United States Government Accountability Office

GAO

Report to Congressional Committees

September 2009

# RECOVERY ACT

# Funds Continue to Provide Fiscal Relief to States and Localities, While Accountability and Reporting Challenges Need to Be Fully Addressed (New Jersey)

GAO-09-1017SP

# Contents

# Appendix XII: New Jersey

## Overview

The following summarizes GAO's work on the third of its bimonthly reviews of American Recovery and Reinvestment Act (Recovery Act)[1] spending in New Jersey. The full report on all of our work, which covers 16 states and the District of Columbia, is available at http://www.gao.gov/recovery.

We reviewed five programs in New Jersey funded under the Recovery Act—Title I, Part A, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended; the Individuals with Disabilities Education Act (IDEA), Part B; Highway Infrastructure Investment funds; Transit Capital Assistance funds; and the Weatherization Assistance Program. We selected these programs for different reasons. To expedite spending of ESEA Title I and IDEA, Part B Recovery Act funds, New Jersey's Department of Education opened a request for applications for local educational agencies (LEA) to use up to 50 percent of each LEA's allocation during the summer recess. Contracts for highway projects using Highway Infrastructure Investment funds have been under way in New Jersey for several months, which provided an opportunity to review and discuss with officials New Jersey's progress in suballocating funds to local areas, as required by the Recovery Act, and the oversight of contracts. The Transit Capital Assistance funds had a September 1, 2009, deadline for obligating a portion of the funds. The Weatherization Assistance Program in New Jersey had begun to spend Recovery Act funds on start-up activities related to the weatherization of homes and, as in other states, the large influx of Recovery Act funds posed a risk to program implementation. With these programs, we focused on how funds were being used; how safeguards were being implemented, including those related to procurement of goods and services for highway and weatherization contracting; and how results were being assessed. We reviewed and discussed with officials contracting procedures and three specific contracts under the Recovery Act Highway Infrastructure Investment funds program. In addition to these five programs, we also updated funding information on the U.S. Department of Education State Fiscal Stabilization Fund (SFSF) and the U.S. Housing and Urban Development (HUD) Public Housing Capital Fund. Consistent with the purposes of the Recovery Act, funds from the programs we reviewed are being directed to help New Jersey and local governments stabilize their budgets and to stimulate infrastructure development and expand existing programs—

[1]Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

thereby providing needed services and potential jobs. The following provides highlights of our review of these programs:

## ESEA Title I, Part A and IDEA, Part B

- New Jersey has allocated $91.5 million—50 percent of its total allocation of $183 million—in Recovery Act funds to LEAs under ESEA Title I, Part A. Similarly, New Jersey has allocated $186 million in Recovery Act funds under IDEA, Part B to LEAs.

- As of September 1, 2009, New Jersey LEAs have not drawn down funds for ESEA Title I or IDEA, Part B. However, state officials reported that LEAs are spending on Recovery Act-funded activities such as summer programs for at-risk students or purchases of equipment and materials for students with disabilities.

- In an effort to expedite spending, New Jersey approved applications in 199 of the state's 616 LEAs to implement summer activities and procure materials and equipment for which they will receive reimbursement with ESEA Title I and IDEA, Part B Recovery Act funds.

- Some pre-existing weaknesses with monitoring at the state department of education and with managing funds at the local level, as well as competing priorities for state department of education staff and responsibility for monitoring 616 LEAs, will make monitoring the use of education Recovery Act funds a challenge for New Jersey.

## Highway Infrastructure Investment

- The U.S. Department of Transportation's (DOT) Federal Highway Administration apportioned $652 million in Recovery Act funds to New Jersey, of which $196 million—30 percent—was suballocated to metropolitan and other areas.

- As of September 1, 2009, the New Jersey Department of Transportation (NJDOT) had awarded contracts, or advertised for bids on, 60 projects, obligating a total of $473 million in highway infrastructure funds. Most of these projects involve road paving, but many also involve bridge replacement and improvements, along with streetscape improvements.

## Transit Capital Assistance Funds

- DOT's Federal Transit Administration (FTA) apportioned more than $1 billion in Recovery Act Transit Capital Assistance funds to New Jersey and urbanized areas that include New Jersey for transit projects. As of September 1, 2009, FTA concluded that the 50 percent obligation requirement had been met for New Jersey and the urbanized areas located in the state.

- New Jersey Transit (NJT) is the primary public operator of bus and commuter rail transit lines in New Jersey. As of August 20, 2009, NJT had received nearly $357 million for Transit Capital Assistance projects.
- The largest funded project is design and early construction of a new rail tunnel under the Hudson River, which will receive $130 million in Recovery Act funds.

## Weatherization Assistance Program

- As of August 31, 2009, the state had obligated $24.1 million of its initial allocation of weatherization funds and disbursed $3.4 million of these funds.[2]
- New Jersey has begun to spend weatherization funds, particularly for start-up activities such as hiring and training. The state plans to use Recovery Act funds to weatherize 13,400 homes.
- The Department of Labor (Labor) has issued prevailing wage rate information for weatherizaton work, which will facilitate weatherization program implementation.
- The state agency administering the program will rely on the automated systems it has used for non-Recovery Act weatherization work to track accountability.
- New Jersey officials stated that they will be able to meet Recovery Act reporting requirements.

## Updated funding information on SFSF and the Public Housing Capital Fund

- The U.S. Department of Education has awarded New Jersey about $891 million, or about 67 percent of its total SFSF allocation. As of September 1, 2009, New Jersey has allocated these funds to LEAs, but LEAs have not drawn down funds. SFSF funds have helped New Jersey restore and increase the state's portion of education aid to LEAs for the 2009-2010 school year.

[2]New Jersey's Department of Community Affairs, the agency administering the weatherization program, defines the term "obligate" as monies available for Community Action Agencies (CAA) to draw down and the term "disburse" as monies CAAs have drawn down.

- New Jersey has 80 public housing agencies to which HUD allocated Recovery Act formula grants. In total, these public housing agencies received $104 million in Public Housing Capital Fund formula grants. As of September 5, 2009, 64 of these public housing agencies have obligated $31 million, and 46 of these public housing agencies have drawn down $6.1 million.

## Recovery Act Funds Continue to Assist in Stabilizing New Jersey's Budget

According to New Jersey state budget officials, the fiscal impact of Recovery Act funds has not changed since they provided budget estimates for GAO's July 2009 Recovery Act report.[3] New Jersey budget officials continue to estimate that the state will take in approximately $4.0 billion less than originally projected for fiscal year 2009 and have closed a budget gap of $8.25 billion for fiscal year 2010.[4] New Jersey budget officials previously estimated that, overall, about $5.6 billion of their estimated $17.5 billion Recovery Act funding and tax benefits will actually pass through the state budget. The use of Recovery Act funds must comply with specific program requirements but also, in some cases, enables states to free up state funds to address their projected budget shortfalls. In response to our question about how New Jersey planned to phase out Recovery Act funds, the Governor's Chief of Staff said that the state had not yet finalized plans to phase out Recovery Act funds. In addition, as a result of New Jersey's budget cycle, New Jersey does not begin budget planning until October or November of this year. By late February, according to state officials, the Governor is required to propose a balanced budget and by then the Governor's Office would have to propose measures that reflect a phasing out of the funds.

As previously reported, New Jersey budget officials said they used their entire rainy-day reserve fund of $735 million in fiscal year 2009 to offset their revenue shortfall. Although the rainy-day fund currently does not contain any funds, the state plans to maintain $500 million for fiscal year 2010. New Jersey budget officials referred to this fund as a "free balance" account, which, they explained, means that it contains unrestricted funds which can be used for any purpose.

[3]GAO, *Recovery Act States' and Localities' Current and Planned Uses of Funds While Facing Fiscal Stresses*, GAO-09-830SP (Washington, D.C.: July 8, 2009).

[4]Recovery Act funds used to stabilize the state's operating budget includes funds made available as a result of the increased Federal Medical Assistance Percentage (discussed in detail in the main report—see GAO-09-1016), SFSF funds, and Temporary Assistance for Needy Families contingency funds.

## Recovery Act Education Funds Allocated to New Jersey

### SFSF Funds

The Recovery Act created a State Fiscal Stabilization Fund (SFSF) in part to help state and local governments stabilize their budgets by minimizing budgetary cuts in education and other essential government services, such as public safety. Stabilization funds for education distributed under the Recovery Act must be used to alleviate shortfalls in state support for education to school districts and public institutions of higher education (IHE). The initial award of SFSF funding required each state to submit an application to the U.S. Department of Education that provides several assurances, including that the state will meet maintenance-of-effort requirements (or it will be able to comply with waiver provisions) and that it will implement strategies to meet certain educational requirements, such as increasing teacher effectiveness, addressing inequities in the distribution of highly qualified teachers, and improving the quality of state academic standards and assessments. In addition, states were required to make assurances concerning accountability, transparency, reporting, and compliance with certain federal laws and regulations. States must allocate 81.8 percent of their SFSF funds to support education (these funds are referred to as education stabilization funds), and must use the remaining 18.2 percent for public safety and other government services, which may include education (these funds are referred to as government services funds). After maintaining state support for education at fiscal year 2006 levels, states must use education stabilization funds to restore state funding to the greater of fiscal year 2008 or 2009 levels for state support to school districts or public IHEs. When distributing these funds to school districts, states must use their primary education funding formula, but they can determine how to allocate funds to public IHEs. In general, school districts maintain broad discretion in how they can use stabilization funds, but states have some ability to direct IHEs in how to use these funds.

### ESEA Title I, Part A

The Recovery Act provides $10 billion to help local educational agencies (LEA) educate disadvantaged youth by making additional funds available beyond those regularly allocated through Title I, Part A of the Elementary and Secondary Education Act (ESEA) of 1965. The Recovery Act requires these additional funds to be distributed through states to LEAs using existing federal funding formulas, which target funds based on such factors as high concentrations of students from families living in poverty.

In using the funds, LEAs are required to comply with current statutory and regulatory requirements and must obligate 85 percent of these funds by September 30, 2010.[5] The U.S. Department of Education is advising LEAs to use the funds in ways that will build the agencies' long-term capacity to serve disadvantaged youth, such as through providing professional development to teachers. The U.S. Department of Education made the first half of states' Recovery Act ESEA Title I, Part A funding available on April 1, 2009, and announced on September 4, 2009, that it had made the second half available.

