
# The State of New York, NY

## Community Development Block Grant Disaster Recovery-Funded New York Rising Buyout and Acquisition Program

**Office of Audit, Region 2**
**New York, NY**

**Audit Report Number: 2019-NY-1001**
**March 29, 2019**

**To:** Stanley A. Gimont, Deputy Assistant Secretary for Grant Programs, DG

**//SIGNED//**
**From:** Kimberly S. Dahl, Regional Inspector General for Audit, 2AGA

**Subject:** The State of New York Did Not Ensure That Properties Purchased Under the Acquisition Component of Its Program Were Eligible

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the acquisition component of the State of New York's Community Development Block Grant Disaster Recovery-funded New York Rising Buyout and Acquisition program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at http://www.hudoig.gov.

If you have any questions or comments about this report, please do not hesitate to call me at 212-264-4174.

Audit Report Number: 2019-NY-1001
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**The State of New York Did Not Ensure That Properties Purchased Under the Acquisition Component of Its Program Were Eligible**

# Highlights

## What We Audited and Why

We audited the State of New York's Community Development Block Grant Disaster Recovery-funded New York Rising Buyout and Acquisition program. We initiated this audit due to concerns related to whether properties purchased were substantially damaged. The objective of this audit was to determine whether the State ensured that properties purchased under the acquisition component of the program met applicable U.S. Department of Housing and Urban Development (HUD), Federal, and State requirements.

## What We Found

The State did not ensure that properties purchased under the acquisition component of its program met eligibility requirements. Specifically, it did not ensure that properties (1) were substantially damaged and (2) complied with flood hazard requirements. Further, it may have improperly purchased properties that did not comply with flood insurance requirements. These deficiencies occurred because the State did not have adequate controls and relied on applicants and other entities to ensure compliance with requirements. For example, the State relied on letters from local governments provided by its applicants to show that properties were substantially damaged, and it did not have a process to ensure that the substantial damage determination letters were accurate and supported. As a result, the State disbursed more than $3.5 million for ineligible properties and incentives and more than $5.9 million for properties that it could not show met applicable requirements, and HUD did not have assurance that Disaster Recovery funds were used for their intended purpose.

## What We Recommend

We recommend that HUD require the State to (1) reimburse more than $3.5 million in settlement costs and incentives paid for properties that did not meet eligibility requirements or should not have received incentives; (2) provide documentation showing that 15 properties met requirements related to substantial damage, flood hazards, and flood insurance or reimburse more than $5.9 million paid to purchase the properties; and (3) conduct a review of the other properties purchased under its program to ensure that properties were eligible and reimburse the amount paid for any additional properties found to be ineligible. Further, we recommend that HUD require the State to provide documentation showing that the acquisition component of its program has ended or improve its controls to ensure that properties purchased are eligible.

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# Background and Objective

On October 29, 2012, Hurricane Sandy made landfall on the east coast, causing unprecedented damage to New York and other eastern States. Through the Disaster Relief Appropriations Act of 2013,[1] Congress made available $16 billion in Community Development Block Grant Disaster Recovery funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization. These funds were to be used in the most impacted and distressed areas affected by Hurricane Sandy and other declared disaster events that occurred during calendar years 2011, 2012, and 2013.

The U.S. Department of Housing and Urban Development (HUD) awarded the State of New York $4.4 billion of the $16 billion in Disaster Recovery funds. The governor of New York established the Governor's Office of Storm Recovery under its Housing Trust Fund Corporation to administer the funds.

The State allocated more than $680 million of the Disaster Recovery funds to its New York Rising Buyout and Acquisition program, which was established to purchase the properties of interested homeowners whose homes were damaged or destroyed by the disasters. The program included two components.

- The buyout component purchased properties located in certain high-risk areas within the 100-year floodplain that were most susceptible to future disasters. Once purchased, the properties were to be transformed into wetlands, open space, or stormwater management systems to create a natural coastal buffer to safeguard against future storms and improve the resiliency of the larger community.
- The acquisition component purchased certain properties that were also at risk but were outside the designated buyout component areas. Once purchased, these properties were eligible for redevelopment in a resilient manner to protect future occupants.

As of July 2018, the State had disbursed more than $208.2 million to purchase 564 properties under the acquisition component of its program. In addition to not being located in a designated buyout area, these properties had to meet several key eligibility criteria. For example, properties were required to be (1) one-family or two-family homes or vacant land that was contiguous to an eligible property with structures, (2) substantially damaged, and (3) located within the 500-year floodplain but not in a floodway.[2]

Our objective was to determine whether the State ensured that properties purchased under the acquisition component of its program met applicable HUD, Federal, and State requirements.

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[1] Public Law 113-2, dated January 29, 2013

[2] Floodways are the portions of the floodplain in which flood hazard is generally the greatest.

# Results of Audit

## Finding: The State Did Not Ensure That Properties Purchased Under the Acquisition Component of Its Program Were Eligible

The State did not ensure that properties purchased under the acquisition component of its New York Rising Buyout and Acquisition program met eligibility requirements. Specifically, it did not ensure that properties (1) were substantially damaged and (2) complied with flood hazard requirements. Further, it may have improperly purchased properties that did not comply with flood insurance requirements. These deficiencies occurred because the State did not have adequate controls and relied on applicants and other entities to ensure compliance with requirements. For example, the State relied on letters from local governments provided by its applicants to show that properties were substantially damaged, and it did not have a process to ensure that the substantial damage determination letters were accurate and supported. As a result, the State disbursed more than $3.5 million for ineligible properties and incentives and more than $5.9 million for properties that it could not show met applicable requirements, and HUD did not have assurance that Disaster Recovery funds were used for their intended purpose.

### Properties Were Not Substantially Damaged

The State did not ensure that properties purchased were substantially damaged. According to the State's action plan and policy manual, properties purchased under the acquisition component were required to be substantially damaged. The State's policies and procedures required homeowners to provide letters from local floodplain administrators or similar officials showing that properties sustained damages equal to or exceeding 50 percent[3] of the prestorm value. However, the State's file for 1 of the 30 properties reviewed did not contain the required letter or documentation showing that the property was substantially damaged. Further, the State's files for the remaining 29 properties reviewed did not contain documentation to support the substantial damage determinations made in the letters.

After communicating with local officials who made the substantial damage determinations and comparing the information from their files to documentation in the State's files, we concluded that 7 of the 30 properties were substantially damaged. Of the remaining 23 properties reviewed, 6 properties were not substantially damaged, and the substantial damage determinations for the remaining 17 properties were not adequately supported. The following bullets provide details on the issues identified.

*Six Properties Were Not Substantially Damaged*

Six of the properties reviewed were not substantially damaged. As described below, the circumstances of these six properties included not having a substantial damage letter, revised

[3] The State's definition of substantial damage was in line with 78 FR (Federal Register) 14332 (March 5, 2013) and regulations at 44 CFR (Code of Federal Regulations) 59.1.

substantial damage determinations, improper inclusion of costs for renovations not related to the storm, and documentation provided leading to a calculation of less than 50 percent damage.

- In one case, the State's file did not contain a letter showing the substantial damage determination, and documentation maintained by the local government showed that the property was only about 31 percent damaged.

- In three cases, the local governments originally assessed the properties as more than 50 percent damaged but later determined that the properties were not substantially damaged after the homeowners appealed the original damage assessments. In all three cases, the State's files contained only the initial substantial damage letters, which stated that the properties were substantially damaged.

- In one case, the local government's file showed that its substantial damage determination included the cost to renovate a kitchen beyond the prestorm value of the property. According to the damage assessment, the kitchen renovation was not due to damage sustained from the storm. Once the cost of the kitchen renovation is removed from the property's damage estimate, the property would be considered only about 41 percent damaged (figure 1).

Figure 1: A property with a damage assessment that improperly included kitchen renovation costs. This picture was taken 16 months after the storm.

