Performance Audit No. 14-03

A Performance Audit of GOED's Corporate Incentives Program

OFFICE OF THE
UTAH STATE AUDITOR

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OFFICE OF THE

UTAH STATE AUDITOR

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The Office of the Utah State Auditor conducted *A Performance Audit of the Governor's Office of Economic Development's (GOED) Corporate Incentives Program* and presents its findings herewith. This audit was selected because of the significant amount of long-term financial commitments GOED can make through its corporate incentives program and the impact that such commitments have on future tax revenue.

Fulfillment of GOED's vision for Utah to "lead the nation as the best performing economy and be recognized as a premier global business destination" includes offering corporate tax credits to either attract or retain companies to do business in the state. GOED has unilateral authority to attract or retain companies to the state by committing a portion of new incremental tax growth created by the incented company over a given time period.

Though advised by a board of industry professionals, GOED's executive director has sole authority to authorize incentives with minimal oversight. GOED has committed over $600 million in corporate incentives, which will likely double by 2024 if recent trends continue.

This audit report outlines concerns that are principally the result of insufficient program guidance and oversight. GOED's controls are inadequate to prevent preferred treatment, improper applicant approval, and questionable payments. Implementation of audit recommendations found in this report will increase the overall accountability of the corporate incentives program and provide greater controls to ensure consistent and fair treatment.

Section 1 (findings 1-2) cites concerns regarding several questionable and unverifiable payments. **Section 2 (findings 3-5)** demonstrates how GOED has gradually lowered the requirements for companies to receive a corporate incentive award. **Section 3 (findings 6-8)** illustrates that insufficient oversight and policies have created control weaknesses that threaten the accountability and integrity of the corporate incentives program and that GOED has misled stakeholders about the projected wages of jobs it incents. **Section 4 (findings 9-10)** provides information regarding the future commitments if trends continue in addition to the sources of tax credits. Unreliable documentation and data from GOED limited our ability to fully determine the pervasiveness of these concerns.

We recognize and appreciate the cooperation of the new GOED administration, which already began proactively implementing many of the recommendations made in this report.

Sincerely,

David S. Pulsipher, CIA, CFE
Performance Audit Director

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Executive Summary

Section 1: Insufficient Post-Performance Controls Led to Questionable Incentive Awards
The Governor's Office of Economic Development (GOED) provided special treatment for some companies by altering post-performance assessments for companies that failed to meet GOED's contractual threshold test for Economic Development Tax Increment Financing (EDTIF) awards. Among concerns, GOED (1) used *existing* company employees to inflate the average wages of the new employees created by the corporate incentive award, (2) used an incorrect benchmark to improperly issue an EDTIF award, (3) boosted the average company wage by removing low-paying jobs from the average, and (4) retroactively modified the wage criteria and issued a corporate incentive award to a company that failed to meet the wage criteria under its original contract.

Each of these adjustments generated an inequitable and inconsistently-applied assessment of company job creation and wages. Additionally, such adjustments create the false perception that GOED incents jobs that pay more than they actually pay.

Additionally, GOED could not verify actual employment and wages for two companies that received EDTIF awards. In the absence of verifiable data, GOED relied on self-reported company information to determine whether a company qualified for an EDTIF award. The company-provided data was unverifiable because the incented companies' reported jobs were filled by third-party contractors who were not company employees and who cannot be cross-referenced with employment information provided by the state's Department of Workforce Services.

Section 2: GOED Gradually Reduced Corporate Incentives Requirements Since 2008
Despite improving economic conditions in the state, GOED has progressively lowered company obligations required to receive an EDTIF award. Among concerns, GOED (1) gradually reduced the wage requirement from 147 percent of the average urban county wage in 2008 to 125 percent of the average urban county wage in 2013, (2) approved companies for the EDTIF program even though almost 30 percent of the projected jobs will pay below the wage requirement, and (3) included employer-paid health benefits to boost the reported employee "wages" of incented companies.

Such adjustments to the program eroded the required employee wages to the point that a company could receive a corporate incentive even though the wages of the new jobs created fall below the average wages of the county in which the new jobs will reside. Such action contradicts the legislative intent that "economic development initiatives and interests of state and local economic development officials should be aligned and united in the creation of higher paying jobs that will *lift* the wage levels of the communities in which those jobs will be created."[1]

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[1] Utah Code § 63M-1-2402(1)(c) (emphasis added).

Section 3: Inadequate Oversight Limits Corporate Incentives Accountability
GOED has the ability to commit future tax revenue without sufficient governing policy. Defining key terms and limits will improve the integrity of the corporate incentives program while providing greater consistency in the treatment of eligible companies.

The level of autonomy granted by statute led to questionable decisions, including the decision to double the length of one company's incentive period though it was not necessary for the company to remain and expand in the state. Additionally, GOED could strengthen their approval process to ensure that companies that relocate or expand in the state would not have done so without a corporate incentive.

Finally, GOED mislead stakeholders regarding projected wages that a newly incented company will pay. GOED regularly reports inaccurately that all projected jobs that will receive EDTIF awards will pay more than the required minimum wage requirement. Failure to accurately inform stakeholders leads to a misplaced assumption that EDTIF awards add more value than they actually contribute. GOED should accurately report projected and actual wages of new jobs in their communication with stakeholders and the public.

Section 4: Corporate Incentives Impact Future Tax Revenue
GOED's corporate incentives commitment exceeds $600 million and will likely double in the next ten years, committing future tax revenue and further complicating state revenue forecasts. Additionally, an estimated 40 percent of all corporate incentives tax credits issued to companies by GOED are individual income taxes withheld from individual employees.

Detailed reports will ensure that stakeholders understand the impact and composition of corporate incentives. In addition, such reports will enable more accurate forecasting to determine future tax revenue.

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Background

Under the direction of the governor, the Governor's Office of Economic Development (GOED) oversees various programs that exist to help GOED realize its vision for Utah to lead "the nation as the best performing economy and be recognized as a premier global business destination." To that end, GOED has four primary stated objectives:

1. Strengthen and grow existing Utah businesses, both urban and rural.
2. Increase innovation, entrepreneurship and investment.
3. Increase national and international business.
4. Prioritize education to develop the workforce of the future.

GOED's executive director, who "serves at the pleasure of the governor," oversees the office operations.[2] Unlike appointments of state agency directors, the appointment of GOED's executive director does not require Senate confirmation. The daily functions of GOED programs are directed by three managing directors who are appointed by the executive director. These managing directors oversee the following office units:

- Tourism, Film, and Global Branding
- Business Outreach and International Trade
- Corporate Recruitment and Business Services

The executive director receives advice from the Board of Business and Economic Development (Board), which has the statutory duty to "advise the office."[3] The Board consists of 15 members appointed by the governor, with the consent of the Senate, to serve staggered four-year terms. Statute requires that no more than eight board members "be from one political party" and that they "be representative of all areas of the state." The governor selects one board member to serve as chair.[4] Board decisions are non-binding and serve only as counsel to the executive director.

The Corporate Recruitment and Incentives (CRI) program exists within the office unit of Corporate Recruitment and Business Services. This program's mission is to "increase the number of quality jobs in Utah by helping existing companies expand and by recruiting new companies to the State." Corporate incentives are awarded by the executive director, with the advice of the Board. Incentive awards are based on GOED's self-selected "three pillars of success and sustainability," which include the following:

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[2] Utah Code § 63M-1-202.
[3] *Id.* at § 63M-1-301.
[4] *Id.* at § 63M-1-302.

1. **Post-performance**. Incentives are disbursed after the company has met the contractual performance benchmarks, such as job creation and payment of new state taxes.
2. **Single Taxpayer**. Incentive amounts are based on new state taxes generated by the project.
3. **Competition**. Incentives must make Utah competitive with other locations.

Most CRI incentives are awarded via Economic Development Tax Increment Financing (EDTIF). The EDTIF awards companies a set fixed percentage of the new state revenue they generate. New state revenue is defined as: (1) corporate income tax, (2) sales and use tax, and (3) employee individual income tax above a baseline.[5] The composition of the EDTIF includes corporate income tax (40 percent), corporate sales and use tax (20 percent), and withholding of employee-paid individual income taxes (40 percent). All tax credits are paid out of the state income tax revenues.

GOED, with advice from the Board, can approve a tax credit of up to "30% of the new state revenues from the new commercial project over the life of a new commercial project or 20 years, whichever is less," not to exceed "50% of the new state revenues from the new commercial project in any given year."[6] The *Economic Development Incentives Act* (63M-1-2400) allows companies to qualify for an EDTIF award if they meet the following criteria:[7]

[5] *Id.* at § 63M-1-2403(8)(a).
[6] *Id.* at § 63M-1-2404(3)(c)(i).
[7] *Id.* at § 63M-1-2404(2).

- "the new commercial project must be within [an economic] development zone;
- the new commercial project includes direct investment within the geographic boundaries of the development zone;
- the new commercial project brings new incremental jobs to Utah;
- the new commercial project includes significant capital investment,[8] the creation of high paying jobs,[9] or significant purchases[10] from Utah vendors and providers, or any combination of these three economic factors;
- the new commercial project generates new state revenues;" and
- the business entity meets the requirements of the post-performance review and verification process, as outlined in Section 63M-1-2405.[11]

Because some of these terms are loosely defined in statute, GOED is responsible to create Administrative Rules to govern the evaluation of companies receiving an EDTIF award.[12]

In its 2013 annual report, GOED claims that EDTIF incentives created 11,933 aggregate jobs since 2006. Additionally, the annual report states that GOED has committed $95.4 million in General Fund (sales tax) cash rebates to three companies and $560.7 million in Education Fund (income tax) tax credits to 82 companies since 2006. GOED paid out $1.5 million in actual rebates and awarded $11.4 million in tax credits in fiscal year 2013.

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[8] "Significant capital investment" is statutorily defined as "an amount of at least $10,000,000 to purchase a capital asset or a fixed asset:

(a) with the primary purpose of the investment to increase a business entity's rate at which it produces goods based on output per unit of labor;

(b) that represents an expansion of existing Utah operations; and

(c) that maintains or increases the business entity's existing Utah work force." (Utah Code § 63M-1-2403(10))

[9] "High paying jobs" is statutorily defined as:

(a) "with respect to a business entity, 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;

(b) with respect to a county, the annual wages of employment positions in a new commercial project within the county that compare favorably against the average wage of the county in which the employment positions will exist; or

(c) with respect to a city or town, the annual wages of employment positions in a new commercial project within the city or town that compare favorably against the average wages of the city or town in which the employment positions will exist." (Utah Code § 63M-1-2403(4)) [Note: it is our understanding that "wages" means that which is reported in "W-2 Box 1," commonly referred to as "W-2 wages."]

[10] "Significant purchases" is not statutorily defined. *See* Utah Code § 63M-1-2403.

[11] Utah Code § 63M-1-2404(2)(b).

[12] *Id.* at § 63M-1-2404(2).

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Section 1:
Insufficient Post-Performance Controls Led To Questionable Incentive Awards

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

The Governor's Office of Economic Development (GOED) provided special treatment for some companies by altering post-performance assessments for companies that failed to meet GOED's contractual threshold test for Economic Development Tax Increment Financing (EDTIF) awards. Among concerns cited in this finding, GOED (1) used *existing* company employees to inflate the average wages of the new employees created by the corporate incentive award, (2) used an incorrect benchmark to improperly issue an EDTIF award, and (3) boosted the average company wage by removing low-paying jobs from the average. Additional concerns with the post-performance review process, such as adding the value of company-paid health benefits to employee wages, are introduced in this finding and discussed in more detail in other sections of this report.

