

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 York)



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Appendix XIII: New York

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 York. 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/>.

New York, the nation's third most populous state and home of the nation's largest city and most important financial center, continues to be hit hard by the current recession. It expects to receive about \$26.7 billion in Recovery Act funds plus possible additional discretionary program funds through the end of 2011. About \$11 billion will be for Medicaid; \$5 billion will be for education; and another \$2.4 billion for highway and transit projects.

GAO's work in New York for this third bimonthly review focused on the efforts of the state to stabilize its budget and meet the Recovery Act's first reporting requirements for recipients of Recovery Act funds. We also focused on three Recovery Act programs—the Transit Capital Assistance Program, the Weatherization Assistance Program, and the Workforce Investment Act Youth Program (WIA)—and updated funding information on the highway construction and public housing programs. We selected these programs for different reasons:

- The Transit Capital Assistance funds had a September 1, 2009 deadline for obligating a portion of the funds and, further, provided an opportunity to review transit agencies receiving Recovery Act funds, including the Metropolitan Transportation Authority (MTA), which manages the nation's largest transit system.
- The Weatherization Assistance Program in New York received an almost 400 percent increase in funding as a result of the Recovery Act. The program began on June 26, 2009, providing us the opportunity to look at how state and local agencies are planning to oversee and implement financial controls, track funding, and report results.
- The WIA Youth program in New York also experienced significant growth due to Recovery Act funds and many summer employment activities funded by the Recovery Act were in full operation at the time of our review.

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

Within these programs, we focused on how funds were being used, how internal controls and safeguards were being implemented, and how results were being assessed. Consistent with the purposes of the Recovery Act, funds from the programs we reviewed are being directed to help New York and local governments stabilize their budgets and stimulate infrastructure development and expand existing programs—thereby providing needed services and potential jobs. The following provides highlights of our review of these programs:

Budget Stabilization

- New York State addressed a significant 2-year budget gap of \$20.1 billion when it enacted its fiscal year 2009-2010 Budget Financial Plan on April 28, 2009,² with the help of approximately \$6.2 billion in Recovery Act funds and other measures.
- Continued declining revenues and the current economic environment resulted in a forecasted \$2.1 billion budget gap for the state at the end of its first quarter for fiscal year 2009-2010.
- The state’s proposal to address this budget gap is expected to be deliberated in early fall 2009.

Highway Infrastructure Investment Funds

- The U.S. Department of Transportation’s Federal Highway Administration (FHWA) apportioned \$1.12 billion in Recovery Act funds to the New York State Department of Transportation (NYSDOT) in March 2009.
- As of September 1, 2009, the federal government had obligated about \$783 million to New York, and about \$23 million had been reimbursed by the federal government.
- According to NYSDOT, it has used Recovery Act funds to award contracts for about 194 projects, 190 of which have begun construction. Since June, NYSDOT has made progress in the number of contracts awarded and the proportion of projects that are located in economically distressed areas.

²The 2-year budget gap of \$20.1 billion was for fiscal years 2008-2009 and 2009-2010.

Transit Capital Assistance Program

- The U.S. Department of Transportation's Federal Transit Administration (FTA) apportioned over \$1.3 billion in Recovery Act funds to the state of New York and urbanized areas (UZA) that include localities in New York. As of September 1, 2009, FTA had obligated \$1.1 billion.
- FTA was slow to obligate these funds, because of its lengthy grant review processes, but as of September 1, 2009, FTA concluded that the 50 percent obligation requirement had been met for New York and urbanized areas located in the state.
- The Metropolitan Transportation Authority (MTA)—the largest transit agency in the country and recipient of the most Recovery Act Transit Capital Assistance Program funds in New York—used preaward authority to begin Recovery Act projects in advance of FTA's obligation of the funds.³ MTA will receive its Transit Capital Assistance Program funding through two grants worth over \$660.2 million.⁴ MTA plans to use these funds to pay for a series of maintenance and capital projects throughout the MTA transit system.

Weatherization Assistance Program

- On June 26, 2009, the U.S. Department of Energy (DOE) approved New York State's plan for the use of Recovery Act funds in the Weatherization Assistance Program authorizing expenditure of 50 percent (\$197.3 million) of its total allocation for this program (\$394.7 million).
- According to officials, as of August 31, 2009, no funds have been disbursed. The state's Division of Housing and Community Renewal which reviews the contract applications submitted by the 64 subgrantees that implement the program for the state has approved nine contract applications obligating \$27.5 million. The division anticipates that the remaining contract applications will be approved by October 15, 2009. However, officials told us that the need to address Davis-Bacon requirements, which were not imposed on the program before the Recovery Act, had complicated the contract-review process

³FTA operates on a reimbursement basis, which means the project sponsor must have incurred a cost before they can draw funds.

⁴MTA expects to receive over \$1 billion in Recovery Act funds, including funds through FTA's Capital Assistance Grants, the Fixed Guideway Infrastructure Investment Program, and the Capital Investment Grant Program.

and created uncertainty over labor costs until prevailing wage rates were determined by September 3, 2009.

Workforce Investment Act Youth Program (WIA)

- The U.S. Department of Labor (Labor) allotted about \$71.5 million to New York in WIA Recovery Act funds.
- The state has allocated \$60.8 million to the state's 33 local workforce areas and, as of August 31, 2009, local areas had expended an estimated \$34.6 million.
- New York summer youth employment programs exceeded their goal by enrolling over 24,000 youth in summer jobs.
- We visited the government entity managing the WIA Youth program in Oneida County. It employed various strategies to help overcome eligibility challenges and to retain older youth at the end of the summer. For example, Oneida County hired four employees from May to December 2009 that assisted youth in the eligibility process.

Public Housing Capital Fund

- New York State has 84 public housing agencies that have received Recovery Act formula grant awards through the Public Housing Capital Fund, totaling \$502.3 million.
- As of September 5, 2009, 59 of the state's 84 public housing agencies have obligated \$154.4 million, while 43 have expended \$2.9 million.

Recovery Act Reporting

- New York State has a major planning effort in place to meet the Recovery Act's first recipient reporting deadline of October 10, 2009.⁵ However, some concerns remain about the ability of recipients in the state that received Recovery Act funds to submit complete reports by the October 10, 2009 reporting deadline, which is 10 days after the end of the quarter; ensure that all subrecipients' data will be included; and report on specific performance measures.
- New York State has contracted with a consultant to assist the state in meeting its first-round reporting requirements in October.

⁵Section 1512 of the Recovery Act requires that all recipients prepare quarterly reports, which includes information such as who is receiving Recovery Act dollars and the amounts, projects or activities that are being funded, the completion status of project activities, and an estimate of the number of jobs created and the number of jobs retained by projects and activities.

- State officials said that state agencies vary in their thoroughness of planning and capability to meet Recovery Act reporting requirements.

Although Recovery Act Funds Helped New York Close a Budget Gap for Fiscal Year 2009-2010, New York Now Estimates a Shortfall Due to Decreased Tax Receipts

As noted in our July 2009 report, New York closed budget gaps of \$2.2 billion for fiscal year 2008-2009 and \$17.9 billion for fiscal year 2009-2010.⁶ To help close the combined budget gap of \$20.1 billion over these two fiscal years, New York used about \$5 billion in funds made available as a result of the increased Medicaid Federal Medical Assistance Percentage (FMAP).⁷ In addition, the state plans to use approximately \$1.2 billion of Recovery Act State Fiscal Stabilization Fund (SFSF) funds to further alleviate this gap.

New York State issued its 2009-2010 Financial Plan First Quarterly Update on July 30, 2009. The state now estimates a General Fund budget gap of \$2.1 billion in the current fiscal year and projects budget shortfalls growing to \$18.2 billion by fiscal year 2012-2013. Based on New York's first quarterly update, approximately 93 percent of the state's current year gap is due to a forecast for a reduction in state tax receipts. The remaining shortfall is due to General Fund disbursement revisions for several areas, such as a decrease in projected lottery receipts and escrow payments from other funds that offset the General Fund costs. The state expects that out-year budget gaps will be the result of both decreased receipts and increased disbursements. Table 1 shows the state's revised gaps between its 2009-2010 Enacted Budget Financial Plan and its 2009-2010 Financial Plan First Quarterly Update.⁸

⁶New York State operates on an April 1 through March 31 fiscal year.

⁷FMAP is discussed in detail in the main report; see [GAO-09-1016](#).

⁸2009-2010 Enacted Budget Financial Plan issued on April 28, 2009.

Table 1: Comparison of New York State's 2009-2010 Enacted Budget Financial Plan and Its 2009-2010 Financial Plan First Quarterly Update

Dollars in millions

Fiscal year	Enacted budget surplus/(gap) estimate	First quarter revisions	First quarterly update surplus/(gap) estimate
2009-2010	\$0	\$(2,123)	\$(2,123)
2010-2011	(2,166)	(2,457)	(4,623)
2011-2012	(8,757)	(4,519)	(13,276)
2012-2013	(13,706)	(4,457)	(18,163)
Cumulative total	\$(24,629)	\$(13,556)	\$(38,185)

Source: New York State's 2009-2010 Financial Plan First Quarterly Update, July 30, 2009.

New York continues to plan for and use Recovery Act funds for its current fiscal year. Specifically, budget officials said that, to date, there have been no changes in the state's planned use of \$3.7 billion in funds made available as a result of the increased FMAP and \$1.2 billion in SFSF funds for budget stabilization during the state's current fiscal year. To address the current-year deficit, the Governor will work with the legislature to develop an Economic and Fiscal Recovery Plan in early fall 2009. According to these officials, the plan will explore all avenues of state spending and will, through the Governor's Office of Taxpayer Accountability, identify areas for savings by examining opportunities to reduce waste, fraud, and abuse in state government. In anticipation of these actions and the allocation of Recovery Act funds, budget officials do not expect the state to use its rainy-day or reserve funds.⁹

State budget officials have taken two main preliminary steps to plan for the eventual phase out of Recovery Act funds. Specifically, the state has, wherever possible (1) applied the Recovery Act funds to nonrecurring items and program restorations and (2) clearly identified the restorations that are made possible with Recovery Act funds. State officials expect to consider additional actions for mitigating the phasing out of funds as they develop the 2010-2011 Budget Financial Plan.

⁹New York has two rainy-day funds—its Tax Stabilization Reserve and Rainy Day Reserve Funds, which according to state officials, must be balanced at approximately \$1 billion and \$175 million, respectively, at the end of each fiscal year. These reserve funds may be utilized for cash flow purposes throughout the year; however, all funds must be restored by the end of the fiscal year.

In response to the Office of Management and Budget's (OMB) May 11, 2009, memorandum,¹⁰ New York budget officials stated that OMB's guidance has had little impact on the state's effort to recoup Recovery Act centralized implementation and oversight costs. State officials based this viewpoint on further discussion with federal agencies and other state budget officials. The state understands the OMB guidance as only allowing up to 0.5 percent reimbursement of total Recovery Act funds for central administrative costs. Budget officials added that their understanding is that this 0.5 percent can only be applied against the subset of Recovery Act programs that specifically allow reimbursement for administrative costs. In addition, New York believes that any effort to secure reimbursement for centralized implementation and oversight costs would reduce funding available to state agencies for assisting in meeting their agency-specific administrative and implementation costs. Finally, budget officials believe that the Statewide Cost Allocation Plan (SWCAP)¹¹ process being used for recouping Recovery Act administrative costs is cumbersome and lengthy. Due to these reasons, the state has not decided whether to move forward with recouping these centralized costs.

New York Has Made Progress in Awarding Highway Contracts, with Over 40 Percent of Planned Recovery Act Projects Now under Construction

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 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 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

¹⁰OMB Memorandum, M-09-18, *Payments to State Grantees for Administrative Costs of Recovery Activities*, dated May 11, 2009.

¹¹SWCAP is a process in which states can recoup administrative costs on an annual basis by submitting cost detail to the Department of Health and Human Services (HHS) for review and approval.

projects under the existing federal-aid highway program is generally 80 percent, under the Recovery Act, it is 100 percent.

