

New Jersey Economic Development Authority Board Governance Review

Final Report

Submitted to the NJEDA Board

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Prepared by



NJEDA Governance Review Draft Final Report

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Executive Summary

Project Objectives

Pursuant to its enabling act and other statutes assigning it administration of programs, the New Jersey Economic Development Authority (EDA) has a mission to support the economic growth of New Jersey through a diverse set of programs and services. In accordance with its statutory powers, it assists public and private sector organizations obtain access to capital, including tax-exempt and taxable bond financing, loans, loan guarantees, and business and tax incentives, as well as offering real estate development assistance and state-of-the-art technology facilities like the New Jersey Bioscience Center of New Jersey.

Statutorily, EDA is comprised of five ex officio members, four of which are the heads of New Jersey state departments, eight appointed public members, and three alternate public members. The members are generally referred to as “the Board.” The Board typically meets monthly, but special meetings are sometimes scheduled between regular monthly meetings, so that the Board meets more than 12 times per year.

Funston Advisory Services LLC (FAS) was selected to provide governance consulting services to assist in evaluating existing EDA governance policies, practices, and procedures and based upon leading practices at peer organizations, to make recommendations for improvement. FAS was also asked to identify recommended changes to the Board’s committee structure, by-laws, charters, and policies which would incorporate the recommended governance improvements.

These recommendations do not constitute legal advice; all recommendations in this report are subject to applicable law, including, but not limited to, EDA’s enabling act, and are to be considered in consultation with legal advice from the Attorney General’s Office. Our diligence and the report recommendations are limited to governance structure, policy and process improvements. This was not an audit or compliance review and cannot guarantee future compliance or a specific level of performance.

Activities Completed

The first phase of the project focused on identifying improvement opportunities. In addition to reviewing existing documents and attending Board and committee meetings both personally (pre-pandemic) and electronically, the FAS team: administered a self-assessment survey to Board members and the executive leadership team; conducted a Board member onboarding and continuing education survey; assessed the Board use of its online Board portal; conducted individual interviews with each Board member; conducted individual interviews with key executive staff; discussed general applicable law with EDA staff and the New Jersey Attorney General’s office, and administered a comprehensive governance benchmarking process with peer New Jersey state agencies and with other state and city economic development agencies with a similar board structure.

Based upon these activities, forty-five recommendations for governance improvements were identified and discussed with EDA senior leadership and the Board Chair.

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Findings and Assessment

Internal feedback

As part of this review, a Board and senior staff self-assessment survey was prepared and administered, and individual interviews were conducted with Board members.

Current and recent Authority Board members consistently expressed the view that the EDA has a highly-competent staff with strong leadership and that the agency performs well. They also generally feel that the Board committee meetings have broad participation and robust discussions and are productive.

A frequent concern expressed was that the full Board meetings were not as effective as they could be due to several factors. First, members do not receive the Board packages until two business days prior to each meeting, and there is limited visibility into committee deliberations. Second, the Board has not recently engaged with staff in setting EDA strategy, and most Board meetings are very transaction focused. There is also an interest in being more thoroughly briefed on program legislation and in receiving better and more frequent program performance reports.

Specific recommendations expressed by Board members in the self-assessment survey included:

Board Roles and Responsibilities

- Need a better definition of the role of the Board and improved Board engagement in decision-making processes
- The Board should be more involved in setting strategy for EDA
- The Board should have a role in the CEO performance evaluation
- Should review delegations and make sure the Board has clarity and the appropriate balance, perhaps result in more delegations of small matters
- Bylaws need a refresh; should also evaluate whether the Board should keep the COO position

Information for Decision Making / Meetings / Procedures and Rules

- Distribute the Board packet earlier and provide committee packets to all Board members
- Provide periodic education/briefings for Board members on governing legislation
- Dated rules and regulations should be reviewed and updated
- Should define metrics and adopt dashboard reporting

Performance Oversight

- Need improved definition of goals and performance reporting versus those goals; more consistent reporting across all areas; and periodic program performance reviews
- The Board's role in oversight and reporting requirements should be more clearly defined

Board and Committee Operations

- Board member requests should be recorded and tracked for follow up
- Bylaws and committee charters should be updated and clarify roles and responsibilities
- Reconsider the committee structure and ensure it is aligned with new programs and priorities
- Committee meeting minutes should be prepared and distributed to Board members

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- Committees should report out to the Board
- Improve committee chair leadership

Independent Advice and Reassurance

- The Board should have expanded access to independent legal counsel; the AG's Office does a great job but needs more staffing capacity for EDA
- The Board should receive more internal audit and other reports on a timely basis
- Need to further develop the internal audit function

Self-Assessment and Development

- New Board member onboarding has been improved, but should be provided to all new Board members, cabinet appointees, and alternates
- EDA should have ongoing opportunities for continuing education
- The Board should conduct a periodic self-assessment for continuous improvement

Questions were raised by several Board members about the frequency of Board and committee meetings. Are monthly meetings too frequent? How could we meet less frequently when we already have packed agendas?

External feedback

FAS also conducted a governance benchmarking study for this assignment. There were two peer groups which completed the same benchmarking survey:

- Five out-of-state economic development agencies with a board governance structure
- Six New Jersey sister agencies

While acknowledging that case law in each state differs and that the enabling act for each agency creates each agency differently with a different allocation of authority between staff and the Board, some key findings of the peer benchmarking process were:

- Other economic development agencies generally:
 - Delegate most authority for transaction approval to staff
 - Meet less frequently than EDA, for example, quarterly or bi-monthly
 - Provide Board books for each meeting to members earlier than EDA
 - Utilize a performance dashboard which monitors key program performance metrics
 - Provide committee report-outs during Board meetings
 - Engage the Board in the strategic planning process
 - Oversee the Internal Audit function through their Board Audit Committee
- Additional findings from the New Jersey sister agencies includes:
 - Most of the agency boards have executive sessions without staff present (e.g., to discuss Chief Executive performance, discuss Board performance self-assessments, etc.)
 - Most agencies record Board meetings
 - Most agencies provide Board books at least five business days in advance of meetings

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Governance Improvement Recommendations

The assessment and recommendations for improvement of EDA's governance are organized around the five major powers held by the EDA Board, including statutory powers assigned to the Board, i.e.:

1. Conduct the business of the Board;
2. Set policy and delegate authority;
3. Approve key decisions;
4. Oversee policy and performance; and,
5. Obtain independent reassurance.

1. Conduct the business of the Board

- 1.1. With review by the proposed Policy and Governance Committee and with Board approval, the CEO and EDA staff should continue to improve and fine-tune the Board's on-boarding program for new Board members and alternates.
- 1.2. With review by the proposed Policy and Governance Committee and with Board approval, the CEO and EDA staff should develop a continuing education process customized to each board member's needs and EDA responsibilities.
- 1.3. EDA staff should ensure that the Board knows the extent of its authority to award financial assistance and to modify, withdraw or reduce awards.
- 1.4. EDA staff should ensure that the Board is kept up-to-date regarding statutory authority. This would include:
 - A plain-language, high-level summary of the various relevant statutory or other governing authorities in on-boarding packages and briefings for new members and representatives.
 - Briefings to the full Board explaining any changes in legislation or material legislative proposals, legal decisions, or other governing authority, as required.
- 1.5. Committee member and committee chair appointments should be reviewed and changed/affirmed as needed, but at least annually, with the Chair reporting such actions to the entire Board.
- 1.6. Subject to restrictions in EDA's enabling act, the Board should specify terms (e.g., two or three years) for Board officers, i.e. the Board Vice Chair and committee chairs.
- 1.7. Each committee should be comprised of less than a quorum of the Board and considered to be pre-decisional, deliberative and advisory.
- 1.8. Under the direction of the committee chair, and assisted by staff, each committee should review and provide input on proposed actions and, subject to considerations of privilege as described in 1.13, report to the full Board on items reviewed.
- 1.9. Through adoption of the new Bylaws, Board Charter and Delegation Policy, the Board should consolidate and clarify the authorities delegated to the CEO. There should be a delegation chart available as a resource to the Board, which details all existing delegations, including dollar or programmatic thresholds, and that is updated when delegations are added or amended.