### IDEA, Part B

The Recovery Act provided supplemental funding for programs authorized by Parts B and C of the Individuals with Disabilities Education Act (IDEA), the major federal statute that supports the provisions of early intervention and special education and related services for infants, toddlers, children, and youth with disabilities. Part B funds programs that ensure preschool and school-aged children with disabilities have access to a free and appropriate public education and is divided into two separate grants—Part B grants to states (for school-age children) and Part B preschool grants (section 619). The U.S. Department of Education made the first half of states' Recovery Act IDEA funding available to state agencies on April 1, 2009, and announced on September 4, 2009, that it had made the second half available.

## New Jersey Continues to Allocate Recovery Act Education Funds, but Monitoring Challenges Exist

As of September 1, 2009, New Jersey had not drawn down its initial allocation of $729 million, $91.5 million, and $186 million in Recovery Act funds for the SFSF, ESEA Title I, and IDEA, Part B programs, respectively.[6] According to state officials, the state will draw down funds from the U.S. Department of Education in mid-September for SFSF payments to LEAs and will begin to draw down funds for ESEA Title I and IDEA, Part B after it makes final approvals of LEAs' applications for the funds and receives requests for reimbursement from the LEAs.

[5] LEAs must obligate at least 85 percent of their Recovery Act ESEA Title I, Part A funds by September 30, 2010, unless granted a waiver and must obligate all of their funds by September 30, 2011. This will be referred to as a carryover limitation.

[6] See GAO-09-1016 for a detailed description of these programs.

On July 7, 2009, the New Jersey Department of Education (NJED) allocated $1 billion[7] of SFSF education stabilization funds and $39.4 million[8] of SFSF government services funds to help cover the state's portion of education funding for the 2009-2010 school year. NJED issued guidance that strongly advised LEAs to spend SFSF funds on salaries in order to minimize earning interest on the funds and to more easily track the funds separately.[9,10] NJED will disburse SFSF funds to LEAs through 18 semimonthly payments that will begin in September 2009 and end in May 2010. New Jersey is requiring LEAs to provide quarterly reports on their spending of SFSF funds in order to monitor LEAs' compliance with the requirements for expenditures of Recovery Act funds.[11]

As reported in our July 2009 report, NJED has allocated ESEA Title I and IDEA, Part B Recovery Act funds to all 616 LEAs. LEAs can begin to submit claims for reimbursement and receive Recovery Act funds for ESEA Title I and IDEA, Part B once NJED approves the formal electronic

[7]NJED officials allocated the total amount of SFSF education equalization funds they expected to receive and that were included in New Jersey's fiscal year 2010 budget.

[8]New Jersey received about $240 million in SFSF government services funds and plans to use the funds for a range of budget stabilization purposes, including education.

[9]According to the U.S. Department of Education's guidance on SFSF, states must have an effective system to ensure that entities are able to draw down funds as needed to pay program costs but that also minimizes the time that elapses between the transfer of the funds and their disbursement by the grantee or subgrantee, in accordance with U.S. Department of the Treasury regulations at 31 C.F.R. Part 205. Education requires grantees and subgrantees to remit interest earned on advances to the department at least quarterly. 34 C.F.R. §80.21(i).

[10]Because New Jersey is using SFSF Recovery Act funds, LEAs will have to separately track expenditures. According to guidance provided by NJED regarding SFSF, LEAs will have to track three separate funding sources—state funds, government services funds, and education stabilization funds—that will equal the total amount of funding the state would have provided. This requirement to track funds separately will require LEAs to make the equivalent adjustment to expenditure accounts. As such, NJED strongly recommended that LEAs make the expenditure side adjustments in salary accounts to minimize accounting errors. The guidance on SFSF also noted that while NJED recommends using SFSF for salaries, LEAs can make the adjustments to expenditure accounts in any general fund category consistent with the programs authorized under ESEA, except for the prohibited categories.

[11]Officials from New Jersey's Office of the Governor noted that NJED plans to use the quarterly reports to monitor compliance with federal cash management requirements.

applications submitted on or before September 14, 2009.[12] For ESEA Title I and IDEA, Part B funds, NJED disburses funding through a reimbursement system in which LEAs spend their own funds and submit claims to the department for reimbursement. NJED officials noted that some LEAs are currently spending on approved activities under ESEA Title I and IDEA, Part B for which they will later request reimbursement with Recovery Act funds. For example, Newark Public Schools officials reported spending $2.25 million for a summer program for underperforming students in July and August 2009 and stated they will request reimbursement with Recovery Act ESEA Title I funds.

## New Jersey Targeted ESEA Title I and IDEA, Part B Funds Toward Summer Education Activities to Expedite Spending

As we previously reported in July 2009, New Jersey allocated ESEA Title I and IDEA Part B Recovery Act funds to all 616 LEAs and, in an effort to expedite spending, opened an application process for LEAs to use up to 50 percent of their allocations on summer activities.[13] LEAs with approved plans for summer activities could implement these activities with the assurance that they would receive reimbursement.[14] NJED officials noted that this expedited process was essentially a preapproval process to ensure that LEAs planned allowable activities under each program. These officials also said the department did not track the implementation of summer plans because, given the limited time, the state did not require LEAs to implement all approved activities. NJED will not know which of the approved activities LEAs were able to implement until their claims for reimbursement go through the department's electronic accounting and grants management system, known as the Electronic Web-Enabled Grant System.

According to data provided by NJED, the department approved applications for summer Recovery Act-funded activities in 199 of the 616 LEAs (32 percent). The number of LEAs with approved plans and the corresponding spending projections are presented in table 1 below. As noted in our July 2009 report, the majority of these approvals were for IDEA Part B.[15] NJED officials provided two possible reasons for this. First,

[12]The electronic applications contained LEAs' planned uses of Recovery Act funds, as well as actual activities implemented. LEAs can obligate funds after NJED designates applications as "substantially approvable."

[13]GAO-09-830SP.

[14]NJED required LEAs to submit a plan for each Recovery Act-funded activity.

[15]GAO-09-830SP.

more LEAs in New Jersey receive IDEA Part B funding than ESEA Title I funding. Second, finding activities on which to spend money quickly is not as challenging with IDEA Part B, whereas it takes more time for staff to develop ESEA Title I programs. One reason why spending IDEA Part B funds may be less challenging is that, traditionally, LEAs use the summer months to purchase equipment or materials for students with disabilities for the upcoming school year. Recovery Act funds provide a way for LEAs in the state to expand or create in-district opportunities for students with disabilities, as well as reinstate programs that LEAs may have cut due to a lack of funds. For example, an official with the Newark Public Schools reported that the district's 30-day extended year program[16] for students with disabilities in July and August 2009 was in jeopardy due to a lack of funds, but the district was able to provide the program using Recovery Act IDEA Part B funds.

**Table 1: Summary of New Jersey's Approved Summer Education Recovery Act Activities**

Dollars in millions

| Program | Number of LEAs with approved plans | Number of approved plans[a] | Total estimated funding approved |
|---|---|---|---|
| ESEA Title I | 78 | 141 | $12.4 |
| IDEA Part B | 155 | 455 | 20.1 |

Source: GAO analysis.

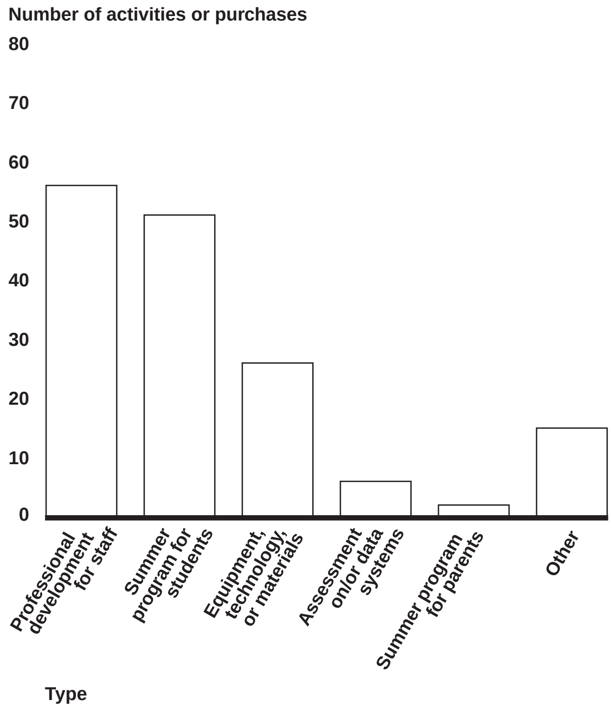
[a]LEAs could submit multiple plans to NJED.

For ESEA Title I, NJED approved 141 plans in 78 LEAs on a range of activities. The most frequently reported activities were summer programs for at-risk students and professional development for teachers, as well as for purchasing equipment such as interactive computers for classrooms. For example, Newark Public Schools officials reported that the district received approval for and provided a professional development program for science teachers. District officials said that without Recovery Act funds, the program would have served only one or two teachers. ESEA Title I Recovery Act funds allowed the district to increase participation by

[16]Extended school year services are special education and related services that are provided to a child with a disability beyond the normal school year, in accordance with the child's Individualized Education Plan, and at no cost to the parents of the child.

approximately 20 teachers.[17] Figure 1 shows the approved activities or procurements for ESEA Title I, by type, as reported by NJED.

**Figure 1: Number of Activities or Procurements included in Approved Recovery Act ESEA Title I, Part A Summer Plans, by Type**




Source: GAO analysis.

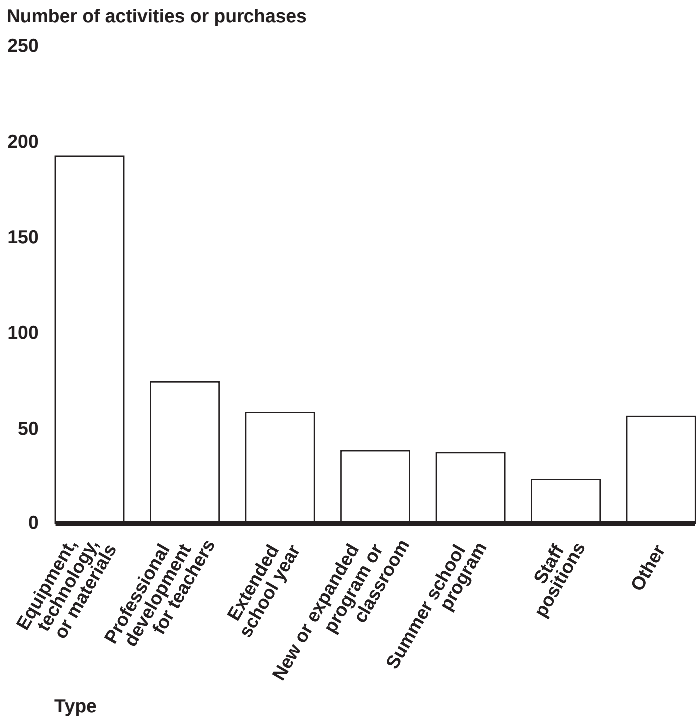
Notes: Plans could include more than one activity or could include an activity and a procurement. The “other” category mostly includes activities for which the descriptions did not provide enough information to categorize.