Funds appropriated for highway infrastructure spending must be used as required by the Recovery Act. One of the act's requirements is that states must certify that they will maintain the level of spending for the types of transportation projects funded by the Recovery Act that they 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, 2010.¹²

As we previously reported in July 2009, \$1.12 billion was apportioned to New York in March 2009 for highway infrastructure and other eligible projects. As of September 1, 2009, about \$783 million had been obligated¹³ and about \$23 million, or 3 percent of obligations, had been reimbursed by FHWA.¹⁴ This does not include obligations associated with \$175.5 million of apportioned funds that were transferred from the Federal Highway Administration (FHWA) to the Federal Transit Administration (FTA) for transit projects.¹⁵ Almost all of these funds (\$175 million) are for a project to rehabilitate seven ramps carrying bus and passenger traffic in and out of the St. George Ferry facility on Staten Island. The transfer of funds to this project was initiated by Governor Paterson. The New York City Department of Transportation and FTA will be responsible for this project and the associated Recovery Act reporting. This project is the single largest use of Recovery Act highway funds for an individual project in New York State, and accounts for about 16 percent of New York's total apportionment. New York has transferred more of its apportioned highway funds to transit projects than all other states plus the District of

¹²Pub. L. No. 111-5, § 1201, 123 Stat. 115, 212 (Feb. 17, 2009).

¹³For the Highway Infrastructure Investment Program, the U.S. Department of Transportation 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.

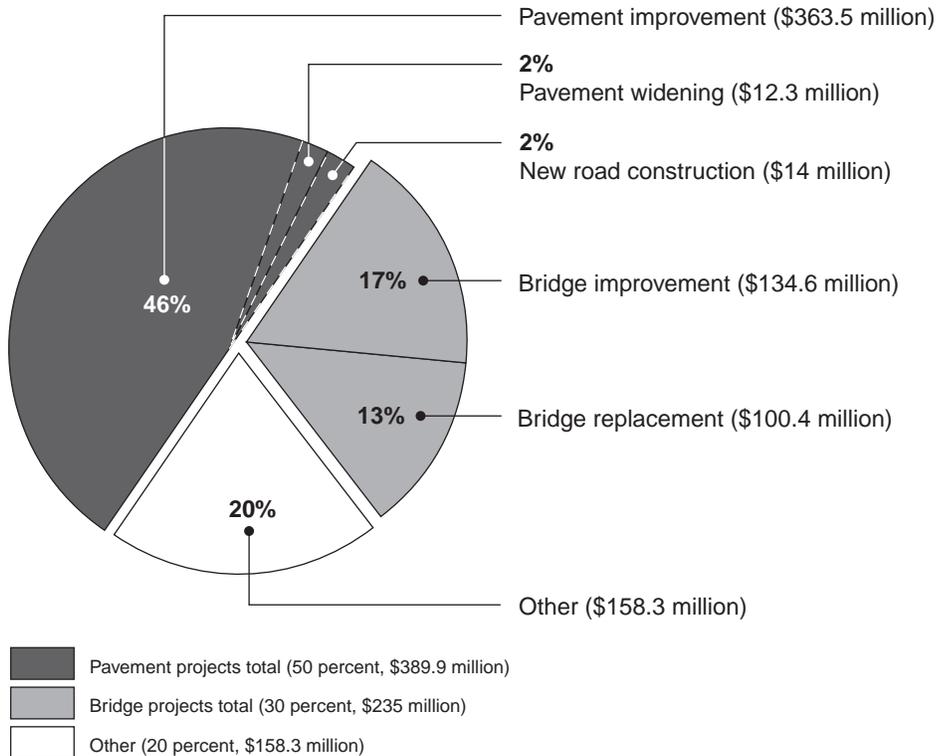
¹⁴States request reimbursement from FHWA as the state makes payments to contractors working on approved projects.

¹⁵Generally, FHWA has authority pursuant to 23 U.S.C. § 104(k)(1) to transfer funds made available for transit projects to FTA. The about \$175.5 million includes \$466,000 in apportioned funds that were transferred from FHWA to FTA for vehicle fleet replacements (e.g., not buses) in Rochester by the Rochester-Genesee Regional Transportation Authority.

Columbia combined. The \$175.5 million New York has transferred to transit projects accounts for about 61 percent of total funds transferred to FTA by all states nationwide.

Approximately 46 percent of Recovery Act highway obligations for New York have been for pavement improvement projects with only a small percentage having been obligated for pavement widening and new road construction. Specifically, \$364 million of the \$783 billion obligated to New York as of September 1, 2009, is being used for pavement improvement projects such as highway resurfacing and reconstruction, including \$143 million for resurfacing roads. In addition, as of September 1, 2009, almost 30 percent of the funds obligated in New York have been for bridge replacement and bridge improvement projects, which is much higher than the national obligation average of 10 percent. Figure 1 shows obligations by the types of road and bridge improvements being made.

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



Source: GAO analysis of FHWA data.

Note: Totals may not add due to rounding. "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.

According to NYSDOT, as of September 1, 2009, FHWA had obligated funding for a total of about 358 projects. According to officials, contracts have been awarded for about 194 of the authorized projects, or 43 percent of the total 450 projects NYSDOT plans to complete using Recovery Act funds. These awarded contracts total \$412 million, or 37 percent of New York's total allocation. Of the projects with awarded contracts, 190 of them, or 42 percent of all planned projects, were under construction. In our July 2009 report, we reported that as of June 17, 2009, 34 contracts had been awarded. The awarding of 160 contracts in 2 months has taxed NYSDOT's limited procurement staff as well as staff in planning, design, construction, and information technology. The Director of the NYSDOT Contracts Management Bureau noted that they have hired no new

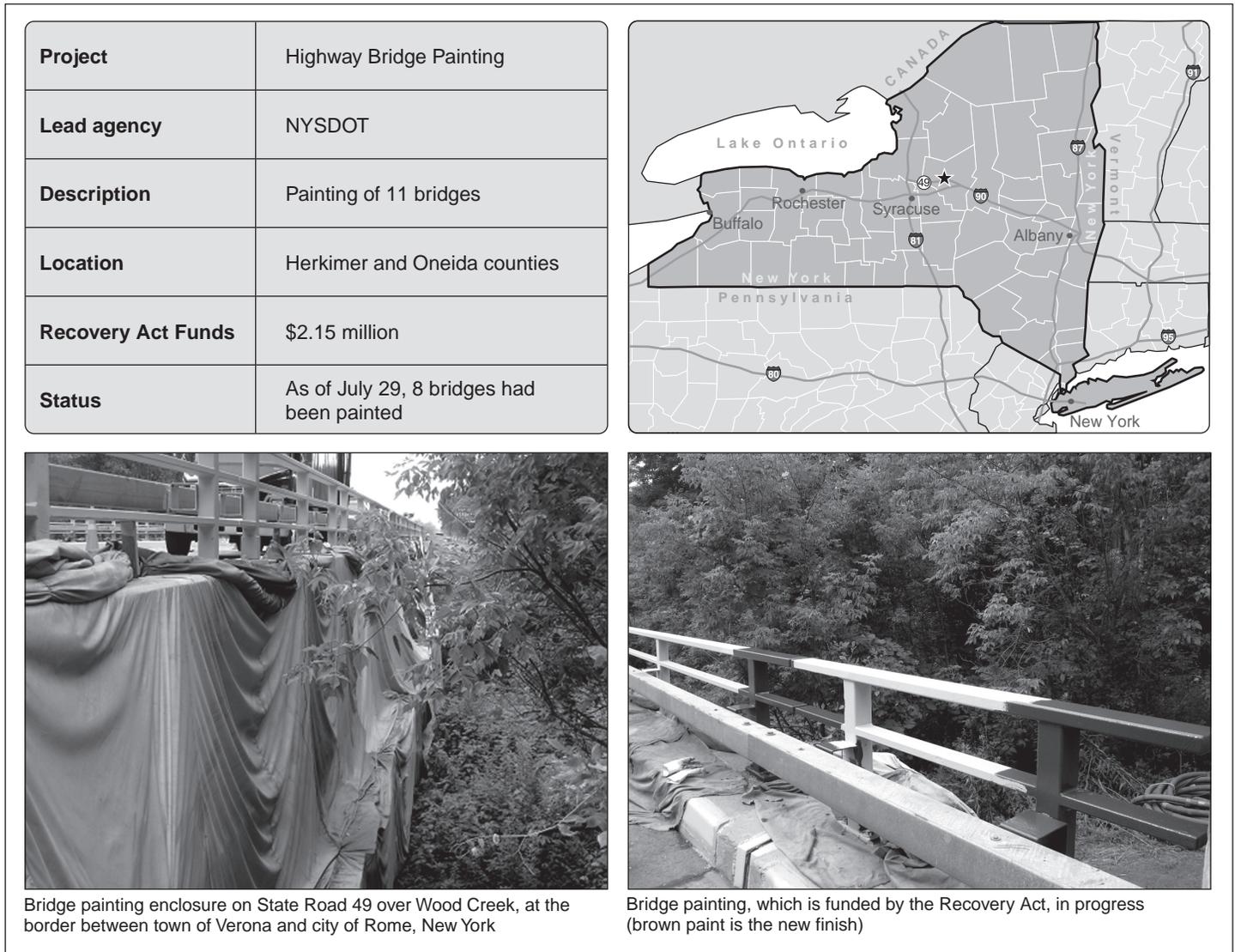
procurement staff and that current staff are working overtime in order to award the large number of contracts.

NYSDOT officials reported that Recovery Act projects have often received bids that are lower than the planned costs of the project, resulting in contract prices as much as 10 to 12 percent lower than the engineering cost estimates. This frees up funds for other projects on the long backlog of New York transportation projects. A NYSDOT official said the agency had anticipated that the construction market would be saturated by now and that bid prices would begin rising. That has not happened yet, however, and it reports that bids continue to come in lower than the planned costs of the projects.

In July, we again visited the \$14.9 million Delaware Avenue reconstruction project in Albany, which we first visited in June. This project is being managed by the City of Albany and was the first construction contract funded by the Recovery Act awarded in the state. This project started in April 2009, involves the complete reconstruction of a 1.6-mile stretch of urban roadway, and employs about 50 people. Project officials report that the project is currently on budget, about 29 percent completed, and expected to be completed by October 2010. Although the project is being funded entirely through the Recovery Act, the City of Albany is currently paying the contractor and billing NYSDOT for reimbursement.

We also visited a bridge included under a NYSDOT bridge painting project that involves work in Herkimer and Oneida counties. This contract was awarded on April 15, 2009, for \$2.15 million. As we reported previously, the original scope of this project was 8 bridges, but, according to officials, NYSDOT was able to add 3 bridges to this contract as a result of the Recovery Act funds. When we visited the project worksite at the State Road 49 Bridge over Wood Creek near Rome on July 29 (see fig. 2), NYSDOT inspectors reported that the contractor had 3 bridges remaining to be painted before the contract completion date of November 30, 2009. NYSDOT officials reported that the same crew of around 17 employees has worked on each bridge, and that the additional 3 bridges allowed the crew to be employed later into the season. The contractor for this project is based in western New York and completes bridge and industrial painting projects in Pennsylvania and Massachusetts.

Figure 2: Profile of a Highway Bridge Painting Project



Sources: GAO (photographs); and Map Resources (map).

As we reported previously, the Recovery Act requires states to give priority to projects located in economically distressed areas, as defined by the Public Works and Economic Development Act of 1965, as amended.¹⁶

¹⁶ 42 U.S.C. § 3161.

As of September 1, 2009, 58 percent of New York's certified projects were in distressed areas. These projects currently account for 33 percent of the total New York state Recovery Act funds, up from about 25 percent in June.