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- 1.10. The Board should consider adoption of updated by-laws, charters and policies which include the provisions set forth in Exhibit 1 and provide for collection of all governance documents in a single place that is available to the Board and staff. By-laws, charters, and non-confidential policies should also be accessible to the public.
- 1.11. Modify the committee structure and responsibilities and document in the By-Laws and new committee charters:
 - Audit Committee: The Audit Committee responsibilities currently include finance and external audit and should be expanded to include oversight of internal audit, compliance, and risk, participation in the independent auditor procurement process, and approval of internal audit, compliance and risk assessment plans and reports. See proposed Audit Committee Charter for further details.
 - Policy Committee: The Policy Committee responsibilities should be expanded to include governance-related topics and renamed the Policy and Governance Committee. See proposed Policy and Governance Committee Charter for further details.
 - Programs: The Policy and Governance Committee, with assistance from staff, should review and develop a recommendation to the Board regarding changes in the program-related committee structure (Director's Loan Review Committee, Real Estate Committee, Incentives Committee) to better align EDA program oversight, particularly as pilot programs mature and legislation requires new or revised programs.
- 1.12. Committee agendas and briefing books should be available (through the Board portal) to all Board members at least five business days prior to meetings.
- 1.13. EDA should develop a template for committee reports, and after each committee meeting, staff should prepare a Committee report to the full Board, which should be approved by the Committee Chair, prior to distribution to the Board. The template should be in two parts: A public summary to be presented to the Board in open session, and a non-public set of back-up documents for any privileged or confidential information. Efforts should be made to use the Board portal to reduce the size and complexity of Board meeting materials, while maintaining the ability to access back-up materials through the Board portal.
- 1.14. Committee reports should be maintained in the Board portal so that all Board members have ready access.
- 1.15. Each Committee Chair, or in the chair's absence, another member of the Committee, should be responsible for reporting out from the Committee to the full Board.
- 1.16. Annually, each Committee (working with staff) should approve a prioritized annual calendar and work plan. These work plans should be presented to the full Board at the Board meeting following the Committee approval to help the full board to understand and balance the schedule of the committee and the expected workflow. The work plans should be maintained in the resources section of the Board portal.
- 1.17. The Board Chair should review each committee's annual workplan to ensure there are no gaps or redundancies.

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- 1.18. All requests from board members should be coordinated through the Director, Board Governance, to manage priorities for staff follow-up from both Board meetings and committee meetings. The Board Chair should be made aware of the status of ad hoc requests from Board members.
- 1.19. Significantly improve the use of the Board portal:
- Make Board books available at least five business days in advance of each meeting.
 - Provide access to the Board portal to all Board members and their designees and alternates.
 - Reports from all committee meetings which have occurred since the last Board meeting should be posted to the Board portal at least five business days in advance of each Board meeting or subsequent committee meeting.
 - Committee reports should be made available to all board members upon posting.
 - Push notifications should be issued to alert all Board members when Board and Committee reports / materials are available.
 - As new by-laws, charters and policies are developed, they should be made available in the Board portal to ensure Board members can easily access them.
 - EDA should make its specific needs known to the Board portal vendor and then work with them to implement the required functionality. The Board should designate a member of the executive staff to be the project leader.
- 1.20. Revise the standing Board agenda to be organized by the powers held by for the Board.
- 1.21. Consider utilizing a consent agenda for items of Board business and approvals which do not have policy implications and would not typically require discussion, unless separate consideration is requested by a Board member. Combined with the recommendations regarding instituting committee reports (1.8, 1.13, 1.14, 1.15), some routine program approvals could be moved to consent agendas based upon committee guidance. Together with clarifying and updating delegations of authority and compliance plans, this should enable the Board to focus less on ordinary transactional items and more on policy setting, performance oversight and strategic planning. It should make Board meetings more efficient and might enable the Board to consider the goal expressed by some members to meet less frequently.

2. Set Policy / Delegate Authority

- 2.1. Develop a planning process which effectively engages the Policy and Governance Committee and the full Board with the CEO and Staff in approving NJEDA's strategic direction so as to support the State Economic Development Plan.
- 2.2. The Board should periodically (e.g., semi-annually or annually) monitor progress against the goals and objectives of the strategic plan.
- 2.3. The Board should consolidate the powers held by the Board in a Board charter.
- 2.4. Any operational delegations from the Board, with the exception of delegations to specific assurance/ reinsurance functions (e.g., internal audit, compliance, etc.), should be to the CEO,

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who in turn should retain the authority for further delegation, as appropriate and allowed by the Board.

- 2.5. The Board should continue to set policy, consistent with established New Jersey law and precedent, but may delegate programmatic transactional approval/rejection decisions to the CEO, subject to any conditions the Board may desire, such as dollar thresholds and/or meeting defined criteria or minimum scoring thresholds. The Board may change, revoke, or add delegations at any point, and should review the efficacy of the delegation terms and conditions at least biennially.
- 2.6. The Board should, with input from the CEO and relevant committees, review the current thresholds for approval by the Board to determine whether more authority can be prudently delegated to staff.
- 2.7. The Board should develop a process for an annual CEO performance evaluation, and other direct reports, if appropriate, and review CEO compensation annually.

3. Approve key decisions

- 3.1. With assistance from staff and the Policy and Governance Committee, the Board should review all regulations (administrative rules) on a periodic (e.g., every three or five years rather than the seven year review period under N.J.S.A. 52:148-5.1) basis to ensure they are up-to-date and appropriate. To facilitate the reviews, they can be done on a rolling basis, be triggered whenever a program expires or changes, and/or be assigned to the relevant committees.
- 3.2. The relevant committee should review and provide input to the Board for its review and approval of due diligence standards and practices for each program at least every three years; new programs may require a more frequent review.
- 3.3. The relevant committee should review and provide input to the Board for its review and approval of performance standards and reporting requirements for each program, including key metrics, and provide direction to staff to ensure adequate reporting for effective program oversight.

4. Oversee Policy and Performance

- 4.1. Staff should provide pipeline reports to the Board for each program which identify the level of prospective transactions in process, stages (where they are in the process), and when they are likely to come to the Board for approval if they pass due diligence.
- 4.2. The Board should receive regular performance time-series dashboards which monitor key performance indicators approved by the Board, report actual compared to expected performance, and present related management corrective actions as needed. For programs with a budgetary cap, the dashboard should also include funds remaining and a run-rate projection.
- 4.3. In consultation with the Policy and Governance Committee, the Board should establish appropriate timeframes for review of pilot programs.

