

July 2009

# RECOVERY ACT

## States' and Localities' Current and Planned Uses of Funds While Facing Fiscal Stresses (New York)



GAO

Accountability \* Integrity \* Reliability

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# Appendix XII: New York

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## Overview

The following summarizes GAO's work on the second of its bimonthly reviews of American Recovery and Reinvestment Act (Recovery Act)<sup>1</sup> 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/>.

**Use of funds:** Our work in New York focused on nine federal programs, selected primarily because they have begun disbursing funds to states and they include both existing programs receiving significant amounts of Recovery Act funds or significant increases in funding, and new programs. Program funds are being directed to help New York stabilize its budget and support local government entities, particularly school districts, and several programs are expanding existing programs. Funds from some of these programs are intended for disbursement through states or directly to localities. The funds include the following:

- **Increased Medicaid Federal Medical Assistance Percentage (FMAP) funds.** As of June 29, 2009, New York had drawn down about \$2.6 billion in increased FMAP grant awards and is using funds made available as a result of the increased FMAP to cover the state's increased Medicaid caseload, work on the state's goal to restructure provider reimbursement, and to offset the state's budget deficit.<sup>2</sup>
- **U.S. Department of Education (Education) State Fiscal Stabilization Fund (SFSF).** Education has awarded New York about \$2.02 billion in Recovery Act SFSF funds, or about 67 percent of its total SFSF allocation of about \$3 billion. As of June 30, 2009, New York had not obligated or disbursed any SFSF funds. New York is planning to use these funds to offset the state budget gap and restore state aid to school districts and 2-year public colleges. For example, the New York City School District will use SFSF education stabilization funds to provide basic education services that would not be offered without the Recovery Act funds.

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

<sup>2</sup>The increased FMAP available under the Recovery Act is for state expenditures for Medicaid services. However, the receipt of this increased FMAP may reduce the funds that states would otherwise have to use for their Medicaid programs, and states have reported using these available funds for a variety of purposes.

- **Highway Infrastructure Investment funds.** The U. S. Department of Transportation's Federal Highway Administration (FHWA) apportioned about \$1.12 billion in Recovery Act funds to the New York State Department of Transportation (NYSDOT) in March 2009. As of June 25, 2009, the U.S. Department of Transportation had obligated about \$589 million to New York. According to NYSDOT, they have used Recovery Act funds for about 240 projects; 105 of these projects had been advertised for bids and 34 contracts had been signed as of June 17, 2009. Many of these projects are preventive maintenance efforts or repaving projects that could be started quickly and completed in 3 years. For example, we visited 1 of the 11 bridges to be repainted, under a state contract, in two economically distressed areas. Without Recovery Act funding this project would have been scaled back or delayed.
- **Title I, Part A, of the Elementary and Secondary Education Act of 1965 (ESEA) and Individuals with Disabilities Education Act, Parts B and C (IDEA).** Through the Recovery Act, over the next 2 years New York school districts expect to receive an additional \$907 million in ESEA Title I funds and about \$760 million in increased IDEA funds. As of June 30, 2009, New York had been allocated about \$453.5 million of the ESEA Title I and about \$409 million of the IDEA funds, according to New York State Division of the Budget officials. As of June 30, 2009, New York had not obligated or disbursed any ESEA Title I and IDEA funds. New York school districts plan to use these funds to expand existing programs. For example, the New York City School District alone estimates that 180 schools with more than 90,000 students will receive ESEA Title I funding for the first time under the Recovery Act.
- **Weatherization Assistance Program.** The U.S. Department of Energy allocated about \$395 million in Recovery Act weatherization funding to New York. As of June 30, 2009, the state had not obligated any of these funds. It plans to begin disbursing its funds in July 2009. New York plans to use the Recovery Act weatherization funds to greatly expand its existing weatherization program; the state estimates that about 45,000 dwelling units will be weatherized using Recovery Act funds.
- **Workforce Investment Act (WIA) Youth Program.** The U.S. Department of Labor allotted over \$71 million to New York in WIA Recovery Act funds. After reserving 15 percent for statewide activities, the New York State Department of Labor has allocated \$60.8 million of this allotment to local workforce investment boards within 30 days of

receipt of funds as required by the U.S. Department of Labor guidance. New York State plans to use the increased Recovery Act WIA funds to provide over 23,400 youth with summer youth/work experience activities. We visited projects in New York City, Utica, and Buffalo, where plans were being developed to provide increased WIA work sites, additional job training, and new programs, including some that would focus on green jobs in landscape design and public horticulture.

- **Edward Byrne Memorial Justice Assistance Grant (JAG) Program.** The U.S. Department of Justice's Bureau of Justice Assistance has awarded approximately \$67 million in Recovery Act funding directly to New York. Based on information available as of June 30, 2009, no Recovery Act funds had been obligated by the New York State Department of Criminal Justice Services, which administers these grants for the state.<sup>3</sup> According to state officials, these funds will be used to implement recently enacted drug law reform efforts, provide job placement services for the formerly incarcerated, and support other programs.
- **Public Housing Capital Fund.** The U.S. Department of Housing and Urban Development allocated about \$500 million in Recovery Act funding to 84 public housing agencies in New York. Based on information available as of June 20, 2009, about \$98.1 million (19.5 percent) had been obligated by 36 of those agencies. The three public housing authorities we visited in Binghamton, Buffalo, and Glen Cove indicated that they were planning to spend the increased funding on an expanded community center, a gymnasium, a computer lab, projects aimed at increasing energy efficiency, and other site improvements.

For more information on Recovery Act program funding within New York State, see the Office of the State Comptroller's Open Book, the Web site that provides transparency for contracts, expenditures, and local government funds, at <http://www.openbooknewyork.com/stimulus/index.htm>. Note, however, in some cases the Recovery Act program numbers in this report may not correspond exactly to those reported at this site because we use different sources and/or timeframes.

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<sup>3</sup>We did not review Edward Byrne Memorial Justice Assistance Grants awarded directly to local governments in this report because the Bureau of Justice Assistance's (BJA) solicitation for local governments closed on June 17; therefore, not all of these funds have been awarded.

**Safeguards and Internal Controls:** As we noted in our April 2009 Recovery Act report, New York plans to track and monitor Recovery Act funds mostly through its existing systems. New York officials recently told us that they have not experienced any challenges with regard to creating discrete budget and accounting codes to track Recovery Act funds; however, a few agencies have expressed the need for more specific guidance from the Office of Management and Budget (OMB) and federal agencies on tracking certain programs. Standards adopted by the Office of the State Comptroller and the New York State Division of the Budget's internal control and internal audit requirements provide state agencies with guidance to (1) conduct risk assessments of agency operations, (2) prepare audit plans to guide their work, (3) evaluate their agencies' internal controls, and (4) monitor and assess their effectiveness. Individual agencies, as well as the Economic Recovery and Reinvestment Cabinet Internal Controls and Fraud Prevention Working Group, are planning to conduct additional oversight of Recovery Act funds, but indicated to us that the lack of funds for monitoring activities may somewhat impede their ability to adequately monitor Recovery Act funds.

**Assessing the effects of spending:** Throughout April, May, and June 2009, most of the state's management focus was on reducing the state budget gap, while applying for and spending Recovery Act funds through its various program agencies. Although state agencies have taken steps to adapt current reporting mechanisms to prepare to meet Recovery Act reporting requirements, some of these agencies continue to express concerns about meeting Recovery Act reporting requirements and continue to look to federal agencies and the Office of the Management and Budget (OMB) for further guidance on how to define report variables such as jobs created and/or sustained. Nevertheless, New York officials throughout the state agencies and at some of the localities we visited provided some preliminary estimates. For example, the New York City School District anticipates saving 14,000 jobs as the result of Recovery Act funding through several programs.

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## New York Using Recovery Act Funds to Help Stabilize Its Budget and Prevent Reductions in Services

Recovery Act funds helped New York to stabilize state finances and are helping to prevent reductions in essential services. For fiscal year 2008-2009, which, for New York, ended on March 31, 2009, the state filled a budget gap of \$2.2 billion, and for 2009-2010, projected a gap of \$17.9 billion, for a combined total of \$20.1 billion.<sup>4</sup> The budget gaps reflect the deteriorating economy and the upheaval in the financial markets.

To help close the budget gaps for fiscal years 2008-2009 and 2009-2010, New York used about \$5 billion in funds made available as a result of the increased Medicaid FMAP. Without these funds, budget officials said the state would have taken other actions, such as deferring payments it owed, in order to end the 2008-2009 fiscal year in balance, which it is required by law to do. Also, budget officials said the infusion of the Recovery Act funds allowed the state to avoid taking funds from its rainy-day fund in order to cover FMAP-related costs.<sup>5</sup> In addition, to close the gap for fiscal year 2009-2010, the state anticipates using about \$1.2 billion of Recovery Act SFSF funds. Nearly all of the SFSF governmental services funds in fiscal year 2009-2010 will be targeted to help the state restore reductions in education and avoid reductions in other essential government services.<sup>6</sup> See figure 1 below for a chart of the actions that were taken to close the budget gaps for fiscal years 2008-2009 and 2009-2010, including the use of Recovery Act funds. Although New York took actions to close the budget gap for this fiscal year, several uncertainties could present risks to the state's current budget, including revenue collections, Medicaid caseload, transit authority finances, and ongoing labor negotiations.

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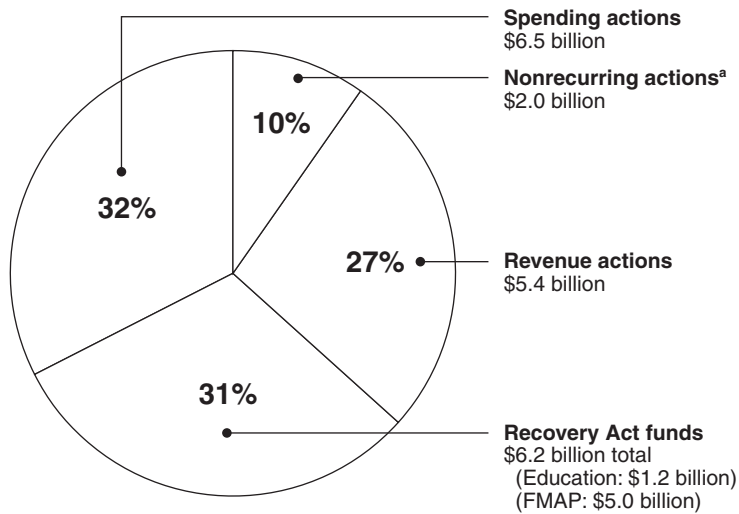
<sup>4</sup>New York State operates on an April 1 through March 31 fiscal year.

<sup>5</sup>New York has two rainy-day funds—its tax Stabilization Reserve Fund and Rainy Day Reserve, which balanced at approximately \$1 billion and \$175 million respectively at the end of 2008-2009. Officials anticipate these balances remaining the same for the 2009-2010 fiscal year.

<sup>6</sup>This represents the 18 percent of SFSF funds that New York must use toward public safety and other governmental services, which may include education.



**Figure 1: Actions to Close Budget Gaps for Fiscal Years 2008-2009 and 2009-2010**



Source: New York - 2009-2010 Enacted Budget Report, April 28, 2009.

<sup>a</sup>The nonrecurring actions include a delay of a Medicaid cycle payment until fiscal year 2011-2012, increased business tax prepayments, and a transfer of New York Power Authority resources.

### New York Giving Some Preliminary Thought to the Phaseout of Recovery Act Funds

New York projects sizable budget gaps for the next 3 years. It projects to receive its remaining Recovery Act funds in the next fiscal year, which begins April 1, 2010—almost \$4.4 billion, net of the cost of federal tax changes. Absent additional federal aid, New York projects to close its future budget gaps largely from state spending reductions and revenue enhancements. The uncertainty about when the economy will experience an upswing will affect these projections. See table 1 for a comparison of budget gap projections with and without gap closing measures, which take Recovery Act monies into account.

**Table 1: Comparison of New York State's Projected Long Term Budget Gap Without and With Gap-Closing Measures**

Dollars in millions

<b>Fiscal year</b>	<b>Without gap-closing measures</b>	<b>With gap-closing measures</b>
2010-2011	\$(20,374)	\$(2,166)
2011-2012	(21,900)	(8,757)
2012-2013	(22,845)	(13,706)
<b>Cumulative total</b>	<b>\$(65,119)</b>	<b>\$(24,629)</b>

Source: New York's 2009-2010 Enacted Budget Financial Plan, April 28, 2009.

New York budget officials said that they have given preliminary thought to the phaseout of Recovery Act funds in the future, but the Governor's representative said it was too early to do any extensive planning. Senior budget officials said their goal, to the extent possible, is to use Recovery Act funds for actions they view as nonrecurring, such as using approximately \$2.26 billion made available as a result of the increased Medicaid FMAP to cover deteriorating receipts and new costs, most of which were related to the economic downturn.