NYS DOT Officials Believe That They Will Meet Recovery Act Reporting Requirements

NYS DOT officials reported that they are working to address OMB's June 22 guidance and are confident they will be able to meet the first OMB reporting deadline of October 10. With the help of the consultant hired by the state to assist state agencies in complying with Recovery Act reporting requirements, NYS DOT has determined that approximately 80 to 90 percent of the data elements required by OMB are in its existing database. NYS DOT is using OMB's data dictionary to program its database with the remaining data elements. NYS DOT officials reported that to meet the October 10 reporting deadline, they will gather information from both the state- and local-let projects and will report directly to OMB, in accordance with the current guidance from the New York Governor's Office. For federal employment reporting purposes, all Recovery Act-funded highway projects complete FHWA Form 1589 on a monthly basis and record the total number of actual employees, number of hours, and total payroll for the month. The information collected by FHWA includes only employment information for jobs funded directly by the Recovery Act.

Both of the Recovery Act highway projects we visited currently report employment information monthly to NYS DOT but had not yet received specific instruction on how to submit reporting information in accordance with OMB's latest reporting guidance. For example, the Delaware Avenue project's main contractor and consultant both fill out the FHWA Form 1589 on a monthly basis on behalf of themselves and their 10 subcontractors. This form reports the number of employees on the project, hours of work, and total payroll for the month. To date, Delaware Avenue project officials have not received guidance from NYS DOT regarding how it should report results in accordance with the June 22 OMB Section 1512 reporting guidance, but are confident they will be able to meet any new reporting requirements.

The NYS DOT Recovery Act Web site also reports on its certified highway projects using other performance measures, such as miles of highway resurfaced and number of bridges to be repaired. According to NYS DOT officials, these performance measures were compiled using data from the agency's management information system. See table 2 for a list of these performance measures as of September 1, 2009.

Table 2: NYSDOT Planned Performance Measures by Project Type, for All Projects Certified as of September 1, 2009

Project type	NYSDOT planned performance results for all Recovery Act projects certified
Safety	<ul style="list-style-type: none"> • 1,000 traffic signals • 11,208 large sign panels • 34 miles of guiderail
Bridge repair	<ul style="list-style-type: none"> • 269 bridges repaired • 234 bridges painted • 437 bridges cleaned
Bridge replacement and rehabilitation	<ul style="list-style-type: none"> • 33 bridges replaced • 34 bridges rehabilitated
Mobility, reliability, smart growth	<ul style="list-style-type: none"> • 1,131 new or improved street crossings • 97 miles of new or replaced sidewalks • 34 miles of new or replaced bike lanes
Highway reconstruction and rehabilitation	<ul style="list-style-type: none"> • 372 lane-miles reconstructed • 220 lane-miles repaved • 22 large culverts replaced
Highway repair	<ul style="list-style-type: none"> • 1,575 lane-miles resurfaced • 299 lane-miles surface treated • 2,011 lane-miles of cracks and joints sealed • 188 large culverts repaired

Source: NYSDOT data and GAO analysis.

NYSDOT Has Developed a Recovery Act Oversight Web site to Improve Communication and Transparency but Has Not Addressed a Potential Conflict of Interest Issue

We reported on NYSDOT’s internal controls over Recovery Act funds in July 2009. In this report, we highlight NYSDOT’s efforts to develop and maintain a Web site that provides current information on Recovery Act projects and report on a potential conflict of interest issue that was first identified in an Office of the State Comptroller (OSC) audit report.

The NYSDOT Recovery Act Web site, www.nysdot.gov/recovery, contains a wealth of information on the state’s highway infrastructure Recovery Act activity, such as the total value, contractor, and status of projects that are searchable by location, congressional district, and a variety of other characteristics. NYSDOT officials reported that they view this Web site as setting a new standard in terms of making Recovery Act status information available to the public. NYSDOT plans to maintain the Web site after the Recovery Act expires in September 2010 for its traditional program and project activity for many programs, such as transit, aviation, and rail.

The potential conflict of interest issue was reported on by the OSC in January 2009. This issue involves the Director of NYSDOT's Audit and Civil Rights Division who is also the department's Internal Control Officer. As Director of the Audit and Civil Rights Division, this individual's responsibilities include oversight of the Internal Audit Bureau, which is charged under state law with reviewing agency operations to assure compliance with management policies and the effectiveness of internal controls. The Director was also designated as the NYSDOT Internal Control Officer, who is charged under state law with implementation and review of NYSDOT's internal control responsibilities (the Enterprise Risk Management Bureau).¹⁷ In addition, the Director was appointed to lead the Governor's Economic Recovery and Reinvestment Cabinet Internal Controls and Fraud Prevention Working Group. The working group is responsible for working with state agencies to provide additional guidance on internal control and fraud prevention to ensure compliance with the Recovery Act. In the January 2009 report on the quality of NYSDOT's internal control certifications, OSC recommended that, to effectively maintain independence by avoiding a conflict of interest, NYSDOT should separate the internal audit function and the internal control officer function. The NYSDOT Executive Deputy Commissioner disagreed with this recommendation.¹⁸ We agree with the OSC recommendation and urge NYSDOT to reconsider its position.

The New York State Governmental Accountability, Audit, and Internal Control Act of 1987¹⁹ (Internal Control Act) requires the head of each agency to designate an internal control officer who reports to the head of the agency and who is responsible for the "implementation and review of the internal control responsibilities" assigned to the agency head under the act. Agency heads are responsible for establishing systems of internal control and programs of internal control review, including periodic assessments of the adequacy of their agency's ongoing internal controls. The act also states that the internal audit function, when established in an agency, is to be headed by an internal audit director, who is required to operate in accordance with generally accepted professional standards for

¹⁷The Audit and Civil Rights Division comprises the Office of Civil Rights, Internal Audit Bureau, Investigations Bureau, Enterprise Risk Management Bureau (Internal Control Office), and the Contract Audit Bureau.

¹⁸On May 8, 2009, the Governor appointed the Executive Deputy Commissioner as Acting Commissioner. The Commissioner is the head of the agency.

¹⁹N.Y. Exec. § 950-953.

internal auditing. These professional standards have been identified as the standards set forth by the Institute of Internal Auditors (IIA) in the state's budget guidance. IIA's standards state that "internal auditors must have an impartial, unbiased attitude and avoid any conflict of interest."²⁰ The mandatory interpretation of this standard states that, "conflict of interest is a situation in which an internal auditor, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfill his or her duties impartially. A conflict of interest can create an appearance of impropriety that can undermine confidence in the internal auditor, the internal audit activity, and the profession."²¹ A conflict of interest could impair an individual's ability to perform his or her duties and responsibilities objectively."

A practice advisory to the IIA's standards states that "internal auditors are not to accept responsibility for non-audit functions or duties that are subject to periodic internal audit assessments. If they have this responsibility, then they are not functioning as internal auditors."²² In addition, the practice advisory states that "when the internal audit activity, chief audit executive (CAE), or individual internal auditor is responsible for, or management is considering assigning, an operational responsibility that the internal audit activity might audit, the internal auditor's independence and objectivity may be impaired." The practice advisory lists the following among the factors that the CAE needs to consider in assessing the impact on independence and objectivity: audit coverage of the activities or responsibilities undertaken by the internal auditor, significance of the operational function to the organization, and adequacy of separation of duties.

OSC also based its recommendation on its Standards for Internal Control in New York State Government and on New York State's Division of the Budget's Governmental Internal Control and Internal Audit Requirements, known also as B-350. According to OSC's standards, "the internal control officer helps establish specific procedures and requirements. The effectiveness of these procedures and requirements must be audited by

²⁰IIA, *International Standards for the Professional Practice of Internal Auditing*, 1120, Individual Objectivity.

²¹IIA defines conflict of interest as "any relationship that is, or appears to be, not in the best interest of the organization."

²²IIA Practice Advisory 1130.A2-1, Internal Audit's Responsibility for Other (Non-audit) Functions.

someone who was not involved in the process of putting them into place. In contrast, the organization's internal auditor is responsible for evaluating the effectiveness of the system of internal control. This individual must be independent of the activities that are audited." Thus, this standard states that "for this reason, in most instances, the internal auditor cannot properly perform the role of internal control officer." B-350 states that "the IA [internal audit] function should be independent of the internal control officer, but should work closely with the internal control officer. Limitations should be established on internal control activities where those duties overlap. Agencies should identify impairments to the independence of the director of internal audit that may be created where the director of internal audit is performing the internal control officer function. Furthermore, internal audit units should not assume operating responsibilities, perform management functions, make management decisions, or assume other monitoring roles (e.g., Information Security Officer)."

In responding to OSC's recommendation, the NYSDOT Executive Deputy Commissioner stated that the independence of the internal audit function has been preserved by keeping it (the Internal Audit Bureau) organizationally separate from the internal control responsibilities (the Enterprise Risk Management Bureau). In addition, the NYSDOT official who is both the director of audits and the internal control officer told us that the department evaluated this organization issue before and after she assumed these responsibilities and concluded both times that there is no prohibition preventing her from holding both positions in the state guidance and law. Further, she said that NYSDOT has made full disclosure of this situation and that, in the case of any actual or appearance of a conflict of interest, she would be recused from making a decision. OSC officials told us in July 2009, however, that there continues to be an inherent conflict of interest in being able to effectively maintain independence.

As noted above, we support OSC's recommendation. While the NYSDOT internal audit bureau and the internal control units are separate within the Audit and Civil Rights Division, they are both headed by the Director of the Division who can override any decisions made by staff in charge of those units. The importance of auditor objectivity related to internal control is highlighted in the IIA guidance, which indicates that the auditor's objectivity is considered to be impaired if the auditor is involved with the implementation of internal control systems. Any work performed by an audit organization, regardless of whether safeguards were placed between units, still reflects the professional reputation of the entire

organization. Having responsibility for both managing and auditing an activity creates an inherent conflict of interest that potentially weakens the integrity of the organization's oversight.

NYSDOT officials provided comments on our draft appendix and disagreed with our concurrence with OSC's recommendation. Their main arguments against our concurrence included the following:

- The Director is responsible for implementing and reviewing the internal control responsibilities established by the Internal Control Act, not implementing the controls themselves. Further, in NYSDOT, the Internal Control Officer (the Enterprise Risk Management Bureau) does not establish specific procedures and requirements for the Department – issuing procedures is a responsibility of agency managers. The Director assists managers by facilitating the identification and evaluation of risks and coaching management in responding to risks which, according to the IIA, are totally appropriate roles for the CAE to perform. NYSDOT has established an integrated approach to risk management whereby the Internal Control Officer is a leader and facilitator, serving as a coordinator – not a manager – of risks. Throughout the NYSDOT each manager has responsibility for identifying, assessing, and appropriately responding to (e.g. controlling) risks within his or her own area.
- Other than simply stating that the internal audit function and the internal control officer function should be separated, OSC did not evaluate whether any impairments actually existed at NYSDOT. Furthermore, this relationship was fully disclosed in NYSDOT's annual internal control certification and summary report.

We also discussed this matter further with NYSDOT officials, who told us that the Audit and Civil Rights Division interprets the Internal Control Act in a manner consistent with IIA standards. In particular, NYSDOT officials stated that they have interpreted the act to require that their Enterprise Risk Management Bureau provide only guidance and advice to program managers on internal controls and that the program managers are primarily responsible for implementing internal control programs, conducting reviews to assure adherence to controls, and analyzing and improving control systems, including providing assurance certifications that the Enterprise Risk Management Bureau does not review. In addition, the officials said that the Enterprise Risk Management Bureau's role as an advisor on internal control issues is consistent with IIA standards.

We agree in theory that if the Director merely advises the program managers on internal controls there is not a conflict of interest with her internal audit role. However, the Director has the legal authority to do more than advise. We note that according to B-350, the internal control officer should be an individual with sufficient authority to act on behalf of the agency head to implement and review the agency's internal control program. We believe that because the NYSDOT internal control officer has the legal authority to implement the internal control program on behalf of the Commissioner, even if that authority is not fully exercised under the Audit and Civil Rights Division's interpretation of the underlying statute, there is the appearance of a conflict of interest. Further, the NYSDOT officials told us that the Internal Audit Bureau does not audit the internal control programs that program managers are responsible for implementing. However, we found that the Internal Audit Bureau reviews program internal controls as part of other audits. Also, if the Internal Audit Bureau avoids auditing matters on which the Enterprise Risk Management Bureau personnel provided guidance and advice, there is a clear impairment to the internal auditor's objectivity. Finally, we note that OSC did not assert that impairments took place. OSC simply states that the organization has an inherent conflict of interest with this structure. GAO agrees that this structure creates an inherent conflict of interest that potentially weakens the integrity of the organization's oversight. Therefore, we continue to support OSC's recommendation.

