

Homes and Community Renewal

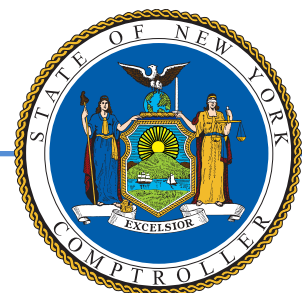
Internal Controls Over the Governor's Office of Storm Recovery's Federally Funded Programs

Report 2022-S-37 | October 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether Homes and Community Renewal (HCR) established and maintained adequate internal controls to oversee and monitor the Governor’s Office of Storm Recovery’s (GOSR) federally funded programs to ensure they meet grant requirements. The audit covered the period April 2017 through December 2022 for the Buyout & Acquisition Program (B&A), April 2017 through January 2023 for the Single-Family Housing Program (SFH), and agency actions through August 2023. Our scope included properties that were accepted into these programs prior to April 2017 but for which activity on the related projects was continuing during the audit period.

About the Program

HCR is New York’s affordable housing agency, with a mission to build, preserve, and protect affordable housing and increase homeownership throughout the State. As part of fulfilling this mission, New York State developed the NY Rising Housing Recovery Programs (NY Rising), along with several other disaster recovery initiatives, as outlined in the State of New York Action Plan for Community Development Block Grant Program Disaster Recovery (Disaster Recovery or CDBG-DR).

NY Rising programs are designed to help New Yorkers who were impacted by Superstorm Sandy, Hurricane Irene, and/or Tropical Storm Lee to recover and rebuild. Sandy – recognized as one of the most destructive storms in recorded U.S. history – hit New York in October 2012, one year after Irene and Lee. Combined, the three storms damaged or destroyed hundreds of thousands of housing units with estimated damages in the billions of dollars. NY Rising programs may also stimulate economic growth in storm-affected communities.

GOSR was established in June 2013 as a temporary agency to coordinate and direct statewide administration of the federal CDBG-DR funds used for recovery and rebuilding efforts in storm-affected municipalities across the State. GOSR operates within the Housing Trust Fund Corporation, which is a component of HCR. In October 2022, the permanent Office of Resilient Homes and Communities was created, which assumed GOSR’s portfolio. In this report, we refer to the agency as GOSR, which was the name in use during most of the time covered by our audit.

From August 2011 through March 2023, GOSR received more than \$4.5 billion in U.S. Department of Housing and Urban Development CDBG-DR funding to address the devastation from these storms, including about \$4.4 billion for Sandy, \$71.6 million for Irene and Lee, and \$35.8 million in National Disaster Resilience Grant funding. GOSR has used these funds to assist impacted residents – through a variety of programs – with housing recovery, small business, community reconstruction, and infrastructure.

B&A and SFH were two of the programs funded by Disaster Recovery funds. B&A consists of two components: Buyout and Acquisition. Through Buyout, GOSR purchased eligible properties within designated Enhanced Buyout Areas (areas within a floodplain that are more susceptible to future disasters) to transform them into wetlands, open space, or stormwater management systems to create a natural coastal buffer to protect against future storms. Through Acquisition, GOSR purchased properties that were at least 50% damaged by any of the three storms, and these properties were generally auctioned to buyers to be redeveloped to be more resilient against future storms. SFH provided homeowners with financial assistance for home repairs, rehabilitation, and elevation for resilience against future storms.

GOSR can initiate a recapture process to recoup funds from program participants who fail to meet program deadlines or who receive benefits for which they weren't eligible. According to the most recent quarterly report of Disaster Recovery expenditures, which HCR posts on its website, as of March 31, 2024, GOSR had expended about \$4.4 billion of its \$4.5 billion budget. For the purposes of our audit, we focused primarily on projects that GOSR funded through its B&A and SFH programs.

Key Findings

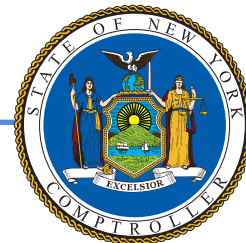
We found significant weaknesses in HCR's internal controls that reduced the effectiveness of its oversight of the properties we examined in the two programs that we included in our audit. We reviewed 10 Buyout properties, 11 Acquisition properties, and 20 SFH properties, and identified potential weaknesses in GOSR's methods for determining applicant eligibility to receive assistance and in determining award amounts. There were also delays in redevelopment of some Acquisition properties, and weaknesses in GOSR's practices related to both recapturing funds and handling uncollectible accounts. Better practices and enhanced monitoring of project progress would contribute to more effective oversight of these important housing recovery programs.

- There were indications that two of the 11 Acquisition properties we reviewed, for which GOSR paid \$189,540, may not have been eligible for funding.
- In our sample, we identified potentially duplicated benefits totaling \$60,288 paid to B&A applicants and a \$6,000 overpayment to an SFH applicant.
- GOSR's controls weren't adequate to ensure that the Acquisition projects we reviewed were effectively progressing and helping achieve program goals. Six of the 11 Acquisition properties we reviewed either remained undeveloped at the time of our audit or were completed late based on the certificate of occupancy and/or other available information. These findings may represent weaknesses in GOSR's readiness to prevent and detect both inappropriate payments and potential fraud that could occur in these and other large-dollar housing development programs.
- We identified areas for improvement in GOSR's practices related to both recapturing funds and handling uncollectible accounts. Together, these weaknesses increase the likelihood of funds not being used for Disaster Recovery program purposes and may represent a financial loss to the State and reduced opportunity for funding for other potential applicants.

Though we cannot project our sample results to the related populations of the funded properties, the implications and significance of our findings warrant prompt and appropriate action to better manage the remaining open projects and to inform other HCR housing programs.

Key Recommendations

- Revise practices, which could include amending policies and procedures, to provide greater assurance that GOSR Disaster Recovery program funds are:
 - Awarded only to eligible applicants and for eligible properties; and
 - Accurately calculated, including making appropriate adjustments for duplication of benefits.
- Take steps to prevent potential losses of federal funds, including proactively addressing project delays that may lead to undeveloped properties and subsequent recapture efforts and uncollectibility determinations.



Office of the New York State Comptroller Division of State Government Accountability

October 30, 2024

RuthAnne Visnauskas
Commissioner/Chief Executive Officer
Homes and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Dear Commissioner Visnauskas:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Internal Controls Over the Governor's Office of Storm Recovery's Federally Funded Programs*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
HCR	Homes and Community Renewal	<i>Auditee</i>
Acts	Federal Disaster Relief Appropriations Acts of 2012 and 2013, collectively	<i>Laws</i>
Appropriations Act of 2012	Federal Disaster Relief Appropriations Act of 2012	<i>Law</i>
Appropriations Act of 2013	Federal Disaster Relief Appropriations Act of 2013	<i>Law</i>
Auction Procedures	Buyout & Acquisition Auction Standard Operating Procedures	<i>Policy</i>
B&A	Buyout & Acquisition Program	<i>Program</i>
B&A Manual	Buyout & Acquisition Policy Manual	<i>Policy</i>
COO	Certificate of Occupancy	<i>Key Term</i>
Disaster Recovery	Community Development Block Grant Disaster Recovery or CDBG-DR	<i>Key Term</i>
FEMA	Federal Emergency Management Agency	<i>Federal Agency</i>
FMV	Fair market value	<i>Key Term</i>
GOSR	Governor's Office of Storm Recovery	<i>HTFC Division</i>
HTFC	New York State Housing Trust Fund Corporation	<i>HCR Component</i>
HUD	U.S. Department of Housing and Urban Development	<i>Federal Agency</i>
LMI	Low- and moderate-income	<i>Key Term</i>
NY Rising	NY Rising Housing Recovery Programs	<i>Programs</i>
Recapture Manual	Recapture Policy Manual	<i>Policy</i>
SFH	Single-Family Housing Program	<i>Program</i>