The New York State Association of Counties expressed concern that the Enacted 2009-2010 state budget includes substantial Recovery Act funds, but does not adjust the spending plan to reflect the current economic reality, or the long-term budget deficits that will occur post-Recovery Act.<sup>7</sup> The Governor's representative said that New York cannot yet take more action than it already has because revenue projections are not firm, and the impact of the economic recession has not fully run its course. The Governor's representative said that a more thought-out exit strategy will be revealed around November or December 2009, when the 2010-2011 budget is presented to the state legislature.

<sup>7</sup>The New York State Association of Counties is a bipartisan municipal association serving all 62 counties of New York.

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## New York Medicaid Has Drawn over \$2 Billion in Increased FMAP and Modified Its Program to Address Concerns over Compliance with Certain Recovery Act Requirements

Medicaid is a joint federal-state program that finances health care for certain categories of low-income individuals, including children, families, persons with disabilities, and persons who are elderly. The federal government matches state spending for Medicaid services according to a formula based on each state's per capita income in relation to the national average per capita income. The rate at which states are reimbursed for Medicaid service expenditures is known as the Federal Medical Assistance Percentage (FMAP), which may range from 50 to no more than 83 percent. The Recovery Act provides eligible states with an increased FMAP for 27 months from October 1, 2008 through December 31, 2010.<sup>8</sup> On February 25, 2009, the Centers for Medicare & Medicaid Services (CMS) made increased FMAP grant awards to states, and states may retroactively claim reimbursement for expenditures that occurred prior to the effective date of the Recovery Act.<sup>9</sup> Generally, for federal fiscal year 2009 through the first quarter of federal fiscal year 2011, the increased FMAP, which is calculated on a quarterly basis, provides for: (1) the maintenance of states' prior year FMAPs; (2) a general across-the-board increase of 6.2 percentage points in states' FMAPs; and (3) a further increase to the FMAPs for those states that have a qualifying increase in unemployment rates. The increased FMAP available under the Recovery Act is for state expenditures for Medicaid services. However, the receipt of this increased FMAP may reduce the funds that states would otherwise have to use for their Medicaid programs, and states have reported using these available funds for a variety of purposes.

From October 2007 to May 2009, the state's Medicaid enrollment grew from 4,121,588 to a projected 4,349,197, an increase of 5.5 percent.<sup>10</sup> While the increase was generally gradual over this period, there were three months where enrollment decreased (fig. 2). Most increases in enrollment were attributable to the population groups of non-disabled non-elderly adults and children and families. There was a decline during this period in

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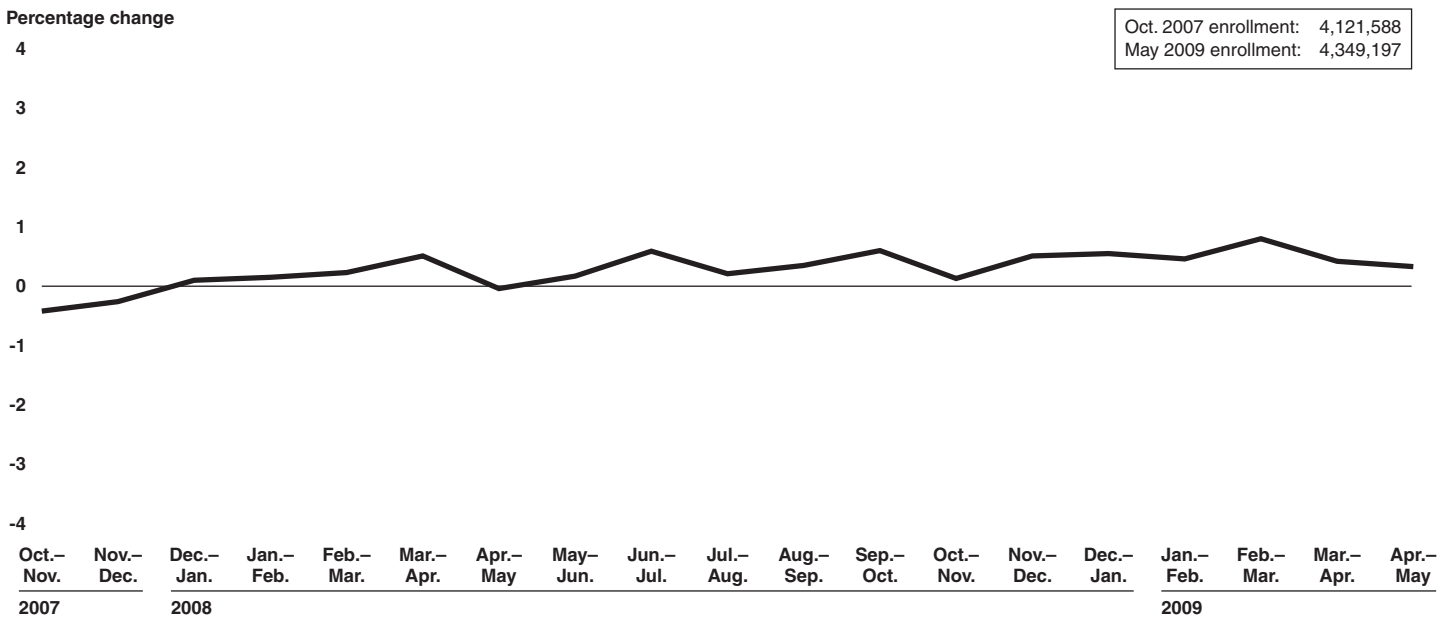
<sup>8</sup>See Recovery Act, div. B, title V, §5001.

<sup>9</sup>Although the effective date of the Recovery Act was February 17, 2009, states generally may claim reimbursement for the increased FMAP for Medicaid service expenditures made on or after October 1, 2008.

<sup>10</sup>The state provided projected Medicaid enrollment data for March, April and May 2009.

the state’s “other” population category, which includes a Medicaid demonstration population group.<sup>11</sup>

**Figure 2: Monthly Percentage Change in Medicaid Enrollment for New York, October 2007 to May 2009**



Source: GAO analysis of state reported data.

Note: The state provided projected Medicaid enrollment data for March, April and May 2009.

As of June 29, 2009, New York had drawn down about \$2.6 billion in increased FMAP grant awards, which is about 80 percent of its awards to date.<sup>12</sup> New York officials reported that they are using funds made available as a result of the increased FMAP to offset the state budget deficit, cover the state’s increased Medicaid caseload and continue working on the state’s goals related to restructuring provider

<sup>11</sup>New York’s other population group includes a section 1115 demonstration program for adults who are aged 19 to 64 who have income or resources too high to qualify for traditional Medicaid. Section 1115 of the Social Security Act authorizes the Secretary of Health and Human Services to waive compliance with certain statutory requirements and to authorize costs that would otherwise not be included as Medicaid expenditures in connection with experimental or demonstration projects that in the judgment of the Secretary are likely to assist in promoting Medicaid’s objectives.

<sup>12</sup>New York received increased FMAP grant awards of over \$3.3 billion for the first three quarters of federal fiscal year 2009.

reimbursement for state fiscal year 2009-2010. New York officials also indicated that the funds made available as a result of the increased FMAP have allowed the state to continue working towards its goals of eliminating barriers at initial Medicaid enrollment, making small eligibility expansions, and restructuring the reimbursement system for institutional providers without having to cut Medicaid enrollees or benefits. Officials added that before the increased FMAP, New York was considering a mid-year deficit reduction program for fiscal year 2008-2009, which would have amounted to a \$3.2 billion reduction in state Medicaid spending. As the state is projecting an eight percent growth in Medicaid enrollment over the current fiscal year, officials noted that the ability to sustain this growth while reforming the program and expanding access is due to funds made available as a result of increased FMAP. Finally, New York officials indicated that the Medicaid program had incurred no additional costs related to the administrative and reporting requirements associated with use of these funds.

New York officials said that the state modified its accounting system to track the increased FMAP funds. For example, the state controller set up separate account and transaction codes to track revenues and expenditures related to the increased FMAP. New York officials said that they also rely on re-programmed CMS quarterly electronic reporting forms to track and report the increased FMAP funds. In terms of additional oversight, the officials noted that the leader of the Governor's sub-cabinet workgroup on Internal Controls and Fraud Prevention asked state agencies that receive these funds to develop and implement plans for internal controls related to their use, which will be reviewed by the leader. In addition, the state's Medicaid program is subject to review and audit by the State Office of the Comptroller and the Office of Inspector General in New York. A number of audits are active at any point in time in New York and funds available to the state as the result of increased FMAP would fall within the purview of such audits.

In addition, in response to concerns regarding maintaining eligibility for the increased FMAP, New York adjusted the method it used to allocate the

nonfederal share of Medicaid expenditures.<sup>13</sup> According to New York officials, the local share of the nonfederal share of Medicaid expenditures is based on a statutory formula that provides for a percentage increase each year, subject to an existing cap, thus limiting counties' exposure to Medicaid expenses. New York officials indicated that the percentage of the local share will be maintained at the September 30, 2008 level over the course of the recession adjustment period. New York officials will initially estimate the state and local shares of the nonfederal share, and will then reconcile these estimates based on subsequent actual data. Based on the reconciliation for the 2008-2009 fiscal year, the final amount of the localities' shares would then be calculated and adjusted amounts would be paid to the counties as warranted.

New York officials were also concerned that the implementation of proposed changes to the state's spousal impoverishment provisions under Medicaid as requested by CMS could be construed as a more restrictive method for establishing eligibility for Medicaid services, thus jeopardizing the state's eligibility for increased FMAP.<sup>14</sup> New York officials requested guidance from CMS and are awaiting clarification on this issue, while delaying implementation. In addition, the 2007 Single Audit for New York identified several material weaknesses related to the state's Medicaid program, including erroneous reporting of the federal Medicaid share, duplicate claims, and the potential overpayment of claims.<sup>15</sup> The audit indicated that state officials agreed with the findings and that corrective actions had been taken to address most of the weaknesses.

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<sup>13</sup>In some states, political subdivisions—such as cities and counties—may be required to help finance the state's share of Medicaid spending. Under the Recovery Act, a state that has such financing arrangements is not eligible for certain elements of the increased FMAP if it requires subdivisions to pay during a quarter of the recession adjustment period (between October 1, 2008 and December 31, 2010) a greater percentage of the nonfederal share than the percentage that would have otherwise been required under the state plan on September 30, 2008. See Recovery Act, div. B., title V, § 5001(g)(2).

<sup>14</sup>In order to qualify for the increased FMAP, states generally may not apply eligibility standards, methodologies, or procedures that are more restrictive than those in effect under their state Medicaid plans or waivers on July 1, 2008. See Recovery Act, div. B, title V, §5001(f)(1)(A).

<sup>15</sup>The Single Audit Act of 1984, as amended (31 U.S.C. ch. 75), requires that each state, local government, or non-profit organization that expends \$500,000 or more a year in federal awards must have a single audit conducted for that year subject to applicable requirements, which are generally set out in Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations (June 27, 2003). If an entity expends federal awards under only one federal program, the entity may elect to have an audit of that program.

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## New York Highway Projects Under Way

The Recovery Act provides funding to the states for restoration, repair, and construction of highways and other activities allowed under the Federal-aid Highway Surface Transportation Program, and for other eligible surface transportation projects. The Recovery Act requires that 30 percent of these funds be suballocated for projects in metropolitan and other areas of the state. Highway funds are apportioned to the states through existing federal-aid highway program mechanisms and states must follow the requirements of the existing program, including planning, environmental review, contracting, and other requirements. However, the federal fund share of highway infrastructure investment projects under the Recovery Act is up to 100 percent, while the federal share under the existing Federal-aid Highway Program is usually 80 percent.

As we previously reported, \$1.12 billion was apportioned to New York in March 2009 for highway infrastructure and other eligible projects. As of June 25, 2009, \$589 million had been obligated. 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. As of June 25, 2009, about \$2.1 million had been reimbursed by FHWA. States request reimbursement from FHWA as the state makes payments to contractors working on approved projects.

To meet the act's objectives—funding projects that can be started quickly and have the desired economic effect in terms of jobs and local benefits—the state targeted most state transportation funds to preventive maintenance efforts, such as cleaning bridges, or repaving. State officials emphasized that these projects extend the life of infrastructure and can be contracted for and completed relatively easily in the 3-year time frame required by the act. Some Recovery Act highway dollars are also being directed to more typical shovel-ready highway construction projects for which there are insufficient funds.

- An example of a project funded by the Recovery Act is the \$14.9 million Delaware Avenue reconstruction project in Albany that we visited. Unlike most New York Recovery Act highway projects that are managed by NYSDOT, Delaware Avenue is managed by the city using NYSDOT contract and construction requirements as its management framework. The city began advertising the project using its own funds in April 2009 and plans to complete it using Recovery Act funds by October 2010. According to NYSDOT, as of June 8, 2009, the construction contract had been awarded so work could begin;

however, the city-state reimbursement agreement is awaiting approval by the Office of the State Comptroller. The project has been on the State Transportation Improvement Program since 2004 and it was chosen in part because it was shovel ready. City officials told us that the project would have been scaled back considerably without Recovery Act funds. Although the county where the project is located is not an economically distressed area (EDA), the City of Albany has been hit hard by the recession. From 1997 to 2006, the city lost over 9,000 taxpayers and over \$600,000 in tax revenue. The Albany project expects to employ 40 people by the summer. Table 2 shows New York’s highway obligations by project type.