Moreover, GOED issued the tax credit to some companies that still did not meet the wage criteria even after these adjustments failed. In one case, GOED even retroactively modified the wage criteria and issued a corporate incentive award to a company that failed to meet the wage criteria under its original contract.

Each of these adjustments generated an inequitable and inconsistently-applied assessment of company job creation and wages. Additionally, such adjustments create the false perception that GOED incents jobs that pay more than they actually pay. Finally, the lack of policy for how these GOED practices are applied increases the state's liability risk for the inequitable treatment of some participating companies and possibly other companies that did not apply for an incentive due to the published qualification criteria.

Contracts State that Incented Companies Must Create a Required Minimum Number of Jobs that Pay a Minimum Required Wage

In order to receive an EDTIF award, companies contractually agree to create a set number of jobs per year that pay employees a wage that meets or exceeds a contractually agreed-upon percentage of the average county wage where the jobs are created. During its post-performance review, GOED conducts a threshold test to assess a company's eligibility for a corporate incentive award based on the company's performance during the prior year. This test employs Department of Workforce Services (DWS) employment data to address two basic questions:

1. Did the company create the contractually required minimum number of jobs?
2. Did the company wage paid meet the contracted minimum?[13]

[13] GOED considers only a company's Utah-based employees and wages in this assessment.

To verify company performance, GOED compares DWS company data against the contract terms. In some cases GOED also considers the company-provided data. Absent additional legislative guidance, GOED has determined that new jobs created by companies in rural counties must pay at least 100 percent of the county average wage, while jobs created by companies in urban counties[14] must pay at least 125 percent of the county average wage.

Some companies are unsuccessful in meeting the basic requirements of GOED's basic test. Therefore, in some cases, GOED reviews detailed employee data that includes: (1) hire and termination dates, (2) hours worked, (3) wages, and (4) position descriptions. GOED then uses a combination of informal adjustments to recalculate the company data until a corporate incentive payment can be justified. We are concerned with the inconsistent and inequitable manner that these adjustments are used. We are also concerned that GOED does not have formal policies or procedures to govern these post-performance adjustments.

Due to insufficient documentation, we were not able to fully evaluate the extent to which GOED made adjustments to company performance in the post-performance process to justify EDTIF awards. Instead, this section explains how four companies failed to meet the minimum performance expectations, and how GOED then justified and issued incentive awards for those companies. Figure 1.1 provides a high-level description of the adjustments that GOED used to justify certain company EDTIF awards.

Figure 1.1 GOED Performance Analysis

GOED Test	Description	Written Policy
Jobs Requirement	Did the company create the contractually required minimum number of jobs?	Yes
Wage Requirement	Did the company salary paid meet the contracted minimum?	Yes
** GOED conducts further analysis for select companies that fail the threshold test outlined above **		
Combine Jobs	GOED combines employees that work only part of the year in the same position into one employee.	No
"Lopping Off"	GOED removes the lowest paid jobs until the wage threshold is met.	No
Add Health Benefits	GOED adds health benefits to employee wages to increase the average company wage.	No
Annualize Wages	GOED annualizes wages for employees that worked less than the entire year in question.	No

Source: OSA Analysis

[14] GOED classifies Davis, Salt Lake, Utah, and Weber counties as "urban" for the purpose of awarding incentives.

We are concerned that the adjustments used in Figure 1.1 are not formally documented, creating an inconsistent post-performance review process. In addition, this process does not necessarily appear to adhere to the legislative intent of the corporate incentives program.

Inclusion of *Existing* Company Employees In GOED's Wage Calculation Inflates Total Company Average Wage

GOED decided to incent companies based on the *average* wages of company jobs in Utah rather than only incenting each job that meets the minimum wage requirement. Therefore, GOED will grant an EDTIF award to a company for new jobs that pay below the minimum requirement as long as the company average wage in Utah (for some or all jobs, including existing jobs) meets or exceeds the contractual threshold. **Finding 4** demonstrates that almost 30 percent of jobs incented in 2012 and 2013 are projected to pay below the minimum wage requirement.

In practice, it appears that GOED also includes some or all existing employees in the average wage calculation, rather than an average of only *new* employees that the company agreed to employ in exchange for receiving an EDTIF award. However, this practice appears to be contrary to the *Economic Development Incentives Act*, which does not expressly permit the consideration of wages of existing or baseline employees in determining EDTIF eligibility and payouts. Statute requires companies to create *new* incremental jobs for a *new* commercial project that generates *new* state revenue to qualify for an award.[15] Wages of existing employees can inflate the company average wage, resulting in companies receiving corporate incentive awards even though they paid new employees less than the wage requirements established in the contracts.

As a result, a company could conceivably receive an EDTIF disbursement by counting toward its job total both (1) part-time jobs and (2) jobs that pay below the minimum required wage in contract (as measured on a job-by-job basis). In addition, a company could conceivably receive an EDTIF disbursement with an average company wage that is inflated by the wages of employees that have been working for years prior to the EDTIF award. GOED should only consider new employee wages to determine if a company qualifies for an EDTIF award.

GOED Issued an EDTIF Award Despite Company A's Failure to Meet the Minimum Wage Requirement

In 2011, after Company A failed to meet the initial wage requirement, GOED reviewed company-provided employee information. During that review, GOED combined 37 employees (including part-timers) into 18 employee positions so that the company would meet the requirements. Combining these positions increased the company's average wage to $32,453, and GOED issued the company a tax credit for over $100,000. However, upon closer review we found that the

[15] Utah Code § 63M-1-2404(2)(b).

wage threshold GOED used to perform the test was incorrect.[16] Despite the fact that the company missed the actual wage requirement by more than $1,000 per job, GOED issued the award anyway. This discrepancy is shown in Figure 1.2.

Figure 1.2 **GOED Issued an EDTIF Award Despite the Company's Failure to Meet the Wage Requirement**

Company	Required Wage	Avg. Wage Paid	Difference
Company A	$33,593	$32,453	($1,140)

Source: Company A data

We are concerned that GOED issued an EDTIF award to this company despite the company's failure to meet the minimum contractual wage requirement. The contract with this company states,

> *"Economic Development Tax Increment Financing can only be issued for Economic Development Tax Increment Financing Periods in which the Project's annual total average salary for employees for the Project is equal to or greater than 125% of the . . . County Median wage, which may change yearly."*

After informing GOED that the incorrect wage criteria was used for the post-performance analysis, GOED staff conducted a new analysis to show how this company still might have qualified for an EDTIF award. In its new analysis, GOED discarded much of its original audit documentation and calculations and added an additional step to its analysis to annualize employee wages, although annualizing wages was neither documented nor applied in the original review.

GOED Removes Companies' Low-Paying Jobs to Boost the Company Average Wage

GOED commonly removes low-paying jobs from the average company wage calculation in order to boost the company's average wages. For example, GOED issued an EDTIF award to Company B even though the company failed to meet the initial average wage criteria by almost $18,000. GOED rationalized issuing an EDTIF award by adjusting the company's minimum obligations by (1) annualizing employee wages for individuals that worked less than the full year, (2) adding health benefits to the employee wages and comparing this total against the average county wage, and (3) removing over 40 low-paying jobs (68 percent of the total number of Company B's new jobs) from the average company wage calculation until the average wage of the remaining employees exceeded the minimum threshold. The practice of removing low-paying jobs from the average wage calculation—known within GOED as "lopping off"—enables select companies to report higher wages for incented jobs. Figure 1.3 shows the distribution in low-paying jobs that were removed.

[16] GOED used a median county wage for the incorrect year.

Figure 1.3 GOED Removed 42 New Low-Paying Jobs for Company B to Realize its Average Wage Criteria and Receive an EDTIF Award

Number of New Employees	Company Salary Plus Benefits	Were the Wages for these Jobs Counted Towards the Incentive Award?
10	$98,888 - $39,338	Yes
10	$38,636 - $35,116	Yes
21	$34,838 - $31,031	No
21	$31,026 - $23,021	No
** Summary of New Company Wages **		
Average Wage (All 62 new jobs; without benefits)		**$34,282**
Average Wage Used for EDTIF Calculation (Only the 20 highest paying new jobs; with benefits)		**$54,067**
Wage requirement		**$52,020**

Source: GOED and Company B data

As shown in Figure 1.3, the bottom two tiers of jobs were removed when determining whether the company met the minimum salary threshold. Consequently, after removing the low-paying jobs from the total, *the company no longer had enough eligible new jobs to qualify for the EDTIF award*, thus failing the first prong of the threshold qualification test, yet the company still received an EDTIF disbursement. In this instance the company either met the wage requirement or the jobs requirement, but not both, as demonstrated in Figure 1.4.

Figure 1.4 Company B Either Failed the New Jobs Bar or the Wage Bar

Company B	Number of Employees	Met New Jobs Bar?	Average Wage	Wage Bar	Met Wage Bar?
Threshold Test Results	62	Yes	$34,282	$52,020	**No**
Second Test Results*	20	**No**	$54,067	$52,020	Yes

Source: GOED and Company B data

**Second test includes annualizing wages, adding health benefits, and removing 42 low-wage employees*

We are concerned that GOED selectively chooses which jobs to count toward helping companies meet one set of requirements while potentially falling short of the other. We are also concerned that this practice is applied inconsistently and, absent consistently applied policies and procedures governing the practice, could be perceived as giving preferred treatment to some companies.

Company C Required a Combination of Multiple Questionable Adjustments to "Successfully Meet" Performance Requirements

GOED made multiple adjustments to justify $750,000 in corporate incentive awards to Company C over a three-year time period. Though GOED did not necessarily need to make all of these adjustments in order for this company to qualify for the incentive award, we are concerned that such adjustments are done inconsistently and without formal governance.

Figure 1.5 shows that the company average salary alone was insufficient for all three years when conducting the test against the county requirement.

Figure 1.5 **Company C Was Issued an EDTIF Award for Three Years Despite Failing to Meet the Minimum Wage Requirement**

Year	Avg. Company Wage Reported*	Wage Requirement	Difference Between Actual and Required Wages	Did the Company Meet the Wage Requirement?
1	$40,729	$52,020	($11,291)	No
2	$47,053	$53,264	($6,211)	No
3	$44,158	$54,321	($10,163)	No

Source: OSA analysis of DWS data and company C contract

After discovering that the company did not satisfy the wage criteria, GOED reviewed other benefits paid. GOED then used a series of adjustments, similar to those outlined in Figure 1.6, to justify a corporate incentive for the company.