- In one case, the local government was unable to provide support for its letter, and when we calculated the damage using the local government's method, we found that the property was not substantially damaged. The local government's policy was to use a Federal Emergency Management Agency (FEMA) proof of loss statement to establish the total damage incurred and then compare it to the tax-assessed value of the property.

While the local government did not have a FEMA proof of loss statement, the State's file contained one. Compared to the County's tax assessment, the property would be considered about 22 percent damaged.

*Substantial Damage Determinations for 17 Properties Were Not Supported*

The substantial damage determinations for 17 of the properties reviewed were not supported. For example,

- Local government files did not always contain support for the prestorm value and estimated cost of repairs needed to support the substantial damage calculations.

- Local governments did not always follow Federal and State requirements when making substantial damage determinations. In one case, the local government based its determination on a comparison of the estimated cost of repair and the poststorm value of the home instead of the prestorm value as required. In another case, the local government based its determination on how high the flood water reached in the home and did not consider the estimated cost of repair or the home's prestorm value (figure 2).

Figure 2: A property with a substantial damage determination that relied on how high the flood water reached in the home. This picture was taken 16 months after the storm.

- Local government files either contained conflicting information or conflicted with documentation in the State's files. In one case, the substantial damage determination was based on a November 2012 contractor estimate, stating that the estimated cost of repairs was more than $149,000. However, a February 2015 poststorm appraisal in the State's file stated that the property was in "very good condition," although there was no evidence that substantial repairs had been made before the appraisal to justify the condition. For

example, the State's files contained receipts for only $10,000 in repairs made before the appraisal, and local records did not show that the homeowner had applied for permits to complete repairs.

These issues occurred because the State did not have adequate controls to ensure that properties were substantially damaged. The State believed it was reasonable to rely on the substantial damage determinations made by local floodplain administrators and stated that it did not verify the existence or percentage of substantial damage. Further, it did not have a process to verify that all files contained the required letter and that the letters submitted by homeowners (1) matched the letters or determinations on file with local officials, and (2) represented the most recent substantial damage determination made by local officials. As discussed in the March 5, 2013, Federal Register notice,[4] having procedures to verify the accuracy of information provided by applicants is important to detect fraud, waste, and abuse. As a result of the issues identified, the State disbursed nearly $9.5 million in Disaster Recovery funds for 23 properties that either were ineligible or that it could not show were substantially damaged.

### Properties Did Not Comply With Flood Hazard Requirements

The State did not ensure that properties purchased complied with flood hazard requirements. According to the State's partial action plan, properties purchased through the acquisition component were required to be located within the 500-year floodplain and outside the enhanced buyout areas and floodways. However, a review of data and maps on FEMA's Flood Map Service Center website showed that two of the properties purchased were outside the 500-year flood plan and one was located in a floodway. The State agreed that two of the properties were ineligible and stated that it would recapture the funds in at least one of the cases. While the State provided a hardship[5] letter for one of the homeowners, it was dated after the purchase was made, and the State did not provide documentation to support the hardship or show that the homeowner had applied for hardship status.

These issues occurred because the State did not have adequate controls to ensure that properties met flood hazard requirements and relied on a contractor to ensure compliance with those requirements. Further, it did not have adequate controls to ensure that hardships were properly documented. As a result, the State disbursed more than $1.2 million in Disaster Recovery funds for two ineligible properties and a property that it could not show was eligible or had properly received a hardship.[6]

### Properties Did Not Comply With Flood Insurance Requirements

The State also may have improperly purchased five properties that did not comply with flood insurance requirements. The State's policy manual allowed it to purchase properties when

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4 78 FR 14337 (March 5, 2013)

5 The State's policy manual allowed it to waive eligibility criteria in extenuating circumstances through its "demonstrable hardship process."

6 These 3 properties were included in the 17 properties that the State could not show were substantially damaged. See appendix C for more information on how many properties had each type of deficiency.

homeowners failed to maintain flood insurance when required, also known as FEMA-noncompliant properties. However, the National Flood Insurance Reform Act of 1994 (42 U.S.C. (United States Code) 5154a) and the March 5, 2013, Federal Register notice[7] prohibited persons who previously received disaster assistance from receiving future assistance if they were required to obtain flood insurance but did not do so. This requirement included assistance for replacement of the previously assisted properties. The State purchased five FEMA-noncompliant properties under the acquisition component, including the following property, which was listed as being in good condition on its poststorm appraisal (figure 3).

Figure 3: A FEMA-noncompliant property with a poststorm appraisal that listed it as being in good condition. This picture was taken 14 months after the storm.

According to the State, the acquisition component of its program was not a replacement program but was to purchase the properties to achieve a FEMA-allowed mitigation purpose. However, the State did not provide documentation to support its statement, and the State's policy manual stated that the program assisted property owners who needed to purchase replacement housing by offering a fair amount to purchase their properties. The State's policy aligned with a November 16, 2011, Federal Register notice,[8] which states that the purpose of replacement housing is to equip an individual or household with the funds necessary to gain replacement housing. The notice also includes the acquisition of damaged properties and states that if award amounts are related to a property's value, HUD considers them to be for the purpose of replacement housing. The award amounts for properties purchased under the acquisition component of the State's program, including awards for FEMA-noncompliant properties, were tied to the poststorm value of the properties.

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[7] 78 FR 14345 (March 5, 2013)

[8] 76 FR 71062 (November 16, 2011)

Further, if the State could show that the FEMA-noncompliant properties were eligible for the acquisition program, a portion of the more than $1.5 million paid to acquire the five properties would be for incentives for two properties. The State's policy manual did not allow it to award incentives beyond the poststorm value for FEMA-noncompliant properties. While the State provided a memorandum stating that one of the two properties was FEMA-compliant because the property was not damaged by a prior storm, it acknowledged that FEMA had an ongoing investigation regarding the homeowner's compliance with requirements. If FEMA determines that the property was noncompliant, the incentives paid for the property would be ineligible.

These issues occurred because the State did not have adequate controls over its program. It did not ensure that its policies and procedures both clearly defined its program and aligned with Federal requirements. Further, it did not have adequate controls to ensure that it complied with its policy manual when calculating and paying incentives. As a result, the State disbursed more than $1.5 million in Disaster Recovery funds for five properties that it could not show were eligible.[9]

## Conclusion

The State did not have adequate controls over the acquisition component of its program and relied on applicants and the work of other entities to justify awards to homeowners without verifying the information. For example, it relied on the substantial damage determinations made by local floodplain administrators and did not verify the existence or percentage of substantial damage. Further, it did not have a process to verify that the letters submitted by applicants were supported and accurate. As a result of these deficiencies, State officials disbursed more than $3.5 million in Disaster Recovery funds for ineligible properties and incentives and more than $5.9 million for properties that it could not show met applicable requirements, and HUD did not have assurance that these funds were used for their intended purpose. If the State reimburses ineligible costs from non-Federal funds and provides documentation to support eligibility determinations, HUD will have more assurance that Disaster Recovery funds are used for their intended purpose. Further, if the State cannot show that the acquisition component of its program has ended,[10] it should improve controls to ensure that additional properties purchased are eligible and that funds are put to their intended use.

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[9] On March 14, 2019, HUD provided a legal opinion that partly addresses the concerns raised regarding FEMA-noncompliant properties. We will review the legal opinion during the audit resolution process to help determine whether the properties were eligible for the acquisition component of the State's program. These 5 properties were also included in the 17 properties that the State could not show were substantially damaged. See appendix C for more information on how many properties had each type of deficiency.

[10] In August 2018, the State stated that only four additional purchases were pending for the acquisition component of its program.

## Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs require the State to

1A. Reimburse from non-Federal funds the $2,595,127 paid to purchase six properties that were not substantially damaged. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the properties.[11]

1B. Reimburse from non-Federal funds the $783,571 paid to purchase two properties that did not comply with flood hazard requirements and for which the State did not have sufficient documentation to show that the properties were substantially damaged. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the properties.