For IDEA Part B, the department approved 455 plans in 155 LEAs on activities such as extended school year programs, as well as for equipment and materials, including smart boards and purchases of reading programs designed for students with disabilities. For example, one LEA planned to purchase 20 computers for students with disabilities and another LEA planned to purchase seven wheelchair-accessible vans to transport students with disabilities. NJED officials observed that the speed with which the LEAs had to implement the summer programs was the primary

[17]Newark Public Schools budgeted and was approved for 22 teachers; however, 14 teachers actually participated.

challenge. Thus, most of the planned activities for IDEA Part B involved purchases of equipment, technology, and materials. Figure 2 shows the approved activities or procurements for IDEA Part B, by type, as reported by NJED.

**Figure 2: Number of Activities or Procurements included in Approved Recovery Act IDEA Part B Summer Plans, by Type**




Source: GAO analysis.

Notes: Plans could include more than one activity or could include an activity and a procurement. The “other” category includes a range of activities such as data management and planning efforts, as well as activities for which the descriptions did not provide enough information to categorize.

## NJED Faces Challenges in Monitoring Education Recovery Act Funds

Pre-existing weaknesses with monitoring at the state level and with managing funds at the local level, as well as competing priorities for NJED staff and responsibility for monitoring 616 LEAs, will make monitoring the use of education Recovery Act funds a challenge for New Jersey. New

Jersey's Single Audit[18] for fiscal year 2008 cited a material weakness in the special education programs which include IDEA, Part B; the audit found no evidence of NJED's monitoring of LEAs' use of federal funds to provide assurance of compliance with laws, regulations, or grant agreements. According to NJED officials, the state primarily relies upon independent audits of LEAs to monitor compliance at the local level. The department is responsible for conducting desk reviews of these independent audit reports of LEAs. However, the 2008 New Jersey Single Audit also found that NJED did not update its tracking system to include 214 of the 333 independent audit reports LEAs submitted to the department. The New Jersey Office of the State Auditor (OSA) has also noted that LEAs in the state have had weaknesses in accounting for and managing funds. For example, a 2009 OSA review of one district found numerous control deficiencies in key accounting areas such as payroll, an area to which NJED is suggesting LEAs apply their SFSF funds. Competing priorities for staff also pose a challenge to the department's ability to fully monitor funds. NJED's self- assessments for 2007, 2008, and 2009 document that inadequate levels of staffing have been and continue to be a risk to internal controls. In response to this, the department produced a corrective action plan that includes hiring new staff. NJED officials reported that the additional responsibilities that come with administering Recovery Act funds have put a strain on the department's already lean staff. While some staff have been reassigned to monitor Recovery Act funds and activities, other staff have responsibilities that compete with the Recovery Act among the department's priorities. For example, in response to the Single Audit finding, the U.S. Department of Education now requires New Jersey to conduct desk audits of 100 percent of LEA audit reports. This will require an increased effort, as the 2008 New Jersey Single Audit also found that in 2008, staff conducted 22 desk reviews (7 percent) of the 333 audit reports LEAs submitted to the department.[19] These NJED staff are also responsible for conducting background checks for a range of state and

[18]The Single Audit Act of 1984, as amended (31 U.S.C. §§ 7501-7507), requires that each state, local government, or nonprofit organization that expends $500,000 or more a year in federal awards must have a Single Audit conducted for that year subject to applicable requirements, which are generally set out in Office of Management and Budget Circular No. A-133, *Audits of States, Local Governments and Non-Profit Organizations* (June 27, 2003). If an entity expends federal awards under only one federal program, the entity may elect to have an audit of that program.

[19]According to the 2008 Single Audit, NJED's records indicated that staff conducted 22 desk reviews, but the department's tracking system indicated that staff conducted 6 desk reviews. NJED's response to these findings attributed the low number of desk reviews to a lack of staff.

local education employees. Responsibility for monitoring 616 LEAs will compound New Jersey's pre-existing and current issues related to monitoring education Recovery Act funds.

NJED officials have reported a range of strategies for mitigating potential issues with compliance, some of which were mentioned in our July 2009 report.[20] Since our July report, much of the department's efforts involved training LEA- and state-level staff on the requirements of the Recovery Act as a "first line of defense." NJED held several sessions across the state on the permissible uses of Recovery Act funds, how to properly account for the funds, and compliance with reporting requirements. The department also participated in a series of information sessions with the New Jersey Association of School Business Officials specifically for staff working in LEA accounting offices. In partnership with the New Jersey Office of the Inspector General, NJED conducted and videotaped training on internal controls, which LEA staff can access through the department's Web site. The New Jersey Recovery Accountability Task Force,[21] the New Jersey Office of the Inspector General, and the Association of Government Accountants provided an audio conference for state staff on internal controls, a session NJED officials said that their staff attended. Officials from the New Jersey Governor's Office noted that the New Jersey Recovery Accountability Task Force also sent written guidance on complying with the Recovery Act guidance to all of the state's LEAs. NJED officials told us they were evaluating staffing needs for the department, including considering additional reassignments of staff, submitting a request to the Governor's Office for a waiver of the hiring freeze, and options for hiring short-term staff. According to these officials, in the short term, they have decided to reassign staff previously responsible for other duties to monitor the accounting for Recovery Act funds in the state's high-risk LEAs. On August 17, 2009, the U.S. Department of Education announced a proposal that would allow states to use more of their

[20] GAO-09-830SP.

[21] New Jersey's Governor created the New Jersey Recovery Accountability Task Force to monitor the distribution of Recovery Act funds in New Jersey and promote the efficient use of those funds. One role of this entity is to provide guidance to agencies receiving Recovery Act funds on merit-based project selection, internal controls, accounting practices, and best practices in contract management and grant administration.

Recovery Act ESEA Title I and IDEA, Part B funds for administration.[22] NJED officials said that this flexibility provides moderate relief as the department has already allocated ESEA Title I and IDEA, Part B funds to LEAs and encouraged summer spending of up to 50 percent of those funds. These officials also said that any funds not already allocated would be used for monitoring activities such as hiring staff. An official from the New Jersey Governor's Office noted that NJED received approval on September 15, 2009 to hire 32 additional staff in order to help address deficiencies identified in the 2008 Single Audit and to assist with monitoring LEAs' use of Recovery Act funds.

We previously reported that the department planned to review the corrective action plans for the fiscal year ending June 30, 2008, for follow-up on all findings in LEAs' independent audit reports related to the Recovery Act. NJED officials initially told us this effort would begin on July 1, 2009, but now state that staff are in the final stages of planning a wider effort that will bring together auditors and other types of monitoring staff (budget managers, grant administrators, county administrators, for example) for a more comprehensive approach. NJED officials reported plans to send teams of these staff to a select number of LEAs to monitor the fiscal and programmatic aspects of LEAs' use of Recovery Act education funds (including SFSF). Currently, officials noted, they have a list of approximately 100 LEAs that may require additional monitoring and comprise about 60 to 70 percent of the Recovery Act education funds in New Jersey. According to NJED officials, they created this list of LEAs using criteria such as independent audit findings related to Recovery Act programs, presence of a state fiscal monitor, and low scores in the state's accountability system.[23] However, officials noted that the current staffing level is insufficient for intensive fiscal and programmatic monitoring of Recovery Act funds in 100 LEAs, while also monitoring state-funded and other federally-funded programs. NJED officials reported that they are finalizing the monitoring plan for Recovery Act funds, determining criteria for assigning a risk level to the LEAs in order to visit those that pose the

[22] 74 Fed. Reg. 41402. These two programs have limits, in place before the Recovery Act was passed, on the amount of funds states may reserve for administration. The Recovery Act allows the Secretary of Education to make reasonable adjustments to those limits to help states meet the additional data collection burden related to administering, monitoring, and reporting on the use of the funds.

[23] New Jersey's Quality Single Accountability Continuum (NJQSAC) is used to monitor and evaluate LEA adherence to state goals by evaluating LEAs' performance in five areas: instruction and program; personnel; fiscal management; operations; and governance.

highest risk, and determining the staffing levels needed to implement the effort. These officials said they plan to send monitoring teams out to LEAs in October 2009.

## NJED Is Implementing Plans to Meet Office of Management and Budget Reporting Requirements

NJED officials reported that the department is on track to meet Office of Management and Budget (OMB) reporting requirements. NJED is not delegating reporting responsibilities to subrecipients (LEAs). NJED officials said the department already collects most of the data required by OMB and plans to prepopulate a form with the data it already collects and send the form to LEAs. LEAs will then be expected to provide information about the number of jobs created and retained with Recovery Act funds and vendors. Because the state will report for LEAs, NJED officials said on July 31, 2009, that they were uncertain about the extent of follow-up required for vendors, particularly when LEAs cannot provide the number of jobs created. Finally, NJED is in the early stages of its plan to collect statewide data on the impact of the Recovery Act on a range of education-related performance measures, including student and teacher outcomes. The department does not plan to roll out this effort until data collection begins for the second quarterly report to OMB.

# New Jersey Has an Overall High State Obligation Rate for the Federal Highways Program but the Obligation Rate of Funds to Suballocated Areas within the State Has Been Slow

The Recovery Act provides funding to the states for restoration, repair, and construction of highways and other activities allowed under the Federal-Aid Highway Surface Transportation Program and for other eligible surface transportation projects. The Recovery Act requires that 30 percent of these funds be suballocated, primarily based on population, for metropolitan, regional, and local use. Highway funds are apportioned to the states through federal-aid highway program mechanisms and states must follow the existing program requirements, which include ensuring the project meets all environmental requirements associated with the National Environmental Policy Act (NEPA), paying a prevailing wage in accordance with federal Davis-Bacon Act requirements, complying with goals to ensure disadvantaged businesses are not discriminated against in the awarding of construction contracts, and using American-made iron and steel in accordance with Buy America program requirements. While the maximum federal fund share of highway infrastructure investment projects under the existing federal-aid highway program is generally 80 percent, under the Recovery Act, it is 100 percent.