Figure 1.6 GOED Included Health Benefits, Removed Low-Paying Jobs from the Average, and Combined Eligible Positions to Rationalize a Corporate Incentive for Company C

GOED Test	Test Description	Would the Company Qualify for an Incentive? Year 1	Year 2	Year 3
Jobs Requirement	Did the company create the contractually-required minimum number of jobs?	Yes	Yes	Yes
Wage Requirement (Figure 1.5)	Did the company salary paid meet the contracted minimum?	No	No	No
** GOED conducts further adjustments for select companies that fail the wage threshold test ** (the adjustments applied below pertain to the wage criteria)				
Full-time employees	Count employees that worked at least 32 hours per week (wages only)	No	No	No
	Count employees that worked at least 32 hours per week (wages plus health benefits)	No	No	No
Full-time and worked at least 50% of year	Count full-time employees that worked at least 50% of the year (wages only)	No	No	No
	Count full-time employees that worked at least 50% of the year (wages plus health benefits)	No	Yes	No
Full-time, combined eligible positions that worked 50% of year	Combine eligible (same positions for separations rehired within 90 days) full-time employees that when combined work at least 50% of the year (wages only)	No	No	No
	Combine eligible (same positions for separations rehired within 90 days) full-time employees that when combined work at least 50% of the year (wages plus health benefits)	No	Yes	No
Full-time, worked 50% of year, combine eligible positions, *and* "lop off" low-wage employees	Count full-time employees that worked at least 50% of the year, but combine same positions for separations rehired within 90 days *and* eliminate low-wage employees (wages only)	Yes*	Yes	Yes*
	Count full-time employees that worked at least 50% of the year, but combine same positions for separations rehired within 90 days *and* eliminate low-wage employees (wages plus health benefits)	Yes	Yes	Yes

Source: OSA analysis of Company C employment data
**Elimination of low-wage employees resulted in failure to meet the jobs bar*

Figure 1.6 shows that this company needed significant adjustments by GOED to "meet" the wage requirement in each year. Our concerns with GOED's performance assessment of this company include:

- GOED added health benefits to the company's average wages, which it then measured against the average county wages that did *not* include health benefits (see **Finding 5** for additional information on this concern).

- GOED removed the lowest-paying jobs from the average until the company's average wage plus health benefits exceeded 125 percent of the county average wage.

- The average company wage calculation included existing baseline employees, nearly 100 of whom made over $100,000 during these three years. None of these employees were hired as a result of the EDTIF incentive, yet GOED's inclusion of some of these employees' wages increased the average salary and resulted in an EDTIF award.

Company C Received an EDTIF Award Though the Majority of New Jobs Pay Below the County Wage Requirement. In addition to needing considerable adjustments from GOED to justify the minimum performance requirements, this company paid new incremental employees well below the average county wage. Such a practice actually lowers the average county wages, which contradicts the purpose of a corporate incentives award and contradicts the statutory objective of the program.[17] Figure 1.7 shows what Company C paid new employees hired each year of the EDTIF payout.

Figure 1.7 Incented Jobs Pay Below the Wage Requirement

Year	Wage Requirement	New Employee Average Wage	Difference Between New Wage and Required Wages	Percent of New Jobs that Pay Above Wage Requirement
1	$52,020	$35,785	$16,235	9%
2	$53,264	$39,244	$14,020	20%
3	$54,321	$39,617	$14,704	8%

Source: Company C data

We are concerned that most of the new jobs this company was incented to create pay below the contractual requirement for the EDTIF award. Incenting the creation of jobs that pay below the county average wage contradicts GOED's policy of "creat[ing] new, high-paying jobs in Utah," which are defined in statute as jobs that pay annual wages that "compare favorably against the average wage of a community in which the employment positions will exist."[18] GOED should only incent the creation of new high-paying jobs that fulfill this statutory requirement.

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[17] The Legislature prefaced the EDTIF statute with several findings, including that "economic development initiatives and interests of state and local economic development officials should be aligned and united in the creation of higher paying jobs that will lift the wage levels of the communities in which those jobs will be created." Utah Code § 63M-1-2402(1)(c).

[18] We believe the term "compare favorably" is consistent with the Legislature's determination that economic development incentives should create "higher paying jobs that will *lift* the wage levels of the communities in which those jobs are created." Utah Code § 63M-1-2402(1)(c) (emphasis added). Therefore, a job that compares favorably is one whose wages are in excess of the average county wage.

Strengthening internal controls by creating formal policies and procedures will improve the corporate incentives approval process. Due to the significant impact that corporate incentives have on future tax collections, the Legislature should take an active role in developing such policy. Further discussion on GOED's insufficient policies can be found in **Finding 6** of this report.

GOED Retroactively Lowered the Requirement and Issued a Tax Credit for A Company That Fell Short of its Initial Contractual Wage Requirement

GOED lowered the contractual wage requirement for and issued an EDTIF award to Company D after the company failed to meet the initial contractual wage requirement. This company contracted to create jobs that were greater than or equal to 175 percent of the county average wage, but only paid employees 168 percent of the county average wage in the contract's first year.

According to recordings[19] from GOED's corporate incentives subcommittee meetings, Company D did not meet its wage requirement because it found that it could pay its employees less in Utah than it does in other locations. Acting on the advice of this subcommittee, GOED decided to retroactively lower the requirement for this company to 125 percent of the average county wage. The amended contract will pay this company 25 percent of new state revenue for 15 years, which could equate up to $5.2 million.

GOED retroactively lowered the contractual requirements in order to maintain a positive relationship with this company. Although this company agreed to add an additional 50 projected jobs and the new contract decreased the overall incentive cap, we are concerned that GOED disregarded its contractual obligations and retroactively paid a company that did not qualify for a *post-performance* incentive award. Furthermore, such arrangements do not have any legislative oversight or stakeholder transparency.

We are also concerned that such an arrangement was made without sufficient guidance to ensure consistent treatment among companies. Due to lack of oversight, governing policy, or precedent, it appears that GOED was able to provide special treatment for this company that it has not provided for any other company. Formalized policies would reduce the inherent risks that accompany this type of special treatment.

[19] See **Appendix B**, transcript 1.

Recommendations

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.

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

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

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

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 positions will exist."

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

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

The Governor's Office of Economic Development (GOED) could not verify actual employment and wages for two companies that received Economic Development Tax Increment Financing (EDTIF) awards. In the absence of verifiable data, GOED relied on self-reported company information to determine whether a company qualified for an EDTIF award. The company-provided data was unverifiable because the incented companies' reported jobs were filled by third-party contractors who were not company employees and who cannot be cross-referenced with employment information provided by the state's Department of Workforce Services. Figure 2.1 shows the unverified jobs at the two companies and the tax credit that GOED issued.

Figure 2.1 GOED Issued Almost $2.8 Million in EDTIF Awards Based on Unverifiable Data Provided by Companies

Company	Year	Jobs Reported	Jobs Verified	Tax Credit Amount
Company E	1	56	2	$472,000
Company E	2	63	2	$1,178,000
Company E	3	75	2	$882,000
Company F	1	28	14	$225,000
Total				**$2,759,000**

Source: GOED and company data

The *Economic Development Incentives Act* (Act) statute does not allow for contractor income taxes to count toward an incentive award. Rather, the Act allows GOED to count "incremental new state tax revenues paid as individual income taxes . . . by *employees* of a new or expanded . . . service within a new commercial project" toward new state revenue generated.[20] In addition, the statute states that the payment of individual income taxes is "evidenced by *payroll records* that indicate the amount of *employee* income taxes *withheld* and transmitted to the State Tax Commission" by the new service within the "new commercial project."[21] Thus, only the individual income taxes withheld evidenced by the payroll records *of the incented company*—and not those of a contractor—may count toward new state revenue. These employees must also work within and be subject to wage withholding by the incented company.

[20] Utah Code § 63M-1-2403(8)(a)(iii) (emphasis added).
[21] *Id.*

Though Company E's contract allows for contractors to fulfill the company's jobs requirement, we are concerned that the contract would allow for the creation of unverifiable jobs. Company E's contract states:

> "Job" means a single, individual, full time position at the Project, where the individual is a Utah Resident and employed at least 32 hours per week….*Such individual may be employed directly by Company or by a contracted service provider for the Project provided the Job falls in line with the Project.* Those individuals who are Company employees shall be entitled to basic health insurance, retirement and other benefits, if any, commensurate with other Company employees in similar positions.

The contract also allowed the company to create only one verifiable new job in 2009 and then allowed an EDTIF payment for each consecutive year based on the unverified contractors. Company F also used contractors, but its contract does not have the same language that allows the inclusion.

Including contract jobs in order to meet the new jobs requirement impairs GOED's ability to verify a key company performance standard. Company E, which was issued more than $2.5 million in EDTIF awards over a three-year period, actually created only two new verifiable jobs within the incented company. However, the company was allowed to report up to 75 contractors to count towards the jobs needed to qualify for the incentive.[22] GOED could not verify that the contractors were paid a wage that met the minimum salary requirement, or that the company actually met the minimum job creation threshold.

Because of the unverifiable nature of including third-party contractors as part of a company's new jobs created to justify an EDTIF award, we recommend that the Legislature determine if such a practice should be allowable.

Recommendations

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

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

[22] Although not verifiable, the tax credit payout for this company was primarily the result of corporate sales tax paid to third parties, not individual income taxes paid.

Section 2:
GOED Gradually Reduced Corporate Incentives Requirements Since 2008

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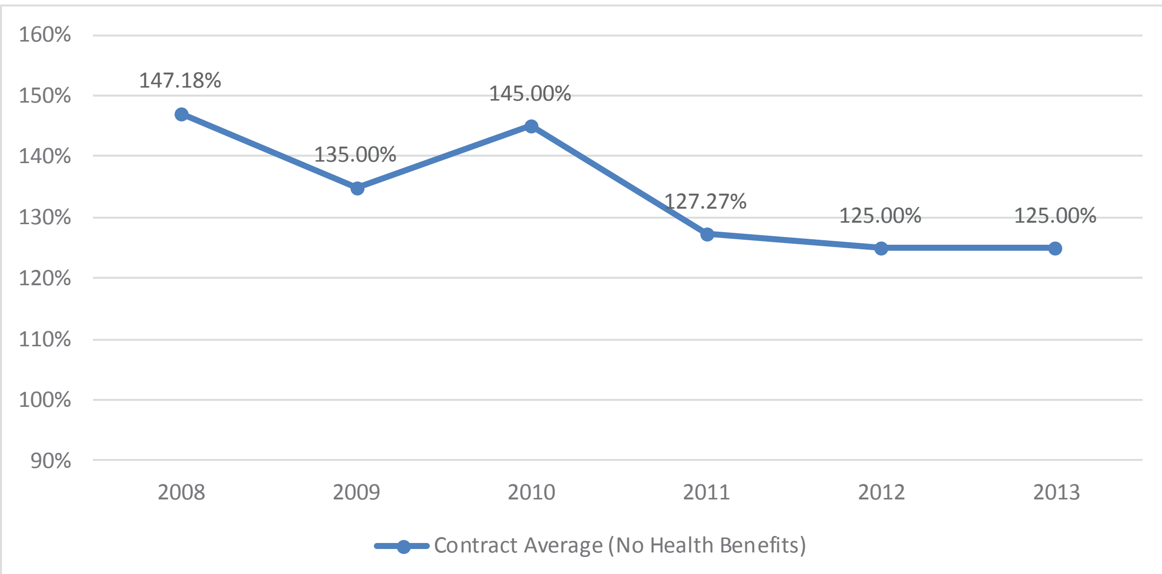
Finding 3 GOED Progressively Reduced Wage Requirements for Incented Companies

Based on its contracts with incented companies, the Governor's Office of Economic Development (GOED) has gradually reduced the wage requirement from 147 percent of the average urban county wage in 2008 to 125 percent of the average urban county wage in 2013. By lowering the wage requirement, GOED decreased the wage a company must pay its new employees in order for the company to qualify for an incentive. Figure 3.1 shows how the wage requirement has changed over time.

