that pay below the average county wage." This is a misstatement of the law. As demonstrated above, the statute does not provide any wage criteria for program eligibility. OSA has incorrectly relied upon the definition of a "high paying job" to support the assertion that the statute requires wages above the county average wage be created for program eligibility. However the statute does not require "high paying jobs" to be created in order to be eligible. The statute only requires "new incremental jobs" be created in order to maintain program eligibility. The "new incremental jobs" are not required to meet any wage criteria or threshold in order to qualify for program eligibility. Therefore, OSA's reliance upon "high paying jobs" to support the assertion that the statute requires wages of any kind for eligibility is incorrect, and thus any reference to wage criteria in the agreements regardless of threshold amount conforms to the statute because wages of any kind are not a requirement for program eligibility.

2) *The statute does not require a job be paid above the county average wage. The eligibility requirements, such as the wage requirement, are self-imposed by GOED, which is working under granted statutory authority.*

The statute governing the EDTIF program remains silent on a definition of "wages" and does not provide that wages be a criterion for eligibility in the program. See Utah Code Ann. §63M-1-2401 *et. seq.* Additionally, the statute does not require that any wage be paid above the county average wage or any threshold. GOED has utilized this statutory discretion to further define "wage" and expound upon when a "wage" is deemed to "compare favorably."

Moreover, the statute gives GOED the discretion to make incentives that are the most "effective incentive for the new commercial project" and establish rules outlining "the conditions that a business entity or local government entity shall meet to qualify for a tax credit." See Utah Code Ann. §63M-1-2404(2)&(3). Therefore, although no wage criteria or threshold are required in the statute, GOED, via statutorily granted authority, can and has created a self-imposed regulation of a particular wage criteria. This wage requirement is provided for in each agreement and the threshold is designed to accomplish the most "effective incentive for the new commercial project" and the state.

The second misstatement made by OSA is the assertion that agreements contain language prohibiting the auditor from accessing contracts.

GOED, in conducting its statutory mandate to create the most "effective incentive," does perform a great deal of due diligence on each potential new commercial project. This due diligence requires the sharing of sensitive financial information of the prospective project. GOED has engaged in the customary practice of entering into a non-disclosure agreement (NDA) with prospective projects in order to adequately perform the necessary due diligence while protecting the sensitive financial information of the prospective project. The NDAs contain a clause that states:

> *"In the event GOED is required, with respect to any judicial, governmental or administrative proceeding, to disclose any Confidential Material, GOED agrees to provide Applicant with prompt notice of such request prior to such disclosure, so that an appropriate protective order or waiver of compliance with the provisions of this agreement can be sought."*

In adhering to this provision of the NDAs, GOED requested a two week period to notify all projects that signed an NDA of the OSA's performance before releasing company specific documentation to OSA. OSA kindly obliged the request and paused the audit for two weeks while GOED notified all NDA signees of the pending audit. The above provision does not prohibit the auditor's access to any material nor does it expressly or impliedly usurp the law. The provision merely states notice will be given before disclosure occurs. OSA admits that full access was granted and did not find any language in any agreement that expressly or impliedly states access to an auditor is to be prohibited.

B) *GOED, through the assistance of OSA, has identified two early agreements that contained an error against statute. Both agreements are being amended to correct the error that was identified and no inappropriate payments or awards have resulted from the error nor does OSA suggest such.*

Finding 7: Limited Oversight Impairs GOED's Accountability

GOED Response: GOED respectfully disagrees with the finding that there is "limited oversight" that impairs GOED's accountability because there are several levels of oversight during each stage of the incentive process.

Prior to offering any EDTIF incentive, GOED performs an extensive application review.

First, all applications are vetted by GOED staff to ensure the minimum criteria are met.