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- 4.4. In addition to the regular oversight reports, at least annually, the Board should receive more detailed program reviews; the Board's annual retreat could be an option to help ensure that these reviews regularly occur.

5. Obtain Independent Reassurance/Verification

- 5.1. The Audit Committee should request the EDA Chief Compliance Officer, with support from other executives, to develop an EDA compliance plan which identifies all the areas where compliance monitoring should occur, the processes, procedures, and frequency for monitoring, the reporting requirements, and any staff training and education required to support implementation of the plan.
- 5.2. The Audit Committee should review annual internal audit and compliance work plans.
- 5.3. The Audit Committee should review regular reports from Internal Audit, including "whistleblower" complaints received, investigated, and resolved.
- 5.4. The hiring, firing and compensation of the head of internal audit should be subject to Audit Committee review.
- 5.5. Internal audit reports should include management action plans.
- 5.6. The Audit Committee should also review regular staff reports on the Authority's compliance with applicable laws.
- 5.7. EDA should plan to implement a Quality Assurance and Improvement Program (QAIP) which includes internal assessments and, every five years, an external assessment by a third party.
- 5.8. When the Board has meaningful and continuing interaction with a third-party provider (e.g., external auditor, external counsel), it should annually provide feedback to the provider regarding their performance and any performance concerns raised by the Board.

Revised EDA Governance Documents

The following new or revised draft documents were developed and submitted to EDA for consideration for Board approval. The revisions will need to be reviewed for compliance with applicable law and for consistency with legal advice. These documents are included as Exhibit 1.

- A. By-laws: Modified
- B. Board charter: New
- C. Committee charters
 - a. Audit Committee: Modified
 - b. Policy and Governance Committee: New
 - c. Directors' Loan Committee: New
 - d. Incentives Committee: New
 - e. Real Estate Committee: New

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D. Policies (All New):

- a. Budget Policy
- b. Business Continuity Policy
- c. Communications and Stakeholder Relations Policy
- d. Delegation Policy
- e. Education Policy
- f. Insider Trading Policy
- g. Performance Review Policy
- h. Referral Policy
- i. Strategic Planning Policy

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A. Background

The New Jersey Economic Development Authority (EDA) solicited proposals in August 2019 for a consultant to review and evaluate the governance policies, practices, and procedures of the Authority, in the context of peer practices, and make recommended improvement updates. The objectives included improving overall EDA internal governance practices, efficiency, and functionality, as well as identifying recommended changes to the Board's committee structure, by-laws, charters, and policies.

Funston Advisory Services LLC (FAS) was selected through a competitive bid process and the governance review was initiated in December 2019.

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B. Governance Project Activities

Phase 1

The first phase of the project focused on a review of existing documentation and other information gathering. The primary activities included:

- Review of existing statutes, by-laws, charters, policies, procedures, and recent independent reviews of EDA; EDA Board and committee processes, including setting policy and delegations, conducting the business of the Board, overseeing policy and performance, and obtaining independent reassurance;
- An online self-assessment survey administered to Board members and the executive leadership team to identify what is working well and what could be improved;
- An online survey of Board members regarding their onboarding experience as new members and their priorities for ongoing Board member continuing education;
- An assessment of EDA use of its Board portal;
- Observations, both in-person and electronically, of various Board and Committee meetings;
- Individual interviews with each Board member;
- Individual interviews with key executive staff;
- Calls with staff and the New Jersey Attorney General's Office;
- A comprehensive governance benchmarking process, which included 80 questions regarding Board and governance structure, policies, and practices, was administered to two peer groups:
 - Six New Jersey sister agencies: the Port Authority of New York and New Jersey, New Jersey Housing and Mortgage Finance Agency, New Jersey Infrastructure Bank, New Jersey Redevelopment Authority, New Jersey Turnpike Authority, New Jersey Health Care Facilities Financing Authority; and
 - Five economic development agencies: Maryland Economic Development Commission, Michigan Economic Development Corporation, New York City Economic Development Corporation, Utah Governor's Office of Economic Development, Virginia Economic Development Partnership.

Based upon these activities, forty-five preliminary governance recommendations for improvement were identified and discussed with EDA senior leadership and the Board Chair.

Phase 2

The second phase of the project was focused on documenting changes which support the initial forty-five governance recommendations. These activities included:

- Recommended updates to the EDA by-laws;
- Creation of a new Board charter;
- Updates to the Audit Committee charter, including articulating additional responsibilities;

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- Creation of new charters for the remaining committees, including added governance responsibilities for the Policy Committee (proposed to be renamed as the Policy and Governance Committee);
- Updates to existing policies and creation of new standalone policies, including delegations; business continuity; insider training; referrals and ex parte communications; Board self-assessment and continuing education; stakeholder relations and communications; CEO performance evaluation; strategic planning; and budgeting; and
- Recommendations for improving the effectiveness of the EDA Board portal.

As mentioned, this project was started in December 2019. The original timing anticipated completion with a presentation to and discussion with the Board at a retreat in June 2020. However, the COVID-19 crisis required EDA to change priorities and thus the timeline for Phase 2 was extended and the project was completed with a presentation to the EDA Board in September 2020.

C. Findings and Recommendations

The assessment of EDA's governance was organized around the five major powers held by the EDA Board, i.e.:

1. Conduct the business of the Board;
2. Set policy and delegate authority;
3. Approve key decisions;
4. Oversee policy and performance; and,
5. Obtain independent reassurance/verification.

For each topic identified in each power of the Board, the current observed delegation status is described, as well as observations and comparisons from the EDA peer benchmarking process and FAS experience with other public agencies. Based upon these observations, recommendations for improvement have been identified and are listed for each topic.

1. Conduct the business of the Board

On-boarding and Continuing Education

Current Status:

EDA has had an onboarding program for Board members and recently improved the program for new members who joined the Board in 2020. Based upon a Board member survey conducted as part of this project, all new Board members who received onboarding training in 2020 said they were highly satisfied, which was a higher rating than from those who received onboarding in 2018 or 2019. Some ex officio designees commented that onboarding had not been offered to them when they first started to attend Board meetings. EDA staff is to be commended for making significant recent improvements to onboarding. Onboarding should also be made available to designees of ex officio members.

There has not been a formal Board member continuing education program at EDA. Through the aforementioned survey, Board members were asked about their interests in continuing education. They all indicated they would be interested and each prioritized their specific areas of interest. While none of the ten areas listed were rated below Medium Priority on average, those topics which ranked highest were:

1. EDA economic transformation program;
2. EDA business processes;
3. EDA's strategy and financial plan; and
4. Policy and communications.

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Some Board members also indicated that they were sometimes unsure of the extent of EDA's authorities to award financial assistance and that they would like to be more fully informed when changes in program legislation occur.

Peer Benchmarking:

Similar to EDA, all the other economic development agencies offer new Board members a briefing session with the CEO and other agency leadership. Only one other reported that they also provide a briefing book, similar to EDA. Just one other agency reported having a formal Board continuing education policy. None of the other New Jersey agencies reported having a Board continuing education policy.