Background

Homes and Community Renewal (HCR) is New York’s affordable housing agency, with a mission to build, preserve, and protect affordable housing and increase homeownership throughout the State. As part of fulfilling this mission, New York State developed the NY Rising Housing Recovery Programs (NY Rising), along with several other disaster recovery initiatives, as outlined in the State of New York Action Plan for Community Development Block Grant Program Disaster Recovery (Disaster Recovery or CDBG-DR).

NY Rising programs are designed to help New Yorkers who were impacted by Superstorm Sandy, Hurricane Irene, and/or Tropical Storm Lee to recover and rebuild. Sandy – recognized as one of the most destructive storms in recorded U.S. history – hit New York in October 2012, one year after Irene and Lee. Combined, the three storms damaged or destroyed hundreds of thousands of housing units with estimated damages in the billions of dollars. NY Rising programs may also stimulate economic growth in storm-affected communities.

The Governor’s Office of Storm Recovery (GOSR) was established in June 2013 as a temporary agency to coordinate and direct statewide administration of the federal CDBG-DR funds used for recovery and rebuilding efforts in storm-affected municipalities across the State. GOSR operates within the Housing Trust Fund Corporation (HTFC), which is a component of HCR. In October 2022, the permanent Office of Resilient Homes and Communities was created, which assumed GOSR’s portfolio. In this report, we refer to the agency as GOSR, which was the name in use during most of the time covered by our audit.

From August 2011 through March 2023, GOSR received more than \$4.5 billion in U.S. Department of Housing and Urban Development (HUD) CDBG-DR funding to address the devastation from these storms, including about \$4.4 billion for Sandy, \$71.6 million for Irene and Lee, and \$35.8 million in National Disaster Resilience Grant funding. GOSR has used these funds to assist impacted residents – through a variety of programs – with housing recovery, small business, community reconstruction, and infrastructure, with periods of eligibility as follows:

- Tropical Storm Lee: September 7, 2011 to September 11, 2011
- Hurricane Irene: August 26, 2011 to September 4, 2011
- Hurricane Sandy: October 27, 2012 to November 8, 2012

GOSR was responsible for Disaster Recovery funds administration, including ensuring that adequate internal controls were in place and functioning in key areas. These areas include ensuring applicant eligibility for funded programs, appropriately and timely executing grant contracts with applicants who were awarded funds, accurately calculating grant awards, monitoring project progress and grantee compliance with agreements, and recouping funds where appropriate. When working effectively, these activities should protect against fraud, waste, and abuse and be a continuous process used to provide assurance that grant recipients are accomplishing agreed-upon activities and objectives and operating funded programs in accordance with written agreements.

Under provisions of the federal Disaster Relief Appropriations Acts of 2012 and 2013 (Acts) (which addressed Irene and Lee, followed by Sandy, respectively), prior to the obligation of Disaster Recovery funds, GOSR was required to submit an Action Plan to HUD detailing the proposed use of those funds, including criteria for eligibility and how the funds would address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas. GOSR developed an Action Plan for each of the three sources of Disaster Recovery funds (Irene and Lee, Sandy, and National Disaster Resilience) and funded programs such as the Buyout & Acquisition Program (B&A) and the Single-Family Housing Program (SFH). The planned activities were required, under GOSR's Buyout & Acquisition Policy Manual (B&A Manual), to meet one of the three national Disaster Recovery program objectives:

- Benefit low- and moderate-income (LMI) households (those with a total household income less than or equal to 80% of the area median family income set by the federal government for the HUD-assisted housing programs);
- Aid in the prevention or elimination of slums or blight; or
- Meet an urgent need (address conditions that pose a serious and immediate threat to the health or welfare of a community, that have recently become urgent, and that cannot be financed by the sub-grantee or State on their own because other funding sources are not available).

GOSR can initiate a recapture process to recoup funds from program participants who fail to meet program deadlines or who receive benefits for which they weren't eligible and can pursue reversion of these properties to HTFC ownership.

Under the Appropriations Act of 2013, GOSR had an initial deadline of September 30, 2017 to expend the approximately \$4.4 billion in Sandy-related federal funds it received. In December 2016, GOSR applied to HUD for, and received, a 5-year extension until September 30, 2022 to expend these funds. The deadline was later extended for an additional year and again for an additional 2 years until September 30, 2025 by the Consolidated Appropriations Acts of 2021 and 2022, respectively. The Consolidated Appropriations Act of 2023 ultimately waived the expenditure deadline entirely.

According to the most recent quarterly report of Disaster Recovery expenditures, which HCR posts on its website, as of March 31, 2024, GOSR had expended about \$4.4 billion of its \$4.5 billion budget. For the purposes of our audit, we focused primarily on projects that GOSR funded through its B&A and SFH programs.

Buyout & Acquisition Program

B&A, which first began accepting applications in April 2013, consists of Buyout and Acquisition components.

Under both components, GOSR purchased homes that were substantially damaged or destroyed during one of the three storms. With Buyout, GOSR – through HTFC – agreed to purchase eligible properties, through a contract of sale with the original

homeowner, that were identified by the State and its local partners (e.g., city or county governments) as being within an Enhanced Buyout Area. An Enhanced Buyout Area is an area within a floodplain that is more susceptible to future disasters, and therefore poses more risk to people and property, and cannot be rebuilt upon and must be demolished. GOSR seeks bids for demolition services to transform these parcels into wetlands, open space, or stormwater management systems to create a natural coastal buffer to protect against conditions that put homes, residents, and emergency responders at high risk due to repeat flooding.

Through Acquisition, GOSR purchased qualifying properties, which were those that had sustained damage by any of the three storms equal to or exceeding 50% of their pre-storm fair market value (FMV) within the 100- or 500-year floodplains (areas with an annual chance of flooding of 1% or 0.2%, respectively). These properties were generally auctioned to buyers who were required to redevelop them to be resilient against future storms, with the goal of protecting future occupants and maintaining the housing stock in storm-impacted communities.

As of December 12, 2022, GOSR had paid out \$276,066,309 for 721 properties under Buyout and \$209,796,574 for 568 properties under Acquisition, totaling nearly \$486 million for the 1,289 properties. B&A has concluded; however, GOSR continues to handle certain properties in the process of being recaptured and reverting them to HTFC ownership for failure to meet program redevelopment requirements.