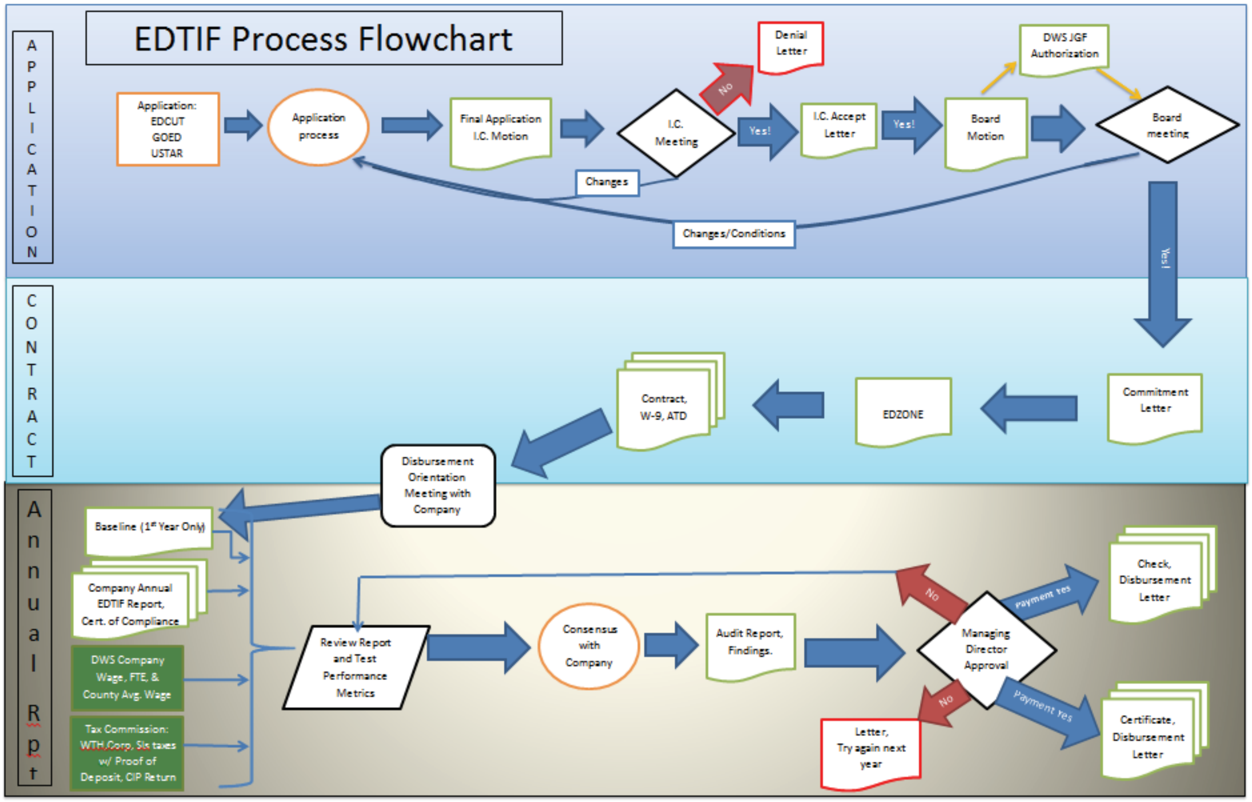
Second, GOED staff recommends an incentive amount and term to a non-quorum sub-committee of the GOED Board (the Incentives Committee) for additional review and diligence. Once the Incentives Committee has a sufficient level of comfort with a proposed new commercial project, the Incentives Committee makes an incentive recommendation to the full GOED Board for additional discussion and final recommendation to the Executive Director.

Third, all incentive offers are deliberated by the full GOED Board in an open and public meeting. The GOED Board is comprised of business and community leaders appointed by the Governor and approved by the Utah State Senate.

Fourth, following a recommendation by the GOED Board on an incentive, the Executive Director may authorize the Office to enter into an Incentive Agreement with a company for a new commercial project. A contract is then drafted to include all of the terms and criteria mentioned in Finding 1.

Within 24 hours, all incentive offers are made available on the GOED website and an aggregate report is provided to the Utah State Legislature annually.