Recommendations:

- 1.1. With Policy and Governance Committee review and Board approval, the CEO and EDA staff should continue to improve and fine-tune the Board's on-boarding program.
- 1.2. With Policy and Governance Committee review and Board approval, the CEO and EDA staff should develop a continuing education process customized to each board member's needs.
- 1.3. EDA staff should ensure that the Board knows the extent of its authority to award financial assistance and to modify, withdraw or reduce awards.
- 1.4. EDA staff should ensure that the Board is kept up-to-date regarding statutory authority. This would include:
 - A plain-language, high-level summary of the various relevant statutory or other governing authorities in on-boarding packages and briefings for new members and representatives.
 - Briefings to the full Board explaining any changes in legislation or material legislative proposals, legal decisions, or other governing authority, as required.

Bylaws and Charters

Current Status:

EDA by-laws govern administration and function of the Authority's Board and committees within the parameters of applicable law, provide for appointment of board members, scheduling of meetings, voting, quorum, appointment/election of officers, role of Authority's Chief Executive Officer (CEO), ability of the Authority to contract for professional services, and hiring of personnel. The by-laws establish committees of the Board and describe their high level roles and responsibilities. Current EDA standing committees include the Audit Committee, Director's Loan Review Committee, Real Estate Committee, Policy Committee, and the Incentives Committee; the COVID-19 Response Committee, an ad hoc committee, was created in June 2020. EDA by-laws were last updated and adopted in 2012. The By-laws, which are being updated as part of this board governance review as requested by the NJEDA, still specify responsibilities of the Chief Operating Officer, a position which no longer exists. The updated by-laws will reflect the re-organization of the Authority.

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Only the Audit Committee currently has a charter. It lays out the Committee's authority, responsibilities and procedures in greater detail than contained in the by-laws. As part of this board governance review, one of the EDA's requests included the creation of charters for each of the Authority's respective committees.

Peer Benchmarking:

By-laws or similar organizational governance documents are essential to functioning of an entity the size and complexity of EDA. In addition, nearly half of the peer state economic development agencies have board and committee charters (like the current EDA Audit Committee Charter) that provide detailed guidance on authority, responsibilities, and procedures. Use of board and committee charters is considered best practice because they offer a roadmap for members and can be used to facilitate board and committee evaluations. Charters are also useful for bringing new board or committee members and staff up to speed.

Recommendations:

EDA by-laws should be updated and charters established for the Board and all committees. The following provisions should be included:

- 1.5. Committee member and committee chair appointments should be reviewed and changed/affirmed as needed, but at least annually, with the Chair reporting such actions to the entire Board.
- 1.6. The Board should specify terms (e.g., two or three years) for Board officers, i.e. the Board Vice Chair and committee chairs.
- 1.7. Each committee should be comprised of less than a quorum of the Board and considered to be pre-decisional, deliberative and advisory.
- 1.8. Under the direction of the committee chair, and assisted by staff, each committee should review and provide input on proposed actions and report to the full Board on items reviewed.

Draft charters and updated by-laws are attached to this Report in Exhibit 1.

Powers Held by the Board

Current Status:

Over time, the Board has adopted a number of resolutions delegating specified powers and responsibilities to the CEO or other staff. All other statutory powers granted to the Board which have not been delegated remain with the Board. Staff maintain a spreadsheet listing many of the delegations of authority approved by the Board; however, it is not comprehensive and is not shared with the Board. The Board has no comprehensive document listing what authorities have been delegated and what powers are reserved for the Board. In addition, EDA has not established a protocol to guide the Board on whether to delegate the power to set, conduct, approve or oversee its various functions.

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Peer Benchmarking:

Three out of the five EDA peer economic development agencies reported in the benchmark survey that they have established powers reserved for their board. This provides clarity around the role of the Board and authority granted to its delegates. We believe that use of a set, conduct, approve or oversee/reassure protocol to guide the Board in defining and exercising its powers is becoming a prevailing best practice trend. These could include, for example:

1. Set policy and prudently delegate, e.g., set new policies, set strategies, set/approve new programs
2. Approve key decisions, e.g., approve budget, approve program transactions, approve annual reports
3. Conduct the business of the Board, e.g., select committee members, conduct the CEO evaluation, conduct the Board self-assessment
4. Oversee delegated authorities and obtain reassurance, e.g., oversee program performance and exception reports, oversee financial reporting, review internal audit reports, review compliance reports

Recommendations:

- 1.9. Through adoption of the new Bylaws, Board Charter and Delegation Policy, the Board should clarify the powers held by the Board and the authorities delegated to the CEO. There should be a delegation chart available as a resource to the Board, which details all existing delegations, including dollar or programmatic thresholds, and that is updated when delegations are added or amended.

The draft Board Charter in Exhibit 1 includes a set, conduct, approve or oversee/reassure protocol to guide the Board in defining and exercising its powers.

Board Policies

Current Status:

EDA has policies, statutes and rules that provide guidance for implementation of its responsibilities. However, these governing documents have not been collected into a comprehensive governance or policy manual. In addition, there are several areas where new or more detailed policies could be put in place or current policies could be updated and integrated with EDA by-law and charter provisions.

In order to address these needs, we worked with staff from EDA and the Attorney General's Office to identify policy topics and issues that merited further attention. In addition to updating the by-laws and developing a template for Board and Committee charters, the following areas of focus for policy revisions were recognized:

- Consistent framework for program due diligence standards
- Metrics and process for evaluation of programs' success
- Strategic planning process
- Formal process for violation enforcement referrals
- Periodic independent program reviews

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- Board powers held and delegations of authority
- Board and committee officer position descriptions
- Calendar of annual Board and committee recurring agenda topics
- Documentation of business continuity plans
- Compliance with SEC insider trading restrictions
- Interested party ex parte communications
- Board member process for referral of vendors and applicants
- Board self-assessment process
- Board member continuing education
- Stakeholder relations and communications plan
- CEO performance review process
- Risk management program
- Budget development and approval process
- Process for Board-staff requests
- Regular periodic review and updates of policies and other governance documents

We have addressed each of these topics in the draft policies, charters and new by-laws contained in Exhibit 1. While EDA has not adopted its own supplemental ethics policy, ethics rules and laws found in the New Jersey Conflicts of Interest Law and in rules of the State Ethics Commission apply to the EDA Board and staff. These laws provide comprehensive ethical standards of conduct and include regular training requirements. EDA has agreed to include the Commission's Plain English Guide to Ethics Standards in its comprehensive governance manual. We believe this will provide reasonable and appropriate guidance to Board members regarding applicable ethical standards of conduct.

Peer Benchmarking:

EDA already has a slightly more robust set of policies than most of its peers. While some economic development agency peers in the benchmarking survey reported having policies similar to those of EDA, most said their policies were limited to program application due diligence standards, ethics or standards of conduct, confidentiality, and whistleblower complaints.

Recommendations:

To ensure that EDA policies set by or applicable to the Board are current, easily accessible to Board members and staff and provide consistency across turnover in Board membership and staff transitions, we recommend:

- 1.11 With review and advice from the Attorney General, the Board should consider adoption of updated by-laws, charters, and policies which include the provisions set forth in Exhibit 1 and provide for collection of all governance documents in a single place that is available to the Board and staff. By-laws, charters and non-confidential policies should also be accessible to the public.