**Table 2: Highway Obligations for New York by Project Type as of June 25, 2009**

Dollars in millions

	Pavement projects			Bridge projects				Total
	New construction	Pavement improvement	Pavement widening	New construction	Replacement	Improvement	Other <sup>a</sup>	
	\$14	\$320	\$8	\$0	\$91	\$72	\$84	<b>\$589</b>
Percent of total obligations <sup>b</sup>	2.4	54.3	1.3	0.0	15.5	12.2	14.3	<b>100.0</b>

Source: GAO analysis of Federal Highway Administration data.

<sup>a</sup>Includes safety projects such as improving safety at railroad grade crossings, transportation enhancement projects such as pedestrian and bicycle facilities, engineering, and right-of-way purchases.

According to NYSDOT, as of June 17, 2009, 105 of these projects had been advertised for contract bids and 34 contracts had been awarded. Typically, according to FHWA officials who oversee the NYSDOT programs, it takes about 6 weeks to advertise and award a highway contract. Thus, only about \$2.1 million in Recovery Act funds had been reimbursed to New York by FHWA as of June 25, 2009.

Officials said that they generally have received more competitive bids on the initial group of Recovery Act projects than they would normally expect, resulting in contract prices as much as 5 to 10 percent lower than engineering cost estimates. FHWA officials said that this frees up funds for the next project on the long backlog of New York transportation projects. FHWA officials noted, however, that Metropolitan Planning Organizations in the state managing Recovery Act highway projects might take a different approach and reserve these funds to meet potential cost overruns. NYSDOT officials also told us that recent contract awards have been closer to expected costs.



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## New York Officials Are Confident That They Will Meet Key Recovery Act Transportation Requirements

Funds appropriated for highway infrastructure spending must be used as required by the Recovery Act. The states are required to

- Ensure that 50 percent of apportioned Recovery Act funds are obligated<sup>16</sup> within 120 days of apportionment (before June 30, 2009) and that the remaining apportioned funds are obligated within 1 year.<sup>17</sup> The Secretary of Transportation is to withdraw and redistribute to other states any amount that is not obligated by any state within these time frames.
- Give priority to projects that can be completed within 3 years, and to projects located in EDAs. EDAs are defined by the Public Works and Economic Development Act of 1965, as amended.
- Certify that the state will maintain the level of spending for the types of transportation 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 planned to expend from state sources as of February 17, 2009, for the period beginning on that date and extending through September 30, 2010.<sup>18</sup>

New York met the 50 percent obligation requirement in May 2009. As of June 25, 2009, about 62.6 percent of the \$784 million that is subject to the 50 percent rule for the 120-day redistribution had been obligated. New York also transferred \$466,000 of Recovery Act highway funding that was subject to the 50 percent rule for the 120-day redistribution from FHWA to the Federal Transit Administration. According to FHWA guidance, once

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<sup>16</sup>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.

<sup>17</sup>The 50 percent rule applies only to funds apportioned to the state and not to the 30 percent of funds required by the Recovery Act to be suballocated, primarily based on population, for metropolitan, regional, and local use.

<sup>18</sup>States that are unable to maintain their planned levels of effort will be prohibited from benefiting from the redistribution of obligation authority that will occur after August 1 for fiscal year 2011. As part of the federal-aid highway program, FHWA assesses the ability of the each state to obligate their apportioned funds by the end of the federal fiscal year (September 30) and adjusts the limitation on obligations for federal-aid highway and highway safety construction programs by reducing the authority of some states to obligate funds and increasing the authority of other states.

transferred, these funds are no longer subject to the 50 percent obligation requirement.<sup>19</sup> In addition, New York State transportation officials are confident that 100 percent of Recovery Act funds will be obligated by the end of the calendar year.

Even before the Recovery Act was enacted, NYSDOT, in anticipation of such an act, began to identify projects on its list of backlog/delayed projects that were shovel ready and could be initiated and completed within a short period. As a result, as of June 2009, NYSDOT expected to spend about 81 percent of its highway apportionment within the first 3 years after the act took effect.

FHWA officials are generally satisfied with the effort NYSDOT has made to identify and fund EDA projects and will continue to monitor the state's progress in this area. Because NYSDOT began to identify potential projects before the act was passed, it did not initially give priority to projects in EDAs. According to senior NYSDOT officials, the department, however, had the objective of spreading whatever federal Recovery Act money became available around the state to maximize its effect. Also, since its initial project review, NYSDOT has emphasized the identification and funding of EDAs and, according to FHWA officials, are now pushing these projects to the head of the line for future funding. Thus, the highway projects certified as of June 4, 2009, included at least one in each of the 30 designated EDA counties in the state at that time.<sup>20</sup> The initial project identification and certification also resulted in about 25 percent of Recovery Act highway funds going to EDAs—areas where about 20 percent of the state's population lives. New York identifies EDAs using the criteria outlined in the Public Works and Economic Development Act of 1965, as amended, and uses the most recent unemployment (2007 and 2008) and per capita income (2006) data available. NYSDOT officials noted however, that some highway projects, such as the Delaware Avenue project, are located in cities that have been hard hit by the recession; however, because these cities are surrounded by affluent areas, the local county is not an EDA.

- We also visited 1 of the 11 bridges to be painted under a NYSDOT project that involves work in Herkimer and Oneida counties (the

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<sup>19</sup>Generally, FHWA has authority pursuant to 23 U.S.C. § 104(k)(1) to transfer funds made available for transit projects to FTA.

<sup>20</sup>According to FHWA, the number of EDAs in New York State as of June 18, 2009 was 35.

Culver Avenue Bridge in Utica, New York). All the bridges are located in EDAs. Officials noted that, generally, bridges must be cleaned and painted every 12 years or significant maintenance problems may occur. The contract for this project was let on March 5, 2009, and awarded April 15, 2009, for \$2.15 million—about 5 percent under estimate. Originally, 8 bridges were to be included in the project but the availability of Recovery Act funding allowed the state to add 3 more bridges. Officials stressed that the project was in jeopardy of not being done for another year or two.

The Governor of New York certified in March 2009 that the state would maintain its level of effort for Recovery Act-related transportation programs. NYSDOT's initial submission, developed in consultation with FHWA, was based on planned obligations during the period of February 17, 2009, through September 30, 2010. Subsequently, on April 22, the Secretary of the U.S. Department of Transportation provided additional guidance and gave the states the option to amend their certifications. Included in this guidance was the requirement that the state maintenance of effort certification be based on planned expenditures and not planned obligations. New York, with assistance from FHWA, resubmitted its maintenance of effort certification to reflect planned expenditures. The federal Department of Transportation is currently evaluating whether the states' method of calculating the amount they plan to expend for the covered programs is in compliance with DOT's guidance. In June 2009, the head of the New York State Budget Division's Revenue and Transportation Unit expressed concern that the basis of measurement for future maintenance of effort compliance by FHWA would only count expenditures for individual Recovery Act eligible projects. However, since New York's maintenance of effort certification was compiled on a program, not a project basis, (consistent with previous state transportation budgets) a maintenance of efforts test on a narrower Recovery Act project eligibility basis would place New York at a disadvantage in determining maintenance of effort compliance.

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## NYSDOT Preparing for Recovery Act Reporting

NYSDOT officials have focused efforts to date on complying with transportation requirements, and identifying and awarding contracts for Recovery Act transportation projects. In May, very limited highway job creation was reported. However, an increase is expected for June because of the jobs created by contracts awarded in May. NYSDOT officials remain confident that current highway construction reporting mechanisms, and the Recovery Act reporting requirements that have been incorporated into contracts using Recovery Act funds, will adequately

meet Recovery Act job creation reporting requirements. FHWA has assumed the responsibility of identifying indirect jobs generated by Recovery Act highway work.

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## New York Planning to Use SFSF Funds to Reduce Planned Budget Cuts

The Recovery Act created the SFSF program to be administered by Education. The SFSF provides funds to states to help avoid reductions in education and other essential public services. The initial award of SFSF funding requires each state to submit an application to Education that provides several assurances. These include assurances that the state will meet maintenance of effort requirements (or it will be able to comply with waiver provisions) and that it will implement strategies to meet certain educational requirements, including increasing teacher effectiveness, addressing inequities in the distribution of highly qualified teachers, and improving the quality of state academic standards and assessments. Furthermore, the state applications must contain baseline data that demonstrate the state's current status in each of the assurances. States must allocate 81.8 percent of their SFSF funds to support education (education stabilization funds), and must use the remaining 18.2 percent for public safety and other government services, which may include education (government services funds). After maintaining state support for education at fiscal year 2006 levels, states must use education stabilization funds to restore state funding to the greater of fiscal year 2008 or 2009 levels for state support to school districts or public institutions of higher education (IHE). When distributing these funds to school districts, states must use their primary education funding formula but maintain discretion in how funds are allocated to public IHEs. In general, school districts maintain broad discretion in how they can use stabilization funds, but states have some ability to direct IHEs in how to use these funds.

As of June 30, 2009, New York had received \$2.02 billion of its total \$3 billion allocation for SFSF—\$1.65 billion is for education stabilization and \$368 million is for government services, according to New York State Division of the Budget officials. As of June 30, 2009, New York had not obligated or disbursed any of the SFSF funds. Based on the state's approved application, the state will allocate 95 percent of the education stabilization funds to local education agencies (LEA) and three percent to IHEs. The remaining two percent must be used to restore education spending in 2011, with any amount leftover to be distributed to LEAs. The state is determining total allocations for each LEA using formulas based on enrollment, school district wealth and student need and has placed no restrictions on the use of the funds beyond those in federal statute. New York is determining total allocations for each IHE using formulas based on

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enrollment. As of June 30, 2009, New York had not yet disbursed funds to LEAs and planned to disburse funds to IHEs before the end of the calendar year. The state application provided assurances to Education that the state will meet maintenance of effort requirements. New York State Division of the Budget officials said that the state is requiring that each LEA submit an application prior to September 1 addressing how it will spend SFSF funds and with confirmation of certain assurances regarding the use of the funds.

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**Almost 40 Percent of New York SFSF Funds to Be Disbursed within Year**

State officials offered projections on when the SFSF funds would be disbursed. Officials said that approximately half of the state's \$3 billion in SFSF funds was allocated to general categories in the fiscal year 2009-2010 Enacted Budget. Although LEAs and IHEs have not received their SFSF fund allocations, as of June 30, 2009, state officials project that 38 percent of the total amount will be disbursed before the end of fiscal year 2009-2010 (March 31, 2010). Officials project that approximately an additional 50 percent of the funding will be disbursed during fiscal year 2010-2011, with the remaining 12 percent disbursed between April 1 and September 30, 2011. This projection is based on the state's cash disbursement practices for school districts. Typically, school districts are awarded funding prior to July 1, the start of the academic year, and the disbursement of these funds to school districts occurs throughout the academic year.

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**Schools and Colleges Planning to Use Funds to Maintain and Expand Current Programs, Save Jobs, and Minimize Tuition Increases**

Prior to being disbursed, Recovery Act funds have already helped reduce cuts in the budgets for public schools and colleges. In particular, the Governor's fiscal year 2009-2010 Executive Budget, released in late 2008, proposed to cut public K-12 education funding by \$698 million from school year 2008-2009 levels by imposing a deficit reduction assessment and proposed to cut 10 percent of aid to community colleges. Planned SFSF funding eliminated these cuts. According to state officials, the state enacted legislation to use the SFSF funds to help restore the budgets of public schools and 2-year public colleges, which, they explained, will result in fewer teacher layoffs and reduced tuition increases, among other things. State officials said that the state financial plan assumes that state aid will increase to replace Recovery Act funding that will be terminated after the 2010-2011 school year, and higher education officials said that student tuition, state financial assistance and local share would have to be increased if other funding is not available to replace Recovery Act funding. However, some locality officials are planning to spend funds in ways that will reduce their budgets in the long term. To assess how some school

districts and colleges will use SFSF funds, we visited two school districts—New York City and Rochester City; two 2-year public colleges—Borough of Manhattan Community College (BMCC) and Hudson Valley Community College (HVCC); and the central offices of the City University of New York (CUNY) and the State University of New York (SUNY)—which, collectively, oversee all the community colleges in the state.