1C. Provide documentation to support the hardship letter provided for a property located outside the 500-year floodplain and documentation to show that the property was substantially damaged or reimburse from non-Federal funds the $435,069 in settlement costs paid to purchase the property. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the property.

1D. Reimburse from non-Federal funds the $183,500 in incentives paid to a homeowner that failed to maintain flood insurance.

1E. Provide documentation to show that the five properties for which the homeowners failed to maintain flood insurance were eligible for assistance and documentation to show that the properties were substantially damaged or reimburse from non-Federal funds the $1,336,883 paid to purchase the properties, including incentives for one property. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the properties.

1F. Provide documentation to show that the remaining nine properties were substantially damaged or reimburse from non-Federal funds the $4,158,836 paid to purchase the properties. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the nine properties.

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[11] In addition to settlement costs, the State may have used Disaster Recovery funds for other costs to acquire and dispose of the properties, such as debris removal, costs to secure the property, and auction fees.

1G. Conduct a review of the universe[12] of properties purchased through the acquisition component of its program to ensure that properties were eligible and reimburse from non-Federal funds the Disaster Recovery funds used in connection with any additional properties found to be ineligible. For example, the State's review could include verification that (1) its files contained the required substantial damage letters, (2) the letters provided by applicants reflected the most recent substantial damage determination made by local officials, (3) substantial damage determinations were adequately supported, (4) properties met flood hazard requirements, and (5) properties were not FEMA-noncompliant.

1H. Provide documentation showing that the acquisition component of its program has ended or improve its controls over the program to ensure that properties purchased are eligible. This recommendation includes but is not limited to updating its policies and procedures and implementing verification processes to ensure that it verifies information provided by applicants and other entities.

[12] This universe includes the 510 properties that were part of our sampling universe but not selected for review, the 24 additional properties purchased between April 2017 and July 2018, the 4 properties that were pending as of August 2018, and any other properties purchased under the acquisition component of the State's program.

# Scope and Methodology

We conducted our audit from April 2017 through September 2018 at the State's offices located at 25 Beaver Street, New York, NY, and our offices located in New York, NY, and Newark, NJ. The audit covered the period October 29, 2012, through March 31, 2017.

To accomplish our objective, we met with key State and HUD employees located in New York, NY, and Washington, DC. We also reviewed

- relevant background information;
- applicable laws, regulations, HUD notices and guidance, FEMA guidance, and the State's policies and procedures;
- the State's HUD-approved action plan and amendments;
- funding agreements between HUD and the State;
- HUD monitoring reports, relevant single audit reports, and the State's quarterly Disaster Recovery performance reports;
- data and reports from HUD's Disaster Recovery Grant Reporting system;[13]
- data, reports, and documents from the NY Rising IntelliGrants system;[14]
- data and maps from the FEMA Flood Map Service Center website; and
- reports and documents provided by the local governments.

As of March 31, 2017, the State had paid more than $199.8 million to purchase 540 properties through the acquisition component of its program. Using the prestorm and poststorm values in the State's data, we calculated an estimated percentage of damage from the storm. We then selected a nonstatistical sample of 20 properties by focusing on those with the lowest estimated damage percentage and those in cities with the highest number of properties. Of the 540 properties, we also selected (1) 5 properties that we determined were FEMA-noncompliant through meetings with the State, (2) 3 properties that we determined were not substantially damaged through meetings with local government officials, and (3) 2 properties that we determined did not comply with flood hazard requirements through searches on the FEMA Flood Map Service Center website. In total, we selected 30 properties for review with settlement payments totaling more than $11.8 million. Although this approach did not allow us to make a projection to the universe of 540 properties from which our sample was selected, it was sufficient

[13] The Disaster Recovery Grant Reporting system was developed by HUD's Office of Community Planning and Development for the Disaster Recovery program and other special appropriations to allow grantees to access grant funds and report performance accomplishments.

[14] The NY Rising IntelliGrants system is used by the State to manage its program and contains key program documentation, such as applications and source documentation establishing eligibility.

to meet our objective and allowed us to review properties that had a higher risk of not complying with eligibility requirements.

For each of the 30 properties selected for review, we reviewed documentation contained in the State's files and performed flood map searches. Because the State relied on substantial damage letters from local governments that were provided by the applicants, we also met with local government officials for each of the properties reviewed. Specifically, we met with local government officials from the City of New York, NY, Long Island, NY, Deerpark, NY, and Esperance, NY, to obtain an understanding of the processes they used to make substantial damage assessments and to obtain documentation supporting their substantial damage determinations.

As of July 2018, the State had disbursed more than $208.2 million to purchase 564 properties under the acquisition component of its program. This means the State had purchased an additional 24 properties between April 2017 and July 2018. Further, in August 2018, the State stated that only four additional purchases were pending for the acquisition component of its program.

To achieve our objective, we relied in part on computer-processed data from HUD, the State, and the FEMA Flood Map Service Center website. We used the data to obtain background information and to select a sample of properties for review. Although we did not perform a detailed assessment of the reliability of the data, we performed minimal testing and found the data to be accurate for our purposes. Specifically, we reconciled the data to source documentation obtained from the State.

We conducted the 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(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

# Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- effectiveness and efficiency of operations,
- reliability of financial reporting, and
- compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

### Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

### Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The State did not have adequate controls to ensure that properties purchased under the acquisition component of the program met applicable HUD, Federal, and State requirements.

# Appendixes

## Appendix A

**Schedule of Questioned Costs**

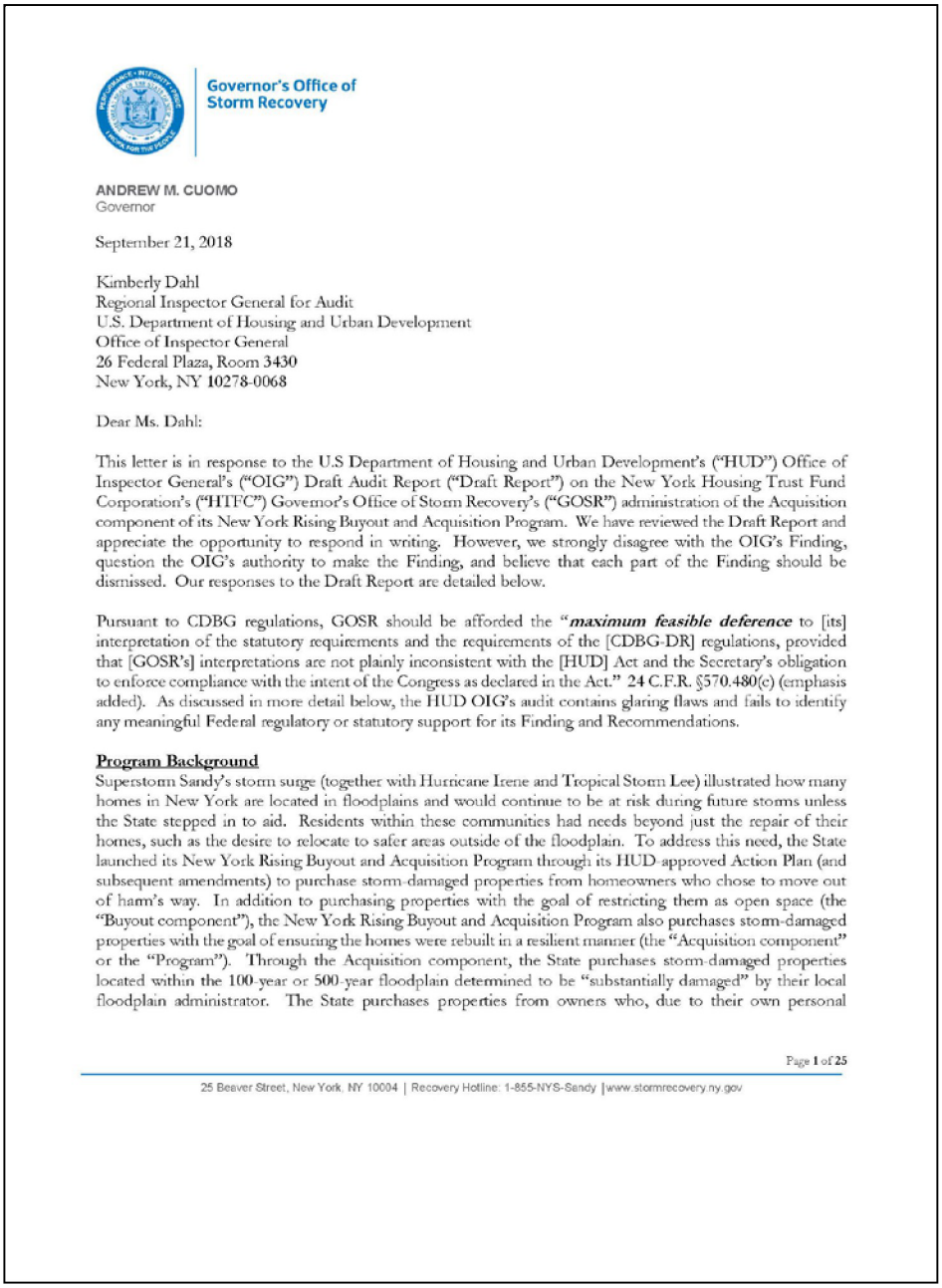
| Recommendation number | Ineligible 1/ | Unsupported 2/ |
|---|---|---|
| 1A | $2,595,127 | |
| 1B | 783,571 | |
| 1C | | $435,069 |
| 1D | 183,500 | |
| 1E | | 1,336,883 |
| 1F | | 4,158,836 |
| **Totals** | **3,562,198** | **5,930,788** |