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Committees of the Board

Current Status:

The EDA Board currently has five standing committees: three which oversee the various EDA programs (Director's Loan Review Committee, Real Estate Committee, Incentives Committee) with agendas that are primarily reviews of transactions under those programs; an Audit Committee which oversees financial operations and the external audit; and a Policy Committee which oversees policy matters. In general, Board members stated that they believe the committees are effective and that the committee meetings are useful in advising staff with respect to matters which come to the Board. Similarly, staff stated that they believe the committees are effective and provide useful input. Although the question of potential improvements to the committee structure was raised, there were no specific alternative structures suggested.

Nearly all Board members stated that they would like committee meeting materials to be available earlier to allow more time to prepare for meetings. Currently, most receive their committee meeting materials two business days before the meeting.

At the time of our Board member interviews, there was no communication from committees to the full Board about the results of their deliberations or feedback to EDA staff. Many Board members expressed frustration with not knowing what had occurred in a committee meeting until they heard recommendations from staff during a Board meeting. Subsequently, staff has begun development of a committee report template for each committee to use to report to the Board with the intent of including these reports in the Board package.

EDA Board practice has been for the staff liaison to each committee to lead the discussion with the Board regarding matters discussed in committee meetings. There has not been an active role for EDA Board committee chairs in leading the discussion at Board meetings, or in recommending to the Board Chair or EDA CEO what should be on the Board or committee agendas. Several committee chairs indicated that they did not have a clear understanding of their role since they were not involved in setting the agenda or leading the discussion.

Like most boards, the EDA Board has an annual cycle for items such as budget approval and reporting to the Governor's Office and Legislature. However, there is not an overall Board and committee calendar for the year which identifies a schedule for specific topics the Board wishes to address, nor is there a workplan for the committees. Generally, staff sets the agenda for each Board and committee meeting and Board members participate. This is consistent with comments from a number of Board members that EDA is a staff-driven organization.

Peer Benchmarking:

The New Jersey peer agencies have, on average, three Board committees. All have an Audit Committee, three of the six have a Finance Committee, and two have a Governance Committee. The peer economic development agencies, on average, have four Board committees each. Most have an Audit Committee, and others which at least two of the five reported include: Executive; Governance; Personnel/Compensation; and Strategic Planning. As most of the peer agency Boards do not approve a significant number of transactions, they generally do not have program-related committees.

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All of the peer New Jersey agencies provide committee meeting materials to members earlier than EDA. All but one send materials at least five business days in advance of committee meetings. Similarly, three of the five economic development agencies provide materials at least a week in advance. Board meeting materials at EDA are somewhat larger than most of the other economic development agencies.

As one of only two economic development agencies or peer New Jersey agencies to use a board portal, EDA is leading practice; however, there is room for improvement in utilizing the capabilities of the portal, including providing committee materials and reports to Board members earlier in the process, as well as making charters, by-laws, policies, delegations and other standing materials easily accessible through a “resources” file on the portal.

Among peer economic development agencies, committee meetings at all but one are led by the committee chair. Similarly, at all the other economic development peers and most New Jersey peers the committee chair provides an oral report to the full Board regarding results of committee deliberations.

Recommendations:

- 1.11 Modify the committee structure and responsibilities and document in new committee charters:
 - Programs: The Policy and Governance Committee, with assistance from staff, should review and provide input to the Board regarding changes in the program-related committee structure (Director’s Loan Review Committee, Real Estate Committee, Incentives Committee) to better align EDA program oversight, particularly as pilot programs mature and legislation requires new or revised programs.
 - Audit Committee: The Audit Committee responsibilities currently include finance and external audit and should be expanded to include oversight of internal audit, compliance, and risk, participation in the independent auditor procurement process and approval of internal audit, compliance and risk assessment plans and reports. See proposed Audit Committee Charter for further details.
 - Policy Committee: The Policy Committee responsibilities should be expanded to include governance-related topics; rename the committee the Policy and Governance Committee. See proposed Policy and Governance Committee Charter for further details.
- 1.12 Committee books should be available (through the Board portal) to all Board members at least five business days prior to meetings.
- 1.13 EDA should develop a template for committee reports, and after each committee meeting, staff should prepare a Committee report to the full Board, which should be approved by the Committee Chair, prior to distribution to the Board. The template should be in two parts: A public summary to be presented to the Board in open session, and a non-public set of back-up documents for any privileged or confidential information relating to specific transactional improvements. Efforts should be made to use the Board portal to reduce the size and complexity of Board meeting materials, while maintaining the ability to access back-up materials through the Board portal.
- 1.14 Committee reports should be maintained in the Board portal so that all Board members have ready access.

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- 1.15 Each Committee Chair, or in the chair's absence, another member of the Committee, should be responsible for reporting out from the Committee to the full Board.
- 1.16 Annually, each Committee (working with staff) should approve a prioritized annual calendar and work plan; these work plans should be presented to the full Board at the Board meeting following the Committee approval to help the full board to understand and balance the schedule of the committee and the expected workflow. The work plans should be maintained in the resources section of the Board portal.

Board Operations, Leadership and Decision-Making

Current Status:

There is not currently a formal process for the Board and committee chairs to plan the strategic agenda for the upcoming year and ensure that each committee's activities are coordinated with that of the Board. The Board relies on staff to bring forward most agenda items.

In some interviews with Board members, it was mentioned that there is not a formal process to ensure that questions or requests from Board members in both Board meetings and committee meetings are tracked to ensure follow-up. As a result, at least one Board member stated that he had received no response to a request he had made more than once.

Peer Benchmarking:

Based upon FAS experience with numerous other public sector organizations, it is leading practice to have a multi-year Board calendar when there are programs and other activities which have a long-term time horizon. This multi-year strategic agenda calendar is then used to help coordinate when specific committee activities need to occur in order to be prepared to support Board decisions in a timely fashion.

It is also a leading practice to have a defined process for documenting and monitoring follow-up to Board member requests and questions which cannot be answered during a Board meeting. Typically, a senior staff person is assigned responsibility for this task, and the Board Chair and CEO monitor progress and report back to the Board as requests and questions are responded to.

In some jurisdictions, requests from Board members are called "matters arising" and given numbers, such as MA 1. The matters arising are then included in the following Board or Committee meeting agendas until resolved. This also allows the Board Chair and CEO to prioritize Board member requests if they require significant time and attention and to advise the Board member on any follow up actions.

When ad hoc requests from Board members are made outside of Board or Committee meetings to individual staff members, based upon FAS experience with other public agencies, leading practice is to maintain a log of all Board member requests. The log should be provided to the Board Chair periodically to ensure the Chair is aware of demands on staff and issues being examined.

Recommendations:

- 1.17 The Board Chair should review each committee's annual workplan to ensure there are no gaps or redundancies.

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- 1.18 All requests from board members should be coordinated through the Director, Board Governance to manage priorities for staff follow-up from both Board meetings and committee meetings. The Board Chair should be made aware of the status of ad hoc requests from Board members.

Communications With and Within the Board

Current Status:

EDA has acquired a leading board portal software package which is used to provide Board package materials to Board members electronically.

Usage of THE Board portal among Board members appears to be very mixed based upon our interviews. Several ex officio members stated that they do not use the Board portal but have staff print out all materials for them. Several designees stated that only the Board member had access to the Board portal and that they could not, therefore, use it. Several members who do use the Board portal suggested user improvements would be helpful.

During this project, EDA staff were working with the Board portal vendor to identify opportunities to configure the software to be more responsive to Board members' needs.