## New Jersey Has an Overall High Obligation Rate

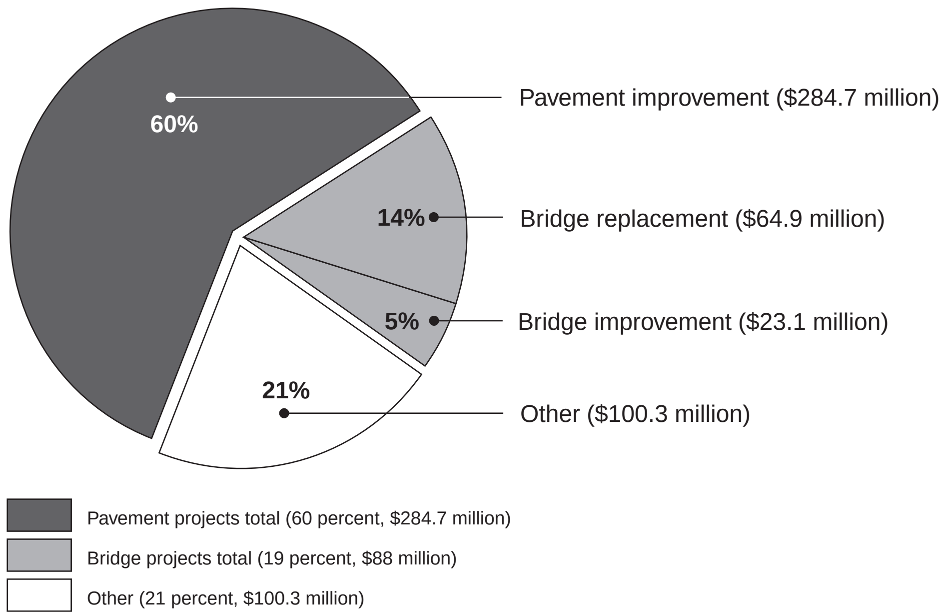
FHWA has obligated New Jersey's Recovery Act funding to statewide projects at a high rate. As of September 1, 2009, FHWA had obligated 73 percent for state highway projects. As we previously reported, $652 million was apportioned to New Jersey in March 2009 for highway infrastructure and other eligible projects. As of September 1, 2009, $473 million had been obligated.[24] As of September 1, 2009, $4 million had been reimbursed by FHWA.[25]

This obligated total is for 60 projects—45 state and 15 local projects. This compares with 53 projects obligated on July 31, 2009. Almost 60 percent of Recovery Act highway obligations for New Jersey have been for pavement improvement. Specifically, $285 million of the $473 million obligated in New Jersey as of September 1, 2009, is being used for pavement improvement. Many state officials told us they selected pavement improvement projects because these projects were already in their pipeline, were identified infrastructure needs, could advance sooner than planned because funding was available, and had met federal planning requirements. Figure 3 shows obligations by the types of road and bridge improvements being made.

[24]For the Highway Infrastructure Investment Program, U.S. DOT has interpreted the term obligation of funds to mean the federal government's contractual commitment to pay for the federal share of the project. This commitment occurs at the time the federal government signs a project agreement.

[25]States request reimbursement from FHWA as the state makes payments to contractors working on approved projects.

**Figure 3: Highway Obligations for New Jersey by Project Improvement Type as of September 1, 2009**




Source: GAO analysis of FHWA data.

Note: "Other" includes safety projects, such as improving safety at railroad grade crossings, and transportation enhancement projects, such as pedestrian and bicycle facilities, engineering, and right-of-way purchases.

## The Obligation Rate of Funds to Suballocated Areas within the State Has Been Slow

NJDOT works with the three Metropolitan Planning Organizations (MPO)[26] in the state to obligate the local highway infrastructure funds. As required by the Recovery Act, 30 percent of Recovery Act highway funds must be suballocated to local areas, and the entire suballocation must be obligated

[26]MPOs are federally mandated regional organizations, representing local governments and working in coordination with state departments of transportation that are responsible for comprehensive transportation planning and programming in urbanized areas. MPOs facilitate decision making on regional transportation issues, including major capital investment projects and priorities.

by March 2010. New Jersey's three MPOs work with their local officials to select projects within their region that qualify for Recovery Act funding. Officials from two MPOs told us they began the planning process before Recovery Act funding became available because they wanted to have projects in place within their region, including distribution mechanisms, once funding was approved.

Local highway infrastructure projects were selected based on their ability to benefit all areas within the MPO region and to be obligated within 1 year. MPO officials told us they endeavored to distribute the funding equitably. For example, one MPO told us it distributed funding in the region based on population, in addition to ensuring that every county would receive at least 3 percent of Recovery Act funding—an amount they considered sufficient in order to make substantial infrastructure improvements in a particular county. Also, NJDOT and MPO officials told us they looked for projects they could implement within the timeframes of the Act, advance projects sooner than current funding would have been available to do so, and were identified infrastructure needs. For example, of 63 projects one MPO selected for Recovery Act funding, 41 were for resurfacing, which can be accomplished in a relatively short amount of time. Other commonly selected projects include bridge repair, signalization, and streetscape improvements. Officials from the MPO told us that resurfacing projects are worthwhile, but given more time, they would have selected a wider variety of projects, including more bridge work in their region. Overall, officials from both MPOs told us that they looked for projects that they could accelerate quickly, and in some cases moved new projects on the region's transportation improvement plan (TIP) in order to receive Recovery Act funding.

Despite early planning, local highway infrastructure funds are being obligated locally at a low rate. As of September 1, 2009, FHWA has obligated funding for only 15 local projects. An NJDOT official told us he estimated that the three MPOs have identified approximately 100 local projects. Currently, New Jersey's obligation rate for the amount suballocated to local areas is 19 percent, whereas the average rate among the 16 states GAO is monitoring, plus the District of Columbia, is 52 percent. NJDOT and MPO officials told us that despite selecting faster-moving projects, funding was being obligated slowly, as many of these local projects were new and needed more start-up time. Also, officials told us that local staff working on many of the projects needed time to navigate federal requirements such as the National Environmental Policy Act (NEPA), which involves the environmental review process. This is an issue, in part because the state had previously planned to fund some of these projects entirely with state funds, meaning the NEPA requirements may not have applied to the projects. Nonetheless, New Jersey is not in immediate danger of failing to meet the 100 percent obligation requirement within 1 year. However, NJDOT and MPO officials have told us they are watching these obligation rates closely and have safeguards in place to ensure the obligation requirement is met. For example, if a project does not meet established milestones or is in danger of not obligating within a year, officials may replace a local project with a state project in the region. In an effort to foster timely delivery, quality products and most importantly, proper project oversight, New Jersey DOT held two training sessions for counties and municipalities. These sessions included modules conducted by both state and federal officials.

## NJDOT Will Use Existing Procedures Intended to Help Ensure Appropriate Use of Funds

Our review of management procedures for state highway construction contracts, as well as our discussions regarding three awarded contracts, indicates that NJDOT is using existing procedures intended to help ensure the appropriate use of Recovery Act funds. The three contracts we reviewed and discussed with state officials included two construction contracts and a design contract that NJDOT awarded.[27] An NJDOT official told us the state awards contracts competitively, by soliciting bids for projects and then selecting qualified contractors that provide the lowest responsible bid and are not on the state's excluded-contractors list. GAO did not verify NJDOT's process for awarding contracts; however, out of the three NJDOT highway contracts we reviewed and discussed with officials, there was an average of six bids per project. Additionally, NJDOT officials told us that bids for all projects are coming in, on average, 20 percent lower than expected, which could lead to more funding being available for other highway projects not currently funded through the Recovery Act.

According to officials, NJDOT is mandated by the state to use low-bid fixed price contracts for construction projects. Officials stated that for professional services, NJDOT's policy is to use a fixed price contract for professional services with the exception of construction inspection, construction engineering, litigation support, and instances where it is difficult to estimate the work effort required to satisfy a complex scope of

[27]The three contracts we reviewed and discussed with New Jersey DOT officials were for repaving, road rehabilitation, and for project design. The three contracts were for a total value of $113 million and are expected to be completed in the next 1 to 3 years.

work. In such cases, officials told us, NJDOT may utilize a cost plus fixed fee contract, also known as a cost reimbursable contract. For example, for the three contracts we reviewed and discussed with NJDOT officials, New Jersey used fixed-price contracts for the two construction contracts and a cost plus fixed fee contract for the design project. NJDOT officials told us that fixed fee contracts are mandated by the state, and in order to use a cost plus fixed fee contract that an exemption has to be granted by NJDOT Assistant Commissioner and documented to New Jersey's procurement division. A NJDOT official told us that the rationale for a cost plus fixed fee contract is that if a project is in its early phases, it could have numerous potential changes that will affect price, such as right of way, utility, and permit issues. According to an agency official, regardless of contract type, NJDOT has standard procedures for construction inspection and materials testing that are approved by FHWA and are currently in place. NJDOT officials told us that they plan to use these standard procedures for Recovery Act projects.

NJDOT is also beginning to use Single Audit results to monitor localities where any state or Recovery Act funding is used. Previously, FHWA officials told us that failure to track Single Audit findings against subrecipients was a weakness in NJDOT's oversight structure. In order to address this weakness, NJDOT officials told us that they have begun developing a program for monitoring Single Act findings in localities where any state or federal highway funds are being used. As part of its process to ensure appropriate use of Recovery Act funds, NJDOT reviews these Single Audit findings to determine if there are any significant findings related to FHWA funds, including Recovery Act funds. This provides NJDOT another mechanism to track Recovery Act funding.

## NJDOT Expects to Meet Reporting Requirements

New Jersey has incorporated the Recovery Act's reporting requirements into its existing FHWA reporting processes, and NJDOT officials said that they are confident the state will be able to meet all requirements. NJDOT officials told us that because of their familiarity with existing FHWA reporting requirements, the additional reporting requirements in the Recovery Act will not be difficult to fulfill. Officials also said they expect to meet all of the Recovery Act reporting requirements by October 10, 2009, per OMB's guidance. For example, to meet the requirement to track the number of jobs created and retained by Recovery Act-funded projects, NJDOT officials have set up a statewide system using vendor reports from contractors and consultants and have centralized this reporting system in order to have statewide and local projects reported in the same database. NJDOT intends to conduct spot checks of the data to review accuracy and also will work with FHWA to achieve proper reporting of employment numbers.