Single-Family Housing Program

SFH, which is no longer accepting new applications, assisted homeowners by funding home repairs, rehabilitation, elevation, and – in some circumstances – reconstruction, to make homes resilient against future storms. Eligible properties were required to be single-family homes or two-unit, owner-occupied homes. SFH applicants who sustained damage to their property and made repairs prior to applying for aid were sometimes eligible for reimbursement funding. SFH awards were calculated after a home inspection was conducted to determine both the scope of work and the activities upon which the award was based. At the time of inspection, GOSR also developed an estimated cost to repair the storm damage and to bring the home to a decent and safe condition. Under SFH, applicants selected a contractor and were responsible for negotiating the final costs of the work.

SFH awards had a base cap of \$300,000, although some applicants were eligible for increases above that amount. For example, those who were determined by GOSR to be LMI qualified for an increase of \$50,000 over the cap. Additionally, applicants whose property was substantially damaged, had been substantially improved, or for which the estimated cost to repair exceeded \$150,000 and the property was within the 100-year floodplain were eligible for a \$50,000 increase to facilitate elevation. For those who qualified for both increases, the maximum allowed was \$400,000. In addition, some applicants were eligible for more funding to ensure project completion if they were determined to have suffered a demonstrable hardship or had

experienced a substantial change that prohibited or severely affected their ability to provide a minimal standard of living or basic necessities of life.

When a property had been substantially damaged or couldn't feasibly be repaired, SFH funds were sometimes awarded, within established caps, to assist the homeowner with reconstruction rather than repair. According to the SFH Policy Manual, the reconstruction award calculation was based on the pre-storm taxable square footage of the home as determined through GOSR's review of property tax records. After a grant agreement had been executed between the applicant and GOSR, 50% of the award was paid to the applicant, with the remainder paid at construction completion. In some circumstances, applicants could request interim payment to complete the remaining work. Some homeowners who were displaced by repair work on their homes may have also qualified for the Interim Mortgage Assistance Program, which helps homeowners cover mortgage payments and is subject to HUD-established caps.

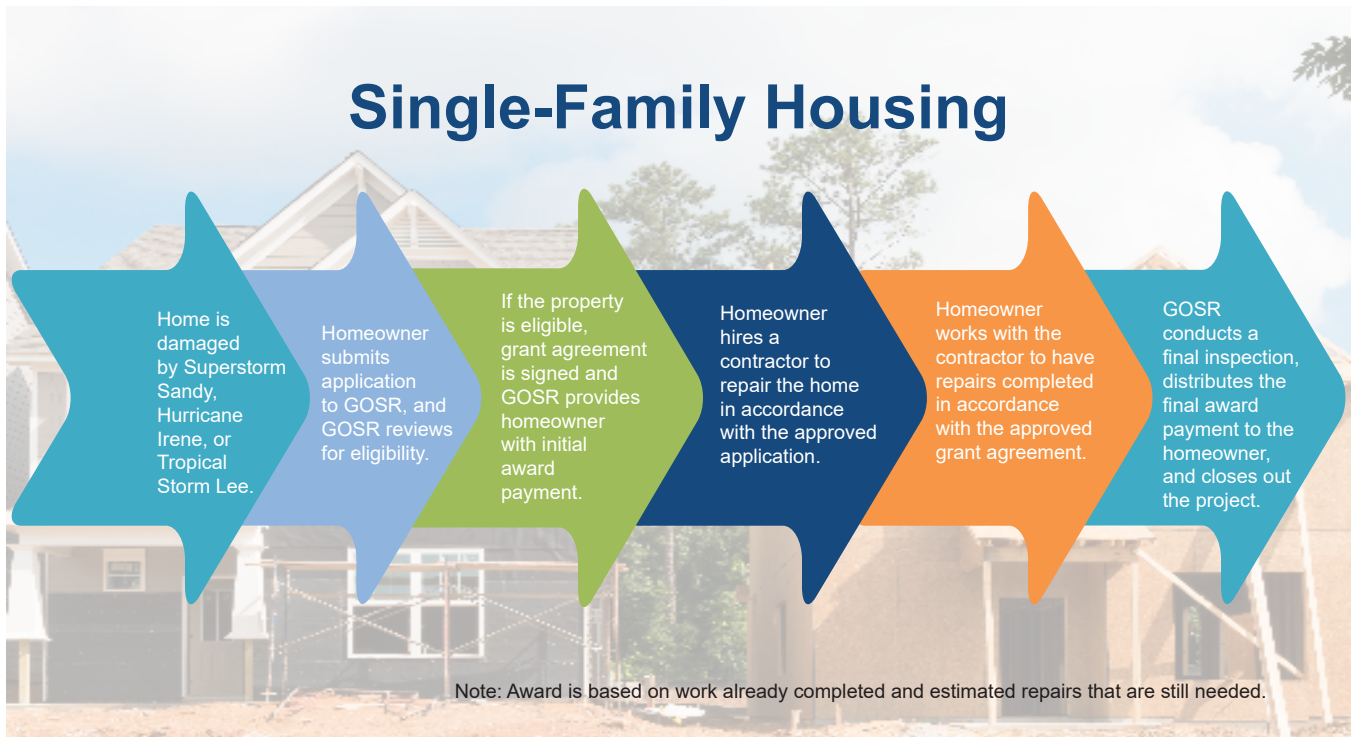
As of January 9, 2023, GOSR had paid out \$1,137,086,231 for 12,154 properties under SFH.

Figures 1 and 2 depict the key steps for both the B&A and SFH programs.

Figure 1 – Buyout & Acquisition Program Key Steps



Figure 2 – Single-Family Housing Program Key Steps



Audit Findings and Recommendations

We found weaknesses in HCR's internal controls that reduced the effectiveness of its oversight of the GOSR federally funded programs we included in our audit. We reviewed 10 Buyout properties, 11 Acquisition properties, and 20 SFH properties and identified weaknesses in GOSR's methods for determining applicants' and properties' eligibility to receive assistance, its consideration of duplication of benefits, and documentation of certain decisions. Of the 11 Acquisition properties we reviewed, which GOSR paid more than \$2.9 million to purchase, we found indications that two, purchased for \$189,540, may not have been eligible for funding. We also identified potentially duplicated benefits totaling \$60,288 paid to B&A applicants and a \$6,000 overpayment to an SFH applicant.

In addition, there were delays in redevelopment with some Acquisition properties, and improvements are needed in GOSR's practices related to both recapturing funds and handling uncollectible accounts. These findings suggest that GOSR is not well positioned to prevent and detect fraud that may occur in these and other large-dollar housing development programs.

Finally, GOSR lacked adequate documentation to support its decision to forgo development of an Acquisition property. Though we cannot project our sample results to the related populations of the funded properties, the implications and significance of our findings warrant prompt and appropriate action to better manage the remaining open projects and to inform other HCR housing programs. Better practices related to determining eligibility for funding and enhanced monitoring of project progress would contribute to more effective oversight of these important housing recovery programs.

Eligibility for Funding

According to the B&A Manual, a property must have been substantially damaged – that is, it must have sustained damage estimated as at least 50% of the property's pre-storm FMV, as indicated by a Substantial Damage letter from the appropriate local authority or floodplain manager – to qualify for Acquisition funding. (The letters we reviewed generally included the dollar amount of estimated damage and the pre-storm FMV, which enabled a calculation of the substantial damage percent.) GOSR also required post-storm appraisals for all participating properties that established the relevant post-storm FMV, which was used to calculate the offer to the applicant (100% of post-storm FMV, plus any applicable resettlement incentives).