Peer Benchmarking:

Among the peer group, EDA is one of only two agencies to use a board portal. Based upon FAS experience with other public sector organizations, however, a board portal has become prevailing practice. Leading practice is to utilize the board portal to provide a single digital repository of most information a Board member will need to do their job including, for example, Board and committee charters and policies, materials from prior board meetings, and program information, in addition to the current meeting Board book.

Recommendations:

- 1.19 Significantly improve the use of the Board portal:

- Make Board books available at least five business days in advance of each meeting.
- Provide access to the Board portal to all Board members and their designees.
- Reports from all committee meetings which have occurred since the last Board meeting should be posted to the Board portal at least five business days in advance of each Board meeting or subsequent committee meeting.
- Committee reports should be made available to all board members upon posting.
- Push notifications should be issued to alert all Board members when Board and Committee reports / materials are available.
- As new by-laws, charters and policies are developed, they should be made available in the Board portal to ensure Board members can easily access them.

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- EDA should make its specific needs known to the Board portal vendor and then work with them to implement the required functionality. The Board should designate a member of the executive staff to be the project leader.

Meetings Agendas

Current Status:

The typical EDA Board agenda follows a consistent template:

1. Board business (e.g., public notice, roll call, minutes approval)
2. Chairman's report
3. CEO's report
4. Authority matters (e.g., new programs, budget approvals, annual report, investigative reports, program improvements, contract approvals)
5. Program approvals:
 - Office of Economic Transformation
 - Incentives
 - Bond Projects
 - Loans/Grants/Guarantees
 - Real Estate
6. Board memorandums (e.g., reports on delegated actions)
7. Public comments
8. Executive session
9. Adjournment

The EDA Board does not currently utilize consent agendas and addresses every item on the agenda during each meeting.

Peer Benchmarking:

The EDA Board agenda-setting practices are consistent with many other agencies. However, there is not an explicit section for oversight items. Based upon FAS experience, leading practice is to follow a consistent structure, similar to the current EDA approach but to prioritize based upon the different types of Board powers. For example, a more prioritized approach could be:

1. Board business
2. Chairman's report
3. Committee reports
4. CEO's report
5. Set policy and delegate (including new programs, governance policy, strategy, etc.)
6. Approve key decisions
 - Budgets, contract approvals, annual reports, etc.
 - Program approvals
7. Oversee delegated activities
 - Reports on delegated actions

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- Performance exception reports
 - Periodic program reviews
8. Independent reassurance
 - Investigative reports
 - Internal audit and compliance reports
 - Other third-party reports
 9. Public comments
 10. Executive session
 11. Adjournment

Many public agencies utilize consent agendas in order to streamline meeting procedures and utilize Board time more effectively. A consent agenda groups routine business and reports and allows the Board to approve items included in the consent agenda group together without discussion or individual motions. If any Board member requests discussion on a consent agenda item, it is removed from the consent agenda and addressed separately by the Board. Types of items typically included in the consent agenda are meeting minutes, committee reports, and other non-controversial items.

Recommendations:

- 1.20 Revise the standing Board agenda to be organized by the powers held by the Board.
- 1.21 Consider utilizing a consent agenda for items of Board business and approvals which do not have policy implications and would not typically require discussion, unless separate consideration is requested by a Board member. Combined with the recommendations regarding instituting committee reports (3.8, 3.13, 3.14, 3.15), some routine program approvals could be moved to consent agendas based upon committee guidance. Together with clarifying and updating delegations of authority and compliance plans, this should enable the Board to focus less on ordinary transactional items and more on policy setting, performance oversight and strategic planning. It should make Board meetings more efficient and might enable the Board to consider the goal expressed by some members to meet less frequently.

2. Set Policy / Delegate Authority

Strategic Planning

Current Status:

EDA is guided by the State Economic Development Plan which also includes other agencies in its scope. This document was last presented to the EDA Board during their November 2018 meeting.

EDA does not currently have a strategic plan specifically for the agency. Historically, EDA has prepared plans annually. In 2018 and 2019, EDA relied on the State Economic Development Plan. Although staff began the strategic planning process in early 2020, the COVID-19 crisis derailed the process because of the extraordinary economic impacts on the State, the fiscal impacts on the Authority, and the reallocation of resources to implement programs to address those impacts. During interviews with Board members,

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some stated that EDA strategy is effectively set through legislation and directives from the Governor's Office. However, others said they desired more Board involvement with developing EDA internal strategies, identifying synergies between programs, and setting agency strategy for successful implementation of the legislative and executive priorities. In addition, some Board members wanted greater involvement in setting EDA's internal policies, such as due diligence standards, risk tolerances, and performance metrics.

Peer Benchmarking:

Peer economic development agency boards generally appear to be more involved in developing their agency's strategic plan than EDA. Of the five peers in the benchmark study, four Boards approve their agency's strategy; one stated that the Board develops the strategy with staff, one Board provides input into the strategic plan, one Board approves the plan, and two Boards review the plan.

Recommendations:

- 2.1. Develop a planning process which effectively engages the Policy and Governance Committee and the full Board with the CEO and Staff in approving EDA's strategic direction so as to support the State Economic Development Plan.
- 2.2. The Board should periodically (e.g., semi-annually or annually) monitor progress against the goals and objectives of the strategic plan.

Powers Delegated to the CEO

Current Status:

Although the EDA has by-laws, it has not comprehensively defined the powers or authorities that are held by the Board, i.e., those decisions that only the Board can make. Thus far, based upon guidance from the Attorney General's office, the approach has been that any power not delegated remains with the Board. But there has been little Board-level discussion of appropriate levels of delegation.

The EDA Board has granted significant internal operating authority to the CEO through the by-laws. Key provisions include the CEO's leading the agency with respect to internal operations and policy, legislation, governance, and strategic initiatives.

Delegations to the CEO for program responsibilities are contained in multiple documents and are difficult to quickly identify. Leading practice is to have all delegations in one document for clear articulation of responsibilities and accountabilities. It also facilitates Board and staff awareness, so as to fine-tune delegation levels and conditions.

EDA also is unusual in including delegations to the President and Chief Operating Officer (currently a vacant position) in its by-laws. Having more than one direct operating report is a lagging practice because it leads to potential confusion and diffusion of accountability. Prevailing practice is to have a single direct operating report to the Board for clarity of responsibilities and accountability.

Many Board members stated in interviews that they believed a greater degree of delegation to the CEO regarding ordinary program transaction approvals would be appropriate. Several cited the approval of

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funds for fuel storage tank removals as an example. The Assistant Attorney General advised that while additional delegations for program transaction approvals are allowable, the Board cannot delegate policy decisions to staff. Therefore, delegations should be specific enough to avoid unintentionally having staff create policy through the approval process. One practical result of that limitation is that it may be more difficult to delegate transaction approval powers for new programs, which are less defined, and where transaction approvals might be policy-making, unless “bright line” criteria can be established by the Board.

One result of the current limited level of delegation for program transaction approvals is the need for monthly Board meetings and limited time to discuss overall program performance and other more strategic issues. Over time, increased delegation to the CEO could provide more Board discussion time for program oversight, performance, and strategies, and perhaps also allow the Board to consider meeting less frequently.

The EDA Board has historically not had a formal process for evaluating the performance of the CEO and has not provided formal performance feedback or reviewed compensation levels. Although the hiring of a new CEO is recommended by the Governor, the Board must approve the selection and set compensation.