Figure 3.1 Weighted Average Urban Wage Requirement



Source: OSA analysis of GOED EDTIF contracts

As illustrated in the figure above, GOED has lowered the wage requirement over the last six years. For example, in 2012, incented companies in urban counties were, on average,[23] required to pay 125 percent of the average county wage, or $53,094. However, if the wage criterion used in 2008 were used for companies in urban counties whose incentives began in 2012, the average wage threshold would have been $57,135.

While GOED's wage requirement for an EDTIF award followed a downward trend from 2008 to 2013, the average county wage in urban areas has steadily increased. Figure 3.2 shows the trend

[23] The average wage criteria for a given year is calculated as the average of all contractually assigned percentages of the average county wage for the particular county in which the company operates. For example, in 2012, each company approved for an incentive in an urban county contracted to pay its employees at least 125% of the average county wage, yielding an average percentage of 125% for the year 2012. The median county wage percentages for three 2008 companies were adjusted to reflect the equivalent *average* county wage for their respective counties.

in the urban average county wage compared to the wage threshold that GOED has required of new companies.

Figure 3.2 **GOED's Effective Wage Requirement[24] for Incentive Awards Decreased While Urban County Wages[25] Increased**

Source: OSA Analysis

Figure 3.2 shows that as the average urban county wage continues to increase, GOED has reduced the wage requirement needed to qualify for a corporate incentive award. By 2013, the inclusion of health benefits actually lowers the effective rate to below the average urban county wage. Statute defines a "high paying" job as one that "compare[s] favorably against the average wage of a community."[26] We are concerned, however, that GOED's interpretation of this definition has gradually eroded over the last six years to the point where the effective qualifying wage is actually less than the average county salary in some counties. Concerns regarding the inclusion of health benefits in company wages are discussed in more detail in **Finding 5**.

Furthermore, as demonstrated in **Finding 4**, almost 30 percent of incented jobs approved in 2012 and 2013 are projected to pay less than the county wage requirement. GOED justifies incenting

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[24] The effective wage requirement accounts for company estimates of company-paid health benefits.

[25] The urban county wage used in this figure is weighted based on the incentives awarded by county.

[26] Utah Code § 63M-1-2403(4)(a).

these lower-paying jobs by awarding companies a corporate incentive based on the *average* company wage rather than the actual wages of the company's new employees.

Recommendations

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.[27]

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

[27] GOED has currently set the threshold at 125 percent of urban average county wage or 100 percent of rural average county wage.

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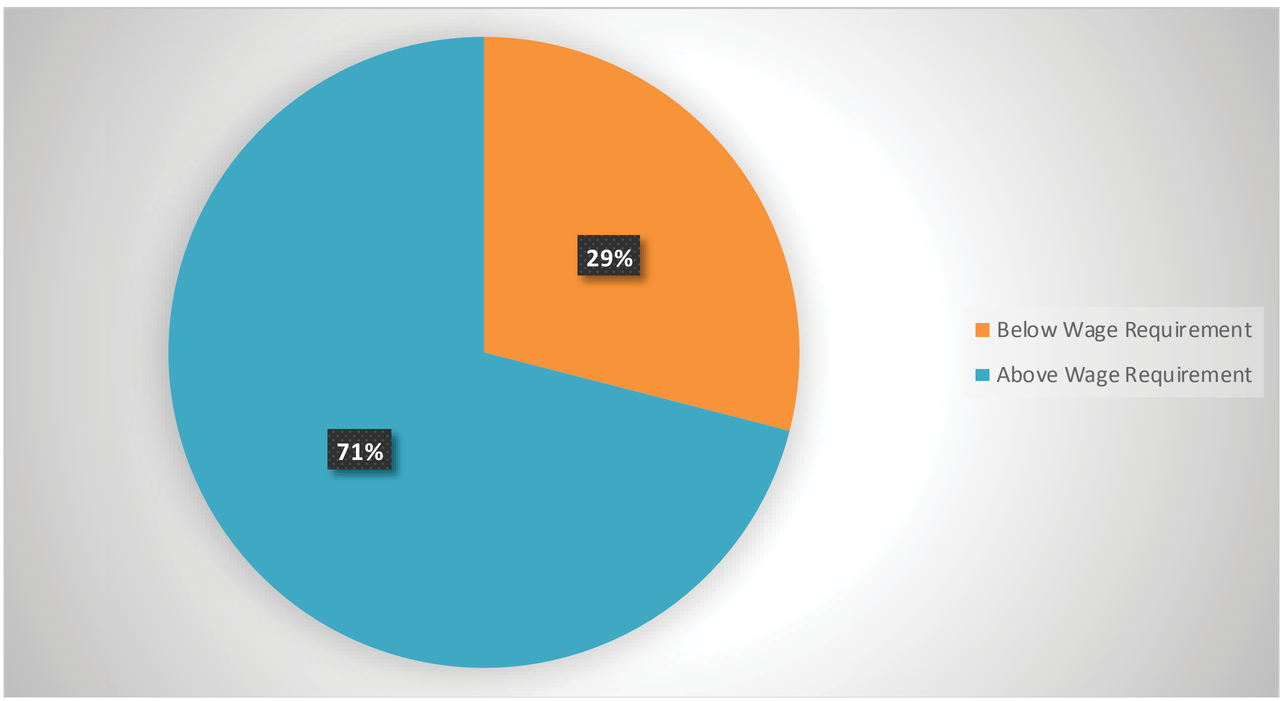
Finding 4 GOED Incents Jobs that Pay Below the Wage Requirements

Nearly one-third of all projected jobs that the Governor's Office of Economic Development (GOED) approved for Economic Development Tax Increment Financing (EDTIF) awards in 2012 and 2013 are expected to pay less than the contractual wage requirement.[28] These projections are provided by the EDTIF candidate companies prior to receiving incentives and are used by GOED to determine whether the company qualifies for an award. Figure 4.1 highlights the projected jobs for the newly incented companies.

Figure 4.1 Almost 30 Percent of Jobs Approved in 2012-2013 Are Projected to Pay Less than the County Wage Requirement



Source: OSA analysis of GOED data

Though statute requires that the wage of "high paying jobs" must "compare favorably against the average wage of a community,"[29] almost one out of every three jobs incented in 2012 and 2013 is projected to pay less than the respective wage requirement.

[28] The average wage requirement GOED uses is 125 percent of the average county wage for EDTIF awards in urban counties and 100 percent of the average county wage for EDTIF awards in rural counties.

[29] Utah Code § 63M-1-2403(4)(a).

We are concerned that GOED incents jobs that pay below the wage requirement and, therefore, do not "compare favorably to the average county wage of a community." Statute states that "economic development initiatives and interests of state and local economic development officials should be aligned and united in the creation of higher paying jobs that will *lift* the wage levels of the communities in which those jobs are created."[30] Nearly 30 percent of the jobs incented in 2012 and 2013 are projected to not meet that standard. This occurs because GOED (1) includes *existing* company employees when conducting the wage threshold test, (2) boosts the average company wage by removing low-paying jobs from the calculation, and (3) adds the value of company-paid health benefits to employee wages which is measured against the average county wage that does not include health benefits.

Recommendations

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.

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 corporate incentives.

[30] *Id.* at § 63M-1-2402(1)(c) (emphasis added).

Finding 5 Inclusion of Company-Paid Health Benefits Inflates Wages

The addition of company-paid health benefits in employee wage projections causes the Governor's Office of Economic Development (GOED) to incent lower paying jobs than it has previously incented. Beginning as early as 2010, GOED began adding employer-paid health benefits with employee wages to inflate a company's "wages" reported when the non-adjusted wages alone were insufficient to reach the county average wage requirement. However, health benefits are not included in the calculation of county average wages to which the projected company wages are compared to determine eligibility for an Economic Development Tax Increment Financing (EDTIF) award. Figure 5.1 shows the effect that including health benefits has on the projected wages of two companies.

Figure 5.1 Many Companies Approved for an EDTIF Award Would Not Meet the Wage Criteria Without Including Non-Wage Compensation

Company	Wage Requirement	Projected Avg. Company Wages	% of Projected Avg. Wage Requirement	Projected Avg. Company Wage w/ Health Benefits	% of Projected Avg. Wage Requirement w/ Benefits
Company G	$56,000	$48,000	85.7%	$60,000	107.1%
Company H	$56,000	$44,000	78.6%	$56,000	100.0%

Source: Analysis of fiscal impact questionnaires (FIQs) projections. Each company project was approved for an urban county and, thus, was required to create jobs that pay at least 125% of the county average wage.

The inclusion of company-paid benefits in the comparison mismatch causes GOED to incent companies to hire employees who receive lower wages than the applicable county wage requirements, as shown in Figure 5.1. Therefore, GOED is incenting companies to create jobs that are not necessarily "higher paying jobs that will lift the wage levels of the communities in which those jobs will be created."[31]

We are concerned that GOED combines benefits with wages, which are then compared to the average county wages that do not include such benefits. This practice lowers the salary that a company must pay in order to receive an EDTIF award and misleads stakeholders into believing that incented jobs pay more than they actually pay.

Furthermore, the use of such a practice without formal policy results in an inconsistent selection of companies that GOED allows to use health benefits to count towards meeting the wage requirement. Based on incentives subcommittee meeting discussions, this practice is intended to be used at GOED's discretion, which may lead to preferential treatment for some companies seeking EDTIF awards. Additionally, some companies that were unaware of the potential

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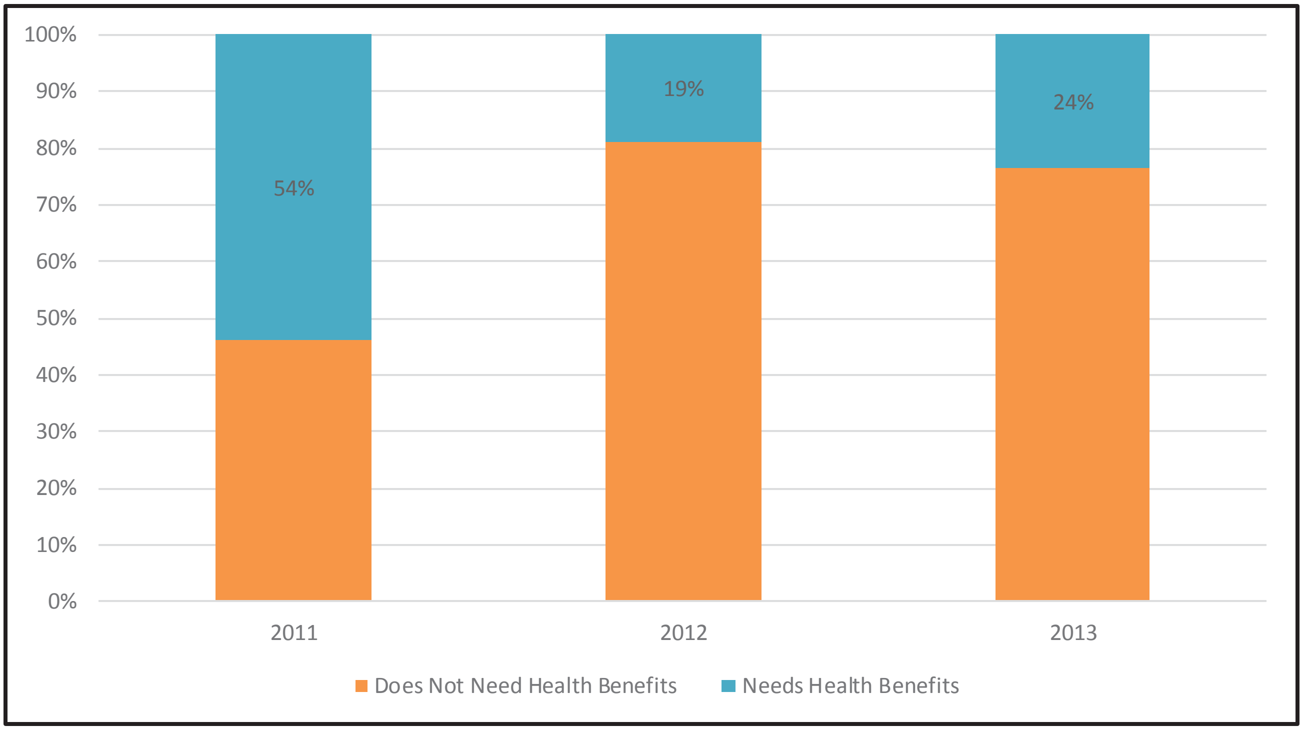
[31] Utah Code § 63M-1-2402(1)(c).

inclusion of health benefits might have applied for and been awarded incentives had they known of this allowance from GOED. Figure 5.2 shows trends in the proportion of companies that were allowed to include health benefits in their fiscal impact questionnaire (FIQ) to be approved for an incentive since 2011.