We found indications that two of the 11 Acquisition properties whose records we reviewed, for which GOSR paid \$189,540, may not have been eligible for funding. For one, which GOSR paid \$140,198 to purchase, the Substantial Damage letter indicated that the property damage incurred was at least 50%. In contrast, Federal Emergency Management Agency (FEMA) documentation for that property indicated that the property was 25.9% damaged. For the second property, which GOSR paid \$49,342 to purchase, the Substantial Damage letter merely stated that the property incurred substantial damage that exceeded 51% but didn't include any dollar amounts, such as the amount of estimated damage, to support the determination of substantial damage. These examples raise questions about whether the properties

were substantially damaged and therefore eligible for funding. In response to our observations, GOSR officials stated that an Action Plan Amendment, approved by HUD in August 2024, removed the Substantial Damage determination as an eligibility requirement for Acquisition properties.

Potential Duplication of Benefits and Overpayments

As a result of our review of our sample of 10 Buyout and 11 Acquisition properties, we identified instances in which GOSR duplicated or potentially duplicated benefits totaling \$60,288 (\$48,399 + \$11,889) paid to B&A applicants. Under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, Disaster Recovery funds may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose and would therefore be a duplication of benefits.

In alignment with the federal requirement, the B&A Manual states that applicants are required to disclose all sources of disaster recovery assistance received. It also states that the most common sources of this assistance are homeowner's insurance, FEMA, and the Small Business Administration, and that GOSR verifies duplication of benefits information from each applicant from eligible government and third-party sources and must subtract the amount of any identified assistance in its determination of the purchase price for the property. Duplicative assistance is described as including, but not being limited to, National Flood Insurance Program proceeds, private insurance proceeds (which must be disclosed by owners and verified by GOSR by contacting insurance companies), and FEMA proceeds received, which must also be disclosed and verified by GOSR. The B&A Manual also states that not all funds that were received in other programs are determined to be a duplication of benefits.

We found that one Buyout property owner was paid \$364,378, which included \$48,399 that had been previously deducted from the grant award as a duplication of benefits related to a flood insurance payment for repairs. This suggests that the applicant was reimbursed for an amount that had been correctly deducted from the award. For another property, GOSR documentation showed that the applicant was paid \$19,842 from other programs for elevation and repairs prior to consideration for Acquisition. However, GOSR calculated the duplication of benefit amount as \$7,953, a difference of \$11,889. In response to our preliminary observations, GOSR officials asserted that, for the first example, the applicant who was reimbursed had eligible receipts for the \$48,399; they did not comment specifically about the second example we cited above.

We also found that one SFH applicant was paid \$6,000 more than the applicable Interim Mortgage Assistance award cap of \$108,000. GOSR officials agreed that this was an overpayment and said the amount is considered "de minimis" because it's less than \$10,000, but also said that it was planned for recapture processing as of April 2023, though with a lower priority than higher-balance files.

Delayed Redevelopment

We concluded that GOSR's controls weren't adequate to ensure that redevelopment of the Acquisition properties in our sample was effectively progressing and furthering program goals. Of the 11 properties we reviewed – located in Delaware, Kings, Nassau, Queens, Richmond, Schoharie, Suffolk, and Tioga counties – we identified concerns with six.

Disposition of Acquisition properties was done to facilitate the availability of new housing stock that meets current codes and standards. GOSR's B&A Manual and other guidance state that most of the properties GOSR purchased through Acquisition would be sold at a public auction, subject to a deed restriction that required redevelopment to occur within 3 years of the closing date, with some exceptions, or the property would revert to State ownership. According to the B&A Manual, properties purchased through Acquisition are monitored until proof is obtained that the property has a home built to local and State building codes. Final certificates of occupancy (COOs), indicating that all redevelopment is consistent with local use and zoning regulations and relevant floodplain development and design requirements, are required to be obtained within 3 years of the closing date for auctions prior to November 2018 and within 18 months for closings in or after November 2018 (with exceptions for variance properties and non-conforming lots – neither of which were among our sample properties – extending the time to 4 years and 3 years, respectively). GOSR was able to grant extensions on a case-by-case basis if the purchaser demonstrated there had been significant progress toward rebuilding.

GOSR contracted with an auction company to sell the properties it purchased under Acquisition to buyers who would redevelop the structures to be more resilient. GOSR's Auction Procedures provided guidance to staff in conducting the auction process, establishing the minimum bid, and monitoring the progress of the properties' redevelopment. They required that the purchaser close on the auctioned property within 45 days, and also described actions to take if the closing wasn't timely and steps for GOSR's Auction Compliance Team to monitor the redevelopment of auctioned properties (including demolition, site plans, and surveys). In total, 510 properties were auctioned as part of Acquisition. Notably, the Auction Procedures don't address ways in which GOSR could ascertain whether a potential buyer was likely to be able to take on reconstruction tasks and meet the redevelopment time frames. We also found no evidence that GOSR staff were taking these steps in the absence of written guidance.

When combined, these conditions increased the risk of project delays and resulted in reduced assurance that the damaged properties would be redeveloped to be more resilient in line with program goals. They may also represent weaknesses in GOSR's readiness to prevent and detect both inappropriate payments and potential fraud that may occur in these and other programs that use similar approaches in their oversight. The lags in redevelopment with some properties we reviewed also increased the likelihood of project failure and the need to undertake subsequent recapture efforts.

According to GOSR’s Auction Procedures, the post-elevation certificate, COO, and before-and-after pictures are reviewed and approved by a GOSR attorney as part of completion of redevelopment. However, we found that two of the 11 Acquisition properties we reviewed hadn’t been elevated, as required under the related contract terms, despite GOSR officials stating that their redevelopment was complete. In these cases, GOSR property records included COOs that were dated within the 3-year redevelopment period, but there were no before-and-after photos. Further, we visited both project sites in August 2023 and observed that neither property had been redeveloped (i.e., elevated or rebuilt). Figure 3 depicts one of these two properties.



Figure 3 – Property undeveloped, August 2023

In the response to our inquiry about this property, GOSR officials stated that they relied on the submitted COO to confirm that redevelopment of the property was completed and that they used it to close this file. Based on our site visit observations and lack of required photos, however, we concluded that the property shouldn’t have been considered to have been appropriately redeveloped.

For another four properties that weren’t complete based on GOSR records, there were delays in redevelopment, as follows:

- Three properties, all of which were acquired by buyers between August 2017 and February 2018 with completion deadlines (none of which were extended) between August 2020 and February 2021, weren’t redeveloped as of August 2023, when we visited the project sites (see examples in Figures 4 and 5).
- For one, the COO indicated that the project was completed nearly 6 months after the deadline.



Figure 4 – Property undeveloped, August 2023



Figure 5 – Property undeveloped, August 2023

In response to our observations, GOSR officials said that staff conducted regular case management with buyers of auctioned properties, and where the owner had shown good faith efforts and provided support of their progress, cases were reviewed for extensions through the demonstrable hardship process. Buyers approved for

time extensions were then subject to new redevelopment deadlines. They also said that when an auction property owner doesn't comply with redevelopment deadlines and hasn't demonstrated good faith efforts toward that end, they pursue legal action. They also indicated that they were pursuing legal action for the property depicted in Figure 5.