Peer Benchmarking:

Three of the other five peer economic development agencies, and all of the New Jersey sister agencies, have a formal policy or charter which defines the powers reserved for the Board.

None of the other economic development agency Boards have another operating report besides the CEO; two have the head of internal audit reporting to the Board, but no other operating executives. Similarly, the other New Jersey agencies only have internal audit, ethics, or general counsel as a direct report besides the CEO.

With respect to hiring of consultants and other outside experts, delegation to the CEO by the Board is a prevailing practice.

Most peer economic development agency boards do not approve routine transactions, i.e., tax incentives, bonds, or grants, as long as they meet program guidelines, unless they represent very significant amounts or are exceptional for some other reason. The role of the EDA Board appears to be more focused on transactional approvals than most other similar agencies.

Among the five other economic development agencies in the peer benchmark study, only one other agency board meets monthly. Two generally meet quarterly and two bi-monthly. This is consistent with the greater level of delegation seen at other agencies.

Most of the economic development agencies and sister New Jersey agencies do not have a formal process for evaluation and feedback to the CEO. However, based upon FAS experience with other public agencies, it is leading practice for the Board to have an annual structured process, to both evaluate CEO performance and to assess and award compensation.

Recommendations:

- 2.3. The Board should define the powers held by the Board in a Board charter.

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- 2.4. Any delegations from the Board, with the exception of delegations to specific assurance/reassurance functions (e.g., internal audit, compliance, etc.), should be to the CEO, who in turn should be granted the authority for further delegation, as appropriate and allowed by the Board.
- 2.5. The Board should continue to set policy, consistent with established New Jersey law and precedent, but may delegate programmatic transactional approval/rejection decisions to the CEO, subject to any conditions the Board may desire, such as dollar thresholds and/or meeting defined criteria or minimum scoring thresholds. The Board may change, revoke, or add delegations at any point, and should review the efficacy of the delegation terms and conditions at least biennially.
- 2.6. The Board should, with input from the CEO and relevant committees, review the current thresholds for approval by the Board/each Committee to determine whether more authority can be prudently delegated to staff.
- 2.7. The Board should develop a process for an annual CEO performance evaluation, and other direct reports, if appropriate, and review CEO compensation annually.

Board Member Appointments

Current Status:

The New Jersey Economic Development Authority Act provides for eight appointed members of the public to serve three year Board terms and to be eligible for reappointment. Staggered terms are provided for Board members who are appointed by the Governor. However, delays in making appointments results in long periods where members continue on the Board after their term has expired until they are replaced. This can result in a substantial portion of the Board being replaced at one time when the holdover Board members are finally replaced.

It is also worth noting that current practice is for the term of new appointments made when Board members hold over past expiration of their original term to be limited to remainder of the holdover term. While not a change in practice, we have inserted a reference to this practice in the new by-laws contained in Exhibit 1.

Peer Benchmarking:

Among the six New Jersey sister agencies, all but one have staggered terms for appointed members. Similarly, among the peer development agency group, all but one have staggered terms. Staggered terms for appointed board members is a prevailing practice with most public agency boards because it reduces discontinuity of board experience, improves institutional memory, and provides for more effective onboarding of new members.

Observations:

We note that delays by the Governor in filling Board positions after expiration of a member's term can frustrate statutorily designed EDA governance practices. Leaving holdover Board members in office for an

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extended period of time can result in replacing a substantial number of holdover Board members at one time, thereby incurring a loss of institutional memory that staggered terms are intended to prevent.

3. Approve key decisions

Administrative Rules

Current Status:

EDA is required by various statutes to establish rules and regulations that set standards and define processes for programs it manages and for implementation of other statutory provisions. Those rules are contained in Chapters 30 and 31 of Title 19 in the New Jersey Administrative Code.

While a substantive evaluation of EDA rule provisions was outside the scope of this review, we did note that EDA rules become out of date when specific programs expire or are changed. This has resulted in EDA administrative rule chapters becoming cluttered with provisions that are no longer used, causing confusion for applicants, board members and new staff. While the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and implementing rules (N.J.A.C. 1:30) require all State agencies to review their administrative rules every seven years, we believe a more frequent review protocol would improve accuracy and clarity of EDA administrative rules.

Peer Benchmarking:

The administrative rule process followed by EDA is largely established by the New Jersey Administrative Procedure Act. EDA is required to follow statutory requirements when establishing, amending, and repealing administrative rules. While statutory administrative rule procedures can vary between states and economic development agencies, the processes used by EDA are largely consistent with peer practices.

Recommendations:

- 3.1. With assistance from staff and the Policy and Governance Committee, the Board should review all regulations (administrative rules) on a periodic (e.g., every three or five years rather than the seven year review period under N.J.S.A. 52:148-5.1) basis to ensure they are up-to-date and appropriate. To facilitate the reviews, they can be done on a rolling basis, be triggered whenever a program expires or changes, and/or be assigned to the relevant committees.

Program Performance Standards

Current Status:

EDA currently tracks performance indicators which are linked to its mission, and the results are available on the state Transparency Center website. The chart includes prior year actual and current year target for 11 performance indicators.

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A frequent comment from Board members was that while overall program information is periodically updated, the Board was not getting regular performance information with the appropriate level of detail for each program. They also noted that more specific information would allow the Board to determine if they should be making policy changes in order to improve results.

Peer Benchmarking:

Among the peer economic development agencies, all but one indicated that they utilize a performance dashboard which monitors key performance indicators defined by the Board. Two also indicated that they receive performance reporting on all approved transactions periodically (e.g., annually).

Recommendations:

- 3.2. The Board and the relevant committee should review and provide input to the Board for its review and approval of due diligence standards and practices for each program at least every three years; new programs may require a more frequent review.
- 3.3. The Board and the relevant committee should review and provide input to the Board for its review and approval of performance standards and reporting requirements for each program, including key metrics, and provide direction to staff to ensure adequate reporting for effective program oversight.

4. Oversee Policy and Performance

Pipeline Visibility

Current Status:

EDA does not currently provide a report to the Board which indicates anticipated future activities levels in the “pipeline.” Most EDA Board members stated that they believe receiving a report which provides information on the level of activity in various stages for each program would be helpful. For example, on new programs, if applicants are not responding as expected, either too little or too great a response rate, the Board would want to consider potential policy adjustments to attempt to elicit participation levels in line with program objectives.

Peer Benchmarking:

Among the six sister New Jersey agencies, four provide a report to the Board of potential projects or transactions which are in process. One of the peer economic development agencies provides a similar report.

Recommendations:

- 4.1. Staff should provide pipeline reports to the Board for each program which identify the level of prospective transactions in process, stages (where they are in the process), and when they are likely to come to the Board for approval if they pass due diligence.

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Performance Expectations and Reporting

Current Status:

EDA currently prepares an annual program summary which is legislatively mandated to be submitted to the Governor and Legislature. However, as a general rule the Board does not receive more detailed periodic program performance reports for each of its programs. Most Board members raised this as a deficiency which they said limits effective oversight of the programs.

Peer Benchmarking:

Of the five peer economic development agencies, four provide a performance dashboard which monitors key performance metrics approved by the Board. Two also require periodic performance reporting to the Board on all approved transactions.