Figure 5.2 Companies Approved for Incentives that Included Health Benefits to Meet Wage Criteria for at Least One Projected Year Over the Life of the Incentive



Source: OSA analysis of company FIQ's

Figure 5.2 shows that about one-quarter of the companies GOED approved for the corporate incentives program in 2013 included health benefits in projected wages in order to "meet" the county wage requirement. To date, most of these company awards have not been paid, but GOED may have contractually obligated the state to this reduced standard for up to 20 years.

Additionally, this practice presents future risk that GOED will continue to incent companies that are paying increasingly lower wages, while including health benefits to justify and award corporate tax incentives. As mentioned in **Finding 1**, the wage threshold measures the employee wages against the average county wage that does not include health benefits. Therefore, the practice of adding employer-paid health benefits to employee wages provides for an inequitable comparison. We believe this practice is contrary to the legislative intent of committing future tax revenue only to companies that will increase the community's wage levels.

Recommendations

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

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 compare the company's compensation with average county compensation.

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Section 3:
Inadequate Oversight Limits Corporate Incentives Accountability

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

The Governor's Office of Economic Development (GOED) has commitments of more than $600 million of corporate incentive awards but has few formal guidelines for how these awards are issued and how performance is measured. Additionally, GOED's interpretation of the statute has led to the issuance of contracts that do not comply with statute.

Though the development of Administrative Rules and policies and procedures are required by statute, GOED does not define key terms and procedures that determine eligibility for a corporate incentive award. Due to the extent of the long-term commitments by GOED, the Legislature should define key terms and establish clear guidelines for companies seeking a corporate incentive award.

Statutory Guidance for the Issuance of Corporate Incentive Awards Is Vague

The *Economic Development Incentives Act* (Act) requires that, in accordance with the *Utah Administrative Rulemaking Act*, GOED "make rules establishing the conditions that a business entity . . . shall meet to qualify for a tax credit."[32] At a minimum, GOED must ensure that these rules include the following requirements:

- "the new commercial project must be within [an economic] development zone;[33]
- the new commercial project includes direct investment within the geographic boundaries of the development zone;
- the new commercial project brings new incremental jobs to Utah;
- the new commercial project includes significant capital investment, the creation of high paying jobs, or significant purchases from Utah vendors and providers, or any combination of these three economic factors;
- the new commercial project generates new state revenues;" and
- the business entity meets the requirements of the post-performance review and verification process, as outlined in Section 63M-1-2405.[34]

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[32] Utah Code § 63M-1-2404(2)(a).
[33] GOED, with advice from the board, "may create an economic development zone in the state that satisfies all of the following requirements: (a) the area is zoned commercial, industrial, manufacturing, business park, research park, or other appropriate use in a community-approved master plan; (b) the request to create a development zone has been forwarded to the office after first being approved by an appropriate local government entity; and (c) local incentives have been committed or will be committed to be provided within the area." *Id.* at § 63M-1-2404(1).
[34] Utah Code § 63M-1-2404(2)(b).

GOED has enacted rules that effectively mirror these minimum statutory requirements, but these rules make no mention of other policies and practices that GOED currently uses to administer the Economic Development Tax Increment Financing (EDTIF) award approval and issuance process.[35] Rather, any additional qualification criteria and payout considerations are found on the GOED website, represented in confidential incentives meeting deliberations, or reflected in post-performance evaluation and adjustment practices.

Although the Act does not mention any other process by which GOED is to establish tax credit qualification conditions, it does address the role of the GOED Board of Business and Economic Development (Board) in this process. For example, consistent with its role as an advisory board, the GOED Board is required to "recommend policies, priorities, and objectives to [GOED] regarding the assistance, retention, or recruitment of business, industries, and commerce in the state."[36] In addition, GOED "shall obtain the advice of the [GOED] board prior to an imposition of or change to a policy, priority, or objective under which [GOED] operates."[37]

Thus, for policy considerations outside of the minimum statutory guidelines formally enacted in rule, GOED chose instead to follow a maximally-flexible approach allowable within the broad parameters of the statute. The decision to emphasize flexibility rather than accountability was discussed in a corporate incentives subcommittee meeting in 2010,[38] when the GOED executive director specified a preference for informal guidelines rather than formal rules and policies.

The decision to not create formal policy gives GOED the continued flexibility to establish questionable and inconsistent methods for approving a corporate incentive award cited in **Finding 1** of this report. Such methods consist of (1) including *existing* company employees to inflate the average wages of the EDTIF award, (2) using incorrect benchmarks to improperly issue an EDTIF award, (3) boosting the average company wage by removing low-paying jobs from the average, and (4) retroactively reducing wage requirements for and issuing a tax credit to an unqualified company.

While the statute is broad, it also requires GOED to formalize administrative rules and policies. We are concerned that GOED chose flexibility over formal rules and policies that would have provided more program accountability and consistency. Such action circumnavigated the rule-making process which would have included more stakeholder participation and input.

The flexibility created from broad statute, rules, and policies caused GOED to make a number of inconsistent decisions regarding which companies to incent, incentive duration, and incentive amount, as demonstrated in previous findings in this report. We believe that, considering the amount of future tax revenue GOED can commit, clearly defined operational boundaries and consistently implemented policies are needed for the following components of GOED's front-end corporate incentive approval process:

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[35] *See* Utah Administrative Code r357-3-3.
[36] Utah Code § 63M-1-303(g).
[37] *Id.* at § 63M-1-304(2)(a).
[38] See **Appendix B**, transcript 2.

1. High paying jobs
2. New incremental job growth
3. Competition with other states for company relocation
4. Appropriate length and amount of award rates
5. Urban versus rural designation
6. Significant purchases from Utah vendors

GOED Contracts Do Not Always Conform to Statute

GOED may enter into an "agreement" with a company to authorize a tax credit if the company meets statutory standards.[39] The Act requires GOED to ensure that this agreement "details the requirements that the business entity . . . shall meet to qualify for a tax credit."[40] In addition, to qualify for a tax credit, a company must provide "documentation that the business entity has satisfied the performance benchmarks outlined in the *agreement*."[41] Assuming the contracts were made with the intent that the companies would create "high paying jobs," GOED approved contracts that contradict statute in the following instances:

- *Incenting jobs that pay below the average county wage*. The Act defines "high paying jobs" as "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."[42] The intent of this language suggests that incented jobs will pay more than the county average wage. By measuring the *average* company wages against the county average wage, GOED incents jobs that pay below the county average wage. This problem is exacerbated by the inclusion of *existing* employees in the company average that is intended to demonstrate wages that were created as part of a corporate incentive.

  Additionally, as mentioned in **Finding 5**, GOED includes health benefits in employee wages, creating an unequal comparison against the average county wage that does not include health benefits. This unequal comparison prevents GOED from conducting an accurate analysis of company wages relative to the county requirement.

- *Jobs shifting from one jurisdiction to another*. The Act requires that new projects "bring new incremental jobs to Utah."[43] New incremental jobs are defined as positions that are "not shifted from one jurisdiction in the state to another jurisdiction in the state."[44] However, some contracts directly conflict with this prohibition and count company employees that transfer from within the state.

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[39] Utah Code § 63M-1-2404(3).
[40] *Id.* at § 63M-1-2404(4)(a).
[41] *Id.* at § 63M-1-2405(2)(f) (emphasis added).
[42] *Id.* at § 63M-1-2403(4)(a).
[43] Utah Code § 63M-1-2404(2)(a)(iii).
[44] *Id.* at § 63M-1-2403(7)(a).

- *Prohibition of auditor access to contracts*. Standard contractual language impaired our access to contracts, though such access is clearly granted in statute. Though we eventually were granted access to the contracts, this prohibition contradicts the Office of the State Auditor's statutory authority and delayed the audit.

GOED should ensure that contracts comply with statute and accomplish the intent of the corporate incentives program.

The Definition of "High Paying" Job Is Applied Subjectively

The corporate incentives program was enacted to "address the loss of prospective high paying jobs,"[45] but GOED has gradually reduced the minimum wage requirements for new companies from 147 percent of average county wage in 2008 to 125 percent today, as mentioned in **Finding 3**.

In passing the Act, the Legislature determined that "economic development initiatives and interests of the state and local economic development officials should be aligned and united in the creation of high paying jobs *that will lift the wage levels of the communities in which those jobs will be created*."[46] However, other than stating that high paying jobs "compare favorably against the average wage of a community" in which the jobs reside, statute does not outline any other quantitative criteria for what a high paying job—or even merely what a new incremental job—must pay to qualify for an EDTIF award.

In deference to the Industrial Assistance Fund requirements in the general GOED statute,[47] GOED eventually adopted 125 percent of average county wage as its minimum benchmark for urban counties. As mentioned in **Finding 5**, GOED also permits some companies to include health benefits in that wage calculation, preventing an accurate comparison with the average county wages. Without clearly defined statute or internal policy at GOED, we are concerned that this wage benchmark may not always reflect the legislative intent behind the definition of a "high paying" job. Utah is one of only two intermountain states surveyed that does not statutorily define the expected salary of incented jobs, as shown in Figure 6.1.

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[45] *Id.* at § 63M-1-2402(2)(a).
[46] *Id.* at § 63M-1-2402(1)(c) (emphasis added).
[47] *See id.* at § 63M-1-904(5)(a)(iii).

Figure 6.1 **Most Intermountain States Define Qualified Jobs and Wage Criteria in Statute**

State	Statutorily Defined Wage Criteria?
Arizona	Yes
Colorado	Yes
Idaho	Yes
Nevada	Yes
New Mexico	Yes
Utah	*No*
Wyoming	N/A

Source: OSA Analysis

Though each state's economic development incentives vary, most other intermountain states surveyed have a statutory definition of what constitutes a job worthy of incentives. Furthermore, GOED appears to be the only intermountain state economic development agency that awards corporate incentives based on the *average* company wage rather than each individual incented job.