1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

# Appendix B

## Auditee Comments and OIG's Evaluation

| Ref to OIG Evaluation | Auditee Comments |
|---|---|
| Comment 1 |  |

Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

September 21, 2018

Kimberly Dahl
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza, Room 3430
New York, NY 10278-0068

Dear Ms. Dahl:

This letter is in response to the U.S Department of Housing and Urban Development's ("HUD") Office of Inspector General's ("OIG") Draft Audit Report ("Draft Report") on the New York Housing Trust Fund Corporation's ("HTFC") Governor's Office of Storm Recovery's ("GOSR") administration of the Acquisition component of its New York Rising Buyout and Acquisition Program. We have reviewed the Draft Report and appreciate the opportunity to respond in writing. However, we strongly disagree with the OIG's Finding, question the OIG's authority to make the Finding, and believe that each part of the Finding should be dismissed. Our responses to the Draft Report are detailed below.

Pursuant to CDBG regulations, GOSR should be afforded the "***maximum feasible deference*** to [its] interpretation of the statutory requirements and the requirements of the [CDBG-DR] regulations, provided that [GOSR's] interpretations are not plainly inconsistent with the [HUD] Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act." 24 C.F.R. §570.480(c) (emphasis added). As discussed in more detail below, the HUD OIG's audit contains glaring flaws and fails to identify any meaningful Federal regulatory or statutory support for its Finding and Recommendations.

**Program Background**

Superstorm Sandy's storm surge (together with Hurricane Irene and Tropical Storm Lee) illustrated how many homes in New York are located in floodplains and would continue to be at risk during future storms unless the State stepped in to aid. Residents within these communities had needs beyond just the repair of their homes, such as the desire to relocate to safer areas outside of the floodplain. To address this need, the State launched its New York Rising Buyout and Acquisition Program through its HUD-approved Action Plan (and subsequent amendments) to purchase storm-damaged properties from homeowners who chose to move out of harm's way. In addition to purchasing properties with the goal of restricting them as open space (the "Buyout component"), the New York Rising Buyout and Acquisition Program also purchases storm-damaged properties with the goal of ensuring the homes were rebuilt in a resilient manner (the "Acquisition component" or the "Program"). Through the Acquisition component, the State purchases storm-damaged properties located within the 100-year or 500-year floodplain determined to be "substantially damaged" by their local floodplain administrator. The State purchases properties from owners who, due to their own personal

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25 Beaver Street, New York, NY 10004 | Recovery Hotline: 1-855-NYS-Sandy | www.stormrecovery.ny.gov

## Auditee Comments and OIG's Evaluation

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 2

Comment 3

Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

circumstances, are either unwilling or unable to withstand prolonged reconstruction and stringent elevation requirements, and thus desire to sell their properties to the State.

GOSR ensures that all storm-damaged properties purchased through the Acquisition component are redeveloped in a code-compliant, resilient manner. To achieve this goal, the Program resells the properties at auction to purchasers who agree to perform necessary construction at their own expense and under a strict three (3) year redevelopment deadline. GOSR has purchased 566 properties and has sold 490 of these properties at auction, with stringent redevelopment requirements. To date, 88 have been completely redeveloped and 315 have construction in progress. GOSR will monitor the remaining properties to ensure the homes are brought to appropriate floodplain standards. The Program has been a popular and successful recovery option for the State of New York. It moved people out of the floodplain, who either would not or could not rebuild their storm-damaged homes in a code-compliant manner, thus subjecting them to risk from future storms, and instead has ensured that elevated, resilient homes are returned to the New York housing market.

**GOSR's Appropriate Reliance on Substantial Damage Determinations to Demonstrate Program Eligibility**

The HUD OIG's Finding is primarily based upon its erroneous decision to question the "substantial damage determination" made by local floodplain administrators. This decision led to flawed and questionable conclusions and Recommendations.

GOSR's Action Plan states that "[e]ligible applicants to the Acquisition component [of the Program] are owners of substantially damaged one-family or two-family homes and/or vacant land. . ." As described below, the term "substantially damaged" is a legal term defined by Federal regulations promulgated by FEMA. For a property to be deemed "substantially damaged," the property must have been issued a "substantial damage letter" from the local floodplain administrator.[1] Program's policy specifically states that "[s]ubstantial damage is proven by the issuance of a Substantial Damage Letter from the appropriate local authorized official or floodplain manager…" This letter is clear and convincing evidence that the property is substantially damaged and puts homeowners on notice that the floodplain administrator has determined their property must be elevated to remain code-compliant. This Program requirement is used solely as a threshold eligibility criteria for entrance into the Program and is not required by HUD or any other Federal law. If an applicant has such a letter, the applicant meets the Program-established threshold eligibility criteria of being deemed substantially damaged. Applicants must submit their substantial damage determination letters to the Program to be eligible to proceed through the Acquisition application process.

The Program does not, and should not, monitor or second-guess the determinations of the local floodplain administrators because local officials are required to make substantial damage determinations to participate in

[1] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010) at 4-3, *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.



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the National Flood Insurance Program ("NFIP"). "The NFIP is a federal program, administered and implemented by FEMA, which enables private property owners to purchase federal flood insurance. The NFIP is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods and was, until recently, generally unavailable from private-sector insurance companies."[2] FEMA regulations require local communities to adopt and adequately enforce local floodplain regulations that are compliant with Federal requirements,[3] which includes assessing whether properties are substantially damaged and/or substantially improved.[4]

GOSR's reliance on the substantial damage letters issued by the local municipalities is reasonable and appropriate. FEMA has set forth standards for calculating substantial damage. Pursuant to FEMA's "Substantial Improvement/Substantial Damage Desk Reference,"[5] enforcing local floodplain regulations requires local officials to perform the following major functions: "(1) determine costs, (2) determine market values, (3) make [substantial damage] determinations, and (4) require owners to obtain permits to bring . . . substantially damaged buildings into compliance with the floodplain management requirements."[6] Local officials are directly responsible for "reviewing the validity of all cost estimates provided by applicants" and for "verifying that the data are complete and reasonable."[7] FEMA monitors local municipalities to ensure compliance with NFIP regulations and substantial damage requirements. FEMA's responsibilities include assessing "community compliance with the minimum NFIP criteria" and providing "information on many aspects of the NFIP, including administration of the [substantial damage] requirements."[8]

FEMA has also provided tools to help local floodplain administrators calculate substantial damage. FEMA's Substantial Damage Estimate ("SDE") software allows local officials to establish reasonable building value and damage estimates. "The SDE enables local officials to calculate a reasonable and defensible estimate of whether a building has been substantially damaged."[9] FEMA offers community SDE training and can deploy personnel to help local officials use SDE software after disasters. SDE software "is intended to be used in conjunction with an industry-accepted, construction cost-estimating guide" and is not required.[10] GOSR has no involvement with or responsibility for a local community's substantial damage determinations or use of FEMA's SDE software.