Recommendations:

- 4.2. The Board should receive regular performance time-series dashboards which monitor key performance indicators approved by the Board, report actual compared to expected performance, and present related management corrective actions as needed. For programs with a budgetary cap, the dashboard should also include funds remaining and a run-rate projection.
- 4.3. In consultation with the Policy and Governance Committee, the Board should establish appropriate timeframes for review of pilot programs.
- 4.4. In addition to the regular oversight reports, at least annually, the Board should receive more detailed program reviews; the Board's annual retreat could be an option to help ensure that these reviews regularly occur.

5. Obtain Independent Reassurance/Verification

Audit Committee Responsibilities

Current Status:

The EDA Audit Committee is comprised of four members and typically meets quarterly for about two hours. The meetings are closed to the public. The State Treasurer is the designated Chair.

The current Audit Committee charter lists the committee responsibilities as including oversight of:

- The independent audit process;
- The authority's financial operations and reporting process;
- Maintenance of a system of effective internal control; and
- Monitoring compliance with the Authority's operating policies, with emphasis of compliance with the Authority's Code of Ethics.

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In 2017, EDA created an Internal Auditor position reporting to the Senior Vice President of Business Support. The primary responsibilities for the position are evaluating and reporting the effectiveness of internal control and compliance of policy and procedures of the Authority's portfolio assets and incentives. EDA has also hired additional internal audit staff and employs an outside firm and independent contractors to supplement the internal staff resources, as needed.

As internal audit plan is prepared annually. EDA staff have indicated that in the first quarter of 2020 the Audit Committee began to review internal audit reports.

EDA has a staff person designated as the Chief Compliance Officer (CCO) who also has other duties. The CCO does not provide reports to the Audit Committee or the Board, and the Audit Committee does not review a compliance plan, as there is no overall compliance plan for the agency.

In 2019, the Governor's Task Force on EDA Tax Incentives found that "EDA lacks the proper internal controls with respect to the processing and review of internal whistleblower complaints." Although a process did exist, it was not well-documented. In late 2019, EDA adopted a formal, written Standard Operating Procedure (SOP) for handling whistleblower complaints. EDA has implemented that SOP and followed it ever since. The SOP requires reporting of all whistleblower complaints to the Audit Committee. More specifically, it requires quarterly reports on complaints and other submissions received, including status and resolution, as well as immediate notice of all complaints alleging: fraud, bribery, corruption or other criminal acts by an employee of the Authority; fraud, bribery, corruption or other criminal acts by a member of the Authority's Board (unless the allegations involve an Audit Committee member, in which case only those members who are not implicated should be advised); misconduct that requires notice be given to the Authority's insurer(s); misconduct that could have a material impact on the Authority's finances, management or operations; and misconduct that otherwise puts the Authority at risk.

Peer Benchmarking:

Based upon FAS experience with other public agencies, having an internal audit function is prevailing practice, and having a direct reporting relationship by the head of internal audit to the Board, and/or the Audit Committee, is also prevailing practice. It is also prevailing practice to have a Chief Compliance Officer (CCO) who develops a compliance plan and meets with the Board or Audit Committee on a regular basis. The CCO does not typically report to the Board or Audit Committee.

It is prevailing practice to have a written whistleblower policy. In New Jersey, the Conscientious Employee Protection Act or "Whistleblower Act" prohibits employers from retaliating against employees for protected activities. It is also prevailing practice for the whistleblower policy to describe protocols and procedures for whistleblower complaint handling to ensure that the Board is aware of the protocols and notified appropriately when complaints arise.

Among the economic development agencies, all but one have an internal audit function and one of those reports to the board. Among the six New Jersey sister agencies, all but one have an internal audit function and three of those report directly to the board or a committee of the board. At two of the four peer economic development agencies with an Audit Committee, the Committee reviews and approves the internal audit plan; one also approves the performance assessment and hiring and firing of the Chief Audit Executive. Among the New Jersey sister agencies, all of the Audit Committees review the internal audit plan; one is responsible for hiring and firing the Chief Audit Officer.

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Recommendations:

- 5.1. The Audit Committee should request the EDA Chief Compliance Officer, with support from other executives, to develop an EDA compliance plan which identifies all the areas where compliance monitoring should occur, the processes, procedures, and frequency for monitoring, the reporting requirements, and any staff training and education required to support implementation of the plan.
- 5.2. The Audit Committee should review annual internal audit and compliance work plans.
- 5.3. The Audit Committee should review regular reports from Internal Audit, including “whistleblower” complaints received, investigated, and resolved.
- 5.4. The hiring, firing and compensation of the head of internal audit should be subject to Audit Committee review.

Internal Audit Practices

Current Status:

Internal audit reports include recommendations but do not include management action plans.

The Internal Audit department works in conformance with the Institute of Internal Auditors (IIA) standards and code of ethics. However, there has not been an internal audit quality assessment.

Peer Benchmarking:

Prevailing practice is for internal audit recommendations to include management action plans for follow up. Among the four economic development with an internal audit function, three of them indicate their internal audit reports include management action plans. Similarly, among New Jersey sister agencies four of five include management action plans.

The IIA recommends that organizations implement a Quality Assurance and Improvement Program (QAIP) for their internal audit function. The IIA further states that “All internal audit activities, regardless of industry, sector, or size of audit staff — even those outsourced or co-sourced — must maintain a QAIP that contains both internal and external assessments.”

Recommendations:

- 5.5. Internal audit reports should include management action plans.
- 5.6. The Audit Committee should also review regular staff reports on the Authority’s compliance with applicable laws.
- 5.7. EDA should plan to implement a Quality Assurance and Improvement Program (QAIP) which includes internal assessments and, every five years, an external assessment by a third party.

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Independent Advice

Current Status:

The EDA Board has delegated selection of most third-party advisors to the CEO. However, the Board retains selection of the external auditor and occasionally has engaged external counsel. There is currently no formal process for the Board to develop and deliver feedback for external service providers the Board engages.

Peer Benchmarking:

Although it is not typical, based upon FAS experience it is leading practice for boards to have a formal process for providing feedback to service providers as part of its efforts in continuous improvement. It is important for the Board to define its expectation at the time of contracting and then have a process for obtaining and delivering Board feedback on a periodic basis.

Recommendations:

- 5.8. When the Board has meaningful and continuing interaction with a third-party provider (e.g., external auditor, external counsel), it should annually provide feedback to the provider regarding their performance and any performance concerns raised by the Board.

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6. Proposed By-Laws, Charters and Policies

New or revised draft by-law, charter and policy documents were developed and submitted to EDA for consideration and for Board approval. The documents will need to be reviewed for compliance with applicable law and for consistency with legal advice. These documents are included in Exhibit 1.

Exhibit 1 – Proposed By-Laws, Charters, and Policies

- A. By-laws
- B. Board charter
- C. Committee charters
 - 1. Audit Committee
 - 2. Policy and Governance Committee
 - 3. Directors’ Loan Committee
 - 4. Incentives Committee
 - 5. Real Estate Committee
- D. Policies
 - 1. Budget Policy
 - 2. Business Continuity Policy
 - 3. Communications and Stakeholder Relations Policy
 - 4. Delegation Policy
 - 5. Education Policy
 - 6. Insider Trading Policy
 - 7. Performance Review Policy
 - 8. Referral Policy
 - 9. Strategic Planning Policy