GOED used this flexibility to incent jobs that actually pay *less* than the wage requirements, as addressed in **Finding 1** and **Finding 4**, as long as the total *average* company wage—including the wages of existing employees whose hire dates predate the incentive period—meets or exceeds the minimum requirement. In addition, it appears that GOED is the only intermountain state economic development agency that includes company-paid health benefits in its reported wages of employees.

We believe the Legislature should clearly define what constitutes a high paying job, as other state legislatures have done.

Clarification of "New" Jobs Would Strengthen the Corporate Incentives Program

As previously mentioned, GOED has the statutory authority to issue tax credits to a company of up to 30 percent of new state revenue for up to 20 years. Based on the current statute, GOED continues to incent a company for a job created in the first year of the incentive for the entire length of the incentive period. Therefore, GOED would consider a job created in the first year of the incentive to continue to provide "new" state revenue for up to 20 years.

Figure 6.2 provides an example of a GOED-approved contract for Company I, which projects a job growth period that flatlines[48] after year four of an eight-year contract. This particular company projected hiring nine employees in the first year of the incentive. This total projected jobs

[48] "Flatlining" describes the point when a company no longer projects to create new incremental jobs, but is still scheduled to receive an incentive from GOED.

increases to 50 employees by the fourth year of the incentive, but flatlines for the remaining years of the incentive period.

Figure 6.2 **GOED Continues to Incent Companies for "New Incremental" Jobs for up to 20 Years After the Jobs Were Created**

Year	1	2	3	4	5	6	7	8*
New Incremental Jobs Projected	9	21	1	19	0	0	0	0
Total Projected Cumulative Jobs	9	30	31	50	50	50	50	50

Source: Company I contract
*Year 8 is a partial year, and not counted as a flatline year.

We are concerned that GOED considers the nine jobs that Company I created in year 1 as "new" jobs for over six years after the jobs' creation. Additionally, we are concerned that this company continues to receive a corporate incentive for nearly four years after it creates its contractually-required jobs.

In another example, Company J was nearing the completion of a five-year incentive when it approached GOED for a second time to request an additional EDTIF incentive due to the difficult economy and the costs associated with their "build out." GOED could not provide the amount of money the company requested by simply increasing the tax credit of the incentive to the maximum allowable 30 percent, nor did GOED feel comfortable awarding 30 percent of new state revenue for what staff determined to be "call center" jobs. As a result, GOED elected to extend the incentive another five years—despite the company's projection of zero job growth for those five years.

One incentives subcommittee member, acknowledging that this new contract would not actually create any new jobs, initially objected to this arrangement.[49] Additionally, this incentives subcommittee member expressed concern regarding the precedent that this new contract would set. Despite concerns from this subcommittee member, GOED approved the corporate incentive.

Similar to other examples in this report, this example demonstrates the inconsistent treatment that companies can receive without formal rules and policies. It is unclear whether GOED would provide similar considerations for other companies. We are concerned that such inconsistent treatment may increase state risks and deter some companies from doing business with the state. We also believe that the Legislature should clearly define how long a "new" incremental job should be incented.

[49] See **Appendix B**, transcript 3.

GOED Requires Most Companies to Create Less Than 50 Percent of Promised New Jobs

In some cases, GOED will continue to issue tax credits to companies that create only a fraction of the new jobs that the company projected to create. For example, a company could contract with GOED to create 20 jobs per year for five years for a total of 100 jobs. However, GOED only requires (by contract) that the company create a minimum percentage of those job projections each year to qualify for that particular year's incentive. The employment projection criterion has typically been a minimum of 50 percent of the approved job projections for the first two years, after which time this requirement typically drops to 25 percent. Figure 6.3 shows an example of how company projections may compare to GOED requirements.

Figure 6.3 **GOED Requires Companies to Create Only a Percentage Of Projected Jobs to Receive a Corporate Incentive**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Company Projected Jobs (Aggregate)	20	40	60	80	100	100
GOED's Job Creation Requirement	50%	50%	25%	25%	25%	N/A
Number of Jobs Required for Incentive (Aggregate)	10	20	15	20	25	25

Source: OSA Analysis

Statutorily, GOED may not authorize a tax credit that exceeds "30 [percent] of the new state revenues from the new commercial project over the life of a new commercial project or 20 years, whichever is less."[50] However, this is the only statutory language that addresses the length of an incentive period, and although the Act requires that each incented project bring "new incremental jobs" to Utah, statute is silent on how many years over the life of the incentive must include new incremental job growth or for how long a newly created job should be incented. Thus, a company could continue to receive an incentive for creating "new state revenue," even though it does not necessarily have to create actual new jobs in each year.

We reviewed all finalized contracts provided to us by GOED[51] and found 48 EDTIF contracts that include a year-to-year projected job growth schedule. These 48 contracts represent 47 unique companies, one of which has two contracts for separate incentives. Overall, 18 of the 48 total contracts analyzed (38 percent) include projections for no additional job growth for at least the

[50] Utah Code § 63M-1-2404(3)(c)(i)(B).

[51] We received 76 unique contracts from GOED, along with a number of separate amendments to those contracts. We conducted our analysis on the assumption that GOED gave us all contracts in their possession, which was our request of them. These 76 contracts represent 72 unique companies. We then limited our analysis to the 50 EDTIF contracts, which represent 49 unique companies. EDTIF contracts represent those incentives approved after May 5, 2008, when the current EDTIF statute went into effect.

final two years of the incentive period.[52] Furthermore, these 18 contracts project an average "flatline" period of 6.3 years but an average job growth period of just 4.6 years.

Statute Grants Broad GOED Discretion in Awarding Corporate Incentive Length and Rate

As mentioned above, the Act states a company may be paid up to 30 percent of new state revenue for up to 20 years or the length of the project, whichever is less. The broad authority granted by the Act allows GOED flexibility to determine the amount and length of an EDTIF award, as long as it is not more than 30 percent of new state revenue over 20 years. Such a generous time appears to be longer than similar corporate incentive programs offered by other intermountain states.

Figure 6.4 demonstrates a portion of an FIQ for Company K that GOED used to determine the appropriate incentive. The potential total EDTIF award that GOED could have approved according to this matrix ranges from $34,761 (5 years at 5 percent) to $1,651,505 (20 years at 30 percent)—a difference of over $1.5 million. We are concerned that GOED makes award decisions without quantifying, defining, and weighing applicable factors according to defined and consistently applied policy. In addition, we are concerned that GOED does not maintain documentation detailing factors and weights considered to provide a record of why a particular incentive was awarded or denied.

Figure 6.4 FIQ Award Rate and Time Period Matrix

Potential Award Estimates	Years 5	10	12	15	18	20
30%	$208,569	$620,461	$803,036	$1,097,956	$1,420,224	$1,651,505
25%	$173,807	$517,051	$669,197	$914,964	$1,183,520	$1,376,254
20%	$139,046	$413,640	$535,357	$731,971	$946,816	$1,101,003
15%	$104,284	$310,230	$401,518	$548,978	$710,112	$825,752
10%	$69,523	$206,820	$267,679	$365,985	$473,408	$550,502
5%	$34,761	$103,410	$133,839	$182,993	$236,704	$275,251

Source: Company K FIQ

We believe that the Legislature should periodically review whether or not the amount and length of time of EDTIF awards continues to meet the needs of the state. In addition, the Legislature should assess the discretion that GOED currently exercises in determining the length and rebate rate of the incented period for applicant companies.

[52] Flatlining at least two years means the job growth projection is the same for the final three years of the incentive. Only projected job growth schedules that *conclude* on a flatline are included. Neither midterm "plateau" years nor partial years in the final "year" of the incentive are counted toward flatline total.

Recommendations

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.

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.

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.

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.

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.

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Finding 7 Limited Oversight Impairs GOED's Accountability

Considering advice from its corporate incentives subcommittee, the Governor's Office of Economic Development (GOED) can, with minimal oversight, dedicate future tax revenue to entice companies to relocate or expand in the state. The level of autonomy granted by statute led to questionable decisions, including the decision to double the length of one company's incentive period though it was not necessary for the company to remain and expand in the state. We believe that GOED could strengthen their approval process to ensure that companies that relocate or expand in the state would not have done so without a corporate incentive.

Implemented policies and procedures, mentioned in **Finding 6**, in addition to greater legislative scrutiny, will minimize inappropriate actions. Additionally, more frequent independent reviews of GOED's corporate incentives program will further safeguard the use of future tax revenue.

GOED Increased the Incentive Length to Twice What the Applying Company Sought

Nearing the completion of its original five-year contract, Company L approached GOED about revisiting the contract to add another five years. Under the original contract, the company was required to pay wages of at least 200 percent of the median county wage. However, the new contract, which took effect in year five of the original contract, lowered the requirement to 125 percent of the average county wage.[53]

Additionally, though the company would have accepted a new five-year extension to their original contract to remain and expand in the state, GOED, based on the advice of its incentives subcommittee, gave the company a new 10-year contract, which committed up to an additional $49 million of future state tax revenues. The company had already received $10.7 million from its first incentive, and GOED feared that the company might leave the state at some future point without another incentive.

One incentives subcommittee member expressed concerns about incenting a company for twice the length of time the company would have accepted.[54] Admitting that this particular incentive would be criticized regardless of GOED's decision, this incentives subcommittee member eventually agreed, and the subcommittee gave a favorable recommendation to GOED's Board of

[53] As originally enacted in the 2005 General Session, the Legislature defined "high paying" jobs as those that "compare favorably against the *median* wage of a community" (emphasis added). However, in H.B. 20 of the 2008 General Session, the Legislature changed the definition from "median" county wage to "average" county wage, the metric published by the Department of Workforce Services.

[54] See **Appendix B**, transcript 4.

Business and Economic Development. GOED eventually agreed to this incentive, which provided this company with twice the incentive length it would have accepted.

Finally, the incentives subcommittee agreed that it would not necessarily recommend the same consideration for other companies. Granting incentive awards beyond what a company would accept to relocate or remain in the state appears excessive and outside the best interest of the state and its other taxpayers. Additionally, it appears that GOED treated this company differently than it treats other companies.

GOED Should Ensure that Only Projects With Actual Competition Are Incented

A fundamental principle determining the effectiveness of an economic development incentive is the assumption that a company would not relocate to or expand in Utah without the incentive. Companies relocate or expand for a number of reasons, including a state's tax climate, workforce availability, utility costs, and/or quality of life.

Company executives typically have a fiduciary responsibility to maximize shareholder returns, causing them to pursue the "best deals" possible when expanding or relocating to another state. Similarly, GOED should have a responsibility to ensure that it is awarding the lowest amount of potential tax revenue necessary to attract or retain a company where a positive cost-benefit arrangement exists for other taxpayers. Although it would be difficult to guarantee that competition exists, there are additional safeguards employed in other states that GOED or the Legislature could enact to better protect against unnecessary or excessive incentive awards. GOED should also require companies to certify that the company would not relocate to or expand in Utah without the incentive.

Colorado statute, for example, requires additional documentation from prospective companies to ensure that competition exists including:

> *An identification of the cost differential in the projected costs of the project compared to the projected costs were the project commenced in a competing state. The cost differential shall include any impact of the competing state's incentive programs and may include:*
>
> *a. Specific costs for labor, utilities, taxes, and any other costs of a competing state's site; and*
> *b. The cost structure of the taxpayer's industry in the competing state.*[55]

We believe that GOED should consider requiring companies applying for a corporate incentive to provide greater assurances to policy makers that there is competition and that the incentive is an important criterion they used to decide to relocate or expand.