Recapture Process and Handling Uncollectible Accounts

We identified areas for improvement in GOSR's practices related to both recapturing funds and handling uncollectible accounts. Together, these weaknesses increase the likelihood of funds not being used for Disaster Recovery program purposes and may represent a financial loss to the State and reduced opportunity for funding for other potential applicants.

Properties in Recapture Status

GOSR's Recapture Policy Manual (Recapture Manual) states, in part, that NY Rising is responsible for ensuring its internal system for debt collection is adequate to effectively collect amounts due. GOSR initiates recapture efforts when an applicant is substantially non-compliant with program requirements and/or is considered to have been overpaid for any reason, including ineligibility for funding. Examples of non-compliance include failure to submit mandatory documentation, complete the required project, and/or allow for mandatory inspections. Despite its existing guidance regarding recapture and other program areas, GOSR's practices need improvement so that it better monitors project progress and takes action to prevent situations that result in recapture efforts.

To initiate recapture, GOSR sends a Repayment Letter to the applicant, who then has 60 days to appeal the repayment determination. In some cases, GOSR may agree to a repayment plan. According to the Recapture Manual, all funds that are recovered as a result are returned to the State's CDBG-DR account or the U.S. Treasury if the grant has been closed out.

For 10 of the 20 SFH properties in our sample (50%), GOSR either took steps to recapture program funds or deemed amounts uncollectible. For eight properties, GOSR took steps to recapture program funds totaling \$1,680,030. Of the eight properties:

- GOSR recaptured funds in full for two, totaling \$292,625; and
- GOSR initiated recapture efforts between June 2016 and March 2023 for six properties, seeking recapture of \$1,387,405, and provided the Repayment Letters that were sent to the applicants and information about litigation related to one of the six properties. As of July 2023, one of the six had made payments toward the amount in recapture status, as shown in the following table.

Recapture Status

ID	Intended Recapture Amount	Month and Year Recapture Initiated	Date of Most Recent Information We Reviewed	Years in Recapture at Time of Our Review	Payments From Applicant
1	\$43,046	6/2016	7/26/2023	7+	Partial payment
2*	45,501	3/2018	7/26/2023	5+	None
3	187,500	11/2021	7/26/2023	1+	None
4	321,868	1/2022	6/5/2023	1+	None
5	367,994	4/2022	6/6/2023	1+	None
6	\$421,496	3/2023	8/23/2023	< 1	None

*Brought to litigation and judgment granted in court against the applicant

For example, GOSR paid \$321,868 for a property damaged by Sandy, and the applicant began elevation work in 2017, but the work remained unfinished and GOSR initiated recapture proceedings in January 2022. For two additional properties, GOSR didn't pursue recapture and instead deemed the amounts, which totaled \$359,245, uncollectible: one, totaling \$358,510, due to the applicant's age, and one for \$735 for de minimis reasons.

In response to our observations about the properties in recapture, GOSR officials said that applicants and their contractors are responsible for completing all program-funded repair work and meeting closeout requirements by established deadlines to avoid recapture. They also said that, since January 2022, the recapture team has reduced the overall New York State balance owed to the federal government by more than \$60 million through a robust and exhaustive recapture process. Note that we did not verify GOSR's statement as part of our audit.

Uncollectible Funds

GOSR established procedures to assist staff in identifying potentially uncollectible funds and that address methods that may help retrieve funds that might otherwise be deemed uncollectible. The procedures include categories of potential reasons for uncollectibility, such as bankruptcy, the age of the applicant (i.e., "Over 70" – [previously "octogenarian"]), an applicant being deceased, and de minimis amounts. GOSR maintains a report of uncollectible accounts that includes the reason for uncollectibility, the original amount to be recaptured, and the amount deemed uncollectible.

From the time it initially received Disaster Recovery funding in 2011 through January 9, 2023, GOSR paid out nearly \$1.1 billion to applicants across 12,154 projects in the SFH program. According to a GOSR report dated March 2023, \$10.7 million was initially planned for recapture related to the SFH program, but had been deemed uncollectible, including \$9.2 million in two categories: Over 70 and Deceased Applicant.

Although it's unlikely that uncollectible funds can be avoided entirely, GOSR might have reduced this risk with alternative procedures, such as those in place for SFH.

For SFH properties that were owned by a trust and the trustee's powers didn't allow it to encumber the property with a lien, the beneficiary – or other person with an interest in the property – was also required to sign the grant agreement to enhance collectibility potential. In addition, if an SFH applicant was an owner on the property deed at the time of the relevant storm and later died, either the heir or the current owner of the property became the applicant. In responding to our observations, GOSR officials indicated that taking steps to reduce the risk of uncollectible accounts aligns with their lessons learned and is among the changes that are being implemented.

Supporting Documentation

We identified one case in which GOSR lacked adequate documentation to support its decision to forgo development of an Acquisition property. In some instances, properties that don't conform to the surrounding area and/or are of greater use to the community as open space are mandated by a deed restriction to remain as open space in perpetuity under GOSR's Change of Use program. Of the 11 Acquisition properties we reviewed, GOSR opted not to develop one, a vacant lot, which was originally contracted for sale via auction for \$116,000 with the intention of rebuilding. Subsequently, the buyer became non-responsive and didn't close on the sale, and – rather than return the property to auction – GOSR designated it as open space and sold it through Change of Use for \$4,500. The records we reviewed, however, didn't adequately substantiate GOSR's decision not to develop this property. As such, it is unclear whether forgoing redevelopment aligned with program goals.

In response to our observations, GOSR officials said that the Acquisition property was non-conforming, in that it was smaller than the relevant planning standard for its zoning district minimum lot width. They said that in these cases, which can result in delayed redevelopment due to lengthy variance review approval processes, they may choose to pursue Change of Use. The appraisal information we reviewed, though, indicated that the property conformed to the plots in the neighborhood and was legal per zoning compliance. Further, the open space appraisal letter stated that the site was a legal building plot, that there were no building moratoriums affecting it, and that all municipal utilities were available. We recommend that GOSR maintain records that substantiate decisions, such as this, that differ from established policies and/or practices.

Recommendations

1. Revise practices, which could include amending policies and procedures, to provide greater assurance that GOSR Disaster Recovery program funds are:
 - Awarded only to eligible applicants and for eligible properties; and
 - Accurately calculated, including making appropriate adjustments for duplication of benefits.

-
2. Take steps to prevent potential losses of federal funds, including proactively addressing project delays that may lead to undeveloped properties and subsequent recapture efforts and uncollectibility determinations.
 3. Improve documentation of decisions – such as those involving Change of Use – that differ from and/or are an exception to established policies and/or practices.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether HCR established and maintained adequate internal controls to oversee and monitor GOSR's federally funded programs to ensure they meet grant requirements. The audit covered the period April 2017 through December 2022 for B&A, April 2017 through January 2023 for SFH, and agency actions through August 2023. Our scope included properties that were accepted into these programs prior to April 2017 but for which activity on the related projects was continuing during the audit period.