The Legislature created the GOED Board and Executive Director relationship so the two could serve as a natural check on one another and there has never been an instance where the Executive Director has awarded an EDTIF that differed from the Board's recommendation.



*EDTIF Process includes an application and contract phase that can take multiple years to complete. Once completed, annual reporting is required until the termination of the contract.

GOED annually reports to the Legislature on all incentives offered and the amount of tax credits issued. Further, each year GOED reports all aggregate outstanding commitment liability on the Combined Annual Financial Report (CAFR), which amounts are reviewed by OSA. GOED also provides a monthly report on incentives offered throughout the year to its Board in its open meetings and makes running information related to incentives offered available on its public website.

Further, to the extent that any incorrect tax credit is identified either through internal or external review, all EDTIF contracts are drafted to provide a recapture provision that survives the incentive term. GOED built this recapture provision into its contracts to protect Utah taxpayers.

Recommendation 1: We recommend that the Governor's Office of Economic Development justify each corporate incentive award to demonstrate that the award terms maximize the benefit to the state and its taxpayers.

GOED Response: As indicated above, all incentive applications go through a multi-level review process to ensure that any corporate incentive award is in the best interest of the State and its taxpayers.

The OSA's assertion that Company L had its incentive length doubled without request lacks full context. Five years after receiving its original incentive, Company L applied for both an extension of its original incentive and an additional incentive for a new commercial project that included significant new capital investment. The OSA's report does not consider that Company L's original incentive extension became part of a larger transaction that included both an extension of the original term and an additional incentive for a new commercial project.

Recommendation 2: We recommend that the Governor's Office of Economic Development require companies to submit options presented by other states or countries prior to being awarded to receive a corporate incentive award.

GOED Response: Although GOED understand OSA's desire to require companies to submit other states' options, it would caution against the unintended consequences in pursuing this course of action, which may result in Utah companies leaving the State and Utah incentive offers being leveraged by out-of-state companies. GOED currently requires that a project be in competition with other states or countries. Companies satisfy this criterion by certifying competition under penalty of law. Companies are often reluctant to share detailed offers from other states, as they are often issued confidentially until formalized to protect a company's proprietary expansion plans.

Indeed, GOED would prefer that companies applying for incentives in Utah and elsewhere refrain from using a Utah incentive offer as leverage in negotiating with another state. After many years of analysis and consideration of its obligations to the State and taxpayers, GOED believes that its front-end analysis of the company, combined with the company's certification of competition, strikes the best balance between ensuring a viable incentive and mitigating the risk of a non-competitive project.

GOED is also cognizant of local companies that are expanding and it has been the practice to incent competitive projects where the growth may occur outside the state. It could not be the Legislature's intent or in the best interest of the taxpayers to have home-grown companies shopping themselves to other states if Utah can provide a financial incentive for them to grow here.

GOED prides itself on operating in good faith with companies and does not want to unintentionally incite bidding wars as a result of requiring a company to shop for offers.

Recommendation 3: We recommend that the Governor's Office of Economic Development require companies to certify that they would not have relocated to or expanded in Utah without the incentive.

GOED Response: This was recommended by OSA during the audit process and it has been implemented in all EDTIF contracts since that date. GOED thanks OSA for the suggestion that has now been in place since April.

Recommendation 4: We recommend that the Legislature consider requiring a thorough independent audit of the corporate incentives at least every third year.

GOED Response: Two years ago, GOED worked with the Sutherland Institute and supported H.B. 380, which was passed by the Legislature to improve GOED's transparency. This legislation requires an audit every five years. GOED complied with this requirement in the first year that the bill was enacted and contracted with Haynie and Company to perform an audit. Further, GOED engaged Tanner and Company to perform a data process and validation this summer which resulted in benign findings. The results of that review will be made public by the time this Audit Report is published. GOED welcomes audits that help improve transparency and program efficiency and effectiveness.