## FTA Found Key Recovery Act Obligation Deadline for Transit Funding Was Met, and Efforts to Assure Compliance with Reporting Requirements Are Under Way

The Recovery Act appropriated $8.4 billion to fund public transit throughout the country through three existing Federal Transit Administration (FTA) grant programs, including the Transit Capital Assistance Program.[28] The majority of the public transit funds—$6.9 billion (82 percent)—was apportioned for the Transit Capital Assistance Program, with $6.0 billion designated for the urbanized area formula grant program and $766 million designated for the nonurbanized area formula grant program.[29] Under the urbanized area formula grant program, Recovery Act funds were apportioned to urbanized areas—which in some cases include a metropolitan area that spans multiple states—throughout the country according to existing program formulas. Recovery Act funds were also apportioned to states under the nonurbanized area formula grant program using the program's existing formula. Transit Capital Assistance Program funds may be used for such activities as vehicle replacements, facilities renovation or construction, preventive maintenance, and paratransit services. Up to 10 percent of apportioned Recovery Act funds may also be used for operating expenses.[30] Under the Recovery Act, the maximum federal fund share for projects under the Transit Capital Assistance Program is 100 percent.[31]

[28]The other two public transit programs receiving Recovery Act funds are the Fixed Guideway Infrastructure Investment program and the Capital Investment Grant program, each of which was apportioned $750 million. The Transit Capital Assistance Program and the Fixed Guideway Infrastructure Investment program are formula grant programs, which allocate funds to states or their subdivisions by law. Grant recipients may then be reimbursed for expenditures for specific projects based on program eligibility guidelines. The Capital Investment Grant program is a discretionary grant program, which provides funds to recipients for projects based on eligibility and selection criteria.

[29]Urbanized areas are areas encompassing a population of not less than 50,000 people that have been defined and designated in the most recent decennial census as an "urbanized area" by the Secretary of Commerce. Nonurbanized areas are areas encompassing a population of fewer then 50,000 people.

[30]The 2009 Supplemental Appropriations Act authorizes the use of up to 10 percent of each apportionment for operating expenses. Pub. L. No. 111-32, §1202, 123 Stat. 1859, 1908 (June 24, 2009). In contrast, under the existing program, operating assistance is generally not an eligible expense for transit agencies within urbanized areas with populations of 200,000 or more.

[31]The federal share under the existing formula grant program is generally 80 percent.

As they work through the state and regional transportation planning process, designated recipients of the apportioned funds—typically public transit agencies and MPOs—develop a list of transit projects that project sponsors (typically transit agencies) submit to FTA for Recovery Act funding.[32] FTA reviews the project sponsors' grant applications to ensure that projects meet eligibility requirements and then obligates Recovery Act funds by approving the grant application. Project sponsors must follow the requirements of the existing programs, which include ensuring the projects funded meet all regulations and guidance pertaining to the Americans with Disabilities Act (ADA), pay a prevailing wage in accordance with federal Davis-Bacon Act requirements, and comply with goals to ensure disadvantaged business are not discriminated against in the awarding of contracts.

The Recovery Act requires that 50 percent of the funds apportioned to urbanized areas or states for the Transit Capital Assistance Program be obligated before September 1, 2009 and the remaining funds are to be obligated within 1 year of apportionment. The Secretary of Transportation is to withdraw and redistribute to other urbanized areas or states any amount that is not obligated within these time frames.[33] As of September 1, 2009, FTA concluded that the 50 percent obligation requirement had been met for New Jersey and urbanized areas located in the state. FTA data showed that 84.6 percent of the funds had been obligated in the urbanized area that includes New Jersey and portions of New York and Connecticut, while 83.6 percent of the funds had been obligated in the Philadelphia urbanized area, which also includes portions of New Jersey. Similarly, 83.9 percent of the funds had been obligated in the Allentown-Bethlehem, Pennsylvania, urbanized area, which includes parts of New Jersey, and

[32]Designated recipients are entities designated by the chief executive officer of a state, responsible local officials, and publicly owned operators of public transportation to receive and apportion amounts that are attributable to transportation management areas. Transportation management areas are areas designated by the Secretary of Transportation as having an urbanized area population of more than 200,000, or upon request from the governor and metropolitan planning organizations designated for the area. Metropolitan planning organizations are federally mandated regional organizations, representing local governments and working in coordination with state departments of transportation that are responsible for comprehensive transportation planning and programming in urbanized areas. MPOs facilitate decision making on regional transportation issues including major capital investment projects and priorities. To be eligible for Recovery Act funding, projects must be included in the region's TIP and the approved State Transportation Improvement Program (STIP).

[33]Pub. L. No. 111-5, 123 Stat. 115,209 (Feb. 17, 2009).

exactly 50 percent of the funds had been obligated in the Atlantic City, New Jersey urbanized area.

State governors must certify that the state will maintain the level of state spending for the types of transportation projects, including transit projects, funded by the Recovery Act that it planned to spend the day the Recovery Act was enacted. As part of this certification, the governor of each state is required to identify the amount of funds the state plans to expend from state sources from February 17, 2009, through September 30, 2010.[34] This requirement applies only to state funding for transportation projects. New Jersey Transit (NJT) also stated that New Jersey is meeting the Recovery Act requirement that the state maintain its level of funding support for transit and not reduce its transit funding due to receiving Recovery Act funds. NJT annually receives $675 million from the state's highway trust fund, and this is the level of funding that applies to this requirement. In addition, project sponsors must submit periodic reports, as required under the maintenance of effort for transportation projects section on the amount of federal funds appropriated, allocation, obligated, and outlayed; the number of projects put out to bid, awarded, or for which work has begun or is completed; project status; and the number of jobs created or sustained. In addition, grantees must report detailed information on any subcontractors or subgrants awarded by the grantee.

## NJT Used Transit Capital Assistance Funds to Improve Its Existing Transit System

NJT, the nation's third-largest provider of bus, rail, and light rail transit, is the primary public provider of transit service in New Jersey. As of September 1, 2009, NJT anticipated receiving grants totaling about $423.4 million, of which $356.8 million is through the Transit Capital Assistance Program, both urban and nonurban, and $66.6 million is through the Fixed Guideway Modernization Program. The funds were allocated to the state's three MPOs based on existing formulas that consider overall population, population density, and existing transit service levels.

NJT, in consultation with the MPOs in the state, selected 16 projects—all of which are in its capital plan—to receive Recovery Act funds. The largest funded project is the new rail tunnel under the Hudson River, known as the ARC, or Access to the Region's Core, which will receive $130 million of Recovery Act funds (the project's total cost is about $8.7 billion). Overall,

[34]Pub. L. No. 111-5 §1201(a).

NJT expects to receive more than $1 billion in federal grants for capital projects for fiscal year 2009, including Recovery Act funding.

Of the 16 Recovery Act projects, 15 received Transit Capital Assistance funds. NJT officials stated that all of their Recovery Act projects are capital projects, and all but four projects (Hackensack Bridge improvements, enhanced track program, commuter rail rehabilitation, and bus rehabilitation) are “capacity expansion” projects designed to increase the number of riders that existing transit can serve. All projects were selected because they could start quickly (were “shovel ready”). Officials selected projects that had completed the environmental review process, were projects that did not require environmental analysis, or were far enough along in the environmental review process to start work by the fall of 2009. As of September 1, 2009, all but one project had completed environmental review.

All projects selected to receive Recovery Act funds were in the Statewide Transportation Improvement Plan (STIP) and approved by FTA, the relevant MPOs, and NJDOT. Officials told us they tried to distribute projects statewide in order to satisfy all of the MPOs and to provide transportation improvements throughout New Jersey, rather than concentrate them in one area of the state. FTA had also given NJT preaward authority for selected projects to enter into contracts before the grants were approved and funds obligated. As of July 31, 2009, FTA had reimbursed NJT about $54.5 million.

According to NJT, work has begun on many of the capital projects, and all are on schedule. Many of the projects (Edison Rail, Plauderville Station, Danville, and Lower Hackensack Bridge Rehabilitation) were projects that received federal funding in the past for a study or to conduct an environmental clearance. Therefore, these projects were more advanced but would not have been completed, according to NJT officials, without Recovery Act funds.

**Table 2: New Jersey Transit Capital Assistance Projects Funded with Recovery Act Grants as of August 20, 2009**

Dollars in thousands

| Project | Transit Capital Assistance | Out to bid (Yes/No) | Work begun (Yes/No) |
|---|---|---|---|
| ARC Final Design | $110,000 | Yes | Yes |
| ARC Tonnelle Avenue Construction | 20,000 | Yes | Yes |
| Edison Rail Park & Ride | 11,000 | Yes | Yes |
| Plauderville Station Improvements | 15,000 | Yes | No |
| Lower Hackensack Bridge Improvements | 30,000 | Yes | No |
| Morristown Line Signal Improvements | 25,000 | Yes | Yes |
| Newark Penn Station Plaza Improvements | 17,300 | Yes | No |
| River Line Cab Signals | 24,000 | No | No |
| Pennsauken Transfer Station Construction | 40,000 | Yes | No |
| Bus Shelter Installation | 2,500 | Yes | Yes |
| Commuter Rail Rehabilitation | 1,500 | N/A | Yes |
| Atlantic City Minibuses | 16,000 | Yes | Yes |
| Bus Rolling Stock Rehabilitation | 35,000 | N/A | Yes |
| Enhanced Track Rehabilitation Program | 4,703 | Yes | Yes |
| Rural Minibus Purchase | 4,838 | Yes | No |
| **Total** | **$356,841** | | |

Source: NJT.

Note: N/A refers to projects done by in-house staff. No contract bids were required.

No Recovery Act funds are currently being used for operating costs; however, this could change if more funds become available. After NJT and the MPOs decided which projects to fund, the 2009 Supplemental Appropriations Act was enacted, which authorizes the use of up to 10 percent of each apportionment for operating expenses.[35] When the law was passed, NJT projects were already approved by the MPOs. However, NJT officials told us that due to the slowness of the economy, most project bids are coming in, on average, 20 percent below the projected costs. As such, officials believe that, once all of the bids are finalized and the MPOs are assured that all of the projects will be completed, NJT may opt to use some of the remaining Recovery Act funding for operating expenses.