- The New York City School District will use SFSF funds to provide basic education services that would not be offered without Recovery Act funds, according to city officials. With more than a million students and approximately 1,500 schools, the New York City School District is the largest in the country. The district had a total budget of approximately \$18 billion in fiscal year 2008-2009 and anticipates receiving \$426 million in Recovery Act SFSF funding in fiscal year 2009-2010. The district lost 550 staff positions in the last 14 months.
- Rochester City School District officials said they are planning to use the funds to strategically modify their budget by realigning quality staff to areas of need rather than make a large number of staff cuts this year—saving 148 jobs. In addition, 16 programs are expected to be expanded, developed, or saved from being cut. The school district has 60 schools, 32,000 students and the highest rate of impoverished students among large school districts in New York. The LEA had a total budget of \$691 million in fiscal year 2008-2009. The LEA faced a deficit of approximately \$40 million in fiscal year 2009-2010 and anticipates receiving approximately \$15 million in SFSF funds. Enrollment has declined for the last 5 years and continues to decline, leading to a greater staff-to-student ratio than officials would prefer. The LEA plans to use SFSF funds to retrain certain teachers for positions that are in higher demand, such as English as a Second Language (ESL) teaching.
- CUNY will use the funds at 2-year colleges to cut the tuition increase from \$600 to \$350 and fund instructional activity and faculty, according to CUNY officials. CUNY is the largest urban university system in the country with 480,000 students and 23 campuses across the five boroughs of New York City. CUNY anticipates receiving \$13.7 million SFSF funds for fiscal year 2009-2010 and will distribute those funds to its campuses using a formula based on enrollment. As a result of receiving SFSF funds, CUNY will be able to partly fill its \$18 million budget gap in fiscal year 2009-2010. CUNY's 2-year colleges will have an additional \$270 to spend on each student due to Recovery Act funds.

- BMCC anticipates spending funds on expanding the campus' capacity and reducing the college's energy expenditure, according to a college official. BMCC has the largest enrollment among the six 2-year colleges in the CUNY system, has 22,400 students, and enrollment is growing. One of the college's buildings was damaged by the terrorist attack of September 11, 2001, and 70 classrooms were lost. BMCC has not received its SFSF allocation yet, or approval by CUNY of its planned uses for the funds. It plans to use SFSF funds to hire more teachers and custodians, extend hours, increase study areas, and replace light bulbs with energy-efficient bulbs. One official said that BMCC plans to continue funding any new teachers with other funding sources after the Recovery Act funds terminate.
- At its 2-year colleges, SUNY officials said the SFSF funds could be used to save and hire approximately 550 additional staff and will be used to decrease planned tuition increases to an average of \$125 instead of \$323. SUNY is the largest comprehensive state university system in the country with more than 438,000 students and 64 campuses. SUNY anticipates receiving approximately \$35 million in SFSF funds for fiscal year 2009-2010, equaling 2.2 percent of its fiscal year 2008-2009 operating budget for 2-year colleges. It will distribute the funds to its 2-year colleges using an enrollment-based formula. It is estimated that SUNY's 2-year colleges will have an additional \$270 to spend on each student due to Recovery Act funds.
- HVCC officials said they plan to use SFSF funds to hire six full-time instructors and three technical assistants, implement a tuition increase of \$200 rather than the originally proposed increase of \$400, and provide financial assistance to 500 to 600 low-income students who do not qualify for a Pell Grant or the State's Tuition Assistance Program. HVCC has the sixth largest enrollment among SUNY's 30 2-year colleges in the state. HVCC anticipates receiving \$1.9 million in SFSF funds, equaling 2.2 percent of its fiscal year 2008-2009 operating budget.

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### Much of SFSF Government Services Funds to Be Spent on Education

In addition to the SFSF education stabilization funds, the state was allocated \$368 million in SFSF government services funds. The State, in turn, allocated approximately half of this total for fiscal year 2009-2010. Much of it will be used for education purposes, according to state education officials, including the Teacher Mentor Intern Program and an academic improvement grant to the Roosevelt School District. Also, government service funds were combined with the education stabilization funds to minimize the tuition increases described above at 2-year colleges

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and provide them with extra funding. For example, SUNY is expected to receive almost \$27.7 million for its 2-year colleges from the SFSEF education stabilization funds and almost \$7.7 million from the SFSEF government service funds.

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## ESEA Title I, Part A, and IDEA, Parts B and C, Education Funds Flow to School Districts through Existing Mechanisms

The Recovery Act provides \$10 billion to help LEAs educate disadvantaged youth by making additional funds available beyond those regularly allocated through ESEA Title I, Part A. The Recovery Act requires these additional funds to be distributed through states to LEAs using existing federal funding formulae, which target funds based on such factors as high concentrations of students from families living in poverty. In using the funds, LEAs are required to comply with current statutory and regulatory requirements, and must obligate 85 percent of its fiscal year 2009 funds (including Recovery Act funds) by September 30, 2010.<sup>21</sup> The Department of Education is advising LEAs to use the funds in ways that will build their long-term capacity to serve disadvantaged youth, such as providing professional development to teachers. Education made the first half of states' ESEA Title I, Part A funding available on April 1, 2009, with New York receiving \$453.5 million of its approximately \$907.2 million total allocation. On June 15, 2009, the New York State Education Department (NYSED) announced ESEA Title I, Part A Recovery Act allocations for school districts for fiscal years 2009-2010 and 2010-2011. The NYSED had planned an initial disbursement to LEAs by the start of the school year, July 1; however, a school district official said the NYSED may instead disburse the total annual allocation to LEAs in September 2009. As of June 30, 2009, NYSED had not obligated or disbursed any of the ESEA Title I Recovery Act funds. The NYSED will require school districts to agree to a number of assurances regarding the use of the ESEA Title I Recovery Act funds before disbursing the funds; however, the application was in draft form as of June 17, 2009.

The Recovery Act also provided supplemental funds for programs authorized by Parts B and C of IDEA, the major federal statute that supports special education and related services for infants, toddlers, children, and youth with disabilities. Part B includes programs that ensure preschool and school-aged children with disabilities have access to a free

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<sup>21</sup>LEAs must obligate at least 85 percent of their Recovery Act ESEA Title I, Part A funds by September 30, 2010, unless granted a waiver, and all of their funds by September 30, 2011. This will be referred to as a carryover limitation.



and appropriate public education and Part C programs provide early intervention and related services for infants and toddlers with disabilities or at risk of developing a disability and their families. IDEA funds are authorized to states through three grants—Part B preschool-age, Part B school-aged, and Part C grants for infants and families. States were not required to submit an application to Education in order to receive the initial Recovery Act funding for IDEA Parts B and C (50 percent of the total IDEA funding provided in the Recovery Act). States will receive the remaining 50 percent by September 30, 2009, after submitting information to Education addressing how they will meet Recovery Act accountability and reporting requirements. All IDEA Recovery Act funds must be used in accordance with IDEA statutory and regulatory requirements.

The Department of Education allocated the first half of states' IDEA allocations on April 1, 2009, with New York receiving a total of \$409 million for all IDEA programs, according to New York State Division of the Budget. NYSED announced IDEA Recovery Act allocation amounts for LEAs on May 22, 2009. As of June 30, 2009, NYSED had not obligated or disbursed any of the IDEA Recovery Act funds. The largest share of IDEA funding is for the Part B school-aged program for children and youth. The state's initial allocation follows:

- \$17 million in Part B preschool grants,
- \$380 million in Part B grants to states for school-aged children and youth, and
- \$12 million in Part C grants for infants and families for early intervention services.

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### School Districts Plan to Use Funds to Expand ESEA Title I and IDEA Programs

To assess how some school districts are planning to use Recovery Act Title I and IDEA funds, we visited two school districts—New York City School District and Rochester City School District.

- New York City School District, the largest in the country, is generally planning to use ESEA Title I and IDEA Recovery Act funds to expand existing programs and save jobs, according to officials. The school district had a total budget of \$18 billion in fiscal year 2008-2009, and for fiscal years 2009-2010 and 2010-2011, it will receive a total of \$708 million in ESEA Title I Recovery Act funds and \$331million in IDEA Recovery Act funds. In recent years, the school district has had an increase in the number of students and schools eligible for ESEA Title I funding. With additional ESEA Title I funding from Recovery Act for fiscal year 2009-2010, the school district will expand its eligibility

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criteria and estimates that 180 schools with more than 90,000 students will receive ESEA Title I funding for the first time. The officials are currently determining whether any schools will receive IDEA funds for the first time this fiscal year. The school district is considering hiring three to five consultants with Recovery Act IDEA funds to assist with monitoring and performing internal control functions. City officials are aware that Recovery Act funding may cease after fiscal year 2010-2011 and resources may not be available to fund the current expansion to ESEA Title I and IDEA services. Officials said the district may have to consider the same types of staff and service cuts they were proposing before the Recovery Act was passed.

- Rochester City School District officials said they plan to use ESEA Title I and IDEA Recovery Act funds for various initiatives, such as expanding bilingual education, hiring library media specialists, improving the school district data system, implementing more early intervention services for students who have not been identified as disabled but need additional support to succeed in school, and expanding a work experience program for disabled youth. The LEA is specifically looking for ways to reduce their budget, such as supplying more early intervention services to lower the school district's higher-than-average rate of students identified as disabled (18 percent compared to the 12 percent state average). In addition, officials are looking to streamline services for disabled students to avoid classrooms with multiple teachers and only one child. As described above, the school district has the highest rates of impoverished students among large school districts in New York with all 60 schools eligible for ESEA Title I funding. Its total budget was \$691 million in fiscal year 2008-2009. For fiscal years 2009-2010 and 2010-2011, the LEA will receive a total of \$20.2 million in ESEA Title I Recovery Act funds. It will also receive approximately \$8.9 million in IDEA Recovery Act funds, according to NYSED.

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### State Plans to Use IDEA Part C Recovery Act Funds for Early Intervention

While the NYSED administers ESEA Title I and IDEA, Part B programs in New York, the New York Department of Health administers the IDEA, Part C programs for infants and toddlers. The department plans to use its Recovery Act, Part C funds to support the implementation of the Early Intervention Program at the state and local level. Initiatives that are planned for Recovery Act funding include the development, implementation, and training of users of a new Web-based information system for the program; expanded clinical program, training, and technical assistance initiatives to benefit local programs, providers, and families; and funding to support municipalities' administration of the program in

each of New York's 62 counties. One main challenge that the agency faces in using Recovery Act Part C funds is meeting the enhanced reporting requirements required of recipients. The agency is working to establish mechanisms to allow for the collecting and reporting of required information within 10 days of the end of each quarter, but officials said these efforts detract from the agencies' ability to procure, obligate, and expend funding in a manner that will meet the intended objective of the Recovery Act to promptly stimulate the economy.

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### State and School Districts Are Requesting Waivers for Certain Requirements and Seek More Guidance

The NYSED is still determining whether to request that Education waive certain statutory and regulatory requirements on the use of the ESEA Title I<sup>22</sup> and IDEA Recovery Act funds. In addition, the New York City School District is applying for a transportation for school choice / supplemental educational services waiver under ESEA Title I. School district officials said they need more guidance from Education regarding the carryover limitation and the public school choice requirement before determining to request waivers. Additionally, officials told us more guidance is needed on how to implement Education's decision to allow LEAs to set aside up to 15 percent of Recovery Act IDEA funds for early intervention services for students who are not currently identified as having a disability. Lastly, the school district lacks clarity on the definition of obligate in regards to obligating 85 percent of ESEA Title I Recovery Act funds by the deadline of September 30, 2010. Generally this would be defined as committing to spend a certain amount against a given appropriation. However, the school district says that most of these funds will be spent on personal service costs, which can change as time goes on due to resignations and leaves of absence. Although the anticipated personal service costs will be indicated in school budgets, school district officials cannot "obligate" a specific final amount upfront, and need some

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<sup>22</sup>Education will consider waiving the following requirements with respect to ESEA Title I Recovery Act funds: (1) a school in improvement's responsibility to spend 10 percent of its ESEA Title I funds on professional development, (2) a school district in improvement's responsibility to spend 10 percent of its ESEA Title I, Part A, Subpart 2 allocation on professional development, (3) a school district's obligation to spend an amount equal to at least 20 percent of its ESEA Title I, Part A, Subpart 2 allocation on transportation for public school choice and on supplemental education services such as tutoring, (4) a school district's responsibility to calculate the per-pupil amount for supplemental education services based on a district's fiscal year 2009 ESEA Title I, Part A, Subpart 2 allocation, (5) the prohibition on a state education agency's ability to grant to its districts waivers of the carryover limitation of 15 percent more than once every 3 years, and (6) the ESEA Title I, Part A maintenance of effort requirements.

flexibility in the interpretation of the 85 percent obligation deadline. The lack of clarity is affecting the school district's ability to finalize school budgets. The Rochester City School District plans to request waivers for the carryover limitation, spending requirements for supplemental education services, set-aside requirements for professional development, and maintenance of effort requirements. The State plans to release the ESEA Title I Recovery Act funds to LEAs by September 1, according to New York State Division of the Budget officials. According to one school district official, NYSED had previously announced that funds could be available by July 1. Rochester City School District officials said that releasing the funds in September poses a challenge to its school district to meet the Recovery Act objectives of releasing funds and saving jobs quickly and may require them to cover their start-up costs with local funds and suspend professional development for teachers this summer that was planned to be funded with ESEA Title I Recovery Act funds.