FTA Concluded That the 50 Percent Obligation Requirement Was Met for New York and Urbanized Areas in the State, but Program Impact Has Been Limited by Slow Federal Grant Approval Process

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.²³ 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.²⁴ 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.²⁵ Under the Recovery Act, the maximum federal fund share for projects under the Transit Capital Assistance Program is 100 percent.²⁶

As they work through the state and regional transportation planning process, designated recipients of the apportioned funds—typically public transit agencies and metropolitan planning organizations (MPO)—develop a list of transit projects that project sponsors (typically transit agencies)

²³The 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.

²⁴Urbanized 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 than 50,000 people.

²⁵The 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.

²⁶The federal share under the existing formula grant program is generally 80 percent.

submit to FTA for Recovery Act funding.²⁷ 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.

Funds appropriated through the Transit Capital Assistance Program must be used in accordance with Recovery Act requirements, including the following:

- Fifty percent of Recovery Act funds apportioned to urbanized areas or states are to be obligated within 180 days of apportionment (before Sept. 1, 2009) and the remaining apportioned funds are to be obligated within 1 year. 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.²⁸
- 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, 2010.²⁹ This requirement applies only to state

²⁷Designated 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).

²⁸Pub. L. No. 111-5, 123 Stat. 115, 209 (Feb. 17, 2009).

²⁹Pub. L. No. 111-5, § 1201(a), 123 Stat. 115, 212 (Feb. 17, 2009).

funding for transportation projects. The Department of Transportation will treat this maintenance-of-effort requirement through one consolidated certification from the governor, which must identify state funding for all transportation projects.

- Project sponsors must submit periodic reports, as required under the maintenance-of-effort for transportation projects section (§1201(c) of the Recovery Act) on the amount of federal funds appropriated, allocated obligated and outlayed; the number of projects put out to bid, awarded, or work has begun or 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.

Of the over \$1.3 billion of Recovery Act Transit Capital Assistance funding that was apportioned to the state of New York or to urbanized areas (UZA) that include localities in New York, 98 percent was apportioned through the urbanized area formula program. Under the Recovery Act, New York's only large UZA (called the New York—Newark, NY—New Jersey—Connecticut UZA) was apportioned nearly \$1.2 billion in Transit Capital Assistance funding. An additional \$123.9 million was apportioned to medium-sized UZAs with populations ranging from 200,000 to 999,999, and nearly \$13.7 million was apportioned to the state of New York for small UZAs with populations of 50,000 to 199,999. In addition, the state was apportioned \$26.25 million for transit projects in nonurbanized areas. The majority of Transit Capital Assistance funds are administered by transit agencies who are designated recipients of this funding. In New York, some of the UZAs cross state borders into Connecticut, New Jersey, and Pennsylvania.³⁰ These states have long-standing formulas that they use to divide the apportionments. For UZAs that contain multiple transit agencies within the state, the MPOs work with the transit agencies to develop a split agreement which spells out how the apportionment will be divided among the various transit agencies in the UZA. NYSDOT administers a small portion of the federal transit aid for projects in smaller communities and rural areas of the state.

³⁰The jurisdiction of some urbanized areas within a state may cross into at least one other state. Therefore, some urbanized areas are included in multiple state totals.

FTA Concluded That the 50 Percent Obligation Requirement Was Met

In March 2009, FTA apportioned over \$1.3 billion in Transit Capital Assistance Recovery Act funds to the state of New York and urbanized areas in the state for transit projects. As of September 1, 2009, FTA concluded that the 50 percent obligation requirement had been met for New York and urbanized areas located in the state.³¹

New York Transit Agencies Are Using Transit Capital Assistance Apportionments for Fleet Improvements and Capital Construction

New York transit agencies submitted grant applications to FTA to use Recovery Act Transit Capital Assistance funds to finance a variety of fleet enhancement and capital projects that would otherwise not have been funded this year. These include rehabilitating or reconstructing existing rail and bus buildings, improving rail yards, replacing aging bus fleets with clean natural gas buses, and purchasing hybrid buses. MTA sought Recovery Act Transit Capital Assistance funding for a number of station, infrastructure, and equipment capital rehabilitation projects bundled under one grant application worth \$393.3 million and funding for a large station reconstruction project under another grant application worth \$266.9 million—for a total of \$660.2 million.³² MTA's smaller Recovery Act Transit Capital Assistance projects include rehabilitating or reconstructing existing rail and bus buildings, creating new locker/rest facilities for transit agency personnel, and installing improved audio systems for the hearing impaired. The large capital project is for improvements at the Fulton Street Transit Center that will ultimately facilitate access and provide intermodal connectivity, among other things. Although MTA's first grant was not awarded until August 13, 2009, according to officials, MTA used preaward authority to begin Recovery Act projects in advance of FTA's obligation of the funds. According to officials, as of August 31, 2009, MTA has entered into contracts with a total value of \$598.8 million for projects funded with Transit Capital Assistance Program funds and expects to have most projects completed by the end of August 2013.

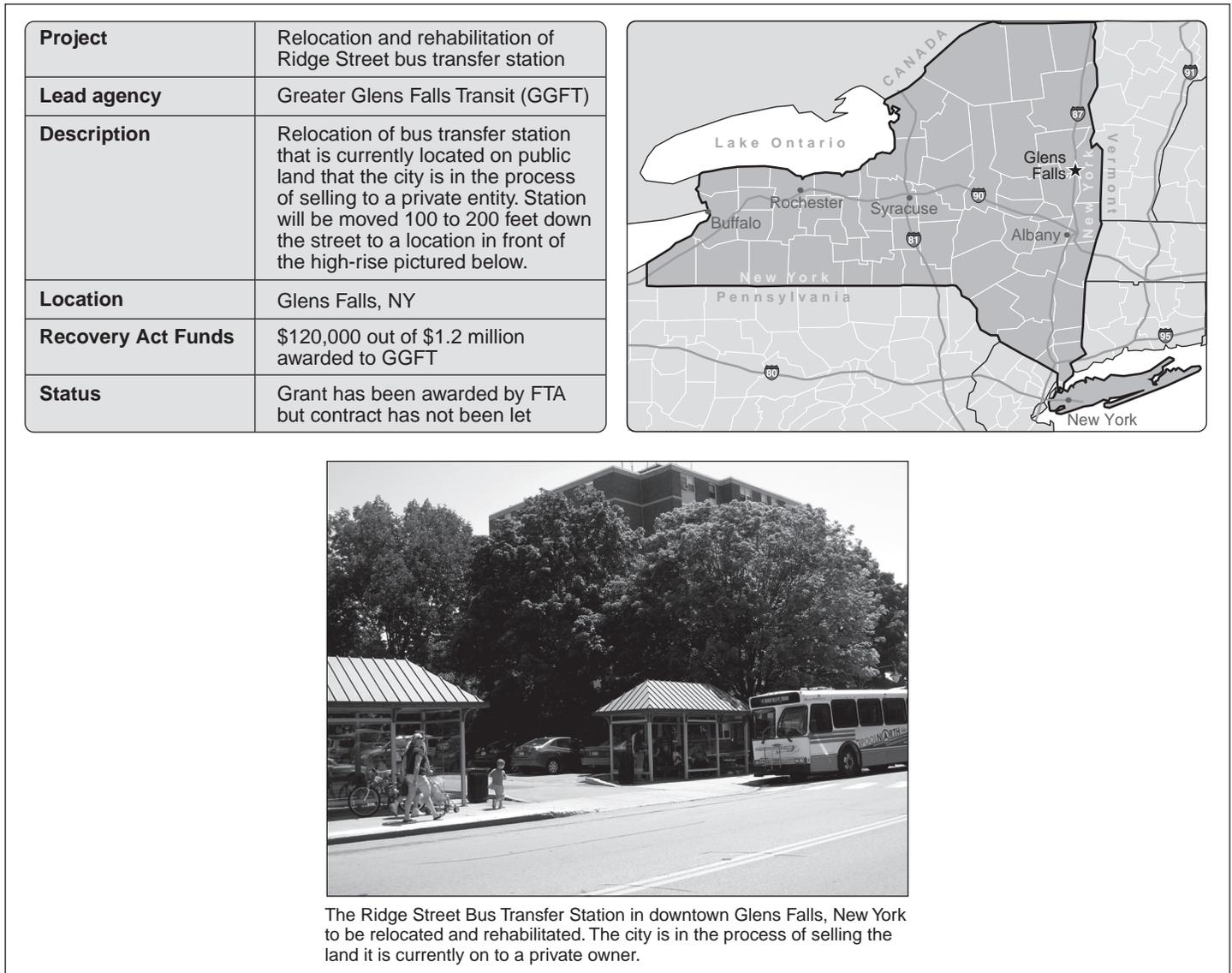
We also visited Greater Glens Falls Transit (GGFT), because it was both a smaller transit agency and among the first agencies in New York to have its Transit Capital Assistance Program grant approved by FTA. GGFT is

³¹For the Transit Capital Assistance Program, DOT has interpreted the term obligation of funds to mean the federal government's commitment to pay for the federal share of the project. This commitment occurs at the time the federal government signs a grant agreement.

³²Combining several projects into one application can expedite the approval process and provide flexibility to grant recipients to move excess funds from one project to another with FTA approval.

part of a UZA with a population of 50,000 to 199,000 and serves 11 municipalities in upstate New York. It received a grant for projects worth \$1.2 million to purchase a hybrid expansion vehicle and for various capital projects, including repairing an in-ground lift, upgrading the computer and the public information systems, and relocating and rehabilitating the Ridge Street bus transfer station in downtown Glens Falls. For a photo of the existing transfer station and additional description of this project, see figure 3.

Figure 3: GGFT Ridge Street Bus Transfer Station Project



Sources: GAO (photographs); and Map Resources (map).

As of August 31, 2009, a GGFT official reported that they had awarded contracts for projects with a total value of \$623,767 that included contracts for a hybrid bus, a service truck, and preventive maintenance. GGFT expects the Recovery Act projects to be completed by the end of 2010. See table 3 for a summary of all GGFT Transit Capital Assistance Recovery Act projects.

Table 3: GGFT Transit Capital Assistance Projects

Project name	Project description	Estimated cost
Buy 30-foot bus for expansion	Buy 30-foot hybrid bus to provide needed additional capacity and help demonstrate the benefits of hybrid propulsion technology in a small fleet/small urban environment.	\$575,000
Preventive maintenance	Cover capital preventive maintenance expenses for calendar years 2009 and 2010.	200,000
Rehabilitate/renovate bus passenger shelters	Redesign and relocate two passenger shelters and information kiosk located on Ridge St. in downtown Glens Falls. Also add 2 shelters in other areas. Replace electronic display, and install additional lighting and benches where needed at high use stops.	170,000
Acquire shop equipment	Rehabilitate/replace existing GGFT in-ground vehicle lift and purchase new shop equipment.	150,000
Acquire miscellaneous support equipment	GGFT's current telephone, tele-information system, and computer systems are outdated and need to be replaced. Existing telephone information system is inadequate to customer and service demands.	100,000
Acquire support vehicles	Replace 2000 pick-up truck and acquire new plow and salt spreader for maintenance of transit facility in winter months.	30,000
Project administration	Funds used to administer the projects.	17,494
Total		\$1,242,494

Source: GAO analysis based on GGFT data.