Recommendation 5: We recommend that the Legislature consider requiring an annual independent review of incentive performance statistics prior to the Legislative General Session.

GOED Response: Again, GOED welcomes reviews that will help improve transparency and program efficiency and effectiveness.

Finding 8: GOED Reported Misleading Wages of Projected Jobs

GOED Response: This finding largely relates back to the health benefit discussion, which has been reviewed in other Findings and recommendations.

To the extent that OSA asserts that GOED's press releases intentionally mislead the public, GOED takes exception to this characterization. Press releases must, by necessity, compress the details of a complex business and tax contract into easily understood information for public consumption. In any case, GOED responded to OSA's concerns about the press releases and has already changed the press releases to address OSA's issues. GOED thanks OSA for the suggestion that has been in place since June.

Recommendation 1: We recommend that the Governor's Office of Economic Development accurately report job creation wages in their communication with stakeholders and the public.

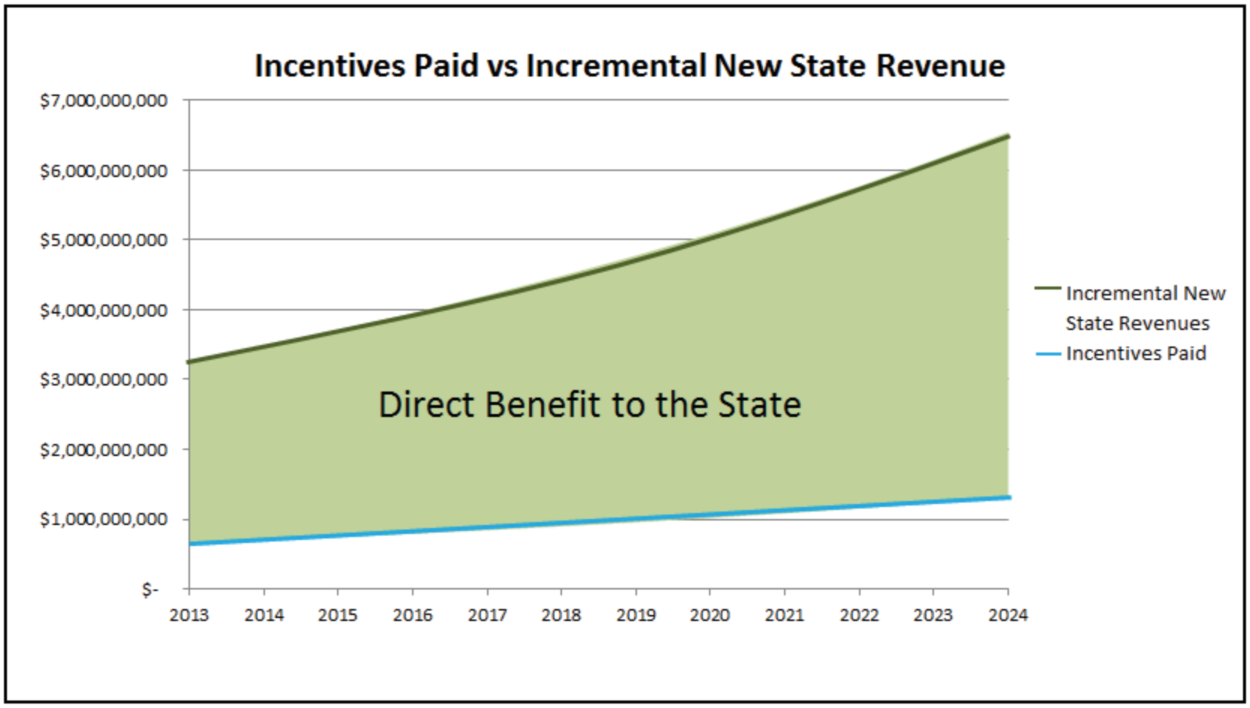
GOED Response: As stated above, during the course of this audit, OSA made suggestions to improve our press releases. Those changes were made, and OSA acknowledged that the changes satisfied their concerns in June 2014.