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## Plans Under Way to Expand WIA Youth Program by Using Recovery Act Funds for Summer Youth Employment Activities

The Recovery Act provides an additional \$1.2 billion in funds nationwide for the WIA Youth program to facilitate the employment and training of youth. The WIA Youth program is designed to provide low income in-school and out-of-school youth age 14 to 21, who have additional barriers to success, with services that lead to educational achievement and successful employment, among other goals. The Recovery Act extended eligibility through age 24 for youth receiving services funded by the act. In addition, the Recovery Act provided that, of the WIA Youth performance measures, only the work readiness measure is required to assess the effectiveness of summer-only employment for youth served with Recovery Act funds. Within the parameters set forth in federal agency guidance, local areas may determine the methodology for measuring work readiness gains. The program is administered by the Department of Labor and funds are distributed to states based on a statutory formula; states, in turn, distribute at least 85 percent of the funds to local areas, reserving up to 15 percent for statewide activities. The local areas, through their local workforce investment boards, have flexibility to decide how they will use these funds to provide required services. In the conference report accompanying the bill which became the Recovery Act,<sup>23</sup> the conferees stated that they were particularly interested in states using these funds to create summer employment opportunities for youth. Summer employment may include any set of allowable WIA Youth activities—such

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<sup>23</sup>H.R. Rep. No. 111-16, at 448 (2009).

as tutoring and study skills training, occupational skills training, and supportive services—as long as it also includes a work experience component. Work experience may be provided at public sector, private sector, or nonprofit work sites. The work sites must meet safety guidelines and federal/state wage laws.<sup>24</sup>

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**New York State  
Department of Labor  
Distributing Recovery Act  
Funding to Local  
Workforce Investment  
Areas**

New York received over \$71 million in Recovery Act funds for WIA youth activities, and after reserving 15 percent for statewide activities, allotted the remaining funds—\$60.8 million—to local workforce investment areas (LWIA) within 30 days as required by the Department of Labor guidance. The New York State Department of Labor (NYSDOL) is responsible for overseeing WIA programs, including the WIA Youth program. The state has 33 local workforce investment areas managed by a local workforce investment board (LWIB). NYSDOL did not set a target amount for spending on youth summer employment activities because each local area has the discretion to determine how to distribute its funds; however, it encouraged local areas to spend some of the funds on summer employment. NYSDOL plans to monitor expenditures in many ways. For example, the Internal Audit Unit within NYSDOL will track expenditures. Local areas to be audited will be selected utilizing a risk-based approach assessing their allocation, obligations, expenditures and accruals. NYSDOL will also review monitoring reports that the Division of Employment Workforce Solutions (DEWS) completes and the Single Audit reports submitted to the U.S. Department of Labor. In addition, DEWS will conduct monthly desk reviews, done at the auditor's desk, rather than in person during a site visit. Furthermore, NYSDOL will review the local area's monthly accrued expenditure reports and follow with DEWS representatives on any unusual activity, then followed up with the local areas if necessary.

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**The Number of New York  
Youth Served by  
Employment Programs Is  
Increasing**

As a result of receiving Recovery Act funds, NYSDOL officials have projected serving more youth than were served last summer by WIA or through other funding sources. In addition to the WIA Youth program, operated year-round with a summer employment component, several local areas in New York operated separate youth summer employment programs last year funded through other sources, including Temporary

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<sup>24</sup>Current federal wage law specifies a minimum wage of \$6.55 per hour until July 24, 2009, when it becomes \$7.25 per hour. Where Federal and state law have different minimum wage rates, the higher standard applies.

Assistance for Needy Families (TANF) and a city tax levy. NYSDOL could not provide information on the number of youth served through all the various programs last year, as NYSDOL does not have authority and oversight responsibility over those funding sources. However, all three local areas we visited had operated such programs and expect to serve more youth this year given the Recovery Act funds. For example, the Buffalo and Erie County LWIB expects to serve approximately 2,900 youth this year—1,300 more than it served last year using other funding sources. Examples of implementation plans for New York City, Buffalo, and Utica follow.

**New York City:** Recovery Act funds for WIA youth summer employment activities will allow the city to increase the number of youth served by about 16 percent, while increasing the number of work sites by 7 percent for 2009 WIA summer programs. Specifically, about 50 percent of New York's WIA Recovery Act funding was allocated to New York City, and these funds will help fund approximately 51,000 youth jobs at about 7,000 work sites this summer. In contrast, according to the New York City LWIB, 43,000 youth received WIA summer youth employment opportunities at 6,500 work sites in 2008.

We visited the New York City LWIB and the Department of Youth and Community Development (DYCD), who will be responsible for implementing the WIA program in New York City. According to officials with those agencies, program officials have not identified and put in place all needed service providers for summer work experiences, but will have the entire list of approximately 7,000 work sites finalized by July 1. Further, the program had not begun enrolling youth because the application deadline had not closed. According to agency officials, as of May 22, 2009— the application deadline— they had received 139,500 applications and will need to spend one month enrolling youth into the program which runs from July 1 through August 15. Agency officials told us they did not request a waiver of existing requirements and there are no current or anticipated challenges in quickly obligating or expending funds for youth summer employment services.

**Buffalo:** We visited the Buffalo and Erie County Workforce Development Consortium, Inc. (WDC), which is a not-for-profit corporation designated primarily as a grants subrecipient of WIA funds. It functions as a fiscal agent and grants subrecipient for the City of Buffalo and the County of Erie for federal and state government programs. WDC also administers other contracts and grants that it periodically receives for purposes of job training and development. The organization also includes the local WIB,

which is responsible for developing policy and performing oversight of workforce development activities.

Several projects will combine green jobs with academic training, as well as weatherization construction skills, according to WDC officials. For example, the EnviroBuild program is an academic and green construction initiative, in which participants will work to earn their General Equivalency Diploma (GED) while also learning construction and green job skills. Participants in this program will receive \$7.25 per hour for their work experience and \$3.00 per hour for GED preparation class work. WDC officials stated they expect 50 percent of youth enrolled in this work and education program to receive their GEDs.

In Buffalo, the WDC, through the Buffalo Employment and Training Center (BETC) intends to partner with 120 community-based agencies and government agencies to place approximately 1,000 youth in work experience activities. The BETC also intends to provide comprehensive employment and training to about 400 youth by partnering with local organizations. For example, BETC will work in conjunction with the Buffalo Public School's Credit Recovery Program (CRP) to help young people that are at risk of dropping out of school. The purpose of the program is to provide students the ability to recover high school credits that they need to graduate while also giving them the opportunity to take part in a summer work experience. The BETC intends to provide 250 jobs to the youth enrolled in the CRP as an incentive for them to successfully complete the program. In addition, the BETC also intends to hire 600 to 800 youth using Recovery Act funds to implement new programs and initiatives designed around green jobs, conservation, recycling, public horticulture, landscape design architecture and maintenance, forestry, and the environmental sciences.

**Utica:** We visited the WIB of Herkimer-Madison-Oneida Counties, which is the entity that receives Recovery Act funding for the WIA Youth program for the three counties surrounding Utica. In 2008, the WIB received \$150,000 in TANF funding to implement youth summer activities for 181 youth. This year, the WIB plans to use approximately \$1.2 million in Recovery Act funding for local WIA Youth summer employment activities. The WIB of Herkimer-Madison-Oneida Counties plans to use the Recovery Act WIA Youth funds to provide approximately 480 to 550 youth with summer youth/work experience activities. These include worksite activities such as trail maintenance, landscaping, kitchen support, local camps, animal care, farm work, municipal parks, water quality

measurement, solar kiln construction, bio-diesel making, and micro/hydro surveying.

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### Challenges to Implementing WIA Summer Youth Employment Activities Remain

Buffalo and Erie County WDC officials told us recruitment of youth who are no longer in school is a challenge, and determining the eligibility of older youth is difficult. For example, many youth who are out of school and unemployed are still living at home with their parents and the aggregate family income makes them ineligible for the program. Officials stated other agencies can provide documentation for an unemployed family member, but it has been difficult for some youth to provide documentation for family members who are underemployed. Specifically, WIB officials in New York City told us it has been a burden to collect all the documentation of applicants for determining their eligibility under WIA. Further, according to NYSDOL officials, many applicants come from “broken homes” and have difficulty providing copies of their birth certificates, proof of citizenship, and other required documentation. New York City Department of Youth and Community Development officials stated their agency is trying to use technology to ease the process—by scanning paper documents for applicants that they can send via e-mail to other agencies.

Additional challenges for both the Herkimer-Madison-Oneida WIB and the Buffalo and Erie County WIB included identifying adequate work sites with meaningful employment opportunities, adequate supervision at work sites, and transportation of youth to work sites. Specifically in the Utica area, transportation for local youth to and from work sites is a challenge and the WIB plans to use Recovery Act funds to hire buses and vans to transport youth for the summer. In addition, Buffalo and Erie County WIB officials told us community-based organizations are suffering from reduced funding, so these traditional partners do not have the resources to provide adequate supervision for the expanded youth summer employment activities. Furthermore, Recovery Act funding will increase youth summer participation by 900 to 1,100 and WIB staff need to manage expectations regarding WIA youth summer employment opportunities. Because the number of participants will increase this summer, officials are concerned that youth participants will assume there will be the same employment opportunities next summer. To mitigate this issue, the Buffalo and Erie County WIB is attempting to brand 2009 Recovery Act WIA funds as one-time Recovery Act funding.



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## New York State Public Housing Capital Grants under Review

The Public Housing Capital Fund provides formula-based grant funds directly to public housing agencies to improve the physical condition of their properties; for the development, financing, and modernization of public housing developments; and for management improvements.<sup>25</sup> 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 they are made available to public housing agencies, expend at least 60 percent of funds within 2 years of that date, and expend 100 percent of the funds within 3 years of that date. Public housing agencies are expected to give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available, as well as projects that rehabilitate vacant units, or those already under way or included in the required 5-year capital fund plans. HUD is also required to award \$1 billion to housing agencies based on competition for priority investments, including investments that leverage private sector funding/financing for renovations and energy conservation retrofit investments. On May 7, 2009, HUD issued its Notice of Funding Availability (NOFA) that describes the competitive process, criteria for applications, and time frames for submitting applications.<sup>26</sup>

New York 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 June 20, 2009, 36 of the state's 84 public housing agencies have obligated \$98.1 million, while 13 have expended \$339,401 as illustrated by figure 3. GAO visited three public housing agencies in New York: The Binghamton Public Housing Authority, the Buffalo Municipal Housing Authority, and the Glen Cove Housing Authority which is located on Long Island. We selected the Buffalo Municipal Housing Authority since it received the second largest capital fund allocation in New York.<sup>27</sup>

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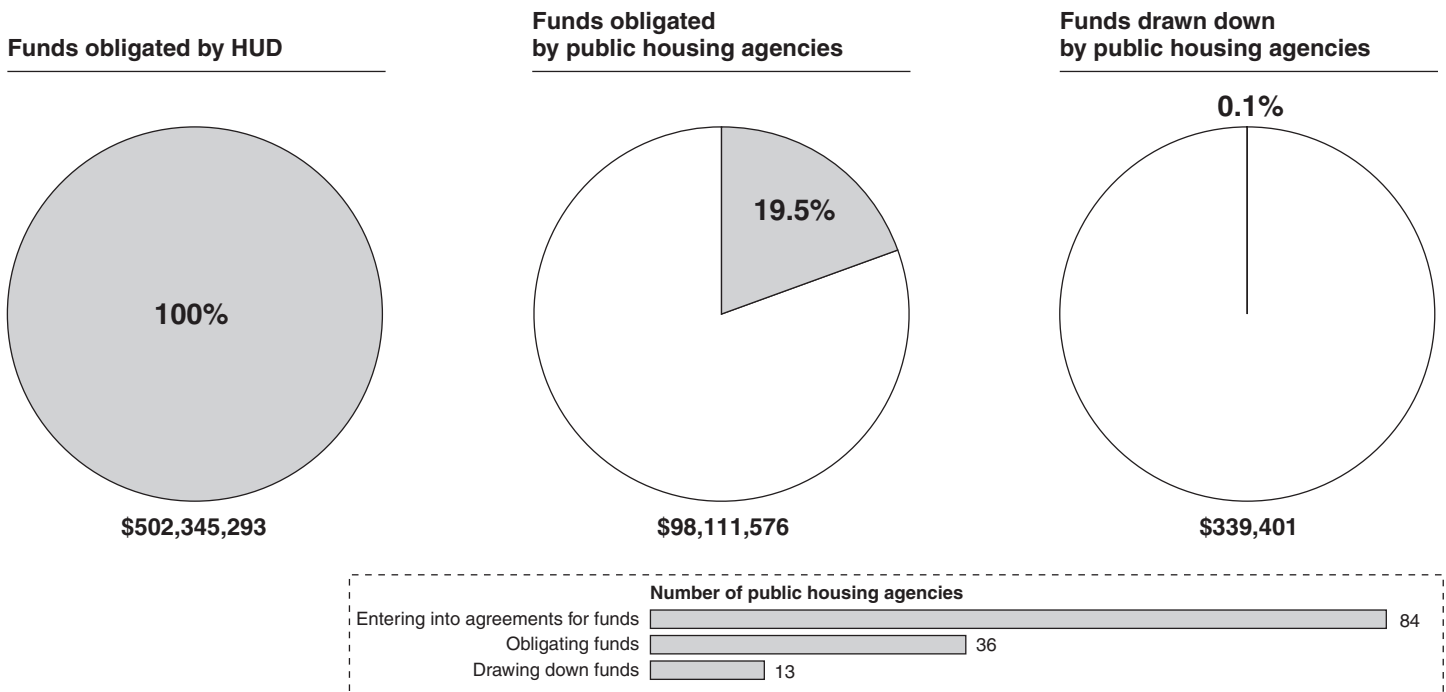
<sup>25</sup>Public housing agencies receive money directly from the federal government (HUD). Funds awarded to the public housing agencies do not pass through the state budget.