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[2] *Florida Key Deer v Stickney*, 864 F. Supp. 1222, 1229 (S.D. Fla. 1994) (*citing* 44 C.F.R. 59.2).
[3] *See* 44 C.F.R. Parts 59, 60, and 61; *see also* 44 C.F.R. §59.2(b) ("[t]o qualify for the sale of Federally-subsidized flood insurance a community must adopt and submit to the Federal Insurance Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.").
[4] *See* 44 C.F.R. Parts 59 and 60.
[5] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010), *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.
[6] *Id.* at 4-1.
[7] *Id.*
[8] *Id.* at 2-4.
[9] *Id.* at 7-7.
[10] *Id.* at 7-8.

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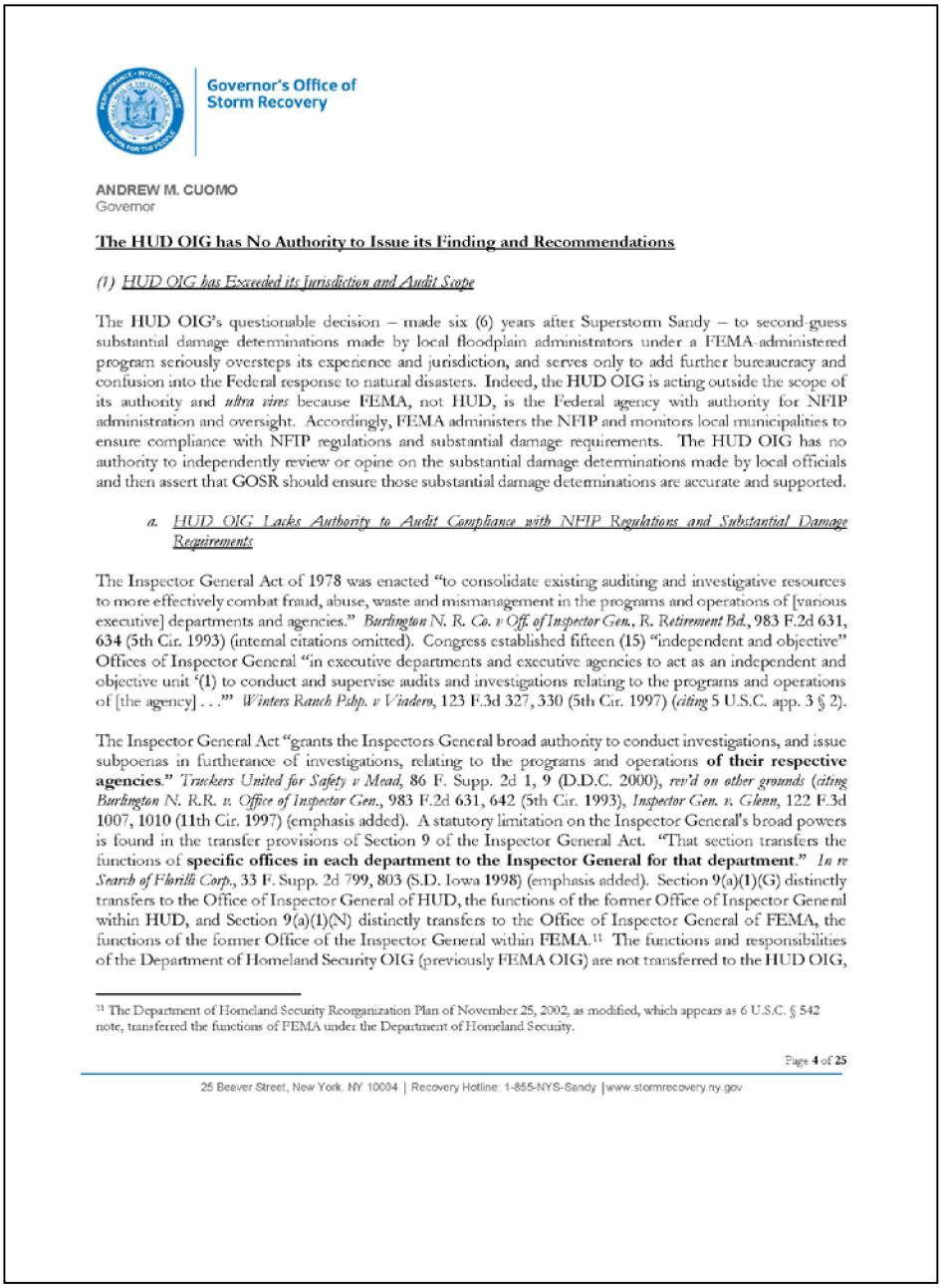

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**The HUD OIG has No Authority to Issue its Finding and Recommendations**

*(1) HUD OIG has Exceeded its Jurisdiction and Audit Scope*

The HUD OIG's questionable decision – made six (6) years after Superstorm Sandy – to second-guess substantial damage determinations made by local floodplain administrators under a FEMA-administered program seriously oversteps its experience and jurisdiction, and serves only to add further bureaucracy and confusion into the Federal response to natural disasters. Indeed, the HUD OIG is acting outside the scope of its authority and *ultra vires* because FEMA, not HUD, is the Federal agency with authority for NFIP administration and oversight. Accordingly, FEMA administers the NFIP and monitors local municipalities to ensure compliance with NFIP regulations and substantial damage requirements. The HUD OIG has no authority to independently review or opine on the substantial damage determinations made by local officials and then assert that GOSR should ensure those substantial damage determinations are accurate and supported.

*a. HUD OIG Lacks Authority to Audit Compliance with NFIP Regulations and Substantial Damage Requirements*

The Inspector General Act of 1978 was enacted "to consolidate existing auditing and investigative resources to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of [various executive] departments and agencies." *Burlington N. R. Co. v Off. of Inspector Gen., R. Retirement Bd.*, 983 F.2d 631, 634 (5th Cir. 1993) (internal citations omitted). Congress established fifteen (15) "independent and objective" Offices of Inspector General "in executive departments and executive agencies to act as an independent and objective unit '(1) to conduct and supervise audits and investigations relating to the programs and operations of [the agency] . . .'" *Winters Ranch Pshp. v Viadero*, 123 F.3d 327, 330 (5th Cir. 1997) (*citing* 5 U.S.C. app. 3 § 2).

The Inspector General Act "grants the Inspectors General broad authority to conduct investigations, and issue subpoenas in furtherance of investigations, relating to the programs and operations **of their respective agencies**." *Truckers United for Safety v Mead*, 86 F. Supp. 2d 1, 9 (D.D.C. 2000), *rev'd on other grounds* (*citing Burlington N. R.R. v. Office of Inspector Gen.*, 983 F.2d 631, 642 (5th Cir. 1993), *Inspector Gen. v. Glenn*, 122 F.3d 1007, 1010 (11th Cir. 1997) (emphasis added). A statutory limitation on the Inspector General's broad powers is found in the transfer provisions of Section 9 of the Inspector General Act. "That section transfers the functions of **specific offices in each department to the Inspector General for that department**." *In re Search of Florilli Corp.*, 33 F. Supp. 2d 799, 803 (S.D. Iowa 1998) (emphasis added). Section 9(a)(1)(G) distinctly transfers to the Office of Inspector General of HUD, the functions of the former Office of Inspector General within HUD, and Section 9(a)(1)(N) distinctly transfers to the Office of Inspector General of FEMA, the functions of the former Office of the Inspector General within FEMA.[11] The functions and responsibilities of the Department of Homeland Security OIG (previously FEMA OIG) are not transferred to the HUD OIG,

[11] The Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, which appears as 6 U.S.C. § 542 note, transferred the functions of FEMA under the Department of Homeland Security.