According to NYSDOT, almost 93 percent of the non-MTA Recovery Act Transit Capital Assistance program funding obligated by FTA for the urbanized and nonurbanized areas in New York have been for bus purchases. Specifically, \$134 million of the \$144 million FTA obligated for New York for non-MTA transit agencies as of September 1, 2009, is being used for projects such as buses, including \$15.7 million for replacement buses for the Capital District Transportation Authority (CDTA).

NYSDOT and transit agency officials we spoke with told us that they used several key criteria for selecting transit projects to be funded under the Recovery Act. At the state level, NYSDOT sought new projects that were "shovel-ready" or existing projects that were out of funding or could be accelerated with Recovery Act funding. Transit agencies used a variety of criteria, including evaluating projects to see whether they were needed to keep the system in a state of good repair; may save or reduce the amount of local tax dollars spent on public transit services, thereby reducing the need for local tax increases; or may add or sustain jobs. According to NYSDOT, many state and local transit officials told the agency that they selected a large percentage of projects for bus replacement to improve reliability and lower maintenance costs. Transit agencies, in conjunction

with the MPO in the region, complied with the public review and outreach requirements by posting projects for public comment and holding public hearings.

Transit Agencies Will Use Existing Internal Control Mechanisms with Some Planned Improvements to Oversee Recovery Act Grants

Because transit authorities throughout the state rely on FTA grants, they must comply with existing FTA oversight requirements pertaining to the use of these funds. FTA evaluates grantees' adherence to grant administration requirements through a comprehensive oversight program. FTA's two major oversight mechanisms are Triennial Reviews of grantees receiving Section 5307 urbanized area formula grants and State Management Reviews of grantees receiving Section 5311 nonurbanized area formula grants. The Triennial Review includes a review of the grantee's compliance in 23 areas that include financial management, technical, and reporting requirements. Thus, NYSDOT, MTA, and GGFT are using existing systems that have been reviewed by FTA and enhanced, if necessary, per FTA requirements to track Recovery Act Transit Capital Assistance grants and oversee the related contracts. They have also made or plan to make some enhancements to these processes as a result of past reviews or audits or a desire to provide increased oversight over Recovery Act funds.

Since MTA is responsible for overseeing the most Recovery Act Transit Capital Assistance funds of any transit agency in the state of New York, we focused on its processes. MTA is required to comply with the New York State Governmental Accountability, Audit, and Internal Control Act. In accordance with that act, MTA annually prepares an internal control certification and summary, which, among other things, describes MTA's internal control program including the identification of high-risk activities and control weaknesses. The summary also describes the corrective actions MTA has undertaken to resolve those identified weaknesses. The risk-based approach takes into account recommendations from prior audit findings, MTA management reviews, and internal control testing. MTA facilitates monitoring by using a central database to track all audit recommendations and the status of corrective actions.

MTA's 2008 to 2009 internal control summary identified some significant deficiencies with regard to internal controls, including the lack of a robust Disadvantaged Minority/Women's Business Enterprise Program (DMWBE) contract tracking methodology in the Office of Civil Rights and an estimated 40 percent staffing shortage of New York City subway inspectors. MTA took corrective actions to resolve these deficiencies.

MTA has plans to increase monitoring for Recovery Act funded projects. MTA's internal audit department plans to audit all Recovery Act projects, when they would typically only audit a sample of the projects, and MTA officials believe they possess the necessary skills and resources to do so. In addition, MTA has an independent engineering consultant who will also monitor the projects. MTA officials said that it will perform more on-site visits to help ensure adequate monitoring of their Recovery Act projects. MTA is also coordinating with the MTA Office of the Inspector General (OIG), Department of Justice (DOJ), and DOT, to develop a special training program that will be targeted to key MTA staff. The training program is currently planned for September or October 2009 and will focus on complying with the Recovery Act and fraud awareness.

MTA also is subject to federal oversight. FTA holds quarterly capital program oversight meetings on every project with MTA, and MTA submits quarterly project reports to FTA. The DOT OIG conducts periodic reviews of MTA. According to an MTA OIG official, the DOT OIG is planning to increase its risk assessment and control environment reviews for Recovery Act oversight.

GGFT is also required to comply with the FTA review and reporting requirements and with the OMB Single Audit requirement. FTA's fiscal year 2007 Triennial Review of GGFT found deficiencies in three areas—Satisfactory Continuing Control,³³ Disadvantaged Business Enterprise

³³Satisfactory Continuing Control compliance requires grantees to maintain control over real property, facilities, and equipment and ensure they are used in transit service. GGFT was found to be deficient, because its contingency fleet plan included vehicles that had been sold.

(DBE),³⁴ and Drug and Alcohol.³⁵ Advisory comments were made in the Safety and Security area. FTA determined that GGFT took sufficient corrective actions to close the deficiencies. The 2007 Single Audit report for GGFT provided an unqualified opinion on its financial statements and on each major program, including the FTA Operating Assistance and FTA Capital Assistance programs. No significant deficiencies were identified related to the audit of major federal awards or audit of financial statements.

New York Transit Agencies Are Developing Plans to Implement Reporting Requirements and Will Rely on DOT to Calculate Indirect Jobs Creation

While transit agencies are generally prepared to meet the various reporting requirements using existing grant reporting mechanisms, the timing of FTA's Recovery Act reporting guidance and its slight difference from the federal Office of Management and Budget (OMB) requirements have created some problems. When we met with NYSDOT, GGFT, and the Adirondack/Glens Falls Transportation Council—which is the MPO for Glens Falls and is reporting for GGFT—the FTA guidance had not yet been posted, and both NYSDOT and Adirondack/Glens Falls Transportation Council were under the impression that FTA would follow the FHWA reporting guidance and had developed plans accordingly. This did not turn out to be the case. The main difference between their employment reporting requirements is that FTA requires recipients to report on a grant basis, while FHWA requires recipients to report on a project basis. In addition, FHWA requires reporting on more types of data. For example, FTA requires recipients to report the total number of hours associated with direct jobs attributed to the grant that will be paid by Recovery Act funds, whether worked by the recipient's staff, contractors, or

³⁴DBE compliance requires a grantee to comply with the DOT's policy that DBEs are ensured nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs; help remove barriers to the participation of DBEs; and assist the development of firms that can compete successfully in the marketplace outside the DBE program. GGFT was found to be deficient because procurement files for trolley buses reviewed during the site visit did not include the required Transit Vehicle Manufacturer DBE certification.

³⁵Drug and Alcohol compliance requires grantees to have a drug and alcohol testing program in place for all safety-sensitive employees. GGFT was found to be deficient because GGFT had hired 15 local school bus operators to operate trolley service during the summer and believed that the school bus operators' drug and alcohol testing program with the school district was sufficient. GGFT was not aware of the requirement to conduct a pre-employment test for these school bus drivers prior to allowing them to perform safety-sensitive work in accordance with FTA Drug and Alcohol regulations.

subcontractors. FHWA, on the other hand, requires recipients to report for each contractor or consultant on a project the number of project employees, the total number of hours those employees worked, and the total amount of wages paid.

For each Recovery Act project, MTA told us that its agencies will calculate employment data for their own staff and collect the required information from contractors. This is the first time MTA has asked contractors to count jobs. To do so, according to officials, MTA included language in Recovery Act contracts requiring contractors to report the number of full-time equivalent employees (FTEs) that are on a Recovery Act job to comply with OMB's requirements. However, MTA reported that the FTA guidance requires recipients to report work hours. On September 10, 2009, MTA reported that it was developing a reporting system to capture both in house and third party work hours for the purposes of federal reporting.

NYS DOT and GGFT also had questions concerning how to calculate direct jobs created from equipment purchases made with Recovery Act funding versus how to count jobs created from Recovery Act funded construction projects. MTA also had concerns about calculating FTEs from work hours. An MTA official said MTA will need to determine the "normal" hours worked in a year for each job title and divide the "normal" number of hours by four to determine the quarterly hours worked.

MTA expects to have some jobs data to report in October. However, NYS DOT reported that the impact of Recovery Act funds has been limited by the time it took to obligate the funds. As such, NYS DOT said that many transit agencies might not have contracts awarded by September 30, 2009, and, therefore, will not have associated jobs to report. Also, after the recipients get their money, it can take up to a year to get delivery of certain items, such as buses.

Transit agencies have limited plans to track performance measures other than those required for federal reporting. GGFT officials told us that they also planned to track local tax dollars saved as a performance measure, but that other metrics to measure improvements to the quality of service and maintenance of a state of good repair are more difficult to identify. MTA did not have plans to track additional performance measures beyond what was being required of them to report. However, MTA was open to considering reporting additional performance measures, such as the number of stations rehabilitated and customer satisfaction before and after the rehabilitation.

The Department of Energy Has Approved New York’s Weatherization Plan, but Implementation Has Been Delayed by Davis-Bacon Act Concerns

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 all but two of the weatherization plans 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 that 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 by the Davis-Bacon Act.³⁶ 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” about labor rates for weatherization work in each of the 50 states.³⁷ The department completed

³⁶The Weatherization Assistance Program funded through annual appropriations is not subject to the Davis-Bacon Act. *See* Pub. L. No. 111-5, § 1606, 123 Stat. 115, 303 (Feb. 17, 2009).

³⁷The five types of “interested parties” are state weatherization agencies, local community action agencies, unions, contractors, and congressional offices.

establishing prevailing wage rates in all the 50 states and the District of Columbia by September 3, 2009.

DOE officials approved New York's weatherization plan on June 26, 2009, and provided an additional 40 percent of the state's allocation for the Weatherization Assistance Program funded by the Recovery Act. This brought the total funds provided New York to \$197.3 million. According to officials, in anticipation of DOE's approval, the New York State Division of Housing and Community Renewal (DHCR) sent out contract application packages to the 64 subgrantees that implement the program, so they could apply for funding under the Recovery Act. According to officials, as of August 31, 2009, nine contract applications with the subgrantees have been approved by the state, obligating \$27.5 million of Recovery Act funds, though none has been spent. Meanwhile, according to officials, several other contract applications have been received and are currently being reviewed. DHCR expects to have additional contract applications approved shortly and all of the contract applications approved by October 15, 2009.

A major issue, according to program officials, in the submission of contracts by the subgrantees to DHCR for approval has been the uncertainty regarding the impact of the Davis-Bacon Act on Recovery Act funding for the Weatherization Assistance Program. The Davis-Bacon Act requirements do not apply to the annual weatherization program funded by grant awards from DOE and the Low Income Home Energy Assistance Program. Until Labor posted prevailing wage rates on September 3rd, the subgrantees had to estimate what these rates would be in their preparation of their budgets for their proposed use of Recovery Act funds in the weatherization program. DHCR has allowed the subgrantees the option of submitting contracts now and amending them later when the wage rates were established or waiting until the rates were established before submitting their contracts for review and approval.

In preparation for establishing wage rates for New York, Labor sent wage surveys to each of the 64 subgrantees conducting weatherization work in the state. These surveys were due back on July 31, 2009. DHCR provided guidance to the subgrantees for completing this survey. According to DHCR, almost all of the subgrantees submitted the survey.

The impact of Davis-Bacon on the Weatherization Assistance Program in New York goes beyond the establishment of prevailing wage rates. Because the only weatherization activities subject to Davis Bacon are those funded by the Recovery Act, subgrantees have to determine a

strategy of how to incorporate it into their overall program. One strategy that subgrantees can use is to subcontract all weatherization work funded by the Recovery Act in order to limit the impact of Davis-Bacon to just those subcontractors. Other subgrantees that use their own employees to do most of their weatherization work are hoping that the wage rates established by Davis-Bacon will be similar to what they pay now. It would be difficult for them to pay different wages to their workers doing the same work based on whether or not the weatherization work was funded by the Recovery Act or some other source, according to program officials.

If the prevailing wage rates established are significantly higher than the rates currently being paid, DHCR officials are concerned that the number of units weatherized and workers hired to do the work may be fewer than what would have occurred if the Davis-Bacon Act had not been applied to weatherization projects funded by the Recovery Act. DHCR officials were hopeful that the wage rates established for many counties will be similar to those already paid by the subgrantees who, in many areas, are the predominant supplier of weatherization services. Thus, the impact of Davis-Bacon on the program would be minimal.