<sup>26</sup>HUD released a revised NOFA for competitive awards on June 3, 2009. The revision included changes and clarifications to the criteria and time frames for applications, and to funding limits.

<sup>27</sup>Although the New York City Public Housing Authority is the largest in the country, we did not visit it during this 2-month period because it was already the focus of work by HUD's Office of Inspector General, which is carrying out reviews of housing agencies' use of Recovery Act funds.

The Binghamton Public Housing Authority was selected as representative of medium-size housing agencies while Glen Cove was selected as it is a small public housing agency that has been designated as troubled by HUD.<sup>28</sup>

**Figure 3: Percentage of Public Housing Capital Funds Allocated by HUD That Have Been Obligated and Drawn Down in New York**



Source: GAO analysis of HUD data.

### New York Public Housing Agencies Have Decided on Uses for Recovery Act Funds

The three public housing agencies we visited in New York received Capital Fund formula grants as follows: the Binghamton Public Housing Authority received \$1.3 million; the Buffalo Municipal Public Housing Authority received \$14.5 million; and the Glen Cove Public Housing Authority received \$555,508. As of June 20, 2009, these public housing agencies had obligated none of the funds, but each housing agency had developed plans

<sup>28</sup>HUD developed the Public Housing Assessment System to evaluate the overall condition of housing agencies and measure performance in major operational areas of the public housing program. These include financial condition, management operations, and physical condition of the housing agencies' public housing programs. Housing agencies that are deficient in one or more of these areas are designated as troubled performers by HUD and are statutorily subject to increased monitoring, 42 U.S.C. sec. 1437d(j).

outlining how the funds would be spent and submitted them to HUD for approval. Once HUD approval is secured, each housing agency plans to immediately follow its procurement process to award contracts for the proposals contained in their plans. All three housing agencies indicated that they expected no problem obligating all Recovery Act funding within the prescribed deadlines.

- The Binghamton Public Housing Authority plans to spend its entire allocation of \$1.3 million on the rehabilitation and expansion of a community center located in the Carlisle Housing Project. This initiative will allow the installation of a permanent computer lab for residents to use for education and employment training as well as construction of gymnasium to provide teens with a facility for activities suited to their age level. The project is scheduled to start on July 20, 2009, and be completed by March 1, 2010.
- The Buffalo Municipal Housing Authority developed an overall capital plan for its use of Recovery Act funds. Overall, its plan uses the act's funding to support 42 separate projects grouped into three major categories to be overseen by a project director for each category. For example, one category consists of projects aimed at increased energy efficiency. Another category addresses overall site improvements, and the last category is aimed at general management improvements and health and safety initiatives. These projects, utilizing \$14.5 million in Recovery Act funds, have varying estimated start and end dates, with the earliest projects starting about July 1, 2009, and the last projects scheduled for completion by March 6, 2011. The authority plans to issue separate contracts for all activities funded by the act so that these funds can be clearly identified and tracked.
- The Glen Cove Public Housing Authority intends to use its Recovery Act funding to conduct two major projects. The first project budgeted at \$375,000 will replace roofs and gutters on various units while the other estimated to cost \$275,000 is aimed at site improvements such as repaving and sidewalk repairs at its projects. Glen Cove Public Housing Authority officials expect to begin these projects in August of this year with the scheduled completion date estimated to be October 15, 2009.

All three public housing agencies used their 5-year plans as a basis to develop their project list for Recovery Act funding. Among the Recovery Act priorities for public housing agencies was the rehabilitation of vacant housing units. Both the Binghamton and Glen Cove Public Housing Authorities have vacancy rates of about 1 percent, so neither considered

the rehabilitation of vacant units an issue in developing its plan for Recovery Act funding. The Buffalo Municipal Housing Authority has a vacancy rate of slightly over 20 percent and is concerned about addressing that issue. These officials said the first step to lower this rate is to develop a new management system to allow it to process applications to fill the units quicker. They said that it takes about 160 days to fill a vacant unit with a new tenant. They attributed the time frame to their process for establishing eligibility for new tenants. They are using Recovery Act funding to develop an automated process to reduce this time and thus lower their vacancy rate. Another main reason for their high vacancy rate, according to these officials, is their high turnover rate, which they attributed to the unattractiveness of individual units and projects. Thus, significant Recovery Act funding is aimed at site improvements to enhance the overall appearance of their projects. In addition to normal site improvements, such as repaving and sidewalk repair, Recovery Act funds will be used to improve security lighting and the installation of surveillance cameras to deter crime.

None of the authorities indicated that they would have problems drawing down funds once HUD has approved their plans. Glen Cove, which is classified as a troubled housing authority by HUD based on its Public Housing Assessment score, noted that it must take extra steps to access their funds through HUD's Electronic Line of Credit and Control System. However, these officials said that this is a technical requirement that they have dealt with in the past and, while an administrative burden, poses no real impediment to drawing down funds.

None of the agencies expressed any concern about tracking Recovery Act funds. They stated that they are accustomed to working with HUD and all said that they have a good to excellent relationship with their local HUD office. They were all aware of the Recovery Act requirements regarding the transparency of funds. Each agency has plans to issue separate contracts for projects funded entirely by the Recovery Act so that there will be no cofunding of projects. For example, the Buffalo Municipal Public Housing Authority stated that all Recovery Act funds will be allocated through separate contracts so its expenditures can be clearly tracked. According to the executive director of each of the three agencies, Recovery Act funds will be coded in their accounting systems to clearly identify how they are spent.

When queried regarding the effects of the Davis-Bacon Act, all three agencies stated that act requirements would not be an issue, as they are accustomed to meeting the Davis-Bacon requirements. However, officials

at the Buffalo Municipal Housing Authority noted New York's Wicks Law, which, according to agency officials, affects all public projects over a certain threshold (\$500,000 for upstate, \$3 million dollars for New York City, and \$1.5 million for downstate counties). This law, according to agency officials, requires separate prime contracts for the electrical work, the plumbing work, and the heating/ventilation/air conditioning work, as well as the overall project. This adds to the administrative burden of coordinating the project and can drive up the cost. However, these officials stated that their general counsel feels that, for projects 100 per cent funded by the Recovery Act, the Wicks Law does not apply, which will ease their administrative burden.

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## New York Plans for Large Increase in Home Weatherization Program

The Recovery Act appropriated \$5 billion for the Weatherization Assistance Program, administered by the U.S. Department of Energy (DOE) through each of the states and Washington, D.C.<sup>29</sup> This funding is a significant addition to the annual appropriations for the weatherization program that have been about \$225 million per year in recent years. The program is designed to reduce the utility bills of low-income households by making long-term energy efficiency improvements to homes by, for example, installing insulation, sealing leaks around doors and windows, or modernizing heating equipment and air circulating fans. During the past 32 years, the Weatherization Assistance Program has assisted more than 6.2 million low-income families. According to DOE, by reducing the utility bills of low-income households instead of offering aid, the Weatherization Assistance Program reduces their dependency by allowing these funds to be spent on more pressing family needs.

DOE allocates weatherization funds among the states and Washington, D.C. using a formula based upon the number of low-income households, climate conditions, and residential energy expenditures by low-income households. DOE required each state to submit an application as a basis for providing the first 10 percent of Recovery Act allocations. DOE will provide the next 40 percent of funds to a state once the department has approved its state plan, which outlines, among other things, its plans for using the weatherization funds and for monitoring and measuring performance. The release of the final 50 percent of the funding to the

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<sup>29</sup>DOE also allocates funds to American Samoa, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, the Navajo Indian tribe, and the Northern Arapahoe Indian tribe.

states will occur in the future, based on DOE progress reviews examining each state's performance in spending its first 50 percent of the funds.

DOE allocated to New York \$394.6 million in Recovery Act funding for the Weatherization Assistance Program for a 3-year period. This is in addition to the \$98.8 million the state received (\$36.6 million from DOE and \$62.2 million from the Low Income Home Energy Assistance Program) as its latest yearly allocation for the Weatherization Program. The New York State Division of Housing and Community Renewal (DHCR) is responsible for administering the program. In response to a Funding Opportunity Announcement from DOE issued on March 12, DHCR submitted its application for Recovery Act funds on March 23 and received its initial 10 percent funding allocation of \$39.5 million on April 13. Meanwhile, the state undertook a planning process that led to the development of its Weatherization Program Plan, which was issued for public comment on April 13. The plan was submitted to DOE for review and approval on May 12. DHCR expects that the state plan meets the requirements set forth in the guidance provided by DOE via e-mail updates and weekly conference calls. As of June 30, 2009, the state had not obligated or disbursed any of these funds.

Once DHCR receives its Notice of Grant Award, it can issue contracts to its subgrantees, which are the existing 64 organizations that provide weatherization services to the state's residents. Under DOE rules, a subgrantee is a not for profit or unit of local government. More than 50 of the existing subgrantees in New York are Community Action Agencies. Typically, but not exclusively, subgrantees service one county. For large urban cities, several agencies receive weatherization funds. For example, 15 subgrantees are funded in New York City to provide weatherization services to its residents. Once the Office of the State Comptroller approves the contracts as required by state law, DHCR can then draw down funds to provide funding to the subgrantees. DHCR officials hope this will be done by mid-August. However, they noted that the prior annual appropriation for Weatherization has allowed the program to begin; Recovery Act funds will allow the program to greatly expand.

According to DHCR officials, it has received its initial allocation of Recovery Act funding for weatherization of \$39.5 million, but has not drawn down any of these funds to date. In addition, the state legislature has appropriated \$263 million in Recovery Act funds for the weatherization program in the state's budget for fiscal year 2009-2010, which started on April 1. The Office of the State Comptroller has established an account for these funds. Once DOE approves the state's

plan and DHCR provides the Comptroller's Office with a notice of grant award, funds can be spent against this account. These Recovery Act funds will be provided a unique accounting code so that the expenditure of these funds will be clearly identified making them easy to track. In the meantime, DHCR has been planning for the major increase in weatherization services provided by the Recovery Act by developing new training and employment programs designed to increase the number of qualified workers for the program. However, due to a state hiring freeze, it is unclear at this time if DHCR will be able to hire additional staff. According to state officials, DHCR will implement the weatherization program with either state staff or contracted staff, or a combination of both.

Subgrantees have been notified by DHCR to anticipate the increased funding provided by the Recovery Act and to plan accordingly. Furthermore, the subgrantees have been told that the Recovery Act requires that funds be clearly identified, that the use of the funds must be transparent, and that the Recovery Act will require additional reporting requirements, such as job creation estimates. However, until DOE provides DHCR with further guidance relating to reporting requirements, DHCR indicated that it will not be able to clarify these requirements for the subgrantees. One crucial element is the applicability of the Davis-Bacon Act to Recovery Act funds.<sup>30</sup> Typically, acting as nonprofit organizations engaged in weatherization activities, subgrantees have not had to deal with the Davis-Bacon requirements. According to DHCR officials, DOE has told them that the department is working with U.S. Department of Labor to address this issue.

As stated in the plan submitted to DOE for review and approval, New York estimates that approximately 45,000 dwelling units will be weatherized with Recovery Act funds. Of the total \$394.6 million the state will receive, the planned initial allocation for the subgrantees is \$190.9 million. The allocation formula is based on the number of income eligible households and degree-days for each area served by the subgrantees. In addition, an extra \$65 million will be awarded to those subgrantees that prove to have the capacity to meet the increased production levels required by the added

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<sup>30</sup>The Recovery Act requires all laborers and mechanics employed by contractors and subcontractors on Recovery Act projects to be paid at least the prevailing wages as determined under the Davis-Bacon Act. Recovery Act, div. A, title XVI, § 1606. Under the Davis Bacon Act, the Department of Labor determines the prevailing wage for projects of a similar character in the locality. 40 U.S.C. §§ 3141-3148.

Recovery Act funding. A further \$50 million has been set aside to fund multifamily weatherization projects in such areas as public housing. The state has also set aside the maximum allowed by the Recovery Act for both administrative costs (\$19.7 million) and for training and technical assistance (\$69 million). DHCR said that it does not expect to use all the set aside funds for either administration or training and will reallocate whatever funds remain to subgrantees able to utilize additional funding.