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[55] Colorado Revised Statutes § 39-22-531(3)(b)(II).

Frequent Independent Review of Corporate Incentives Would Increase Accountability

While improved policies and procedures would strengthen controls to ensure consistency and accountability (see **Finding 6**), regular independent reviews could ensure that GOED follows policies and procedures and has an appropriate level of accountability. GOED has conducted two limited reviews of the corporate incentives process since 2012. However, each of these reviews admits that they are not comprehensive nor representative.

The *Economic Development Incentives Act* currently requires GOED to "conduct an audit of the tax credits" every five years, beginning in 2014. These audits should "make recommendations concerning whether the tax credits should be continued, modified, or repealed," and evaluate "the cost of tax credits," "the purposes and effectiveness of the tax credits," and "the extent to which the state benefits from the tax credits." [56]

While these regularly-scheduled audits might help to ensure proper accountability, they will occur only once every five years. Due to the significance of the amount of future tax revenue which GOED has the ability to disburse, the Legislature should consider requiring a thorough independent audit of the corporate incentives program at least every third year. The Legislature may also consider requiring an annual independent review of performance statistics prior to receiving GOED's legislative reports in order to ensure that legislative decisions are based on accurate data.

[56] Utah Code § 63M-1-2406(3).

Recommendations

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.

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.

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.

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

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

Finding 8 GOED Reported Misleading Wages of Projected Jobs

The Governor's Office of Economic Development (GOED) misinformed stakeholders, including the public, regarding projected wages that a newly incented company will pay. GOED regularly reports inaccurately that all projected jobs that will receive Economic Development Tax Increment Financing (EDTIF) will pay more than the minimum wage requirement.[57] According to individual company forecasts for those approved for an EDTIF award in 2013, approximately 25 percent of incremental new jobs created by EDTIF awards will pay less than the minimum wage requirement, despite GOED's overstated public claims. Failure to accurately inform stakeholders leads to a misplaced assumption that EDTIF awards add more value than they actually contribute. GOED should accurately report projected and actual wages of new jobs in their communication with stakeholders and the public.

GOED Press Releases Misrepresent Company Wage Estimates

Almost 85 percent of GOED's press releases for companies approved to receive an EDTIF award in 2013 falsely state or imply that *all* newly created jobs will pay more than the required average county wages, though the incented companies claim that many of these jobs will pay below that standard. GOED criteria requires the *average* wages to be equal to the county average wage for companies locating in rural counties and at least 25 percent more than the average county wages for companies locating in urban counties.

Many of the GOED press releases incorrectly stated that "[a]ll of the incented jobs pay at least 125 percent of the county's average annual wage including benefits,"[58] though most incented companies do not make a similar claim. Each company submits the estimated wages of new incremental employees with its application for the EDTIF. Only about 75 percent of the new employees listed in the company fiscal impact questionnaire (FIQ) in 2013 are estimated to make more than the required minimum wage for their respective counties (without benefits added). The following two examples highlight our concern.

One Incented Company Projects that 90 Percent of New Incremental Jobs will Pay Less than the Contractual Wage Requirement. According to the Company H corporate incentives application, the company claims that most of the new incremental employees will be paid less than the required amount for the urban county in which it was relocating. However, GOED's press release that announced the incentive for this company states,

[57] GOED criteria requires that the *average* salary of the new incremental jobs pay at least 100 percent of the average county wage for rural counties or 125 percent of the average county wage for urban counties.

[58] Press releases for rural counties state that "[a]ll of the [incented jobs] will pay at least 100% of the county's average annual wage including benefits."

"All of the incented jobs will pay at least 125% of the county's average annual wage, including benefits." (Emphasis added)

GOED's public statement regarding this company conflicts with the company's application, which states that few of the new incremental jobs created will pay above $55,508, or 125 percent of the applicable urban county average wage. Figure 8.1 shows the actual breakdown of anticipated wages provided by this company.

Figure 8.1 **Estimated Annual Wages of New Incremental Jobs Created for Company H**

Number of Positions	Average Wages
205	$32,500
8	$37,500
16	$42,500
39	$47,500
8	$55,000
4	$65,000
5	$75,000
7	$85,000
2	$95,000
4	$112,500
2	$137,500
1	$162,500
1	$187,500
4	$225,000
**** Company Projections Summary ****	
Total New Jobs	**306**
Total New Jobs Above Required Minimum	**30**
Total New Jobs Below Required Minimum	**276**
Average Projected Wage	**$43,562**
Median Projected Wage	**$32,500**
Wage Requirement	**$55,508**

Source: Company H FIQ
Note: Wages in red are below the average wage requirement for this county

Contrary to GOED's press release, this incented company projects that the overwhelming majority of the new incremental jobs will pay less than 125 percent of the average county wage.

Additionally, the average wage of these new jobs is $43,562, which falls below the average county wage threshold for this urban county and, therefore, this company is not eligible for an EDTIF award. However, in order to facilitate this company's qualification for the incentive, GOED added $12,000 in health benefits to the prospective average company wage. Even with the inclusion of health benefits, which we believe is a practice contrary to statute, the wages for nearly 75 percent of the new employees fall below the county requirement. **Finding 5** addresses our concern that GOED adds certain non-wage benefits in the company wages, but does not account for such benefits in the average county wage against which the company wages are measured.

An Incented Company Claims that Only 14 Percent of New Employees will Meet the Minimum County Wage Requirement. Despite this admission by Company M, GOED stated in its press release that the new jobs created in this urban county would,

> *"pay at least 125 percent of the county's average annual wage including benefits."*

This statement, which is similar to statements found in many press releases announcing EDTIF awards in 2013, misleads stakeholders to believe that all new jobs would pay at least 125 percent of the average-paying county job. Figure 8.2 shows the projected wages from the company's EDTIF application.

Figure 8.2 Estimated Annual Wages of New Incremental Jobs Created for Company M

Number of Positions	Average Wages
200	$32,500
104	$37,500
1	$42,500
15	$47,500
23	$55,000
4	$65,000
1	$75,000
6	$95,000
2	$137,500
**** Company Projections Summary ****	
Total New Jobs	**356**
Total New Jobs Above Required Minimum	**51**
Total New Jobs Below Required Minimum	**305**
Average Projected Wage	**$38,202**
Median Projected Wage	**$32,500**
Minimum Wage Requirement	**$44,464**

Source: Company M FIQ
Note: Wages in red are below the minimum wage requirement for this county

Contrary to GOED's public statements, this company projects that the majority of the new incremental jobs will pay below 125 percent of the average county wage. Similar to wages from Company H in Figure 8.1, the average wage of Company M's new incremental jobs is below the minimum required in order to receive a corporate incentive in this urban county. In order to facilitate company qualification for the incentive, GOED added company-paid health benefits to the average wage of the new incremental jobs. This addition creates the perception that the company meets the standard for the EDTIF award; however, actual company wages fall short of the respective minimum county wage requirements. GOED should ensure that the company wages are measured against comparable standards to ensure a clear measurement of the impact of corporate incentives.

Misleading Press Releases Overstate Economic Benefit of Corporate Incentives

GOED's external communication misleads stakeholders into believing that all jobs created through the EDTIF exceed their respective county minimum wage requirements. Additionally, the wording of some press releases appears to suggest that the incented company will provide health benefits in addition to wages in excess of the county wage requirement. In reality, however, many incented companies will provide wages that meet or exceed the county wage requirement only when the value of company-paid health benefits are included with wages.

The inaccurate and misleading press releases misinform the public and other stakeholders to believe that GOED's corporate incentives attract higher paying jobs than they actually incent. By overstating anticipated company wages in its external communication, policy makers, taxpayers, and other stakeholders are led to believe that GOED's corporate incentives have a greater impact than they actually have.

Recommendations

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

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

Section 4:
Corporate Incentives Impact Future Tax Revenue

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Finding 9 EDTIF Commitment Will Likely Double by 2024

The Governor's Office of Economic Development's (GOED) Economic Development Tax Increment Financing (EDTIF) commitment exceeds $600 million and will likely more than double in the next ten years, committing future tax revenue and further complicating state revenue forecasts. Additionally, the annual amount paid out in corporate incentives will likely increase by five fold over the same time period.

GOED could better ensure that EDTIF contracts are awarded only to companies meeting well documented pre-incentive economic criteria and are paid only to companies meeting rigorous post-performance controls based on verifiable data. Currently such concerns—which are discussed in detail in **Finding 1** through **Finding 5**—question the integrity and execution of the corporate incentive program's post-performance review process. The Legislature could also exert greater control over GOED's ability to obligate future tax revenues by considering program spending caps.

EDTIF Payments Currently Represent a $655 Million Commitment

According to the state's 2013 Comprehensive Annual Financial Report (CAFR), future EDTIF payments could exceed $600 million, assuming the incented companies produce the contractually agreed upon jobs and new state revenue. The CAFR identifies this commitment as follows:

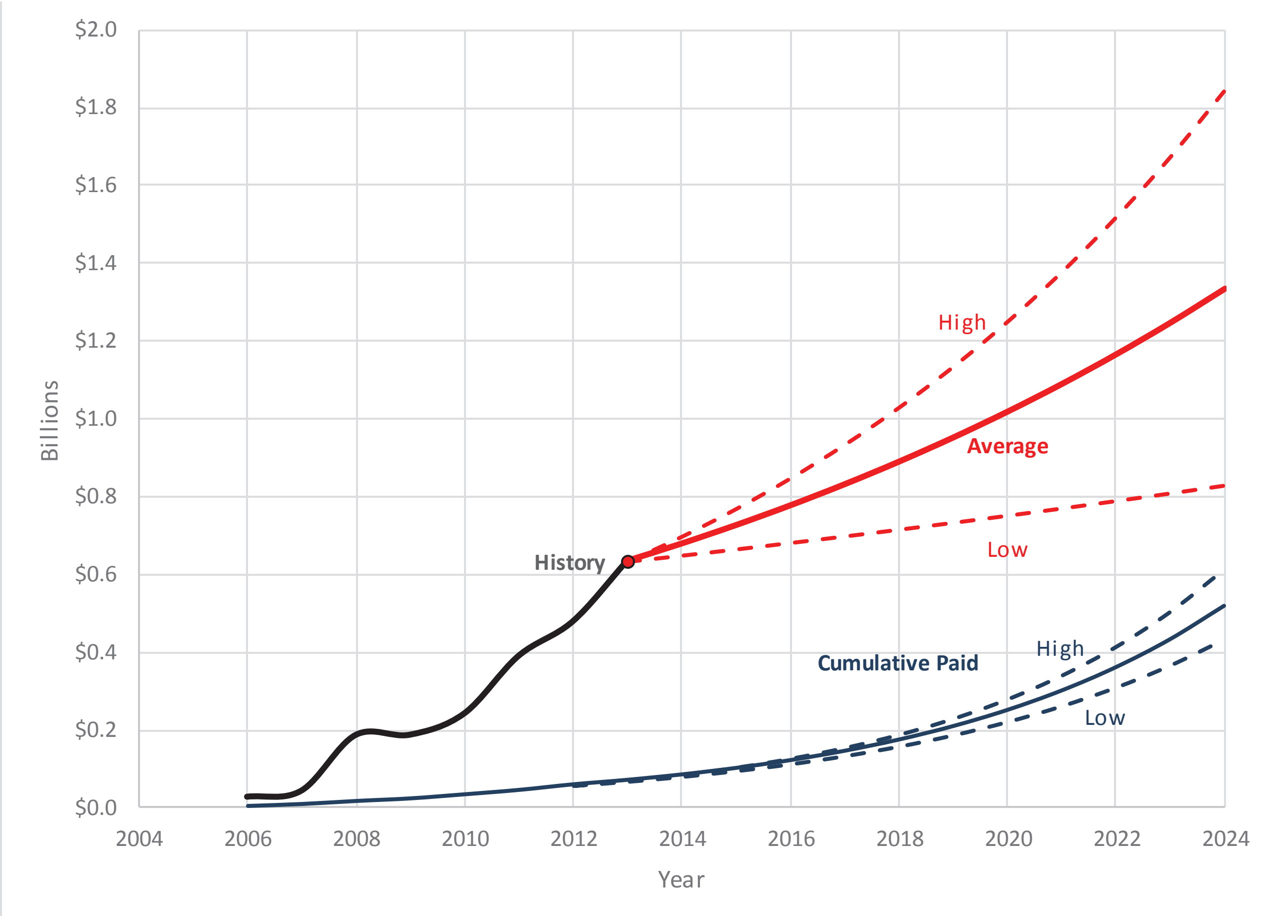
> *At June 30, 2013, the [EDTIF] had outstanding long-term contract commitments for General Fund cash rebates of $94.749 million and Education Fund tax credits of $560.739 million. These cash rebates and tax credits are contingent on participating companies meeting certain economic development performance criteria.*