Further, the administrative tasks required under Davis-Bacon, such as wage verification, visits to job sites, and weekly payrolls, are new to the subgrantees and represent a cost not previously experienced by the program. DHCR coordinated training sessions on September 2nd in Syracuse and September 10th in New York City on the proper administration of Davis-Bacon requirements. All subgrantees were encouraged to attend one of these sessions that were presented by Labor.

According to DHCR officials, another potential programmatic impact of Davis-Bacon is that it might reduce the weatherization activities that are eligible for funding. To be eligible for funding under the Weatherization Assistance Program, an activity must generally achieve a Savings to Investment Ratio (SIR) of at least one. That is, one dollar invested, one dollar saved. DHCR officials are concerned that, if wage rates rise significantly due to Davis-Bacon, some activities such as window or door replacement may no longer be able to achieve the required SIR figure. This would preclude them from being completed as part of the weatherization program.

Though no Recovery Act funds have been spent to date, DHCR said that the subgrantees have been expanding their operational capabilities through such actions as hiring and training additional staff and purchasing vans and trucks. The subgrantees have been able to do this by using their

allocation of annual weatherization funding provided by DOE and the Low Income Home Energy Assistance Program in anticipation of Recovery Act funds being available shortly. Likewise, DHCR has been using two contractors to provide ongoing training sessions for subgrantees' workers. DHCR is using funds from its normal weatherization program to fund all of its activities to date, including those related to the Recovery Act weatherization program.

State Officials Plan to Use a Variety of Accountability Approaches to Monitor the Use of Recovery Act Weatherization Funds

DHCR officials stressed that an extensive fiscal and program monitoring system was in place for the weatherization program prior to the passage of the Recovery Act. Though the Recovery Act greatly increased the funding available for the program, the state plans to use its current program infrastructure to absorb this funding increase. It expects that its existing network of subgrantees will be able to expand the program to accommodate the increase in funding provided by the Recovery Act through the expansion of their in-house capabilities, employing additional subcontractors, or a combination of these two approaches. DHCR anticipates that some of the subgrantees will demonstrate a greater ability to expand production more than others. For that reason, DHCR set aside \$65 million from its allocation of Recovery Act funds to direct additional funding to those subgrantees most able to make use of it in weatherizing additional housing units.

DHCR uses a few mechanisms to perform oversight. DHCR conducts an annual review of each subgrantee and program inspectors and fiscal staff conduct 9 to 12 field visits to each agency. DHCR also reviews the Single Audits conducted of each subgrantee in the weatherization program and requires corrective action plans for any findings detected by these audits. These corrective action plans are monitored by DHCR to ensure that any issues are addressed. At the state level, there are no open findings from the state's Single Audit related to the Weatherization Assistance Program.

DHCR officials provide technical assistance to address any problems discovered based on their review of a subgrantee's performance. They do not characterize subgrantees as high risk or low risk. Based on their experience, DHCR officials said that the performance of subgrantees can change dramatically in a short period of time for various reasons, including the turnover of key personnel. Therefore, they maintain a high level of monitoring for all of the subgrantees in its weatherization program.

In addition to its normal monitoring process, DHCR has established a Weatherization Assistance Program database that allows DHCR to monitor monthly production goals against actual work completed. When a contract with a subgrantee funded by the Recovery Act is awarded, DHCR advances 25 percent of the contract award to the subgrantee. Further draw downs of Recovery Act funds will only be permitted based on the actual work completed. In addition, according to agency officials, the subgrantees are required by DHCR to ensure that Recovery Act funds be clearly separated from the regular weatherization funding that they receive. For example, subgrantees are required to have a separate bank account for Recovery Act funds. Further, all work done using Recovery Act funds must be clearly identified and separate from work funded from other sources. Recovery Act funds cannot be co-mingled with other funding.

DHCR has indicated that it intends to use its share of Recovery Act funds earmarked for administration to increase the resources available for on-site technical assistance provided to subgrantees, as well as increase the number of staff available for on-site monitoring of the program. Particular emphasis will be placed on both assisting and monitoring the implementation of Davis-Bacon by the subgrantees.

Finally, to facilitate procurement of bulk weatherization materials for the program, the New York State Weatherization Directors' Association annually solicits suppliers to establish a statewide price schedule for various weatherization materials. According to officials, this solicitation is conducted in accordance with state procurement guidelines and allows subgrantees to purchase weatherization materials in bulk at statewide negotiated prices. According to DHCR, the Buy American provision of the Recovery Act should not have a major impact on this procurement effort.

State Officials Are Preparing to Measure the Impact of Recovery Act Weatherization Funds and to Meet Its Reporting Requirements

DHCR intends to use DOE performance measures to determine the impact of Recovery Act weatherization funds in their state. For example, DHCR will use DOE methodology to measure the energy savings achieved by the use of Recovery Act funds in the weatherization program. With regard to job creation and retention, DHCR is waiting for guidance from DOE on how to measure and report these figures. It intends to follow that guidance in reporting on job creation and retention. Similarly, DHCR will comply with any other DOE guidance for measuring the impact of Recovery Act funds, as well as provide training to the subgrantees regarding compliance with any DOE requirements.

New York is considered the prime recipient, as defined by OMB, for weatherization funds provided by the Recovery Act, and DHCR is responsible for administering the weatherization program for the state. The 64 subgrantees that operate the weatherization program for DHCR are considered subrecipients. DHCR intends to collect all data required by DOE for reporting purposes from the 64 subgrantees and report these data for them. DHCR officials said that they already collect all of the information that they expect DOE to require except figures for job creation and retention. In addition, DHCR officials intend to perform quality reviews of the data submitted by the subgrantees to detect and correct any omissions or errors in the data being reported by the subrecipients. Once DOE has issued final guidance to DHCR on the reporting requirements under the Recovery Act, addressing such outstanding issues as job creation and retention, DHCR will issue guidance to its subgrantees.

New York Exceeded Its Goal for the Number of Youth Served in the WIA Program This Summer, Despite Facing Challenges

The Recovery Act provides an additional \$1.2 billion in funds for the Workforce Investment Act (WIA) Youth program, including summer employment. Administered by the Department of Labor (Labor), the WIA Youth program is designed to provide low-income in-school and out-of-school youth 14 to 21 years old, who have additional barriers to success, with services that lead to educational achievement and successful employment, among other goals. Funds for the program are distributed to states based on a statutory formula; states, in turn, distribute at least 85 percent of the funds to local areas, reserving as much as 15 percent for statewide activities. The local areas, through their local workforce investment boards, have the flexibility to decide how they will use the funds to provide required services.

While the Recovery Act does not require all funds to be used for summer employment, in the conference report accompanying the bill that became the Recovery Act,³⁸ the conferees stated they were particularly interested in states using these funds to create summer employment opportunities for youth. While the WIA Youth program requires a summer employment component to be included in its year-round program, Labor has issued guidance indicating that local areas have the flexibility to implement stand-alone summer youth employment activities with Recovery Act

³⁸H.R. Rep. No. 111-16, at 448 (2009).

funds.³⁹ Local areas may design summer employment opportunities to include any set of allowable WIA Youth activities—such as tutoring and study skills training, occupational skills training, and supportive services—as long as it also includes a work experience component. A key goal of a summer employment program, according to Labor’s guidance, is to provide participants with the opportunity to (1) experience the rigors, demands, rewards, and sanctions associated with holding a job (2) learn work readiness skills on the job, and (3) acquire measurable communication, interpersonal, decision-making, and learning skills. Labor has also encouraged states and local areas to develop work experiences that introduce youth to opportunities in “green” educational and career pathways. Work experience may be provided at public sector, private sector, or nonprofit work sites. The work sites must meet safety guidelines, as well as federal and state wage laws.⁴⁰ Labor’s guidance requires that each state and local area conduct regular oversight and monitoring of the program to determine compliance with programmatic, accountability, and transparency provisions of the Recovery Act and Labor’s guidance. Each state’s plan must discuss specific provisions for conducting its monitoring and oversight requirements.

The Recovery Act made several changes to the WIA Youth program when youth are served using these funds. It extended eligibility through age 24 for youth receiving services funded by the act, and it made changes to the performance measures, requiring that only the measurement of work readiness gains will be required to assess the effectiveness of summer-only employment for youth served with Recovery Act funds. Labor’s guidance allows states and local areas to determine the methodology for measuring work readiness gains within certain parameters. States are required to report to Labor monthly on the number of youth participating and on the services provided, including the work readiness attainment rate and the summer employment completion rate. States must also meet quarterly performance and financial reporting requirements.

New York was awarded about \$71.5 million in Recovery Act WIA Youth funds. The New York State Department of Labor (NYSDOL), the agency responsible for overseeing the state’s WIA Youth Program, allocated \$60.8

³⁹Department of Labor, Training and Employment Guidance Letter No. 14-08 (Mar. 18, 2009).

⁴⁰Current federal wage law specifies a minimum wage of \$7.25 per hour. Where federal and state laws have different minimum wage rates, the higher rate applies.

million (85 percent of the total WIA Youth Recovery Act funds) to 33 local workforce investment areas (LWIA) within the state. NYSDOL used \$3.35 million of their 15 percent WIA Youth state set-aside funds to fund the State Parks' Conservation Corps Initiative. According to a local official, the state encouraged LWIAs to try to spend all of their funding as soon as possible to stimulate the economy. State officials estimated that as of August 31, 2009, \$34.6 million was spent by the LWIAs. NYSDOL established a goal of serving about 23,600 youths in WIA Youth summer employment programs; it reported that it exceeded that goal and placed an estimated 24,208 youths in summer employment, as of August 15, 2009. According to Labor data as of July 31, 2009, a majority of these were youth 14 to 18 years old. Of all participants, 27 percent were out-of-school youth and less than one percent were veterans (see table 4). We visited Oneida County Workforce Development⁴¹—the government entity that implements the WIA Youth program in Oneida County—and two of their summer job sites and two employers.⁴² The county served approximately 230 youth as of August 31 and will place another 15 in jobs, almost reaching its target of 250 youth participants.

Table 4: Demographics of New York State WIA Summer Youth Employment Participants as of July 31, 2009

Category	Number of youth	Percent of all youth in summer employment
Youth 14 to 18 years old	15,114	71
Youth 19 to 21 years old	4,730	22
Youth 22 to 24 years old	1,531	7
Total	21,375	100

Source: Labor data based on data reported by the states.

⁴¹Oneida County Workforce Development is part of Working Solutions, the Workforce Investment Board that serves Herkimer, Madison, and Oneida Counties.

⁴²Scheduling conflicts with other federal and state auditors limited our ability to visit our second planned site visit, the New York City workforce development office.

Oneida County Found Solutions to Challenges It Faced in Quickly Expanding Its WIA Youth Program and Now Aims to Retain Older Youth in the Workforce

In our previous bimonthly report, local officials cited challenges regarding youth eligibility, adequate supervision, and transportation for youth. Oneida County staff found it more difficult this year to determine the eligibility of applicants for the WIA Youth program than in previous years because of the inclusion of older youth. Officials said that older youth that are not employed or in school often do not have documentation of their identity, such as a birth certificate or social security card, their household income, or their citizenship. Oneida County hired four employees from May to December 2009 to assist the applicants with documentation of their eligibility. Officials overcame such challenges as finding meaningful work opportunities with adequate supervision and transportation for youth to job sites by contacting local employers with existing relationships with Oneida County Workforce Development and placing youth in jobs within a mile of their homes. In addition, a local workforce official said that Oneida County has managed stand-alone summer youth employment programs funded by other sources in recent years and its familiarity with the process allowed it to expand the program quickly.