To accomplish our objective and assess related internal controls, we reviewed federal laws, State regulations, and GOSR policies and procedures; interviewed GOSR officials and employees to understand the internal controls over the programs they administered; and reviewed GOSR financial and administrative records.

We used a non-statistical sampling approach to provide conclusions on our audit objective and to test internal controls and compliance. We selected judgmental samples; however, because we used a non-statistical sampling approach for our tests, we cannot and did not project the results to the respective populations. Our samples, which are discussed in detail in the body of our report, were as follows:

- A judgmental sample of 10 of 721 Buyout properties and 11 of 568 Acquisition properties to test for compliance with GOSR and federal procedures, based on factors such as geographic location, project status, and award amounts. As of December 12, 2022, GOSR had paid \$4,412,324 for the 10 Buyout properties in our sample from the total population of 721 properties for which GOSR paid \$276,066,309. GOSR had paid \$2,902,300 for the 11 Acquisition properties in our sample from the total population of 568 properties for which GOSR paid \$209,796,574.
- A judgmental sample of 20 of 12,154 SFH properties to test for compliance with GOSR and federal procedures, based on factors such as geographic location, project status, and award amounts. As of January 9, 2023, GOSR had paid \$5,118,178 for the 20 SFH properties in our sample from the total population of 12,154 properties for which GOSR paid \$1,135,848,313.

We obtained data from GOSR's Intelligrants system. We assessed the reliability of that data by reviewing existing information, interviewing officials knowledgeable about the system, and tracing to and from source data. We determined that the data we obtained from this system was sufficiently reliable for the purposes of this report.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of HCR's oversight and monitoring of GOSR's federally funded programs.

Reporting Requirements

We provided a draft copy of this report to HCR officials for their review and formal written response. We considered their response in preparing this final report and have included it in its entirety at the end of the report. HCR officials agreed with some, but not all, of our conclusions and recommendations. We address certain aspects of their response in the report's State Comptroller's Comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner/Chief Executive Officer of Homes and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments



Homes and Community Renewal

KATHY HOCHUL
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

August 30, 2024

Heather Pratt, Audit Director
Office of the New York State Comptroller
Division of State Government Accountability
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Albany, NY 12236

RE: Report 2022-S-37, Homes and Community Renewal: Internal Controls Over the Governor’s Office of Storm Recovery’s Federally Funded Programs.

Dear Ms. Pratt:

New York State Homes and Community Renewal (“HCR”) appreciates the opportunity to respond to the above-referenced audit report and thanks the Comptroller’s staff for their professionalism and courtesy throughout the audit process.

New York State’s federally funded Community Development Block Grant Disaster Recovery Program (“CDBG-DR” or the “Program”) was designed to rapidly deploy funds for the critical repair, reconstruction, or acquisition for redevelopment or conversion to open space of damaged homes across disaster-declared regions of New York State. The State did not have access to federal CDBG-DR funds until more than six months after Superstorm Sandy, and the Governor’s Office of Storm Recovery (“GOSR”) structured the Program to quickly provide funding to residents who were displaced or living in substandard conditions.

As part of implementing the overall Program, GOSR developed a Single-Family Housing Program that balanced swift delivery with appropriate controls, ensuring compliance with all federal requirements from the outset while collecting and retaining required documents throughout the application process. GOSR-funded awards were adjusted and reconciled at the time of disbursement using the best available information. This approach allowed the Program to promptly deliver necessary funds to homeowners so that they could commence repairs or reconstruction while additional documentation was collected and verified by GOSR staff.

Similarly, GOSR developed a Buyout and Acquisition Program that focused on quickly processing and acquiring hundreds of heavily damaged homes whose owners were unwilling or unable to complete repairs, or whose property was located in an area considered to be high risk. Avoiding delays in funding delivery was crucial to prevent further impediments to the recovery of homes and entire communities, a consequence that would have been unacceptable given the urgent need for disaster relief.

This Program design yielded tangible results. Less than six months after it was established, the Program had issued payments to 2,654 applicants. To date, the Program has awarded funds to over 11,000 applicants for repairs

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and acquired over 1,200 homes for resilient redevelopment or conversion to open space, helping rebuild a more resilient New York.

Below is our response to the draft report’s recommendations, which includes clarifying and/or corrective information relating to certain findings and assumptions underlying the recommendations.

Recommendation 1: Revise practices, which could include amending policies and procedures, to provide greater assurance that GOSR Disaster Recovery program funds are:

- **Awarded only to eligible applicants and for eligible properties; and**
- **Accurately calculated, including making appropriate adjustments for duplication of benefits.**

Agency Management’s Response:

HCR considers that both the draft findings tied to these recommendations and the recommendations themselves have been addressed. The eligibility issues identified by the draft report have been resolved through the approval by the U.S. Department of Housing and Urban Development (“HUD”) of an Action Plan Amendment removing the Substantial Damage requirement, as described in more detail below. The potential duplication of benefits issues cited by the draft report were appropriately addressed by the Program through receipt reviews, as discussed below. Similarly, the draft report recommendations regarding strengthened policies around award calculation, eligibility, and duplication of benefits have been addressed by policy and procedure improvements, including continuous updates to the Program’s *Closeout Review Process*, to ensure these and other requirements are appropriately documented and verified.

The Program was designed to rapidly mobilize funds for the repair, elevation, reconstruction, and acquisition of homes impacted by disasters throughout New York State. GOSR’s primary objective was to ensure displaced families could swiftly return to their homes or move on from heavily damaged properties and high-risk areas, incorporating resiliency strategies into construction and repair processes while maintaining federal compliance. Given the need to move quickly in disaster relief work, it was impractical to predict which properties would successfully complete repairs, elevation, or reconstruction. Throughout the Program’s duration, policies, procedures, and deadlines were in place to determine eligibility, accurately calculate awards, and provide enhanced case management support to vulnerable applicants.

Regarding the six Acquisition properties that the report states may not have been eligible for funding based on contracted appraisals and/or Federal Emergency Management Agency (“FEMA”) documentation on file, the Program relied on the local floodplain administrator’s determination of Substantial Damage, as evidenced in their Substantial Damage Letters, to determine the extent of damage. The Substantial Damage measure is the appropriate measure for this purpose, for several reasons. Substantial Damage means the cost to repair a property in a floodplain is 50 percent or more of the structure’s market value before the disaster occurred, whereas appraisals are only one indication of a property’s value at a given time. Appraisals are not designed to assess or opine on a property’s lost value due to damage or the cost of repairs needed to restore the property’s value to what it was prior to sustaining damages. Increases in post-storm fair market values may be related to changes in the local housing market, rather than the extent of repair needs for a property.

For the reasons stated above, with respect to “Table 1 – Percent Damage Determinations, GOSR-Contracted Appraisals vs. Substantial Damage Letters from Local Floodplain Administrator” in the draft report, it is

inaccurate to calculate the percent of damage simply by comparing a post-storm appraised value to a pre-storm appraised value. Further, for Project IDs B and C, the fact that the post-storm fair market value exceeded the pre-storm market value for those properties, which had documented Substantial Damage, illustrates that a post-storm appraisal alone is not an accurate reflection of the percentage of damage sustained during a storm.