Recommendation 2: We recommend that the Governor's Office of Economic Development exclude the value of company-paid benefits in wages when reporting job creation.

GOED Response: As previously mentioned in our response to Finding 5, GOED feels that it is appropriate to consider company contributed benefits as part of an overall compensation package given to employees, so long as that is made clear in the text of any release or report. <u>Even the examples cited by the Audit Report clearly indicate that the wage projections include company contributed health benefits.</u>

Finding 9: EDTIF Commitment Will Likely Double by 2024

GOED Response: Regardless of what the 2024 commitment by the state may be, the statute and mechanics of the program ensure that the benefit by way of increased revenue to the state will always be at least three times what the liability is. The post-performance nature of the program guarantees that the state does not rebate taxpayer money until the tax increment is generated. All commitments of the state should be compared with corresponding new state revenue that such a commitment represents. The green shaded area in the graph below represents benefit to the state and would represent just over **$5,000,000,000 of incremental new state tax revenue** if OSA's projections are accurate.



Earlier this year, GOED engaged Haynie and Company (a certified accounting firm) to conduct an audit to comply with the requirements mentioned in HB 380, which explicitly requires a cost and benefit analysis. The Haynie audit calculated a benefit to the state of $3.19 to date for every $1 paid out in incentives, and that number will only grow as companies continue to invest in Utah over the life of their incentive.

Recommendation 1: We recommend that the Governor's Office of Economic Development annually provide detailed information to stakeholders regarding:

- **a. The Economic Development Tax Increment Financing liability**
- **b. Verifiable jobs created**
- **c. Detailed wages of incented jobs**
- **d. Actual corporate incentives awarded**

GOED Response: The recommended information is all currently provided to the public in GOED's Annual Report that is published each October, with the exception of the detailed wages. OSA also works with GOED annually to verify the EDTIF commitments and incentives awards published in the State of Utah Comprehensive Annual Financial Report (CAFR) Notes section C each year. OSA has never before expressed concern with commitment balances and incentive award amounts issued each fiscal period as published in the CAFR. A liability does incur when the tax credit is issued.

If the Legislature feels that reporting wage information would be helpful, GOED will provide that information in the aggregate as it does with all confidential information, or any other format the Legislature deems useful via the reporting mandates in statute.

Recommendation 2: We recommend the Governor's Office of Economic Development establish a reasonable methodology to evaluate whether a company would expand or relocate to Utah in the absence of an EDTIF incentive during the pre-incentive evaluation process.

GOED Response: Please see our response to Finding 7, Recommendations 3 and 5 which address our existing methodology that occurs throughout our multi-layered review process on the front end, and through a certification by a company executive that the new commercial project was competitive.

GOED disagrees that there is not currently a reasonable methodology to evaluate a company's expansion plans. GOED develops partnerships with companies that are considering expansion projects, many of which initially arise out of a competitive Request for Information process or that come to GOED's attention through national site selectors and tax consultants. The evaluation process that has been used to date has been reasonable and effective. Several company decision-makers have expressed in public settings that they would not have expanded in Utah were it not for the incentives program.

GOED also requires that an executive from the company seeking an incentive attest to the fact that their expansion was competitive and that they would not have come to Utah without the incentives offered.

Recommendation 3: We recommend that the Legislature evaluate the long-term fiscal commitment of the state's corporate incentives program to ensure that the financial commitment provides the desired cost-benefit tradeoff for the state.

GOED Response: This recommendation is addressed in current statute (H.B. 380), which requires an audit every five years and specifically requires GOED to report on "the estimated costs and economic benefits of the tax credit commitments that the office made." Utah Code Ann. §63M-1-2406(1)(d). As mentioned previously, the Haynie and Company audit demonstrated a $3.19 return to the state for each $1 spent. Further evidence of the program's success is demonstrated by the new commercial projects throughout Utah that would not have located here were it not for the corporate incentives program.