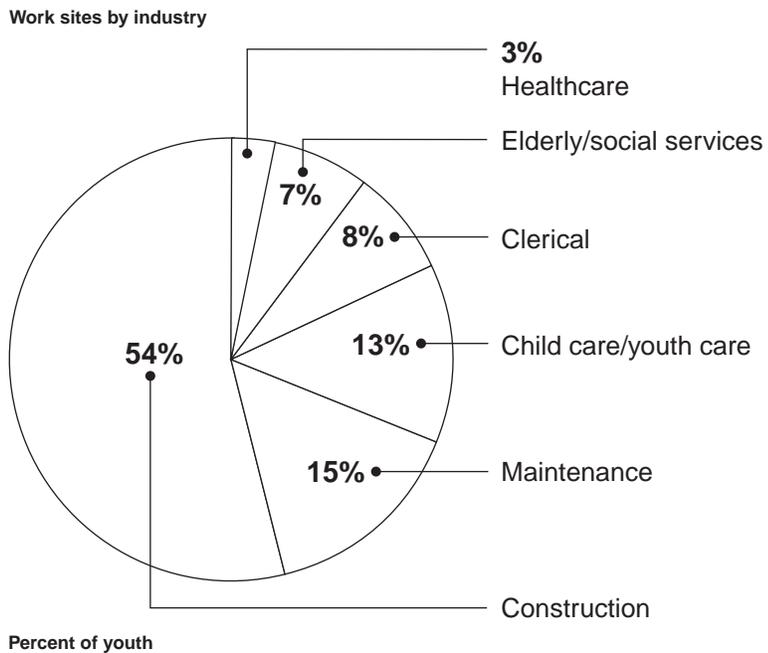
During our visit, Oneida County workforce officials said that their current challenge is retaining older youth, ages 19 to 24, in the workforce or in pursuing some form of education after the summer program ends. An official said connections that older youth made with the workforce development community could be lost if youth do not have existing education or work plans when the program ends. Oneida County will engage the older youth from their summer youth employment program year-round by providing continued job counseling and giving them priority to enter a year-round workforce program that will begin this year. Individual work sites also encouraged year-round involvement by allowing summer participants access to a computer lab all year, providing tours to a local community college and Job Corps facility, and providing military enlistment information. Next year, Oneida County plans to offer summer youth employment opportunities for older youth with other funding sources if additional Recovery Act funds are not awarded.

Oneida County Aimed to Place Youth in Jobs within High-Demand Trades

Oneida County Workforce Development placed approximately 230 youth in 38 summer employment work sites using WIA Recovery Act funds, as of August 31, 2009. Approximately 75 percent of the youth were employed at public sector work sites, with the remaining 25 percent of youth at nonprofit work sites. (For more information on work sites, see fig. 4.) Officials placed an estimated 70 percent of the youth in jobs that included occupational skills training, much of it focused on the construction trade due to the demand for those skills. For example, youth rehabilitated

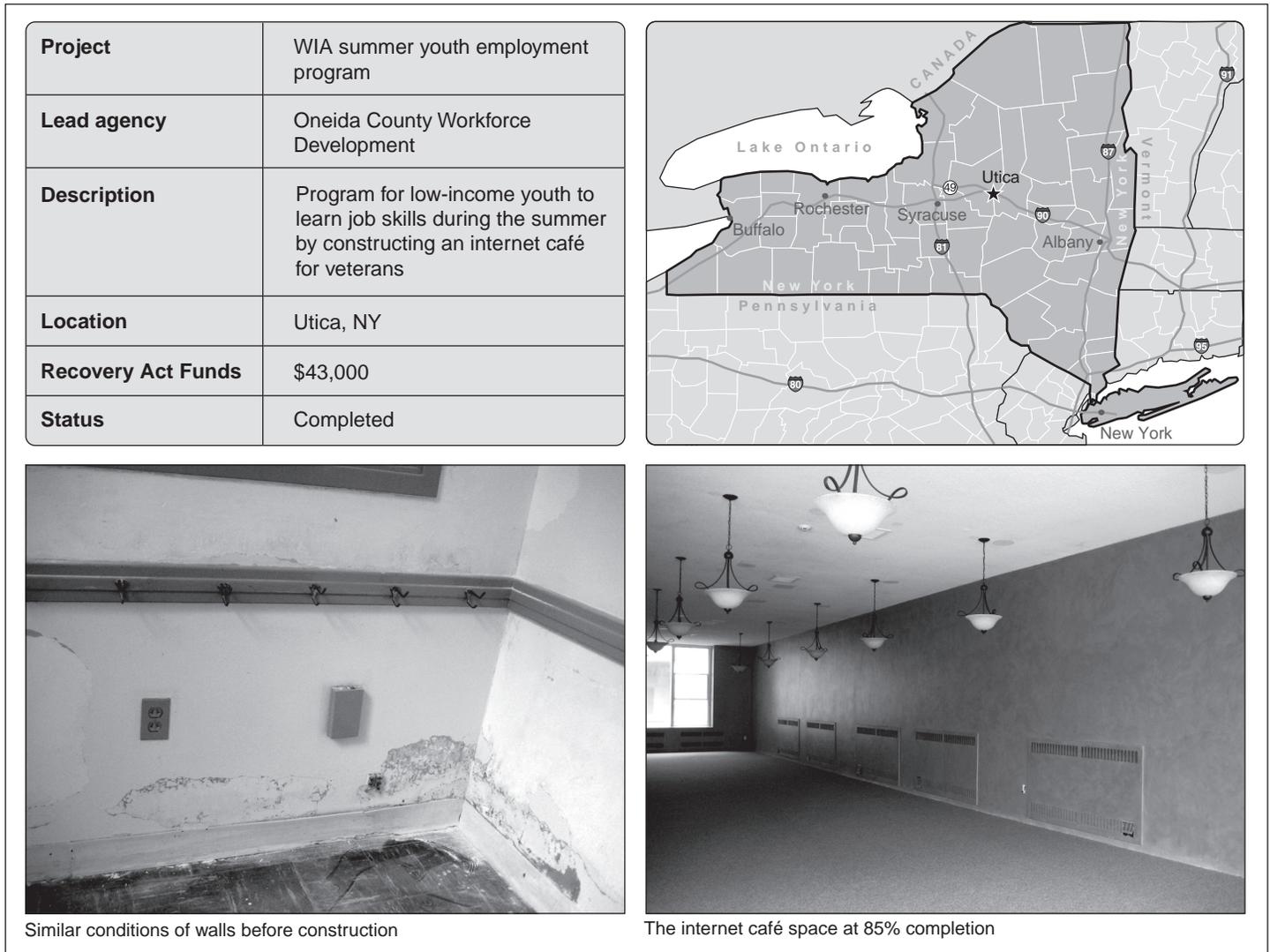
houses for the Utica Municipal Housing Authority. Officials said about 10 percent of the jobs were defined as “green” jobs and included some environmental and green technology. For example, at a work site we visited where youth constructed an Internet café for veterans, they learned about recycled construction materials and energy-efficient light bulbs (see fig. 5).

Figure 4: Percentage of Youth Working at Oneida County WIA Summer Youth Employment Work Sites as of August 31, 2009



Source: GAO analysis of Oneida County Workforce Development data.

Figure 5: Internet Café Constructed by WIA Summer Youth Participants



Sources: GAO (photographs); and Map Resources (map).

In addition, youth out of school could enroll in a General Education Diploma (GED) training course for 3 hours a day outside of their work hours and get paid for 2 of the 3 hours. Officials said that programs for 19 to 24-year-olds included more occupational training, while programs for 14 to 18-year-olds included more academic skills training due to, among other things, restrictions imposed by labor laws on working conditions for minors. Some youth were taught work-appropriate behavior and discussed their personal growth in the program with supervisors. The youth

constructing the Internet café were asked by their employer to sign a code of conduct that governed their behavior at the work site, requiring such things as respect to others, proper dress, and language. Another work site we visited employed mentally and physically handicapped youth between the ages of 17 and 19 at a community park. The youth were taught skills related to taking initiative, having ethics in the workplace, and using proper language.

Oneida County Uses Various Monitoring Techniques to Safeguard Its Summer Youth Employment Program and Measure Outcomes Related to Participation and Work Readiness

To increase monitoring of the Recovery Act-funded program, Oneida County hired four employees temporarily to manage the monitoring of this program from May to December 2009. They worked to ensure all eligibility documentation was obtained before youth were employed; regularly performed site visits to all work sites throughout the summer to visually inspect them for safety hazards and use of safety equipment; and checked that appropriate work activities and adequate supervision were provided. According to local officials, each employer entered into a contract with Oneida County Workforce Development, detailing the specific work experiences to be provided and including a statement that two staff members would always be on site. One vendor had a process to support correct attendance counts each day for youth employed in landscaping activities. In this case, youth signed in and signed out with a manager at one central location before and after going to their work site, which could change daily.

The county measures completion and drop-out rates, daily attendance, and work readiness determinations of youth before and after the program. As of August 31, the completion rate for Oneida County was 87.5 percent and the drop-out rate was 12.5 percent. Of those that completed the employment, 100 percent attained work readiness.

Table 5: Outcomes of Participants at Two Oneida County WIA Work Sites

	Site A: number (percent)	Site B: number (percent)
Completion		
Enrolled	30	20
Completed	26 (86.7)	18 (90)
Work readiness		
Achieved	26 (100)	18 (100)
Future plans		
Employed	5 (19)	5 (28)
Applied to community college	4 (15)	4 (22)
Have or plan to take GED test	4 (15)	8 (44)
Applying for job in trade	3 (12)	3 (17)
Applied for year-round youth employment program	0 (0)	14 (78)

Source: Utica Municipal Housing Authority and Mohawk Valley Community College.

In addition, each youth jointly completed an individual service plan with a job counselor that documents the youths' short-term and long-term goals, among other things. Some program managers revisited the individual service plan with the youth at the end of the program. Local officials said that the daily attendance of older youth, ages 19 to 24, was higher than they expected based on similar programs they had conducted in the past. One local work site official said some youth associate the program with President Obama and, as a result, feel an obligation to complete the program.

NYSDOL Plans to Conduct Initial Reviews of Each of the 33 LWIAs by November 2009 to Help Assure Compliance with Recovery Act Requirements

As the agency responsible for administering WIA for New York, NYSDOL has a monitoring system in place to oversee the WIA Youth program and the activities of the LWIAs. For example, NYSDOL auditors plan to visit each of the 33 LWIAs by November 2009. The state anticipates visiting 23 of the LWIAs by September 2009. These initial reviews will consist of verifying that each LWIA has a budget and spending plan in place for Recovery Act funds to help ensure that expenditures, accruals, and obligations are properly reported and documented. Each LWIA will be required to complete a questionnaire to assess their ability to comply with the requirements of the Recovery Act and to determine if additional technical assistance is required.

After these initial visits, NYSDOL intends to continue monitoring a sample of the LWIAs with an emphasis placed on those LWIAs determined to pose the highest risk. This monitoring, which will continue through the life of the Recovery Act, involves both a fiscal and programmatic review. Among the key programmatic elements reviewed are adherence to workforce safety guidelines, conformity with applicable federal and state laws in regards to both wage and work requirements, and the eligibility of participants. The review is also expected to determine whether local areas are using Recovery Act funds as a supplement to their regular funding and not supplanting those funds.

NYSDOL Is Preparing to Measure the Outcomes of Recovery Act Funding for the WIA Summer Youth Employment Program to Meet Its Reporting Requirements, but Does Not Anticipate Meeting the 10-Day Reporting Deadline

NYSDOL officials said that each of the LWIAs regularly reports to it and will continue to report on the achievement of work readiness by the participants in their summer youth employment program. LWIAs did request a waiver from Labor for reporting work readiness for ages 14 to 17 because they felt that the measure was less applicable to this age group, as their WIA experience tended to emphasize educational experiences. The waiver has not been approved yet, as of August 31. NYSDOL allows each LWIA to develop its own work readiness measure, but the state reviews it before it can be implemented. For long-range outcomes, NYSDOL will track outcomes for those youth that were enrolled in Recovery Act-funded WIA summer youth employment activities and later receive youth services supported by regular WIA funding.