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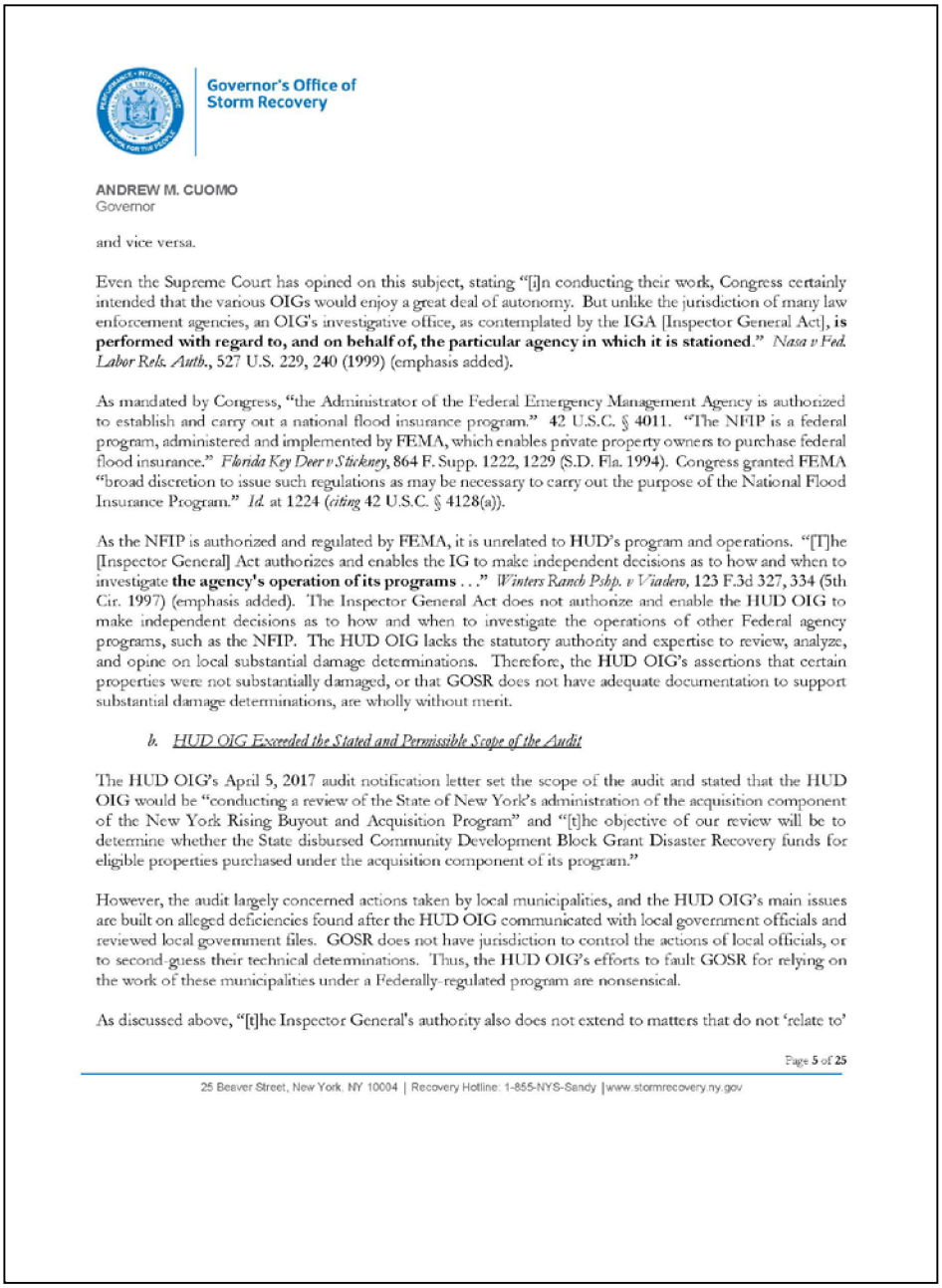

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and vice versa.

Even the Supreme Court has opined on this subject, stating "[i]n conducting their work, Congress certainly intended that the various OIGs would enjoy a great deal of autonomy. But unlike the jurisdiction of many law enforcement agencies, an OIG's investigative office, as contemplated by the IGA [Inspector General Act], **is performed with regard to, and on behalf of, the particular agency in which it is stationed.**" *Nasa v Fed. Labor Rels. Auth.*, 527 U.S. 229, 240 (1999) (emphasis added).

As mandated by Congress, "the Administrator of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program." 42 U.S.C. § 4011. "The NFIP is a federal program, administered and implemented by FEMA, which enables private property owners to purchase federal flood insurance." *Florida Key Deer v Stickney*, 864 F. Supp. 1222, 1229 (S.D. Fla. 1994). Congress granted FEMA "broad discretion to issue such regulations as may be necessary to carry out the purpose of the National Flood Insurance Program." *Id.* at 1224 (*citing* 42 U.S.C. § 4128(a)).

As the NFIP is authorized and regulated by FEMA, it is unrelated to HUD's program and operations. "[T]he [Inspector General] Act authorizes and enables the IG to make independent decisions as to how and when to investigate **the agency's operation of its programs** . . ." *Winters Ranch P'ship. v Viadero*, 123 F.3d 327, 334 (5th Cir. 1997) (emphasis added). The Inspector General Act does not authorize and enable the HUD OIG to make independent decisions as to how and when to investigate the operations of other Federal agency programs, such as the NFIP. The HUD OIG lacks the statutory authority and expertise to review, analyze, and opine on local substantial damage determinations. Therefore, the HUD OIG's assertions that certain properties were not substantially damaged, or that GOSR does not have adequate documentation to support substantial damage determinations, are wholly without merit.

*b. HUD OIG Exceeded the Stated and Permissible Scope of the Audit*

The HUD OIG's April 5, 2017 audit notification letter set the scope of the audit and stated that the HUD OIG would be "conducting a review of the State of New York's administration of the acquisition component of the New York Rising Buyout and Acquisition Program" and "[t]he objective of our review will be to determine whether the State disbursed Community Development Block Grant Disaster Recovery funds for eligible properties purchased under the acquisition component of its program."

However, the audit largely concerned actions taken by local municipalities, and the HUD OIG's main issues are built on alleged deficiencies found after the HUD OIG communicated with local government officials and reviewed local government files. GOSR does not have jurisdiction to control the actions of local officials, or to second-guess their technical determinations. Thus, the HUD OIG's efforts to fault GOSR for relying on the work of these municipalities under a Federally-regulated program are nonsensical.

As discussed above, "[t]he Inspector General's authority also does not extend to matters that do not 'relate to'

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agency programs or operations." *Truckers United for Safety v Mead*, 86 F. Supp. 2d 1, 10 (D.D.C. 2000), *rev'd on other grounds*. The *Truckers United for Safety* Court reasoned that "[t]his 'relating to' language has been interpreted broadly to include investigations of: 1) agencies' internal operations; 2) entities receiving benefits from agency programs . . . 3) entities receiving federal funds . . . and 4) contractors performing services for an agency." *Id.* at 10 (internal citations omitted). "[T]he Inspector General Act, its legislative history, the case law interpreting it, and the DOJ opinion analyzing it, all lead to the conclusion that the Inspector General is granted general authority to conduct investigations of an agency's internal administration of federal programs, as well as investigations of recipients of federal funds." *Id.* at 11.