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## Increased Edward Byrne Memorial Justice Assistance Grants Will Support Expanded and New Projects in New York

The Edward Byrne Memorial Justice Assistance Grant (JAG) program within the Department of Justice's Bureau of Justice Assistance (BJA) provides federal grants to state and local governments for law enforcement and other criminal justice activities, such as crime prevention and domestic violence programs, corrections, treatment, justice information sharing initiatives, and victims' services. Under the Recovery Act, an additional \$2 billion in grants are available to state and local governments for such activities, using the rules and structure of the existing JAG program. The level of funding is formula-based and is determined by a combination of crime and population statistics. Using this formula, 60 percent of a state's JAG allocation is awarded by BJA directly to the state, which must in turn allocate a formula-based share of those funds to local governments within the state. The remaining 40 percent of funds is awarded directly by BJA to eligible units of local government within the state.<sup>31</sup> The total JAG allocation for New York state and local governments under the Recovery Act is about \$110.6 million, a significant increase from the previous fiscal year 2008 allocation of about \$8.4 million. The New York Division of Criminal Justice Services (DCJS) administers JAG funds for the state.

As of June 30, 2009, New York has received its full state award of about \$67 million.<sup>32</sup> New York plans to use these funds to expand personnel and services in connection with recent drug law reform efforts, as well as to provide transitional jobs and permanent job placement services for the formerly incarcerated. New York's six areas for distributing JAG funds are described below (see figure 4 for estimated allocations by funding area).

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<sup>31</sup> We did not review these funds awarded directly to local governments in this report because the Bureau of Justice Assistance's solicitation for local governments closed on June 17.

<sup>32</sup> Due to rounding, this number may not exactly equal 60 percent of the total JAG award.



**Funding Area 1:** Hire residential drug treatment personnel to support recent drug law reform efforts;

**Funding Area 2:** Expand drug court services and personnel in high-volume courts, including the addition of new court personnel in high-volume counties;

**Funding Area 3:** Hire staff to implement recently imposed case sealing and research obligations connected with drug law reform;<sup>33</sup>

**Funding Area 4:** Support expansion of prosecution services and personnel in high-volume diversion courts;

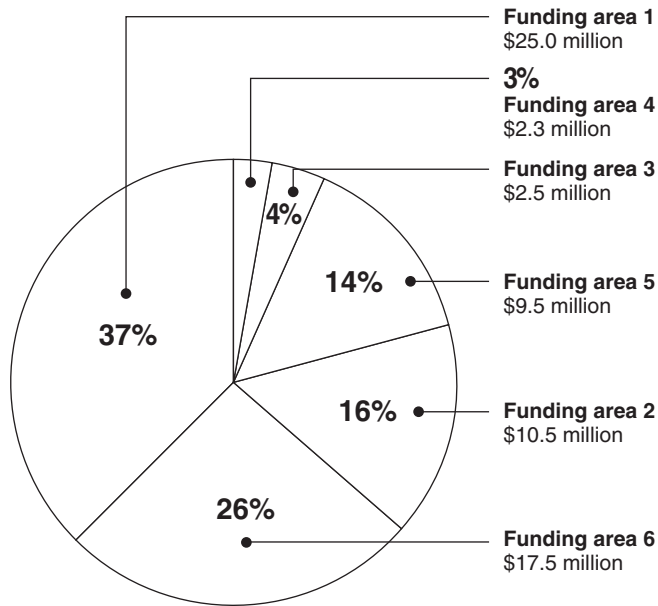
**Funding Area 5:** Add personnel and services in three or more new probation violation residential centers, and possible expansion of existing centers;

**Funding Area 6:** Create jobs through the support of established re-entry programs, as well as alternatives to incarceration initiatives.

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<sup>33</sup>DCJS is the repository agency for criminal history records in New York. DCJS officials stated that new drug reform law allows an offender convicted of a drug offense or certain other offenses to seal the instant conviction and up to three prior misdemeanor drug convictions after successful completion of treatment. These added sealing and unsealing provisions will place significant additional obligations on DCJS, according to DCJS officials.

**Figure 4: Estimated State Allocation of JAG Funds, by Funding Area**



Source: GAO analysis of New York Division of Criminal Justice Services data.

New York State plans to utilize the \$67 million in JAG funding to create jobs and expand services in connection with recent drug law reform legislation, as well as to provide transitional jobs and permanent job placement services for the formerly incarcerated. DCJS plans to use approximately \$25 million to hire residential drug treatment personnel to support expanded diversion opportunities for drug offenders and \$10.5 million to enhance drug court services in high-volume courts, including the addition of new court personnel in high-volume counties. According to DCJS officials, new opportunities for a non-incarceratory sentence for certain drug offenders will increase the burden on local probation departments, so DCJS plans to use \$9.5 million to provide additional personnel and services in three or more new probation violation residential centers, and possible expansion of existing centers. Also, DCJS plans to use \$2 million to hire prosecutors in high-volume diversion courts and \$2.5 million to hire personnel necessary to comply with its new obligations under the drug laws in the areas of research and record sealing.

In addition, DCJS officials told us that New York plans to commit \$17.5 million to fund four established re-entry organizations to provide transitional jobs and permanent job placement services for ex-offenders, which may help reduce recidivism and improve public safety. DCJS plans to use these funds to increase the marketability of this difficult-to-employ population, including \$1 million to support the State Department of Correctional Services' literacy program; \$2 million to support alternative to incarceration programs; \$1 million for a pilot juvenile re-entry program; and \$1.5 to assist with re-entry efforts upstate and in Long Island. This plan for distributing JAG funds is pending approval by the New York State Division of the Budget.

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## New York Is Using Existing Internal Control Mechanisms to Track and Monitor Recovery Act Spending

According to state officials, New York generally has good budget and accounting systems in place to separately identify and track funds received from various sources; therefore, they said that establishing discrete budget and accounting codes to track Recovery Act funds would pose no challenge to the state. So far, state officials have not heard of any challenges from either the state agencies or localities with regard to creating separate budget and accounting codes to track Recovery Act funds received and disbursed. However, a few agencies have expressed the need for additional guidance related to separate tracking of Recovery Act funds. For example, the New York City Department of Education officials said that there are several tools built into their budget system to ensure that funds are budgeted in compliance with basic instructional needs, mandates, and grant requirements, but they require more guidance from the U.S. Department of Education, the New York State Education Department (NYSED), and the federal, state, and city budget offices on the specific details they will need to track and report for Recovery Act funds. At the same time, New York City officials said that they are trying their best to move forward to build and implement the controls that they can reasonably anticipate, and will help ensure that their budgeting and financial systems can segregate and track the allocation and expenditure of Recovery Act funds. Likewise, the NYSDOL officials said that they are waiting for the U.S. Department of Labor to provide guidance on how the funding should be tagged for the Recovery Act WIA program before providing advice to the localities.

The State's Division of the Budget (DOB) has established discrete appropriations for about 100 Recovery Act funding items that are included in the enacted budget for fiscal year 2009-2010, which began on April 1, 2009. In order to access their Recovery Act appropriation authority, state agencies must send a certificate of approval along with a copy of the

federal grant award notice to DOB requesting authority to spend these moneys. Based on a technical memorandum issued in April 2009, special DOB procedures have been implemented for Recovery Act certificates to ensure that these transactions are processed separately, that proposed spending is consistent with Recovery Act purposes, and that state agencies are adhering to the reporting and accountability requirements of the act.

Following DOB's approval of state agencies' appropriation, the certificate is submitted to the Office of the State Comptroller (OSC), where the availability of the federal funding is verified and other accompanying documentation is reviewed before any entries are made into the state's Central Accounting System (CAS). As mentioned in our April 2009 report, OSC has issued an accounting bulletin detailing special accounting requirements to be applied to Recovery Act funds. The state will use CAS to centrally track the receipt and expenditure of Recovery Act funding across all agencies. This information will be used along with agency-specific reporting on individual projects/activities to meet Recovery Act quarterly reporting requirements. We received schedules from some agencies that reflect the discrete budget and accounting codes used to track the receipt and payment of funds through the state's CAS.

Some entities' Recovery Act funds, such as the public housing agencies', will not flow through the State's Central Accounting System. The public housing agencies we visited believe that their internal control systems are adequate to meet the Recovery Act requirements. Each has established processes to track projects and funds and have incorporated the identification and tracking of Recovery Act funds within the current accounting systems. The housing agencies have specific policies in place to review bids, evaluate contractors, and award contracts. Payment for work funded by the Recovery Act will only be made after a physical inspection and a pre-audit of the payment request, which is their normal process for such contracts. Each agency has a separation of duties for each step in the payment process.

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## New York Continues to Update and Refine Its Internal Controls to Comply with Its Internal Control Act and Professional Standards

In 1987, the New York State Legislature enacted the New York State Governmental Accountability, Audit and Internal Control Act (Internal Control Act).<sup>34</sup> The act requires, among other things, that each agency establish and maintain a system of internal control and a program of internal control review, designate an internal control officer, as well as periodically evaluate the need for an internal audit function in each agency. The Internal Control Act requires that the State Division of the Budget periodically (1) issue a list of agencies covered by the Act, and (2) issue a list of agencies required to have an internal audit function. Beyond these two statutory requirements, DOB has also taken administrative steps to facilitate and support the goals of the Internal Control Act through the issuance of additional guidance and the annual internal control certification requirement. Based on DOB's Governmental Internal Control and Internal Audit Requirements manual,<sup>35</sup> the system of internal control should be developed using the Committee of Sponsoring Organizations of the Treadway Commission (COSO) conceptual framework and should incorporate COSO's five basic components of internal control.<sup>36</sup> In addition, to fulfill the requirements of the Internal Control Act, OSC is responsible for developing the Standards for Internal Control in New York State Government.<sup>37</sup> Currently, 107 state agencies are required to submit internal control summaries and certifications annually to the New York State Budget Director,<sup>38</sup> and 35 state agencies are required to have an internal audit function.<sup>39</sup> Agencies that are required to have an internal audit unit are required to comply with the Institute of Internal Auditors'

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<sup>34</sup>N.Y. Exec. § 950-953.

<sup>35</sup>Budget Policy and Reporting Manual, Governmental Internal Control and Internal Audit Requirements, B-350.

<sup>36</sup>The five basic components of internal controls are control environment, risk assessment, control activities, information and communication, and monitoring.

<sup>37</sup>Standards for Internal Control in New York State Government, revised October 2007.

<sup>38</sup>The Internal Control Summary and Certification form provides supporting justification for an agency's or authority's level of compliance with the requirements of the Internal Control Act. The certification form requests information regarding specific actions taken, or needed to be taken, by agencies/authorities to comply with each of the Act's requirements. As of June 8, 2008, 91 agencies have submitted their internal control summaries and certifications.

<sup>39</sup>Agencies periodically evaluate the need to establish, maintain or modify an internal audit function. The Director of the Division of the Budget periodically issues a schedule of state agencies that are required to establish and maintain an internal audit function. This schedule was last updated in 2007.

(IIA) International Standards for the Professional Practice of Internal Auditing.

In 2004, OSC issued a report that assessed State agencies' internal audit units' compliance with the Internal Control Act. OSC identified a significant degree of noncompliance with the Internal Control Act by the 34 agencies' internal audit units that were established under the Act. More than half of the 34 agencies had numerous instances of noncompliance, and most agencies needed at least some improvements. Prevalent problems involved the structure of the internal audit units, including director and staff qualifications, training, as well as individual and organizational independence. In addition, many internal audit units were not providing the proper oversight of their agencies' operations because they did not conduct risk assessments of agency operations, prepare audit plans to guide their work, evaluate their agencies' internal controls, or have a process to monitor and assess their overall effectiveness as an internal audit unit. In response to OSC's audit, DOB proposed a jointly sponsored internal audit best practices group to help agencies to comply with the act. Drawing upon this proposal, an Internal Control Taskforce was established in October 2004 as a joint effort of DOB, OSC, and the New York State Internal Control Association. In September 2006, the Internal Control Task Force issued a report, which recommended sweeping reforms in the way the internal control and internal audit functions are managed, monitored, and administered in New York State. According to OSC, while many recommendations require operating changes at the agency level, others call for clarification and greater specification in both the Budget Policy and Reporting Manual that governs the internal control program and the Standards for Internal Control in New York State Government.