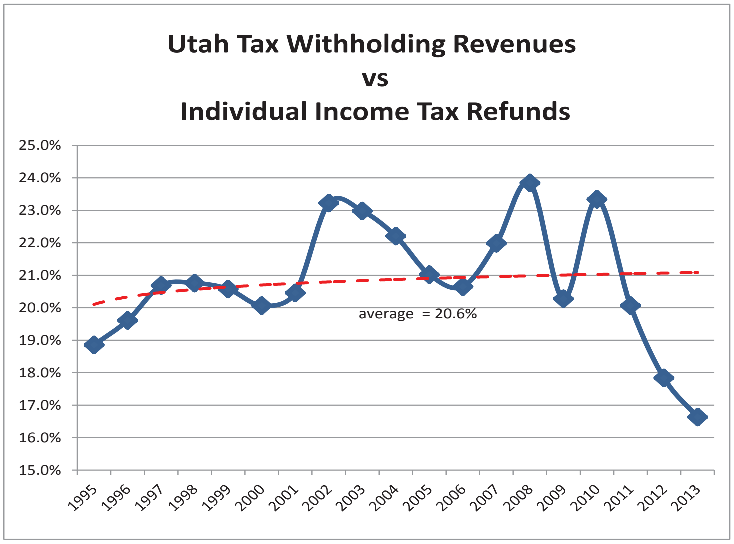
Finding 10: GOED Cannot Verify Employee Withholding Portion of EDTIF

GOED Response: As indicated previously, the EDTIF is a tax increment financing mechanism that authorizes GOED to rebate on three forms of revenue generated by new commercial projects: corporate or franchise income tax, the state portion of sales tax, and employee withholding tax. The Legislature recognized that although withholding tax is paid by individual employees, were it not for the new commercial project locating in Utah the incremental revenue stream would not have been generated. It thus logically set up a process whereby GOED is allowed to rebate a portion of employee withholding tax. OSA takes issue with GOED rebating on the employee withholding tax, however this is expressly authorized via statute.

Recognizing that individuals often receive refunds on their individual income tax, GOED deducts the overall rebatable amount by 25% to account for any such individual's refund. This conservative methodology and rebate amount was derived directly from information provided by the Utah State Tax Commission when the program was just beginning in 2006, again in 2008 and 2010. From The Utah State Tax Commission – Tax Collections report (TC-23) the amount of Individual Income Tax Refunds and Withholding Refunds are compared to the Tax Revenues from Individual Withholding.

As demonstrated by the chart below, the 25% refund rate is a conservative approach.

Average Individual Withholding Refund



**Source: USTC Tax Collections Report of Gross Individual Withholdings Versus Refunds*

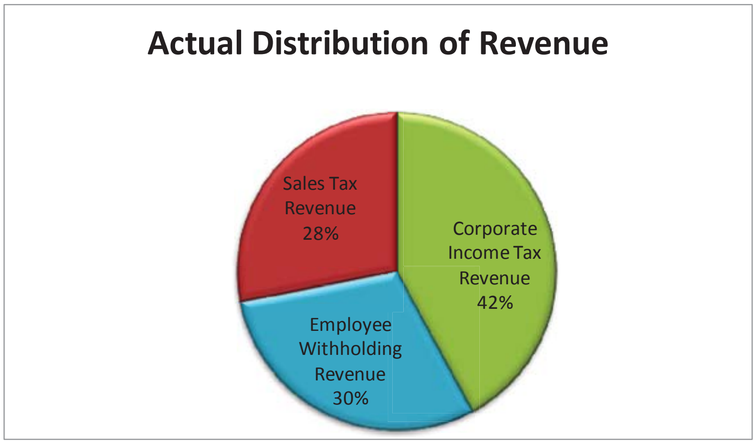
Recommendation 1: We recommend that the Legislature consider if the Governor's Office of Economic Development should continue to have the authority to award employee-paid income taxes to incented companies.