The HUD OIG's expansion of their investigation into local government operations was also improper because under the Acquisition component of the Program, private citizens were the recipients of CDBG-DR funds, not the local governments in this context. The primary objective of the audit was to ensure CDBG-DR funds were used to purchase eligible properties. The Acquisition component of the Program only involved direct transactions between the State and private citizens. Furthermore, the audit was not a review of internal operations, and local governments did not receive benefits from the Acquisition component of the Program and were not contractors performing services under the Program. None of the four circumstances outlined by the *Truckers United for Safety* Court exist to authorize the HUD OIG's review of local government files during their audit of GOSR.

c. *The OIG's reliance on the March 5, 2013 Register Notice is Improper and Overreaching*

The HUD OIG relies on the "verify" language in the March 5, 2013 Federal Register Notice to justify its audit and Finding, yet the March 5, 2013 Register Notice provision the OIG cites refers to the State's required certifications of proficient controls, processes and procedures.[12] The HUD OIG is not applying this provision of the March 5, 2013 Register Notice appropriately.

Prior to receiving CDBG-DR funds, GOSR had to provide its procedures to detect fraud, waste, and abuse of funds as part of the Certifications Checklist grantees were required to complete to enable the HUD Secretary to certify that GOSR's procedures were adequate. The March 5th Notice requires GOSR to have "adequate procedures to prevent fraud, waste, and abuse" and mandates that GOSR must "verify the accuracy of the information provided by applicants."[13] GOSR does both. As part of the certification process, GOSR, as required, attached procedures that indicated how it verifies the accuracy of applicant-provided information, as well as described GOSR's anti-fraud, waste, and abuse procedures.

Specifically, for this Program, it is not enough for an applicant to simply represent to the Program that their property was substantially damaged. Instead, GOSR requires applicants to submit a duly issued substantial damage letter from their local floodplain administrator. Submission of such letters is the appropriate control

[12] 78 FR 14336 (March 5, 2013).
[13] *Id.* at 14337.



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to verify that a property is substantially damaged, as the letters are issued from a local government performing a function required by Federal law. The HUD OIG asserts that GOSR now needs "a process to verify that the letters submitted by homeowners were supported and accurate," implying that the submission of a substantial damage letter – a letter produced by a local government under a continuing legal obligation to comply with applicable Federal regulations – is not sufficient. Instead, the HUD OIG is wrongly suggesting that the State's disaster recovery Program must monitor these calculations. GOSR is in no position to question the veracity of substantial damage letters duly issued by local municipalities. To require the State to do so would be improper, impractical, and a wasteful duplication of efforts by an agency that does not possess the authority or expertise to question the inherent validity of official documents issued by another governmental entity. GOSR's current procedure has been reviewed and approved by HUD, and additional controls are unnecessary and would waste time and money.

*d. The State Lacks Legal Authority to Implement the HUD OIG's Recommendations*

GOSR also lacks legal authority to review or challenge the substantial damage determinations made by local floodplain administrators, and therefore cannot implement the HUD OIG's Recommendations. The Supreme Court has stated that "an agency literally has no power to act . . . unless and until Congress confers power upon it." *Louisiana Pub. Serv. Com v FCC*, 476 U.S. 355, 374 (1986). Here, Congress has not conferred any power upon the State, through GOSR, to administer and oversee the NFIP and/or review the adequacy of local substantial damage determinations. Congress has conferred such power on FEMA. 42 U.S.C. § 4011.

The rule that an agency has no power to act, unless and until Congress confers power upon it, is illuminated by the Inspector General Act, which places certain limitations on the authority of the OIGs. Federal agencies are statutorily prohibited from transferring "congressionally-delegated program operating" responsibilities to the OIGs. 5 U.S.C. App. 3 § 9(a)(2). In *Burlington N. R. Co. v Off. of Inspector Gen., R. Retirement Bd.*, the Inspector General of the Burlington Railroad Retirement Board assumed the statutorily mandated duty of the Railroad Retirement Board, and the Court of Appeals for the Fifth Circuit held that based "on the nature of this particular audit of Burlington Northern, the Inspector General exceeded his statutory authority." *Burlington N. R. Co. v Off. of Inspector Gen., R. Retirement Bd.*, 983 F2d 631, 643 (5th Cir. 1993).

FEMA regulations do not authorize GOSR to review or second-guess substantial damage determinations that local floodplain administrators are performing inadequately. While the HUD OIG cannot act without legal authority, neither can GOSR. The HUD OIG's Recommendations are effectively meaningless.

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*(2) HUD OIG Cannot Hold GOSR Responsible for Local Municipalities' Determinations and Documentation*

GOSR strongly disagrees with this Finding and with the OIG's fundamental understanding of substantial damage assessments. To require GOSR to re-perform and verify work completed by local municipalities who are: (1) under a duty to comply with Federal requirements and (2) subject to monitoring by FEMA, would be overly burdensome for both GOSR and homeowners applying to the Program. This situation would also



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create an untenable friction between GOSR and local floodplain administrators in instances where GOSR's damage assessments differ from those of the local municipalities. This would result in homeowners being unable to proceed with their application to the Program while GOSR and the local floodplain administrators debated the appropriate substantial damage calculation.

Additionally, the HUD OIG takes issue with the policies and procedures of the local municipalities regarding substantial damage determinations and the documentation they maintain to support those determinations. It is not GOSR's responsibility to ensure that local governments can adequately document their substantial damage determination process. That responsibility lies with the local governments and FEMA through their monitoring of the local floodplain administrators. Per FEMA, local governments "must be prepared" to explain how they make substantial damage determinations[14] and "should document their decisions and the documentation should be retained in the community's permit records."[15]

Further, it is not GOSR's responsibility to establish local government policies or to determine the adequacy of existing local government policies, or to verify or maintain documentation collected by local municipalities. GOSR is not aware of how or why the local municipality performed any of their calculations or made their substantial damage assessments. Nor is GOSR able to question the assessments.

To reiterate, if the HUD OIG believes that a municipality's documentation is insufficient and that substantial damage calculations are not being adequately monitored, the most appropriate course of action would be for the HUD OIG to raise this issue directly with FEMA or the DHS OIG.

While GOSR fundamentally disagrees with the HUD OIG's authority to issue its Finding, a direct challenge to the substance of the Finding is provided below:

**HUD OIG FINDING 1: The State Did Not Ensure That Properties Purchased Under the Acquisition Component of Its Program Were Eligible**

**(a) HUD OIG COMMENT: Properties Were Not Substantially Damaged**

**GOSR RESPONSE:**

The HUD OIG's file review demonstrates a lack of experience with the subject matter at issue and a selective and arbitrary use of information to justify their Finding. HUD OIG auditors spent seventeen (17) months on an audit reviewing local files over which GOSR has no control. During its audit of GOSR, the HUD OIG communicated with local government officials and reviewed local government files. In its Draft Report, the

[14] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010) at 4-1, *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.
[15] *Id.* at 4-2.

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HUD OIG now proceeds to inappropriately hold GOSR responsible for the content of those files. GOSR simply cannot be faulted for the actions of a local government.

Through its determinations that certain properties were not damaged enough to participate in the Program, the HUD OIG is arbitrarily replacing the judgment of local floodplain administrators with its own unqualified judgment and making every possible attempt to poke holes in the local substantial damage decisions, including inappropriately considering documentation in GOSR's files that local officials did not have access to and are not related to proving how much damage a property sustained.

The HUD OIG even includes pictures of properties in its Draft Report, taken months or years after the storm, seemingly to imply that the properties were not substantially damaged. Yet most homes were damaged by floodwater inundation which destroys electrical systems, appliances, flooring, and drywall, and causes mold and bacteria to grow. This type of damage is costly to repair and will not be reflected in a picture of the outside of a home long after the storm.

The HUD OIG's Draft Report and Finding also lack clarity and transparency, and fail to identify the auditing standards used to make their determinations. The HUD OIG Draft Report did not include applicant-specific information other than a high-level summary. It was only upon request that GOSR was supplied with sufficient information to provide a meaningful response. After review of the HUD OIG's support for their applicant-specific determinations, GOSR fundamentally disagrees with its methodologies and conclusions.