[35]Pub. L. No. 111-32, §1202.

## NJT Efforts to Assure Compliance with Recovery Act Requirements

NJT officials stated that it has been proactive in building the management infrastructure needed to achieve accountability, compliance, and reliable reporting mandated by the Recovery Act. NJT's independent auditor provided an unqualified or "clean" opinion on its consolidated financial statements for the years ended June 30, 2007 and 2008.[36] The auditor stated that NJT complied, in all material respects, with the types of compliance requirements described in the OMB Circular A-133 Compliance Supplement and the New Jersey State Grant Compliance Supplement that are applicable to each of its major federal and state programs. Although the independent auditor did not express an opinion on NJT's internal controls,[37] it considered NJT's internal controls over financial reporting and compliance with the federal and state requirements as a basis for designing its own auditing procedures.

NJT has a long-standing process in place for handling federal funds. Essentially, NJT uses the same funding control procedures for Recovery Act funds as for its regular FTA funds. In most cases, the Recovery Act reporting is an addition to existing reports submitted to FTA and U.S. DOT. NJT sends financial data to FTA 10 days after the close of each quarter and enters quarterly milestone and progress reviews into FTA's reporting system.

NJT has taken additional steps to manage and account for Recovery Act funds. For example, NJT holds biweekly meetings to monitor the progress of Recovery Act projects. These meetings serve to review environmental, design, and other key milestones, as well as ensure that progress and workforce data collected are consistent and reported in a timely manner.

[36]The independent auditor identified one significant deficiency related to NJT's leveraged leases, whose outstanding amount as of June 30, 2008, is approximately $1.6 billion. Specifically, there is only one NJT employee who has in-depth knowledge of how these transactions are developed and monitored throughout the life of the lease. This employee maintains the closing documents for each of the transactions. As a result, a summary of outstanding leveraged lease obligations was not prepared and monitored, thus preventing NJT management from identifying and reporting that it was in technical default.

[37]Internal control is an integral component of an organization's management that provides reasonable assurance that the objectives of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations are being achieved. Internal controls also serve as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. Organizations that award and receive grants need good internal control systems to ensure that funds are properly used and achieve intended results.

Additionally, NJT officials include Recovery Act projects in project status meetings with the Executive Director of NJT every 6 weeks.

To assure compliance at the project level and minimize risk, NJT has assigned project managers to each Recovery Act project. They prepare detailed budget data and approve all purchase requisitions. NJT staff also attended fraud awareness training sponsored by the U.S. DOT. In addition, FTA participates in quarterly progress reviews with NJT to review whether selected projects have an appropriate scope and budget and have met all federal requirements, such as Davis-Bacon prevailing wage rules and environmental review procedures. On June 1, 2009, FTA issued its Combined State Management Triennial Review of NJT. Although not an audit, the review provided an assessment of NJT's compliance with Federal requirements determined by examining grant management practices and program implementation activities. FTA's Triennial Review of NJT reported no deficiencies in 20 of 26 areas reviewed, including program and financial management and grants administration. Lack of staffing and related resources associated with particular civil rights programs generally contributed to NJT's deficiencies.[38] FTA regional officials told us it plans to hire more regional staff (for example, engineers and transportation specialists) to regularly review Recovery Act projects and provide more on-site monitoring.

## NJT Is Preparing to Implement the Latest Recovery Act Reporting Requirements

NJT is preparing to implement the Recovery Act reporting requirements. However, NJT officials are concerned that reporting job creation may prove difficult when it comes to reporting job creation to various authorities. In the past, based on a request from the U.S. House of Representatives, Committee on Transportation and Infrastructure, NJT submitted information on direct and indirect jobs created. U.S. DOT reports that it will continue to collect estimates of both direct and indirect jobs, but NJT plans to submit to OMB information only related to jobs

[38]FTA reviewed 26 areas, ranging from program management to safety and security, and found 11 deficiencies in 6 areas, in particular civil rights programs. In addition, 4 of the 11 deficiencies were related to inadequate monitoring over compliance with the Disadvantaged Business Enterprise (DBE) program. Specifically, NJT did not examine DBE payrolls, payments, and equipment used to verify that work committed to DBEs is actually performed by DBEs.

created directly due to Recovery Act funding.[39] Therefore, under the Recovery Act reporting requirement, the state would not report on someone delivering materials to a job site, even though that is creating employment, albeit indirectly. NJT officials said that some jobs may be missed due to this calculation. Overall, officials believe that estimates of job creation will be much easier to track when in-house staff are used, rather than outside contractors. Matching the old and new job creation reports may prove to be another challenge if all previous reporting has to be redone to match the new OMB guidance. No other performance measures are being used to evaluate performance of Recovery Act funds for transit.

Finally, NJT reported no particular challenges related to managing and reporting on Recovery Act projects. However, officials stated that multiple federal and state oversight agencies asking for the same program and financial information is burdensome. Officials told us that they have not hired any additional staff to manage the reporting requirements but that existing staff are working longer hours to accommodate the workload.

[39]OMB Memorandum M-09-21, *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009* (June 22, 2009), states that recipients should not report on the employment impact on materials suppliers and central service providers (so-called “indirect” jobs) or on the local community (“induced” jobs). Employees who are not directly charged to Recovery Act supported projects or activities, who provide critical indirect support (e.g., clerical/administrative staff preparing reports, institutional review board staff members, departmental administrators) are also not counted as jobs created or retained.

## New Jersey Is Administering, Monitoring, and Implementing Reporting Requirements for Weatherization Assistance Program Funds, but Some Challenges Remain

The Recovery Act appropriated $5 billion over a 3-year period for the Weatherization Assistance Program, which the U.S. Department of Energy (DOE) administers through each of the states, the District of Columbia, and seven territories and Indian tribes. The program enables low-income families to reduce their utility bills by making long-term energy-efficiency improvements to their homes by, for example, installing insulation, sealing leaks; and modernizing heating equipment, air circulation fans, or air conditioning equipment. Over the past 32 years, the Weatherization Assistance Program has assisted more than 6.2 million low-income families. By reducing the energy bills of low-income families, the program allows these households to spend their money on other needs, according to DOE. The Recovery Act appropriation represents a significant increase for a program that has received about $225 million per year in recent years.

As of September 14, 2009, DOE had approved the weatherization plans for all but two of the states, the District of Columbia, the territories, and Indian tribes—including all 16 states and the District of Columbia in our review. DOE has provided to the states $2.3 billion of the $5 billion in weatherization funding under the Recovery Act. Use of the Recovery Act weatherization funds is subject to Section 1606 of the act, which requires all laborers and mechanics employed by contractors and subcontractors on Recovery Act projects to be paid at least the prevailing wage, including fringe benefits, as determined under the Davis-Bacon Act.[40] Because the Davis-Bacon Act had not previously applied to weatherization, the Department of Labor (Labor) had not established a prevailing wage rate for weatherization work. In July 2009, DOE and Labor issued a joint memorandum to Weatherization Assistance Program grantees authorizing them to begin weatherizing homes using Recovery Act funds, provided they pay construction workers at least Labor's wage rates for residential construction, or an appropriate alternative category, and compensate workers for any differences if Labor establishes a higher local prevailing wage rate for weatherization activities. Labor then surveyed five types of "interested parties"[41] about labor rates for weatherization work. The department completed establishing prevailing wage rates in all of the 50 states and the District of Columbia by September 3, 2009.

[40]The Weatherization Assistance Program funded through annual appropriations is not subject to the Davis-Bacon Act.

[41]The five types of "interested parties" are state weatherization agencies, local community action agencies, unions, contractors, and congressional offices.

## New Jersey Is Using Weatherization Funds for Start-up Activities

DOE approved New Jersey's state plan on July 10, 2009, and provided 50 percent of the weatherization funds allocated to the state to New Jersey's Department of Community Affairs (NJDCA), which administers the weatherization program. [42] According to the NJDCA officials, they had anticipated issuing to each of the subgrantees—22 Community Action Agencies (CAAs), which conduct weatherization work, approximately 35 percent of the 50 percent of funds that DOE released to New Jersey by August 31, 2009.[43] However, the officials commented that as of September 9, 2009, NJDCA had issued the full 35 percent of the weatherization funds to only six of its 22 CAAs. They explained that NJDCA and the remaining 16 CAAs were still in various stages of the grant agreement process, primarily due to technical amendments NJDCA had to make to the grant agreements.[44] Also, according to officials from NJDCA and the New Jersey Governor's Office, the process was further impacted because the New Jersey Attorney General's office is reviewing some of the grant agreements as an additional oversight measure.[45] NJDCA officials also noted that four CAAs had not received any funding as of September 9, 2009.[46] Of these four CAAs, three are receiving additional oversight by NJDCA and one is pending finalization of a memorandum of understanding (MOU). NJDCA officials further commented that the status of the grant agreement process progresses daily. They said they were hopeful that the grant agreements between NJDCA and the CAAs would be completed by September 30, 2009. See table 3 for the funds obligated and disbursed as of September 9, 2009.

[42]DCA is a state agency that provides administrative guidance, financial support and technical assistance to local governments, community development organizations, businesses, and individuals to improve the quality of life in New Jersey.

[43]The 22 entities include 21 CAAs and a local government organization.

[44]According to the NJDCA officials, when DOE released an additional 40 percent of weatherization funding in July 2009, they had to change the CAAs' grant agreements to address these funds.

[45]According to a NJDCA official, the New Jersey Attorney General's office is reviewing the grant agreements with a higher level of review than typical grant agreements as a proactive measure.

[46]NJDCA defines these four entities as high risk due to performance issues or being a new NJDCA weatherization entity.

**Table 3: Weatherization Funds Obligated and Disbursed in New Jersey as of September 9, 2009**

| | |
|---|---|
| Total amount of Recovery Act weatherization funds for New Jersey | $118,821,296 |
| Total funds obligated[a] | 24,142,983 |
| Total funds disbursed[b] | 3,441,955 |

Source: New Jersey Department of Community Affairs.

[a]Funds are deemed to be obligated once all approvals have been satisfied in NJDCA's grants administration system, at which point an award letter can be generated and only minor tasks need to be accomplished in order for funds to be available for disbursement.

[b]Funds are deemed to be disbursed when there is a transfer of funds from NJDCA to the grantee.