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**New York State's Approach to Assessing Risks Relies on a Range of Factors**

As mentioned earlier, New York State Division of the Budget requires state agencies to use the COSO conceptual framework in assessing risks to the state agencies.<sup>40</sup> According to state officials, all agencies are required to develop risk-based work plans. The state's process for assessing risks includes a range of factors, such as consideration of prior audit findings, questionnaires to managers, emerging risks identified in consultation with management, and the results of data collection and analysis. In addition,

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<sup>40</sup>The conceptual framework includes identifying internal and external risk factors and analysis of the risks.

annually, as part of their internal control summary and certification, state agencies are required to identify and describe all high-risk activities and indicate those risk areas reviewed during the past fiscal year, as well as the actions taken or planned to eliminate the risks. According to an OSC official, state agencies have developed their approaches to identifying risks for specific programs; however, it is unclear how well an approach has been developed for Recovery Act funds. In addition, OSC also stated that subrecipient monitoring and performance is generally an area of high risk, and the extent to which state agencies have assessed subrecipients' capability to account for Recovery Act funds varies by agencies. OSC is currently reviewing state agencies' recently submitted internal control summaries and certifications to plan its risk-based audit approach for its upcoming audits. In addition, OSC's Office of State Government Accountability is expected to develop a program level risk assessment tool that the agencies can use to assess risks in their Recovery Act-funded program activities.

NYS DOT provides an example of how a specific state agency identifies risks. NYS DOT officials say that they use a systematic approach to identify and evaluate risk and related internal controls. Based on DOT's recent internal control summary and certification, its risk assessment process is managed by its Enterprise Risk Management Bureau in accordance with COSO and guidance provided by DOB. According to NYS DOT, annually, meetings are held with the department's managers to identify and discuss risks, the adequacy and effectiveness of existing controls, and potential corrective actions that could be implemented to mitigate identified risks. In addition, according to NYS DOT, a standardized risk assessment tool based on 24 risk factors is used to conduct interviews in NYS DOT's regions and main office. Information derived through the interviews is analyzed and then discussed with Division Directors and Executive Management. Risks are prioritized and corrective actions plans developed by program managers for areas identified as high risks to NYS DOT. For the state fiscal years 2006-2007 and 2007-2008, the Single Audit report revealed internal control weaknesses in NYS DOT's highway planning and construction programs including (1) the lack of a sanctioning policy for subrecipients who are not compliant with Single Audit requirements—a key element in strengthening existing procedures to enforce compliance and to help ensure subrecipients submit their audit reports within the required deadline, and (2) failure of four counties to perform Single Audit of highway planning and construction programs. NYS DOT said that it has (1) put a subrecipient sanctioning policy in place as of August 13, 2008, and (2) has revised its process to review subrecipients' Single Audit reports to include

procedures to verify that the major program identification and selection process was conducted in accordance with OMB Circular A-133 requirements.

According to NYSED officials, every 2 years, the NYSED undertakes a major assessment process to determine the agency's high-risk areas. Each manager completes a control self-assessment process, which identifies significant risks in his or her area. Each of the major program area manager conducts periodic meetings to discuss all high risk areas. NYSED has not yet completed its annual internal control summary and certification for 2009. The NYSED officials said that they are currently assembling a team to conduct risk assessment of the programs funded by the Recovery Act. Single Audit findings revealed internal control weaknesses at some of New York's school districts. For example, for New York City School District, the 2007 audit found that there were not sufficient controls over equipment purchased with federal funds. The city's Department of Education, with the assistance of a consultant, is modifying its automated inventory database system. For the Rochester City School District, the 2008 audit found that no certifications were completed by employees working and charged to federally funded programs. According to NYSED, the school district used a cross-functional team to develop a reporting system to be used for the completion of payroll time certifications for the district.

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### Lack of Sufficient Funds May Impede New York's Plans for Adequately Monitoring Recovery Act Funds

Some agencies, as well as the OSC, have developed plans to conduct additional monitoring to account for the increased federal funding under the Recovery Act; however, the lack of sufficient administrative funds to do so may impede their plans. New York agencies have experienced an additional 10 percent reduction in their budgets for the fiscal year that began on April 1, 2009, and as a result, an OSC official said, it is difficult to maintain a robust internal control environment.

On April 1, 2009, the Director of State Operations sent a memorandum to state agencies outlining the Recovery Act requirements and requested that agencies prepare a report documenting their processes for fraud prevention, contract management, and grants accountability by May 1, 2009, to help ensure compliance with the Recovery Act. Most agencies



have responded to this request, according to a state official.<sup>41</sup> An Internal Controls and Fraud Prevention Working Group was also established as part of the Governor's Economic Recovery and Reinvestment Cabinet, and the working group is responsible for working with agencies to provide additional guidance on internal control and fraud prevention to ensure compliance with the Recovery Act.<sup>42</sup> The Internal Controls and Fraud Prevention Working Group has assumed a number of monitoring responsibilities and has requested guidance from OSC in carrying out its work. In addition, the working group is in the process of coordinating internal control and fraud training with OSC and the State Inspector General.

OSC has committed to perform 10 additional audits of state agencies. According to a deputy comptroller of OSC, these planned audits will be determined by the agencies' internal control summaries and certifications. In addition, OSC has developed a locality audit strategy for Recovery Act funds and has plans for training in weatherization internal control issues at the local level. However, thus far, OSC has not received any additional funding or staff to perform internal control, risk assessment, or monitoring. OSC said that it has a very aggressive audit agenda that it cannot defer; however, monitoring will not be as aggressive as intended.

NYSED feels that it has good existing protocols for monitoring the ESEA Title I and IDEA programs funds that it will receive under the Recovery Act. NYSED is not sure whether any additional or modified oversight mechanisms will be used to monitor internal controls and compliance associated with Recovery Act ESEA Title I, IDEA, and SFSF funds. In addition, NYSED officials said that their program office routinely monitors subrecipients. According to NYSED, in deciding what districts to monitor, they will rate district's relative risks and plan to devote internal resources. NYSED is awaiting future Education guidance on reporting to determine whether additional monitoring is needed.

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<sup>41</sup>Twenty-six agencies were required to respond to this request, and 20 have done so as of June 7, 2009. According to a state official, the majority of the large agencies receiving significant Recovery Act funds have responded, including the state Department of Health, the state DOT, the NYSED, and SUNY. According to the chair of the Internal Control and Fraud Prevention Working Group, follow-up with the remaining agencies is being conducted.

<sup>42</sup>New York State Department of Transportation chairs the Internal Controls and Fraud Prevention Working Group.

With regard to monitoring of Recovery Act projects, according to NYSDOT officials, NYSDOT has instituted several actions to monitor Recovery Act funds, including: (1) designating a senior manager who has experience in areas such as strategic planning, operational planning, performance management, and risk management to oversee all Recovery Act activities and to report directly to the commissioner; (2) creating an agencywide action list, which is used by the agencywide Recovery Act team and others to track action items, identify lead individuals, establish completion goals and monitor progress; (3) holding weekly conference calls between main office program areas and the agency's 11 regional planning and program management offices to share information, address concerns, as well as to identify and monitor regional issues and concerns that need to be addressed; (4) increasing the number of temporary construction inspectors to provide the proper levels of field oversight for construction activities; (5) participating with the FHWA New York Division on field project reviews as part of FHWA's risk management plan; and (6) providing local project sponsors with quality control and quality assurance checklist to ensure proper project contract submissions for approval to NYSDOT. In addition, NYSDOT officials said that they have requested additional staff for monitoring Recovery Act efforts, but they do not expect to get any additional staff.

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### Single Audit Findings Are Major Factors in Agencies' Development of Risk Assessments and Monitoring

NYSED, NYSDOT, and other agencies informed us that their agencies' use of Single Audit results is a key aspect of their annual process in assessing their agencies' risks and in conducting monitoring of their programs. For example, NYSED developed a comprehensive database that tracks Single Audit findings over a 4-year period. According to state officials, the database captures these findings by each of NYSED's approximately 700 school districts and includes a description of the corrective actions. The database is also used for subrecipient monitoring. NYSED requires all subrecipients to submit a copy of their Single Audit report, and it performs Single Audit monitoring and review every year on its localities. According to NYSED officials, in areas where there are audit findings, NYSED sends annual letters to the program managers in the localities. If the findings are recurring, NYSED may follow up with on-site visits. NYSDOT is responsible for ensuring that subrecipients have annual Single Audits. NYSDOT's Contract Audit Bureau maintains an active database tracking system for the submission of subrecipient Single Audit reports. When the Contract Audit Bureau receives an audit report, it is logged into the database and reviewed by the department staff. This review includes determining if the amounts reported approximate those expected based on NYSDOT expenditure data. According to NYSDOT officials, if issues were

identified, they would send a letter outlining the issues, request that they develop corrective action plans, and a time frame for implementation of corrective action, and would follow up with visits. According to NYSDOT officials, NYSDOT periodically sends out status reports to program managers requesting that they update the status of their corrective actions.

Each public housing agency we visited is required to conduct a Single Audit that is reviewed and approved by HUD. HUD requires that they address any findings that are disclosed by the audit, and each public housing agency we visited stated that their process is to work with HUD to address any issue that arises. None felt that the Recovery Act posed any new challenges to them in terms of internal controls over the use of these funds. For the Binghamton and Buffalo public housing agencies' Single Audit reporting, there were no deficiencies in internal controls that were considered to be material weaknesses. For Glen Cove, Single Audit findings revealed that Glen Cove had failed to take a physical count of its fixed assets for the previous 2 years. Glen Cove responded that it agreed with the finding and will develop a process to ensure that a count would take place by March 31, 2009.<sup>43</sup> New York officials informed us that they are currently awaiting further Single Audit guidance from OMB with regard to Recovery Act funds.

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## Agencies Are Still Awaiting Guidance to Assess Impact but Some Have Preliminary Estimates

Throughout April, May, and June 2009, the state focused its attention on using Recovery Act funding to improve the state budget deficit, and applying for and spending Recovery Act funds through its various program agencies. While state agencies have taken steps to adapt current reporting mechanisms to prepare to meet Recovery Act reporting requirements, some of these agencies continue to express concerns about meeting Recovery Act reporting requirements and continue to look to federal agencies and OMB for further guidance on how to define report variables such as jobs created and/or sustained.<sup>44</sup> Nevertheless, as covered in the various sections above, New York officials throughout the state agencies

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<sup>43</sup>For Binghamton, the Single Audit covered the fiscal year that ended June 30, 2007; for Buffalo, the Single Audit covered the period for fiscal year that ended June 30, 2008; and for Glen Cove, the Single Audit covered the period for fiscal year that ended March 31, 2008.

<sup>44</sup>After soliciting responses from a broad array of stakeholders, OMB issued additional implementing guidance for recipient reporting on June 22, 2009. See, OMB Memorandum, M-09-21, *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009*.

and at some of the localities we visited provided some preliminary estimates:

- The Delaware Avenue highway reconstruction project in Albany expects to employ 40 workers this summer.
- The New York City School District anticipates saving 14,000 jobs and hiring three to five people to track Recovery Act funds. In addition, the Rochester City School District anticipates that it will retain 148 staff due to SFSF; about 85 staff due to ESEA Title I funds; and about 56 staff due to IDEA funds.
- SUNY plans to save and hire 550 additional staff at its campuses and decrease tuition increases to an average of \$125 instead of \$323 with SFSF education stabilization funds. In addition, Hudson Valley Community College plans to use SFSF education stabilization funds to hire six full time instructors and three technical assistants and decrease the proposed tuition increase to \$200 instead of \$400. CUNY will be able to partly fill an \$18 million budget gap in fiscal year 2009-2010 with SFSF Recovery Act funds.
- For the Workforce Investment Act Summer Youth Employment Program, New York City anticipates that it will hire an additional 8,000 summer youth over last year's total of 43,000. In addition, the Buffalo and Erie County Workforce Development Consortium plans to hire 1,300 more youth than last year.

The three housing authorities we visited have considered how to measure the effects of projects funded by the Recovery Act. For example, the Binghamton Public Housing Authority hopes to see a reduction in apartment turnover rate, maintenance costs, and crime rate as a result of the new community center. This center, which will include a new gymnasium, will expand recreational opportunities for older youth. It also hopes to see a lower unemployment rate among residents as a result of expanded employment/educational programs made possible by the establishment of a permanent computer room. The Buffalo Municipal Housing Authority stated that its four main goals are a (1) reduction in the time it takes to fill vacant apartments, resulting in a lower vacancy rate, (2) reduction in energy costs, (3) lowering of the crime rate, and (4) increased resident satisfaction. The Glen Cove Housing Authority said that it believes that the various site improvements would increase resident satisfaction. All three authorities further stated that they were awaiting further guidance from HUD on other Recovery Act reporting requirements

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and measurements. The most common example they cited was dealing with job creation estimates.

Finally, we note that the New York State Education Department is still awaiting reporting guidelines from the U.S. Department of Education. In that regard, the New York City School District officials are concerned that Education may require school districts to track student results specifically to Recovery Act spending. They do not think it is possible to isolate the effects of Recovery Act funding on a student due to the many funding sources affecting a student's school experience. They do, however, track and will be able to report education progress and outcomes for all students.

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## State Comments on This Summary

We provided the Governor of New York and representatives of oversight agencies with a draft of this appendix on June 18, 2009. Representatives from the Governor's office and the oversight agencies responded on June 22, 2009. In general, they agreed with our draft and provided some clarifying information, which we incorporated. The officials also provided technical suggestions that were incorporated, as appropriate.

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