[Comment 1](#)

In addition, as the draft report acknowledges beneath Table 1, the Program was in the process of implementing an Action Plan Amendment to address the use of the Substantial Damage Letters from municipalities for determining eligibility for funding for Acquisition properties. That Action Plan Amendment was approved by HUD on August 1, 2024, and it entirely removes the determination of Substantial Damage as an eligibility requirement for Acquisition properties. Accordingly, the Acquisition Program policies no longer require properties to be substantially damaged from a qualifying storm to be eligible for an award. This is protocol that HUD instructed the Program to use to resolve the identified eligibility issues.

The draft report identified two instances of potential duplication of benefits totaling \$60,288 collectively. However, in neither case is it clear that a duplication of benefits occurred. For the Buyout property owner paid \$48,399: That applicant had a contractor perform repairs to the home in that amount which were eligible receipts that did not overlap with the flood insurance benefits received. For the Acquisition property owner paid \$19,842 from other programs for elevation and repairs prior to transferring to the Acquisition Program: The Program confirmed that \$11,889 was spent by the applicant on eligible costs. Therefore, only the balance of \$7,952.79 – the amount on the Verification of Disaster Benefits Received Award Statement – was considered a duplication of benefits and was deducted from the applicant’s Acquisition Program award.

[Comment 2](#)

Also, the draft report identifies one applicant that was overpaid \$6,000 in the Single-Family Housing Program. The file for that applicant was transferred to the Recapture Program for processing. A routine recapture review identified eligible file offsets which resolved the overpayment. Consequently, no balance is owed to the Program by that applicant.

The Program’s processes and controls were specifically designed to account for verified duplication of benefits. Documentation was provided during the audit showing that the Program was reimbursing only those expenses that were not covered by another source (i.e., insurance, FEMA, etc.). This documentation remains available and can be provided to illustrate why these payments do not constitute a duplication of benefits. Additionally, given the urgency of providing recovery assistance to impacted New Yorkers over a year after Superstorm Sandy’s impact, GOSR decided to issue initial awards in cases where data on additional funding received by applicants remained unavailable, and subsequently reconcile the awards to address any duplication of benefits.

[Comment 3](#)

As part of the Program's continuous improvement and closeout efforts, new policies and procedures were implemented and enforced in 2023 enhancing internal controls over awards, eligibility, and duplication of benefits. As of June 30, 2023, the Program ceased issuing new award payments. Final award changes due to eligibility, award calculations, and duplication of benefits were subject to a September 30, 2023, appeal and/or hardship deadline.

During the time of the audit, the Program relied on the "*Closeout Review Process v7.4 SOP*," dated June 23, 2022, to ensure the accuracy of single-family applicant files. These procedures served as the internal guide for final quality control during the closeout process. Continuous improvements and updates have been made to these

procedures to align them with changes in Program policies and controls. These updates are reflected in the latest version of the procedures "Closeout Review Process v7.8," published on February 20, 2024.

Recommendation 2: Take steps to prevent potential losses of federal funds, including proactively addressing project delays that may lead to undeveloped properties and subsequent recapture efforts and uncollectibility determinations.

Agency Management's Response:

HCR considers that it has already responded to the draft report's recommendation with respect to project delays by actively taking steps to address properties that have not completed redevelopment. HCR acknowledges that certain Acquisition projects remain undeveloped or have experienced delays in completing redevelopment. To this point, however, around 90% of Acquisition properties sold at auction to redevelopers have been successfully redeveloped, and the Program has reverted ownership of the remaining properties to the State or is actively evaluating or pursuing enforcement options, as discussed below. HCR disagrees with any implication that project delays could represent general weaknesses in detecting and preventing inappropriate payments or fraud. While the draft report acknowledges that Superstorm Sandy was one of the most destructive storms recorded in U.S. history, it does not appear to fully recognize the inherent challenges of dealing with such widespread damage and, importantly, the magnitude of the efforts that were made to overcome those challenges.

[Comment 4](#)

HCR partially disagrees with the draft report's findings regarding areas for improvement related to recapture of funds and uncollectible amounts, and that these issues increase the risk of financial losses to the State and funds available for disaster recovery purposes. The Program has taken active steps, in coordination with HUD and the NYS Division of Budget ("DOB"), to mitigate the potential loss of federal funds by working to reduce recapture amounts and ineligibility determinations (e.g., with flexible deadlines, additional Program support, and the identification of other eligible expenditures), and by repaying over \$30 million in ineligible expenditures that have been returned to the State's CDBG-DR line of credit, as discussed below. Where improvement is needed, however, the Program has continuously engaged both HUD and State leadership to refine recapture policies and processes and advocate for federal relief on ineligible expenditures.

The Program successfully supported over 12,200 applicants in the wake of a disaster by helping them repair, elevate, or reconstruct their homes or by acquiring their homes for resilient redevelopment or conversion to open space uses. The homeowner repair program, as part of the Single-Family Housing Program, has been highly successful, providing comprehensive case management and estimating support to homeowners. Deliberate deadlines were communicated to homeowners to help them progress with their projects. Given the scale of destruction and the limited pool of qualified contractors available to homeowners for repair and construction, project delays were inevitable and planned for. The Program was not involved in the selection or vetting of contractors chosen and hired by applicants, as outlined in the Program's Homeowners Manual, which is fully consistent with CDBG-DR requirements. Benefits to this approach included allowing applicants the freedom to select who they worked with to repair their homes – e.g., to choose a contractor they may have worked with in the past – and avoiding the administrative burden that would have been placed on the Program if it had been required to manage contractors directly for thousands of projects across the State.

Recognizing that some projects might not meet program deadlines or other requirements, GOSR established the Recapture Program to reclaim funds from applicants who failed to meet final program requirements. Before

transferring applicant files to the Recapture Program, the Program provided applicants multiple opportunities to clarify their award benefits and request extensions for completing funded work in order to avoid recapture. For instance, in May 2018, applicants were notified of an extended deadline to schedule a final inspection by June 1, 2019, and were required to close out their award by December 31, 2019. Due to COVID-19-related delays, the final inspection deadline was further extended to November 1, 2020. Additionally, GOSR created the Construction Program as a CDBG-DR funded sub-component of the Single-Family Housing Program to provide agency-procured and managed contractors and/or intensive technical assistance to complete repairs on behalf of applicants unable to do so themselves. In doing so, the Program helped homeowners complete their recovery and avoid recapture of funds. Finally, the Program worked closely with applicants at risk of recapture to identify and document other eligible uses of grant funds to lower the amount of funds subject to recapture, as in the case of the \$6,000 “overpayment” discussed above.

The recapture process is robust and exhaustive in its efforts to collect ineligible grant awards, including but not limited to making formal demands for repayment, engaging in negotiations, and pursuing litigation. Upon the granting of a default judgment through the courts, the Program attempts collection through the NYS Department of Taxation and Finance’s Statewide Offset Program, through which amounts owed may be garnished from tax refunds and/or contracts the applicant has with New York State. The recapture process, however, allows awardees who subsequently complete their projects and comply with all closeout requirements to be eligible to retain their award. Also, applicants with project delays who demonstrate a pathway to complete their project can still be eligible to retain their awards. For applicants with no pathway toward completion or award mitigation, the recapture process is initiated to recoup funds.