Though the expressed commitment will be paid out over up to 20 years, and should be paid subject to company performance, a growing proportion of corporate income tax revenues in any given year may complicate the state's ability to forecast future state revenue.

EDTIF Commitment Will Likely Approach $1.3 Billion by 2024

Given a simulation of recent trends, the EDTIF commitment will continue to grow significantly over the next decade if GOED continues the historical pace of new contract approvals. The promised tax credits are outside of the normal appropriations process. EDTIF commitments enter the budget process retrospectively when economists reduce the revenue forecast of income tax by the amount of potential tax credits claimed by companies. Figure 9.1 summarizes the likely path of the growth in commitment and aggregate payments under the program based on a simulation of future program growth concurrent with recent experience.

Figure 9.1 Summary of 10-Year EDTIF Projection.



Source: OSA Analysis

The continued growth of GOED's EDTIF commitment, shown in Figure 9.1, could further complicate future revenue forecasts. Conceptually, all EDTIF payments should be rebates of increased state revenue created by companies that would not do business in the state without such an incentive. However, we are concerned that the inadequate pre-incentive and post-performance controls documented throughout this audit report allow GOED to approve and award questionable long-term EDTIF incentives without a meaningful limit on their ability to forego future state revenue. GOED stakeholders—including the public, the Board of Business and Economic Development, and the Legislature—would benefit from additional information regarding the growing commitment of EDTIF awards.

Recommendations

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 commitment.
    b. Verifiable jobs created.
    c. Detailed wages of incented jobs.
    d. Actual corporate incentives awarded.

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.

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.

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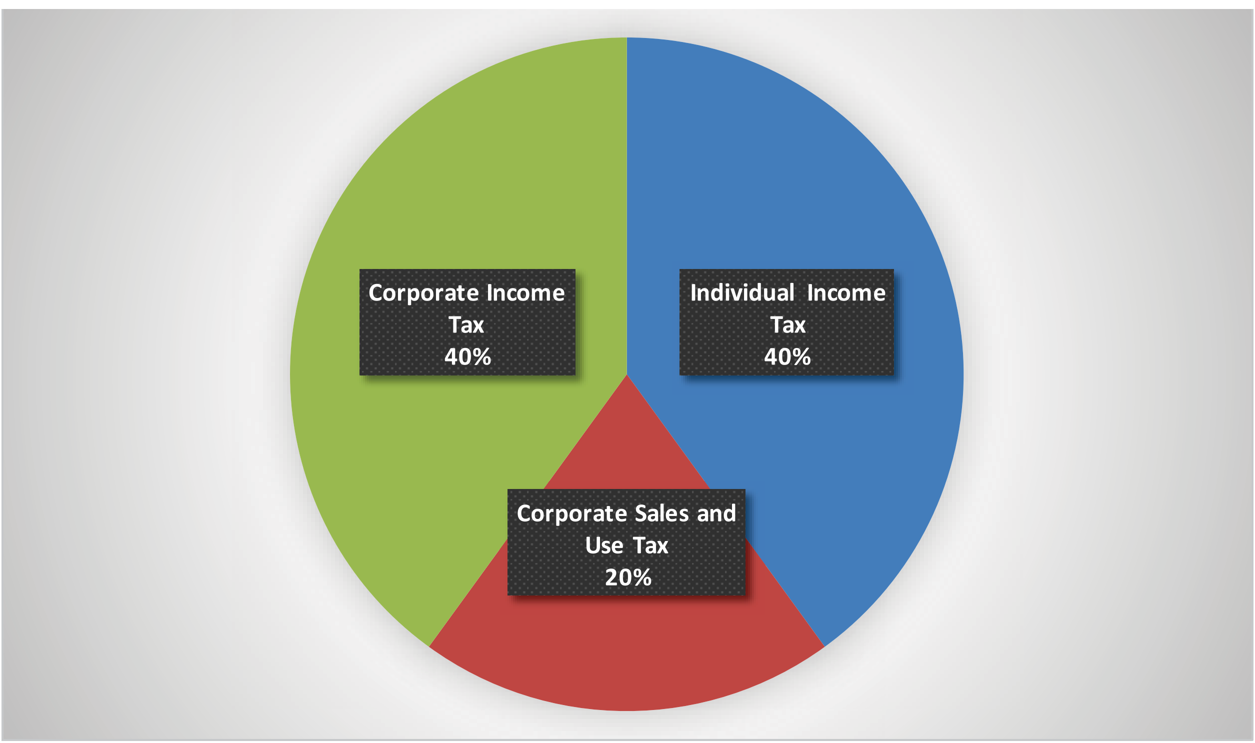
Finding 10 GOED Cannot Verify Employee Withholding Portion of EDTIF

An estimated 40 percent of all tax credits issued to companies by the Governor's Office of Economic Development (GOED) through the Economic Development Tax Increment Financing (EDTIF) program are due to individual income taxes withheld from individual employees. Currently, GOED estimates the taxes paid by the employee based on the individual income tax withholding for new jobs created; however, GOED cannot verify the actual amount *paid* after the year-end tax reconciliation. GOED reduces the amount of company withholding by 25 percent for purposes of computing EDTIF award amounts.

Figure 10.1 shows that corporate income tax and employee-paid individual income tax withholdings represent 80 percent of the projected revenue generated by companies issued an EDTIF award. However, some companies could have a low corporate tax liability and be primarily awarded tax credits based on employee individual income tax withholdings, a cost borne directly by the employee.

Figure 10.1 Estimate of EDTIF Payment Sources



OSA analysis of GOED and Tax Commission Data

Prior to receiving a corporate incentive award, an incented company must provide GOED with "documentation of the new state revenues from the business entity's new commercial project *that were paid* during the preceding calendar year."[59] In addition, statute states that "incremental new state tax revenues *paid* as individual income taxes . . . *as evidenced* by payroll records that indicate the amount of employee income taxes *withheld and transmitted* to the State Tax Commission" may be counted toward the new state revenue calculation.[60] As mentioned above, companies actually report (and GOED calculates) individual income taxes *withheld* rather than individual income taxes *paid* in determining the amount of new state revenue generated from which to pay an award.

Although GOED is limited in providing a portion of new state revenues paid, GOED has no practical ability to determine that amount, nor do we believe GOED should have access to Tax Commission records regarding individual tax returns. The Legislature should decide whether GOED should continue to be allowed to award corporate incentives based on unverifiable income taxes.

Recommendations

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

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.

[59] Utah Code § 63M-1-2405(2)(b)(i) (emphasis added).
[60] *Id.at* § 63M-1-2403(8)(a)(iii) (emphasis added).

Appendix A Audit Scope, Methodology, and Limitations

A Performance Audit the Governor's Office of Economic Development's (GOED) Corporate Incentives Program was performed in an effort to evaluate the effectiveness of a program that has committed more than $600 million to incent companies to conduct business operations in Utah. The scope of the audit, which was narrowed based on a risk assessment conducted as part of the initial phases of the audit included an evaluation of the following:

- The effect that corporate incentives will have on future state revenue.
- Controls to determine which companies receive incentives.
- Controls to determine the amount that incented companies receive.

To this end, field work for this audit—which occurred from March 2014 to August 2014—included but was not limited to the following:

- A 10-year simulation based on program trends.
- A review of applicable state statute, Administrative Rules, and program policies and procedures.
- An analysis of Economic Development Tax Increment Financing (EDTIF) credits issued from 2006 through 2012.
- A review of available contracts, projections, and analysis for EDTIF awards approved from 2006 through 2012.
- A review of corporate incentive models used in six surrounding states (Arizona, Colorado, Idaho, Nevada, New Mexico, and Wyoming).

In the early stages of field work, we became aware of material deficiencies in GOED's data tracking system (Salesforce). Therefore, analysis and recommendations were based on documents produced by GOED, the Department of Workforce Services, the Tax Commission, and incented companies to demonstrate their qualifications for an EDTIF award.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Data Reliability was a Significant Concern. Throughout the audit we encountered a number of material data reliability concerns, including: (1) undocumented internal review processes, (2) inadequate policies and procedures for post-performance payments, (3) insufficient company data storage, and (4) unreliable databases and data produced by GOED. Additionally, GOED initially restricted full access to office staff and personnel, limiting access to information and delaying the audit. The new administration removed such restrictions and cooperated fully with the audit.

In some cases, GOED was unable to provide full and accurate data to conduct a comprehensive analysis needed to determine the full extent of concerns cited in this report. Despite concerns with the data, our analysis is based on the best available information that could be acquired. Nevertheless, we recommend that GOED make significant efforts to increase the reliability of its data, especially considering the amount of future tax revenue committed to be disbursed.

Appendix B Select Corporate Incentives Meeting Transcripts

The following are transcripts of portions of corporate incentives subcommittee meeting recordings referred to in the audit report. The corporate incentives subcommittee is a non-quorum group of GOED's Board of Business and Economic Development. As such, the subcommittee is not subject to the state's *Open and Public Meetings Act*. Though GOED regularly creates recordings of subcommittee meetings, GOED has designated that such recordings are protected under the *Government Records and Management Act* (GRAMA).[61]

GOED also claims that the anonymized transcripts of those recordings created by the Office of the Utah State Auditor (OSA) are similarly protected and may not be released publically. The OSA took proactive steps to anonymize the transcripts by obscuring names of employees, board members, and companies as well as excluding confidential company information. The OSA believes these anonymized transcripts provide key insight into questionable decisions cited in the audit report and do not contain any information that should be considered protected by GRAMA. However, to comply with GOED's classification, these transcripts were placed in this appendix which is provided under a separate confidential cover.

Transcript 1

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[61] Utah Code § 63G-2-305(35).

Transcript 2

REDACTED

Transcript 3

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Transcript 4

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Agency Response

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