GOED Response: Please see our introductory comments to this finding. This recommendation to the Legislature is contrary to existing law and misunderstands the tax increment nature of the program. The Legislature recognized that although withholding tax is paid by individual employees, the credit goes to the project employer, without whom the incremental revenue stream never would have been generated.

Recommendation 2: We recommend that the Governor's Office of Economic Development provide annual reports to the Legislature regarding the sources and composition of corporate tax incentives.

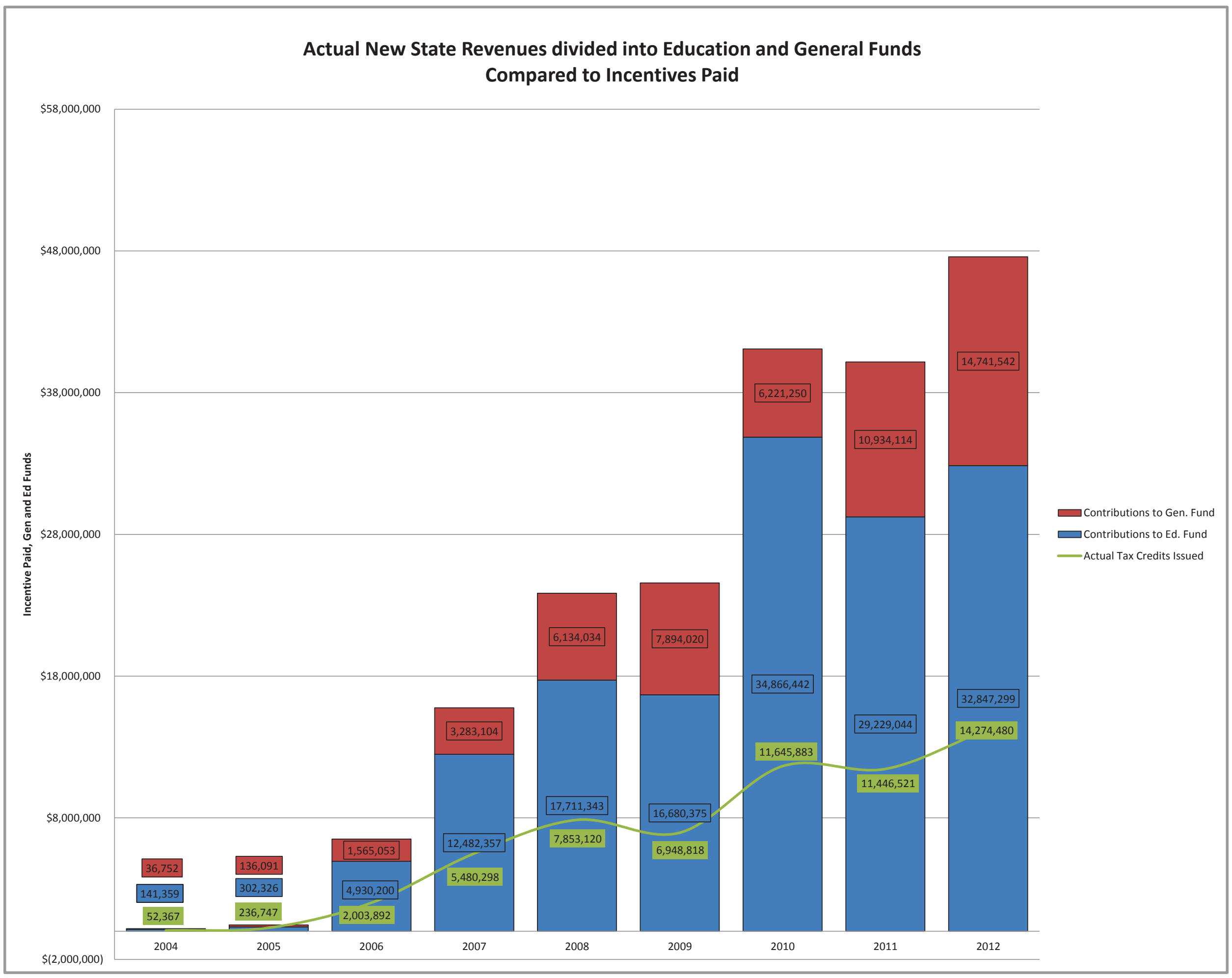
GOED Response: Upon request from the Legislature, GOED will provide such source and composition.