Subsequently, NJDCA will release additional funds, on a reimbursable basis, after assessing a CAA's progress in successfully completing weatherization work. Such assessments will include reviewing reports such as those indicating the number of weatherization projects completed. NJDCA also plans to reward those CAAs that complete all the work in their grant agreement on a timely basis and meet quality standards, by providing them more funds to do additional weatherization work. NJDCA has allocated $9 million for such incentives.

As stated in New Jersey's approved weatherization plan, NJ DCA will retain 28 percent of the Recovery Act funds that are allocated for training and technical assistance purposes. Also, NJDCA will use some of their Weatherization funds to hire four additional monitors to improve program oversight. According to a senior NJDCA official, NJDCA monitors inspect anywhere from 5 to 100 percent of weatherization projects completed by each CAA, depending on the performance record of a CAA. These staff inspect an average of 25 percent of the units. According to program officials, the department will not release payment to a CAA until a monitor signs off that the work inspected is complete and meets quality standards. Program officials said that although New Jersey has a hiring freeze, the state granted a waiver to NJDCA to hire these workers for the weatherization program. This will bring NJDCA's total number of monitors to nine, which officials said is necessary due to the increased workload.

According to NJDCA officials, as early as April 2009, many CAAs started using their initial allocation of weatherization funds for start-up training and hiring activities.[47] For example, one CAA official reported that his organization used its initial Recovery Act funds to establish a separate office for the weatherization program, to physically separate it from the other approximately 40 community programs that it operates.[48]

## New Jersey Established Weatherization Wage Rates Prior to Labor's Determination

Recovery Act weatherization projects must comply with the prevailing wage as determined under the Davis-Bacon Act.[49] On August 17, 2009, Labor issued Davis-Bacon prevailing wage rates for New Jersey's 21 counties. Weatherization funds that states receive through their regular appropriations are not subject to Davis-Bacon requirements. As a result, Labor had not previously needed to establish wage rates for weatherization work. Due to the Recovery Act guidance and prior to Labor establishing these wage rates, New Jersey's State Plan and Grant Application to the US Department of Energy established a weatherization wage rate of $17.40 per hour (plus benefits) that CAAs could use until the Labor wage rates became available. As noted in our July 2009 report,[50] NJDCA officials said they established the rate to avoid unnecessary delays in starting weatherization work.

According to a NJDCA official, although New Jersey had established a wage rate, some of the CAAs were concerned about encountering unforeseen repercussions for using a Davis-Bacon rate that Labor had not established. An official at one CAA we visited reiterated this concern, adding that his CAA had not received information on the New Jersey rate in writing. As a result, the official was reluctant to commence weatherization work using Recovery Act funds. Accordingly, the CAA used its initial Recovery Act weatherization funds for start-up activities such as hiring, training, and procuring vehicles.

NJDCA officials said the department was not aware of any CAAs that had begun actual weatherization work with the initial allocation of Recovery Act funds, mitigating the need for likely wage adjustments. In some instances, Labor's wage determinations (by county) were lower than New

[47]Approximately $6.1 million for training and technical assistance purposes was available to CAAs and local government entities.

[48]This CAA is allocated a total of $3 million of Recovery Act weatherization funds.

[49]Pub. L. No. 111-5, §1606, 123 Stat. 115, 303 (Feb. 17, 2009).

[50]GAO-09-830SP.

Jersey's established rate of $17.40 per hour (plus benefits) for all trades. For example, in Ocean County, the rate for weatherization workers installing windows and doors was set at $14.09 per hour (plus $4.08 per hour in benefits). Conversely, some of Labor's rates were higher than what New Jersey established. For example, in Somerset County, the HVAC's mechanic wage was $24.45 per hour (plus 0.77 per hour in benefits). NJDCA officials commented that by establishing a rate of $17.40 per hour (plus benefits) before Labor established its rates, New Jersey was essentially able to ensure that wages and benefits would not go below this floor rate, even if Labor set lower rates for counties.

NJDCA weatherization program officials told us they had not received a survey from Labor seeking input on wage rate determinations. However, they were aware that Labor had sought guidance from other sources in New Jersey, including CAAs, before making its wage determinations. As we reported in July 2009, NJDCA officials anticipated Labor setting a lower wage rate than what New Jersey established, primarily because New Jersey has generally high wages and is a strong union state.[51]

## State Officials Are Relying on Existing Procedures to Monitor the Use of Recovery Act Weatherization Funds, but Acknowledge Increased Risk

NJDCA officials said they will rely on its existing systems and procedures to determine risk and monitor procurement and disbursement of funds.

To monitor risk associated with Recovery Act funds, DCA expects CAAs to maintain detailed records in the Hancock Energy Software Weatherization Assistance Program (HESWAP), an online reporting system that is NJDCA's primary accountability tool for tracking and managing the use of Recovery Act funds. While the agency has not performed a formal risk assessment of the CAAs, NJDCA officials said that this assessment is built into their approval and monitoring process. For example, they said monitors review 100 percent of household applications for weatherization, and NJDCA strictly enforces procurement procedures. Further, NJDCA assigns a risk level of high, medium, or low to CAAs based on their past performance and determines the level of funding each should receive based in part, on their risk level. For example, as of September 9, 2009, NJDCA officials designated three CAAs as "high risk," and thus, these CAAs would receive the lowest amount of weatherization Recovery Act funding—$500,000 each. In addition, NJDCA officials said they analyze

[51]GAO-09-830SP.

relevant audit results, such as those obtained from Single Audit reviews, to assess CAAs' performance and determine appropriate funding levels.

According to NJDCA program officials, the weatherization program relies on a decentralized procurement system for the entire procurement process.[52] NJDCA has delegated purchasing responsibilities to CAAs, although NJDCA officials said they were considering developing a centralized list of approved weatherization materials suppliers. Also, according to a NJDCA program official, contractors who attended a NJDCA weatherization conference expressed a high level of interest in joining a national buyers' group for weatherization activities in order to obtain materials at a more cost-effective rate. In order to monitor procurement activities, program officials said that NJDCA uses HESWAP as an internal control to monitor the work activities of CAAs. HESWAP tracks authorizations and project costs and creates payment invoices. According to a NJDCA official, the system is designed to disallow reimbursement for materials not on NJDCA's approved list.

Finally, NJDCA officials said they will monitor the disbursement of Recovery Act funds to CAAs through its System for Administering Grants Electronically (SAGE). SAGE assists their efforts to ensure that funds are disbursed properly because it enables them to manage executed grants. In addition, NJDCA officials said they would rely on HESWAP. NJDCA officials cited SAGE and HESWAP as important internal controls in monitoring grant expenditures.

New Jersey's Office of the State Auditor (OSA) has raised general concerns about risks associated with the expenditure of Recovery Act funds at the local level, though it has not yet specifically reviewed DCA's weatherization program.[53] As a result of these concerns, OSA sent a letter to the Governor and the Legislature recommending that oversight groups ensure transparency, accountability, and compliance with specific programmatic goals before disbursing substantial Recovery Act funds. OSA staff stated that deficiencies they identified in some programs that

[52]However, according to NJDCA officials, CAA procurements must adhere to a centralized list of approved materials.

[53]At the time of our review, state auditors were in the process of completing one segment of a two-part audit on a sample of programs that are receiving Recovery Act funds. The first part focused on monies going directly municipalities from the federal entity. The second part of the audit would involve Recovery Act funds that were passing through the state to program agencies. They began this portion of the work in August 2009.

were receiving Recovery Act funds have serious implications for other Recovery Act programs, such as weatherization assistance. They based their conclusions on their review of independent financial and Single Audits of a sample of New Jersey local entities for four Recovery Act programs that have been allocated a total of $220.7 million in direct funding.[54] OSA found that these external audits revealed historical transparency and/or accountability risks and grant compliance issues at a number of these entities. For example, they discovered that one municipality that was allocated a combined total of $2.7 million from three Recovery Act programs had ineffective financial controls. At the time of our review, OSA officials said they were preparing to undertake a similar audit of a sample of programs, including weatherization, receiving Recovery Act funding through the state's accounting system.

Another potential risk is that NJDCA is allocating the largest amount of Recovery Act funds—$30 million for weatherization projects—to the New Jersey Housing Mortgage & Finance Agency (NJHMFA), primarily to weatherize multifamily units. NJHMFA is established under, but is not a part of, the New Jersey Department of Community Affairs. It is constituted as an instrument of the state, exercising public and essential governmental functions, and for the purposes of weatherization, considered a local government affiliate. According to its 2008 financial statement, NJHMFA has extensive experience in construction and property management, financing, and energy-efficient design for multifamily dwellings.[55] However, NJHMFA does not have prior experience in weatherizing homes. According to NJHMFA officials, NJDCA solicited the NJHMFA to participate in the Recovery Act weatherization program, although the agency has not performed weatherization work in the past. NJDCA officials explained that most of the regular weatherization appropriations go toward weatherizing single-family dwellings. With the availability of the Recovery Act funds, NJDCA wanted to ensure that tenants who live in multifamily units also benefit from these funds. To mitigate the fact that NJHMFA has not conducted weatherization work in the past, NJDCA said

[54]The four programs are: the Community Development Block Grant, Homelessness Prevention/Rapid Re-housing Grant, Energy Efficiency and Conservation Block Grant, and Public Housing Capital Fund Grant.

[55]NJHMFA's 2008 Annual Report states that the entity is dedicated to increasing the availability of and accessibility to safe, decent, and affordable housing for families. According to NJHMFA officials, the entity operates similar to a bank; has been in existence for 42 years; has completed 350 ongoing projects in New Jersey; and has modernized over 45,000 units, including 10,000 single family units.

that monitors will inspect 100 percent of the approximately 3,900 units that NJHMFA is expected to complete over a 3-year time frame. However, since this is a substantial number of units, the inspections may not be timely. Such inspection delays could result in payment delays and limit the ability to complete other work. As of September 9, 2009, NJDCA had not provided any weatherization funds to NJHMFA. NJDCA was still in the process of drafting a memorandum of understanding with NJHMFA to focus on weatherizing multifamily units in NJHMFA's portfolio.

## Weatherization Program Not Included in 2007 and 2008 Single Audit Reports

The weatherization program was not included in the 2007 and 2008 Single Audit reports in because New Jersey's independent auditor did not identify this program as a major program based on risk criteria, including minimum dollar thresholds, set out in the Single Audit Act and OMB Circular No. A-133. According to NJDCA's internal auditor, weatherization is being included in the 2009 Single Audit, given the large influx of funds as a result of the Recovery Act.