For reporting purposes, NYSDOL officials said the agency is the prime recipient and each of its 33 LWIAs are subrecipients. NYSDOL officials said that they will gather the data from the LWIAs, consolidate it, and report it for them in order to comply with the Section 1512 reporting requirements of the Recovery Act. They already gather extensive data from the LWIAs through their Management Information System and they anticipate modifying it to obtain whatever data are needed to comply with anticipated requirements. NYSDOL noted that a major issue in complying with these requirements was the delay in obtaining guidance from Labor on what it will require. This guidance was not issued until August 14, 2009. This delay has hampered their effort to provide guidance to the LWIAs on what is expected from them. More detailed information on NYSDOL's planned monitoring of Recovery Act expenditures can be found in GAO's previous bimonthly report.

NYSDOL officials raised a concern about the 10-day reporting requirement deadline. They do not believe that any state with multiple work areas, such as New York with 33 LWIAs, will be able to comply with that requirement

unless estimates are used in place of actual numbers. If actual numbers are required, it will take 20 to 30 days after the end of the quarter to come up with reliable figures.

Public Housing Agencies Have Made Progress Utilizing Recovery Act Funds

The Public Housing Capital Fund provides formula-based grant funds directly to public housing agencies to improve the physical condition of their properties; to develop, finance, and modernize public housing developments; and to improve management.⁴³ 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 are made available, as well as projects that rehabilitate vacant units, or those already underway 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).

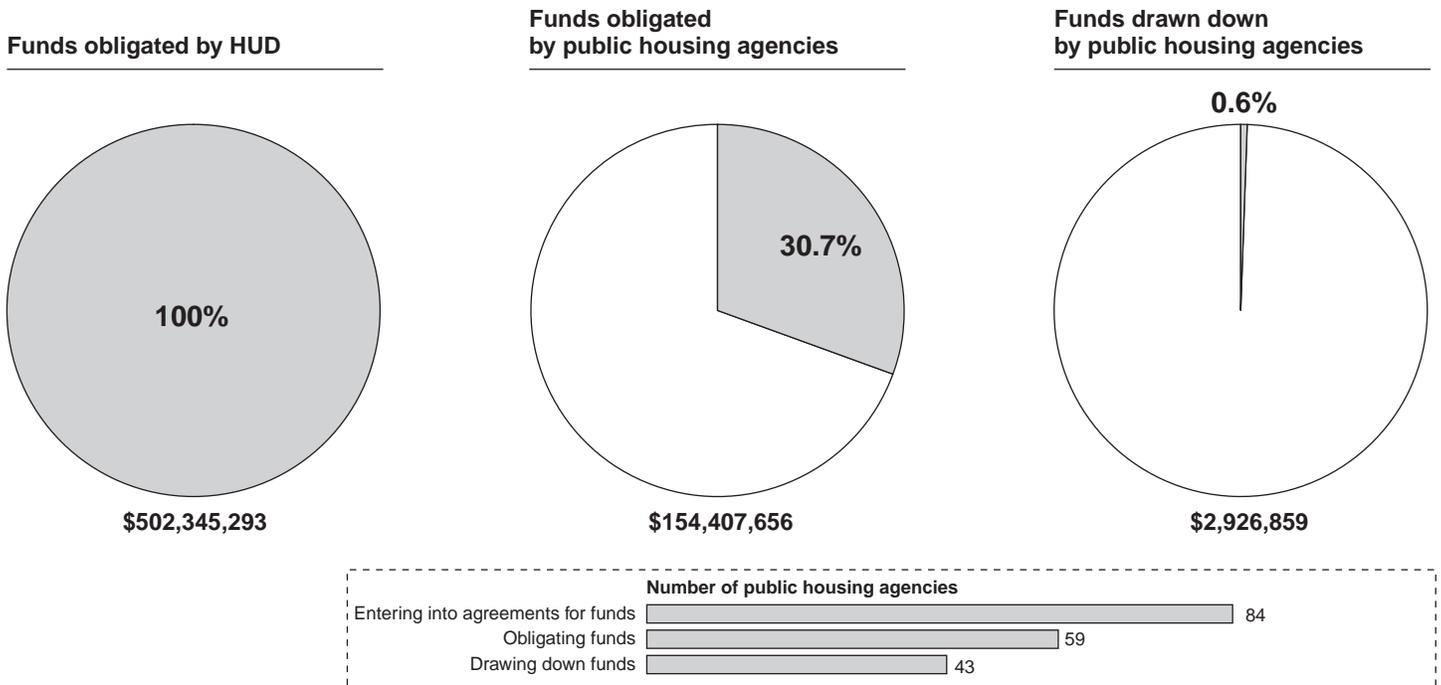
For the creation of energy-efficient communities, applications (which were due July 21, 2009) were to be rated and ranked according to criteria outlined in the Notice of Funding Availability. The last three categories

⁴³Public housing agencies receive money directly from the federal government (HUD). Funds awarded to the public housing agencies do not pass through the state budget.

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 York State has 84 public housing agencies that have received Recovery Act formula grant awards through the Public Housing Capital Fund, totaling \$502.3 million. Though we visited three housing agencies for our previous report, we did not visit any housing agencies for this report cycle. However, we continued to monitor the use of Recovery Act funding by the 84 public housing agencies in New York State. As of September 5, 2009, 59 of the state's 84 public housing agencies have obligated \$154.4 million, while 43 have expended \$2.9 million, as illustrated by figure 6.

Figure 6: Percentage of Public Housing Capital Funds Allocated by HUD That Have Been Obligated and Drawn Down in New York as of September 5, 2009



Source: GAO analysis of HUD data.

New York Is Focusing Guidance and Training Efforts on Meeting Reporting Requirements, but Concerns Remain

The New York Recovery Cabinet is taking several actions to help agencies comply with reporting requirements. For example, the Governor's Office has designated an individual to oversee Section 1512 Recovery Act recipient reporting requirements. In June 2009, this individual met with key officials in each agency, including finance, internal control, and program staff, to determine whether agency staff understood 1512 reporting requirements and were developing plans and procedures to help ensure that the requirements will be met in a timely manner. In addition, the New York State Division of the Budget contracted with a consultant to (1) assess the optimal approach (centralized, decentralized, or hybrid) to be used when reporting to the federal government; (2) assess state agencies' ability to meet Section 1512 reporting requirements; (3) provide assistance to agencies identified as high risks in complying with the reporting requirements, and (4) assess the state's ability to conduct centralized quality assurance procedures for accurate and complete reporting to the federal government. The Governor's Office identified 26 agencies or prime recipients, including MTA, that are responsible for complying with the reporting requirements.⁴⁴ To help ensure that the state meets its reporting requirements over the course of the Recovery Act, the state also issued a request for proposal for a Recovery Act consultant to serve on a longer-term basis in assisting state agencies.

The consultant has taken several actions to help New York meet its reporting requirements. The consultant prepared a survey that was sent to the 26 agencies, which are subject to the 1512 reporting requirements. The consultant was to analyze the results of the survey, work with the state to develop risk criteria, and assign a risk rating to each agency and program. This work was to be completed during the first week of July 2009.⁴⁵ Based on the state's estimate, 16 to 18 of the 26 agencies that are subject to Recovery Act reporting are considered high risk. For those agencies and programs assessed as high risk, the consultant is conducting follow-up workshops to (1) assess ability to report required data or data element

⁴⁴According to the Governor's Office, they have compiled an inventory of prime recipients that is maintained and updated as necessary by the Recovery Cabinet. Inventories of subrecipients are being maintained by the agency making the subaward or contract.

⁴⁵On August 18, 2009, we requested survey results, which include a list of agencies that are considered high risk. However, as of September 16, 2009, we still had not received the list.

capability,⁴⁶ (2) assist agencies in meeting reporting requirements, and (3) identify any gaps with the Recovery Act requirements. In addition, the state has used a consultant to provide training on reporting requirements to agencies and other recipients. For example, the consultant conducted an in-person training session on section 1512 reporting requirements for state personnel in June and a Webinar for non-state prime recipients or subrecipients (such as local governments, nonprofits, and contractors) on section 1512 reporting requirements in July.⁴⁷ Additional training via Web cast is scheduled for September 10th. The recovery czar said that 200 people attended the in-person training and 1,500 people attended the Webinar.

On August 6, 2009, the New York recovery czar issued guidance to state agencies about the collection of Recovery Act Section 1512 reporting data. New York has chosen the decentralized approach for reporting recipient information, so each state agency that is a prime recipient will report directly to www.federalreporting.gov. In addition, the guidance states that each agency will report both prime recipient and subrecipient data and that prime recipients will not delegate reporting responsibility to a subrecipient. For example, DHCR intends to collect all the data required by DOE for reporting purposes from the 64 subgrantees running the state's weatherization program and report it for them. In addition, prime recipients who receive funds directly from a federal agency, such as MTA, will also report directly to www.federalreporting.gov.

According to the Governor's Office, many of the state agencies have reporting plans in place, but they vary in their thoroughness of planning and capabilities. Officials in the Governor's Office said that they are less concerned about agencies such as NYSDOT and NYSDOL, which are very experienced with federal reporting requirements, than some of the programs or agencies, such as the weatherization program, that are relying on local community-based organizations to administer Recovery Act funds. Such local organizations may not have experience with federal reporting requirements.

⁴⁶The specific data elements to be reported by prime recipients or subrecipients includes award type, description, amount of Recovery Act funds expended to projects/activities, project status, number of jobs created and retained, and amount awarded to and received by subrecipients.

⁴⁷This Webcast is archived at www.recovery.ny.gov.

New York State is also taking measures to help ensure accurate and complete reporting of the state's data elements. For example, the consultant is assessing the state's 1512 data element capability and quality assurance capability. In addition, officials at the Governor's Office said that they will begin working on a formal process regarding data quality reviews and that it plans to involve the state's quality control office. According to the Governor's Office, on August 4, affected agencies were informed that they are required to incorporate quality control measures related to Section 1512 reporting in their internal control and audit plans. The Governor's Office said that those plans will be reviewed soon to determine whether agencies have complied with this requirement. It is also developing a standard checklist of items that should be reviewed in the 1512 data quality control process for distribution to the agencies and plans to designate an individual to provide central oversight of agency compliance with quality control standards.

According to the Governor's Office, subrecipients will provide information to state agencies, which will assess the quality of the data and identify any issues such as double counting. A state official said that some subrecipients may submit reports on paper, which will require agencies to perform data entry. The state official also said that agencies are prepared to make phone calls between September 30th and October 10th to get the reports from sub-recipients. According to Office of the State Comptroller (OSC) officials, New York State has good systems to capture financial data, but it does not have good systems to capture measurement or impact data, such as the number of jobs created. The financial information in the state's central accounting system will be used along with agency-specific reporting on individual projects/activities to meet Recovery Act quarterly reporting requirements. The state officials also said that the contract information for state agencies can be obtained in real-time from Open Book, which is managed by OSC.⁴⁸

The Governor's Office said that it is not certain about the extent of the program results it will report on October 10, 2009. In addition, an official from the Governor's Office said that some federal agencies are requiring recipients to track other performance measures. However, the official said that this can create confusion because OMB has separate requirements from the federal agency with whom a recipient normally interacts. For

⁴⁸Open Book does not include financial data for agencies, such as MTA, that receive funds directly from federal agencies.

example, while OMB requires recipients, such as MTA, to report the number of FTEs on a Recovery Act job, FTA guidance requires the same recipients to report work hours.

State Comments on This Summary

We provided the Governor of New York with a draft of this appendix on September 9, 2009. Representatives from the Governor's Office and the oversight agencies responded on or about September 11, 2009. In general, except for NYSDOT's disagreement with our concurrence with OSC's recommendation on the potential conflict of interest issue, they agreed with our draft and provided some clarifying information, which we incorporated. We addressed NYSDOT's comments in the respective section. The officials also provided technical suggestions that were incorporated, as appropriate.

GAO Contacts

Susan Fleming, (202) 512-4431, or flemings@gao.gov

Dave Maurer, (202) 512-9627, or maurerd@gao.gov

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