The following chart demonstrates the actual breakout between the corporate income taxes, individual withholding taxes (show net of the 25% rebate) and the sales taxes rebated to EDTIF recipients. This chart is inclusive of all incentives awarded from calendar year 2006 through calendar year 2012.



For convenience, GOED also provides an analysis that demonstrates how the revenue generated by the EDTIF program was distributed into the various state funds in the table below. The green line below represents incentives paid out, which is a fraction of what is added to the state Education Fund (blue column) and General Fund (red column) by the generated revenue.

EDTIF Contribution to Education (Blue) and General (Red) Funds



Conclusion

Thank you again for your analysis. GOED appreciates this Report's identification of certain areas where it can improve, including through adopting Policies, Procedures and updated Administrative Rules, which it is in the process of revising.

Although some valuable suggestions have been provided, GOED is concerned that the Audit Report:

1. Misunderstands the difference between a tax increment financing economic development tool and a per job incentive;

2. Repeats findings, fails to note that the findings related to a negligible percentage of incentives, fails to note mitigating improvements; and

3. Advocates against the program in its continued questioning of legislation and failure to recognize the revenues in addition to the commitments.

GOED is willing to work with OSA cooperatively to improve the program, to increase confidence in its metrics and measurements and to assure both OSA and the public that it is a good steward of the public's funds and the public's trust.

Appendix A

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INDEPENDENT ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES

Governor's Office of Economic Development
60 East South Temple, 3rd Floor
Salt Lake City, UT 84111

We have performed the procedures enumerated below, which were agreed to by Governor's Office of Economic Development (the "GOED"), solely to assist you with respect to the procedures related to the tax credits (and EDTIF rebates) allowed under Section 63M-1-2405 of the GOED for the years ending July 2006 through July 2013. The Governor's Office of Economic Development is responsible for the accounting records and schedules. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

1) **Procedure:**
On a sample basis, we recalculated the cost of the tax credits (and EDTIF rebates) that are reported on the summary incentives schedules. For purposes of our procedures any difference under $1.00 was not considered a finding.

Findings:
No exceptions were found as a result of applying the procedure.

2) **Procedure:**
We evaluated the purposes and effectiveness of the tax credits, by performing the following:
   1. We recalculated on a sample basis the difference between the cost of the tax credits with the benefits received, which is "new state tax revenue."
   2. We summarized for the fiscal year 2006 to 2013, the number of instances where the costs of the tax credits exceed the benefits received.

Findings:
In fiscal year 2006, the cost of the tax credits exceeded the benefits received. This was due to 2006 being the start up year for the EDTIF rebate program and only one incentive was paid but 13 were granted. Because this was the initial year the operational costs (program overhead) was greater than the EDTIF new state revenues.

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3) **Procedure:**
We recalculated the extent to which the state has benefited from the tax credits.

Findings:
No exceptions were found as a result of applying the procedure, the average new state revenue earned per dollar spent was calculated to be $3.19 for the time period covered by our procedures (July 2006 through July 2013).

We found that the state will benefit from these programs beyond the period covered by our report, we did not evaluate the future benefit the state will receive from these programs.

We were not engaged to, and did not, conduct an audit, as defined by generally accepted auditing standards, the objective of which would be the expression of an opinion on the accounting records and financial statements. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of Governor's Office of Economic Development and those familiar with procedures performed and is not intended to be and should not be used by anyone other than those specified parties.

Haynie & Co

Haynie and Company

Salt Lake City, Utah

January 31, 2014