The draft report expresses concern that the Program’s controls were inadequate to ensure that redevelopment was effectively progressing and furthering program goals. While deed restrictions were placed on those properties for which redevelopment was to be completed by the purchasers within three years (or in some cases 18 months) of the closing date, enforcing a deed restriction by carrying out a reversion of title to the Program involves a costly and lengthy litigation process. Recognizing this, the Program decided it was in the best interests of the State to allow additional redevelopment time for purchasers who demonstrated substantial construction progress. The Program’s auction compliance case management procedures allow for redevelopers to submit hardship requests for time extension if they can demonstrate they are making good faith efforts to complete their redevelopment, to advance the Program’s goal of successful, resilient redevelopment of storm-damaged properties. Purchasers that did not meet the redevelopment deadline and showed no or minimal construction progress by the deadline had litigation commenced against them. The Program will continue to evaluate whether seeking reversion of the remaining undeveloped properties or allowing deadline extensions is in the State’s best interests.

These comprehensive efforts demonstrate the Program’s commitment to addressing project delays and preventing potential federal fund losses while also supporting homeowners in their recovery efforts.

As discussed in the draft report, the Recapture Program identified certain instances in which recapture of funds would not be pursued. These include hardship cases where an applicant’s circumstances, including old age, indicate vulnerability, and the vigorous pursuit of recapture would be against equity and good conscience; and de minimis cases where the amount of ineligible funding is so low that undertaking the robust recapture process discussed above would not be cost-effective.

The draft report states that the Program might have reduced the risk of uncollectible funds with alternative procedures. As an example, the draft report suggests that the Recapture Program could mirror the treatment of repair awards for properties owned by applicants who later passed away. The Single-Family Housing Program allowed the heirs of deceased applicants to become the new applicants and receive the disaster recovery benefits needed to repair their inherited homes. The Program’s hardship policies regarding awards for the properties of deceased applicants aligned with the interests of the State in fostering recovery not only for individual homeowners, but also for the entire community. However, implementing such an approach in the Recapture Program would effectively saddle heirs with the liabilities of the deceased party, which would be against equity and good conscience.

GOSR has leveraged the federal rules related to repayment of ineligible costs from non-federal funds to mitigate full losses of federal funding – namely, if ineligible amounts are repaid from non-federal sources prior to grant closeout, those funds are returned to the grantee’s (i.e., New York State’s) line of credit as CDBG-DR funds. This means the funds are not truly lost and can be used to continue to advance the State’s disaster recovery and mitigation efforts, including for more recent disasters, as allowed by HUD’s interchangeability of funds policy. To this point, HCR has to date repaid, in coordination with HUD and NYS DOB, over \$30 million in ineligible funds to HUD, prioritizing cases tied to resolving audit findings. HUD returned these funds to the State’s CDBG-DR line of credit, which allows them to be used to advance the State’s recovery objectives and serve New Yorkers.

HCR and GOSR leadership have continuously communicated with and updated HUD, State leadership, and NYS DOB on recapture efforts and liabilities, including policies regarding uncollectible recapture funds. HCR has also supported and encouraged advocacy at the federal level for write-offs of ineligible CDBG-DR funding, especially for hardship cases. While a favorable outcome in these efforts is by no means guaranteed, there is precedent for such write-offs of ineligible disaster recovery funds in the 2018 Disaster Recovery Reform Act’s prohibition on FEMA clawbacks of certain ineligible awards.

Recommendation 3: Improve documentation of decisions – such as those involving Change of Use – that differ from and/or are an exception to established policies and/or practices.

Agency Management’s Response:

HCR disagrees with this recommendation both as it pertains to the Change of Use decision noted in the draft report and, more broadly, because the Program already consistently documents programmatic policy and procedural decisions in compliance with CDBG-DR requirements. While the Program recognizes the importance of documenting these decisions consistent with HUD requirements, the level of documentation that the draft report appears to expect would result in an undue administrative burden.

The Program regularly updates its policy and procedure manuals and other written guidance as policies or practices evolve, including instances which may require an exception to standard policy. In addition to published manuals, the Program maintains an extensive inventory of internal guidance documents and Standard Operating Procedures, one of which includes guidance on Change of Use. As noted above, the Program may, from time to time, amend policies, procedures, and guidance to remove unnecessary administrative burden while ensuring compliance with both programmatic and CDBG-DR requirements.

These written procedures support the Program’s decision to undertake a Change of Use to open space preservation for the property referred to in this recommendation. That parcel was determined to be non-conforming and unlikely to be successfully redeveloped so a Change of Use to open space preservation was warranted. This Change of Use was noted in the Program’s system of record at the time that determination was made.

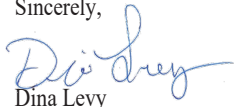
Additionally, both resilient redevelopment or conversion to open space use are eligible and compliant per HUD rules and requirements for the CDBG-DR program. Both options can meet a National Objective and eligible end use per these rules, and both are understood in the disaster recovery context to represent sound policy outcomes – either by ensuring that redevelopment mitigates the potential effect of future disasters or by removing structures and people from at-risk areas while simultaneously mitigating risks of subsequent flooding in the area by allowing for natural absorption of floodwaters, unimpeded by building or pavement.

The Program’s decision to change the use of the property in question was both consistent with internal policies and procedures and fully eligible and compliant with CDBG-DR requirements. It would cause the Program undue burden to compile and maintain the level of documentation that the draft report appears to expect for a decision that ultimately does not impact the eligibility for or compliance with the terms of use of CDBG-DR funds.

[Comment 5](#)

Please contact Sean Fitzgerald, Audit Coordinator, at (518) 473-3112 if you have any questions or require anything further.

Sincerely,



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State Comptroller's Comments

1. We have modified our report accordingly.
2. Because, as HCR states, it was not clear that a duplication of benefits occurred, it was also unclear that it had not occurred. As such, we reported the \$60,288 as a potential duplication of benefits.
3. We reviewed the documentation that HCR provided but, as similarly noted in Comment 2, we couldn't conclude that the program was reimbursing only those expenses that were not covered by another source. We therefore concluded that there was a potential duplication of benefits.
4. We recognize that administering and overseeing housing recovery programs – especially after storms of the magnitude addressed with this funding – involve inherent challenges, such as project delays and some applicants' need for technical assistance. However, given the scale of these programs' efforts, coupled with the urgency in getting funding to applicants (both of which HCR acknowledges), minimizing the risk of loss due to human error, abuse, and fraud becomes more pressing. Given the significance of the amounts in recapture and those deemed uncollectible that we included in our report, which are generally associated with project delays, we believe that proactively acknowledging and addressing these risks is warranted.
5. The documentation that our auditors reviewed wasn't adequate to determine that a decision to forgo auctioning the cited property had been made, or the reason for it. Our recommendation to better substantiate decisions, such as the one regarding this property's Change of Use, doesn't call for HCR taking on an undue administrative burden. Something as simple as a comment in the system of record often suffices to provide a record of decisions.

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