The 2005 Single Audit report identified two findings in the weatherization program, and one was a material weakness related to reporting. Specifically, NJDCA did not establish a procedure to reconcile the expenditures charged to the programs[56] with the amounts reported on the Schedule of Expenditures of Federal Awards, which is generated by the New Jersey Department of Treasury. The independent auditor issued a qualified opinion[57] on New Jersey's compliance with the weatherization program for 2005 because of these findings.

The 2006 Single Audit report identified three findings in the program. Two were related to reporting and were material weaknesses, one of which was the same material weakness identified in 2005. The second material weakness was that DCA did not have adequate policies and procedures in place to ensure that the federal financial report was properly completed,

[56]Specifically, these programs were the Weatherization Assistance for Low-Income Persons Program and Community Services Block Grant Pprogram.

[57]A qualified opinion report is issued when the auditor encountered one of two types of situations which do not comply with the types of compliance requirements described in OMB Circular No. A-133 Compliance Supplement and the New Jersey State Grant Compliance Supplement that are applicable to each of its major federal and state programs. This type of opinion is very similar to an unqualified or "clean opinion," with a certain exception that the program did not comply with the requirements of laws, regulations, contracts, and grants applicable to each of its major federal and state programs.

supported by accurate documentation, and reviewed by a supervisor prior to its submission. The independent auditor also issued a qualified opinion in 2006 on New Jersey's compliance with the weatherization program for the year ending June 30, 2006, because of these findings. The state implemented several corrective action plans to address the Single Audit findings, including the timely reconciliation of accounts and meeting reporting requirements.

## Weatherization Program Officials Do Not Foresee Challenges in Meeting Federal Reporting Requirements

### NJDCA Officials Say They Can Meet OMB Reporting Requirements

NJDCA is the prime recipient of weatherization funds and is therefore responsible for meeting Recovery Act reporting requirements. NJDCA officials said they did not have concerns about their ability to meet the various reporting requirements, including the Section 1512[58] requirements for reporting on the use of funds and job creation and retention.[59] According to NJDCA officials, they will be able to meet the reporting requirements primarily because HESWAP provides access to real-time information about each CAA's weatherization projects, including costs, and SAGE provides information about grant management. Also, the CAAs are able to access this same information, which facilitates their reporting on a timely basis.[60] At the time of our review, DOE required quarterly reporting for the weatherization program. However, according to one of the NJDCA officials, DOE indicated at a conference in July that it intended to change this requirement to monthly reporting. NJDCA officials said they did not anticipate such a change posing a challenge for them. NJDCA officials further stated that they have participated in Webinars to obtain clarification on guidance. They said they were beginning to prepare for the

[58]Pub. L. No. 111-5, § 1512, 123 Stat. 115, 287 (Feb. 17, 2009).

[59]As of late August, the Director of the weatherization program stated that some additional guidance from OMB was still pending on minor issues involving counting jobs created.

[60]However, program officials acknowledged that NJDCA must allow for the monitoring, review, and approval of an inspected unit. Once these activities are complete, the information becomes real-time in HESWAP and can then be submitted to DOE as a completed project.

required October 10 report to OMB, noting that CAAs are encouraged to provide their reports to NJDCA by September 15.

NJDCA officials said they had not delegated any reporting requirements responsibilities to the CAAs as OMB allows. However, officials from the New Jersey Governor's Office stated that the New Jersey Recovery Accountability Task Force had sent written guidance to state and local entities concerning reporting requirements.

### Program Officials Have Not Begun to Measure Impact of Recovery Act Funds on Energy Savings

A NJDCA official said they have not yet attempted to measure the impact of Recovery Act weatherization funds on energy savings, primarily because they have not yet received guidance from DOE on how to do so. This official stated that using DOE's historical methodology to calculate energy savings is logical. It is a formula-based approach that is a part of the energy audit system that DOE uses to calculate a savings-to-investment ratio. He further commented that DOE's traditional approach has provided a clear indication of savings and efficiencies for each measure used, and therefore would be appropriate to measure the impact of Recovery Act funds on energy savings. This NJDCA official said that for its regular weatherization appropriations funding, they have relied on a list of "Priority Measures" that DOE approved. These measures include assessing items such as health and safety testing, attic insulation, and window and door replacement.

## Update on Amount of Public Housing Capital Funds Obligated by Public Housing Agencies in New Jersey

The Public Housing Capital Fund provides formula-based grant funds directly to public housing agencies to improve the physical condition of their properties; develop, finance, and modernize public housing developments; and improve management.[61] The Recovery Act requires the U.S. Department of Housing and Urban Development (HUD) to allocate $3 billion through the Public Housing Capital Fund to public housing agencies using the same formula for amounts made available in fiscal year 2008. Recovery Act requirements specify that public housing agencies must obligate funds within 1 year of the date on which they are made available to public housing agencies, expend at least 60 percent of funds within 2 years, and expend 100 percent of the funds within 3 years. Public housing agencies are expected to give priority to projects that can award contracts based on bids within 120 days from the date on which the funds

[61] Public housing agencies receive money directly from the federal government (HUD). Funds awarded to the public housing agencies do not pass through the state budget.

are made available, as well as projects that rehabilitate vacant units, or those already under way or included in their current required 5-year capital fund plans.

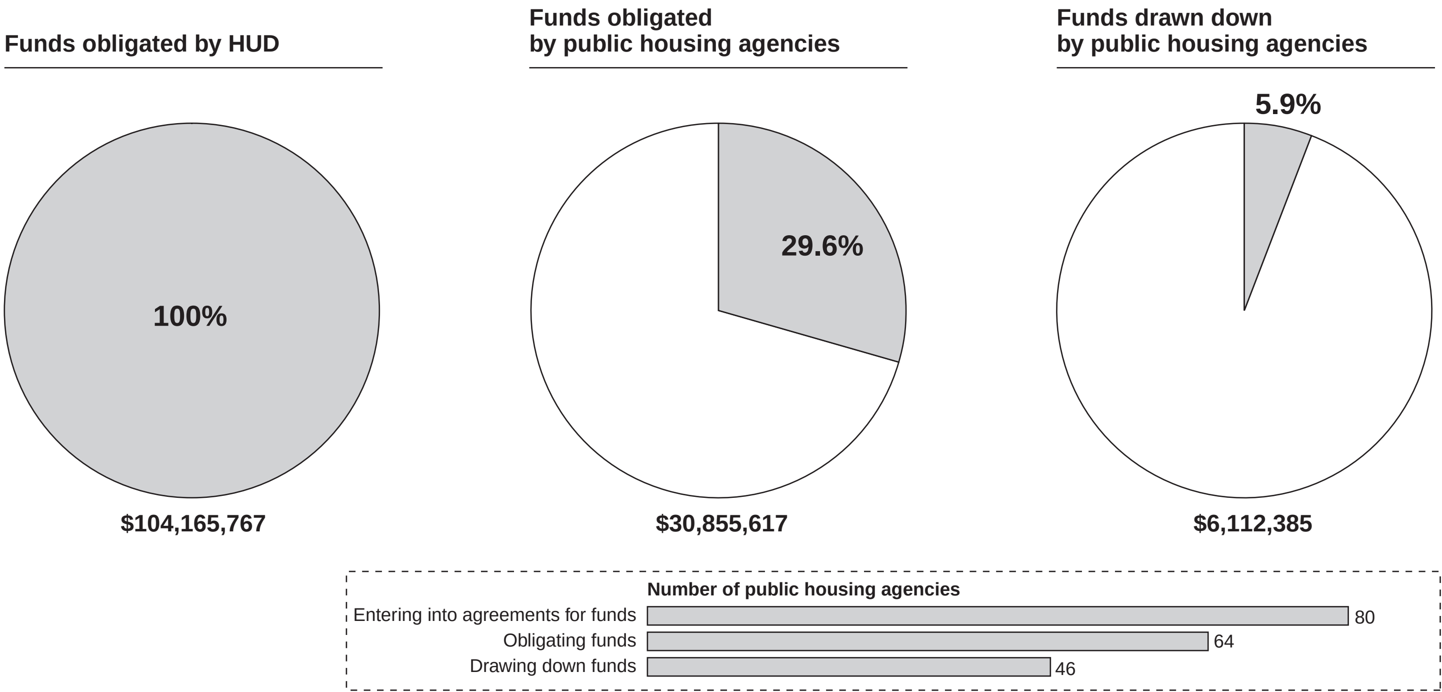
HUD is also required to award nearly $1 billion to public housing agencies based on competition for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments. In a Notice of Funding Availability published May 7, 2009, and revised June 3, 2009, HUD outlined four categories of funding for which public housing agencies could apply:

- creation of energy-efficient communities ($600 million);
- gap financing for projects that are stalled due to financing issues ($200 million);
- public housing transformation ($100 million); and
- improvements addressing the needs of the elderly or persons with disabilities ($95 million).

For the creation of energy-efficient communities, applications (which were due July 21, 2009) were to be rated and ranked according to criteria outlined in the Notice of Funding Availability. The last three categories will be threshold-based, meaning applications that meet all the threshold requirements will be funded in order of receipt. If funds are available after all applications meeting the thresholds have been funded, HUD may begin removing thresholds after August 1, 2009, in order to fund additional applications in the order of receipt until all funds have been awarded. Applications in these three categories were accepted until August 18, 2009.

New Jersey has 80 public housing agencies to which HUD allocated Recovery Act formula grants. In total, these public housing agencies received $104 million in Public Housing Capital Fund formula grants (see fig. 4). As of September 5, 2009, 64 of these public housing agencies have obligated $31 million and 46 of these public housing agencies have drawn down $6.1 million. GAO visited four public housing agencies in New Jersey for our July 2009 report. These are the Newark Housing Authority, the Plainfield Housing Authority, the Rahway Housing Authority, and the Trenton Housing Authority. We will provide updated information on these housing agencies in a future report.

Figure 4: Percentage of Public Housing Capital Funds Allocated by HUD That Have Been Obligated and Drawn Down in New Jersey as of September 5, 2009




Source: GAO analysis of HUD data.

## New Jersey's Comments on This Summary

We provided the Governor of New Jersey with a draft of this appendix on September 3, 2009. The Governor's Chief of Staff, who serves as the co-chair for the Governor's Recovery Accountability Task Force, responded for the Governor on September 8, 2009. The official provided technical suggestions that were incorporated, as appropriate.

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