For example:

- For applicants EF-506-AQ, EF-791-AQ, EF-820-AQ, EF-858-AQ, and EF-408-AQ, the HUD OIG used eligible repair receipts contained in GOSR's files to calculate a property's cost of repairs. The HUD OIG auditors added up applicant repair receipts, used them to calculate their own damage percentages, and used those damage percentages as proof that the properties were not substantially damaged. **This methodology is inaccurate and does not reflect any accepted auditing standard or accepted method of calculating substantial damage/substantial improvement.** Repair receipts were collected from applicants for two (2) purposes unrelated to quantifying property damage, and receipts in an applicant's file do not account for that applicant's total reconstruction costs:
    - First, repair receipts were collected from applicants who were initially in GOSR's Single Family Housing Program and intended to reconstruct their homes. In the Single Family Housing Program, GOSR reimburses applicants for eligible repair expenses. When the HUD OIG auditors use the term "eligible," they are only referring to repair costs that are "eligible" to be reimbursed with CDBG-DR funds. When applicants decided they did not want to reconstruct their homes and instead wanted GOSR to purchase their homes, they were transferred to the Acquisition component of the Program. The receipts in these files were not collected to verify an applicant's total damage and do not account for an applicant's total reconstruction costs.



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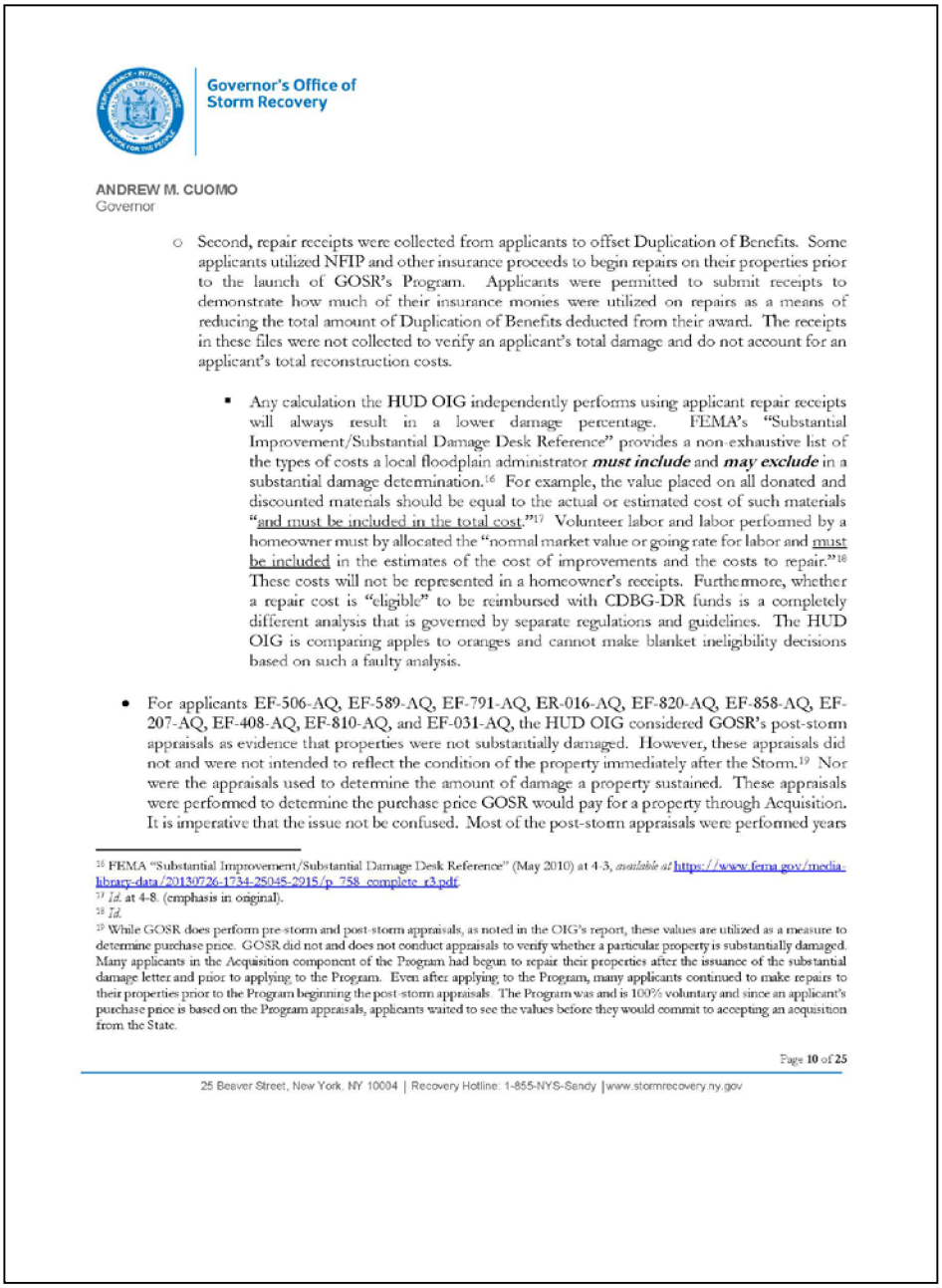

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- Second, repair receipts were collected from applicants to offset Duplication of Benefits. Some applicants utilized NFIP and other insurance proceeds to begin repairs on their properties prior to the launch of GOSR's Program. Applicants were permitted to submit receipts to demonstrate how much of their insurance monies were utilized on repairs as a means of reducing the total amount of Duplication of Benefits deducted from their award. The receipts in these files were not collected to verify an applicant's total damage and do not account for an applicant's total reconstruction costs.

  - Any calculation the HUD OIG independently performs using applicant repair receipts will always result in a lower damage percentage. FEMA's "Substantial Improvement/Substantial Damage Desk Reference" provides a non-exhaustive list of the types of costs a local floodplain administrator ***must include*** and ***may exclude*** in a substantial damage determination.[16] For example, the value placed on all donated and discounted materials should be equal to the actual or estimated cost of such materials "and must be included in the total cost."[17] Volunteer labor and labor performed by a homeowner must by allocated the "normal market value or going rate for labor and must be included in the estimates of the cost of improvements and the costs to repair."[18] These costs will not be represented in a homeowner's receipts. Furthermore, whether a repair cost is "eligible" to be reimbursed with CDBG-DR funds is a completely different analysis that is governed by separate regulations and guidelines. The HUD OIG is comparing apples to oranges and cannot make blanket ineligibility decisions based on such a faulty analysis.

- For applicants EF-506-AQ, EF-589-AQ, EF-791-AQ, ER-016-AQ, EF-820-AQ, EF-858-AQ, EF-207-AQ, EF-408-AQ, EF-810-AQ, and EF-031-AQ, the HUD OIG considered GOSR's post-storm appraisals as evidence that properties were not substantially damaged. However, these appraisals did not and were not intended to reflect the condition of the property immediately after the Storm.[19] Nor were the appraisals used to determine the amount of damage a property sustained. These appraisals were performed to determine the purchase price GOSR would pay for a property through Acquisition. It is imperative that the issue not be confused. Most of the post-storm appraisals were performed years

[16] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010) at 4-3, *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.
[17] *Id.* at 4-8. (emphasis in original).
[18] *Id.*
[19] While GOSR does perform pre-storm and post-storm appraisals, as noted in the OIG's report, these values are utilized as a measure to determine purchase price. GOSR did not and does not conduct appraisals to verify whether a particular property is substantially damaged. Many applicants in the Acquisition component of the Program had begun to repair their properties after the issuance of the substantial damage letter and prior to applying to the Program. Even after applying to the Program, many applicants continued to make repairs to their properties prior to the Program beginning the post-storm appraisals. The Program was and is 100% voluntary and since an applicant's purchase price is based on the Program appraisals, applicants waited to see the values before they would commit to accepting an acquisition from the State.

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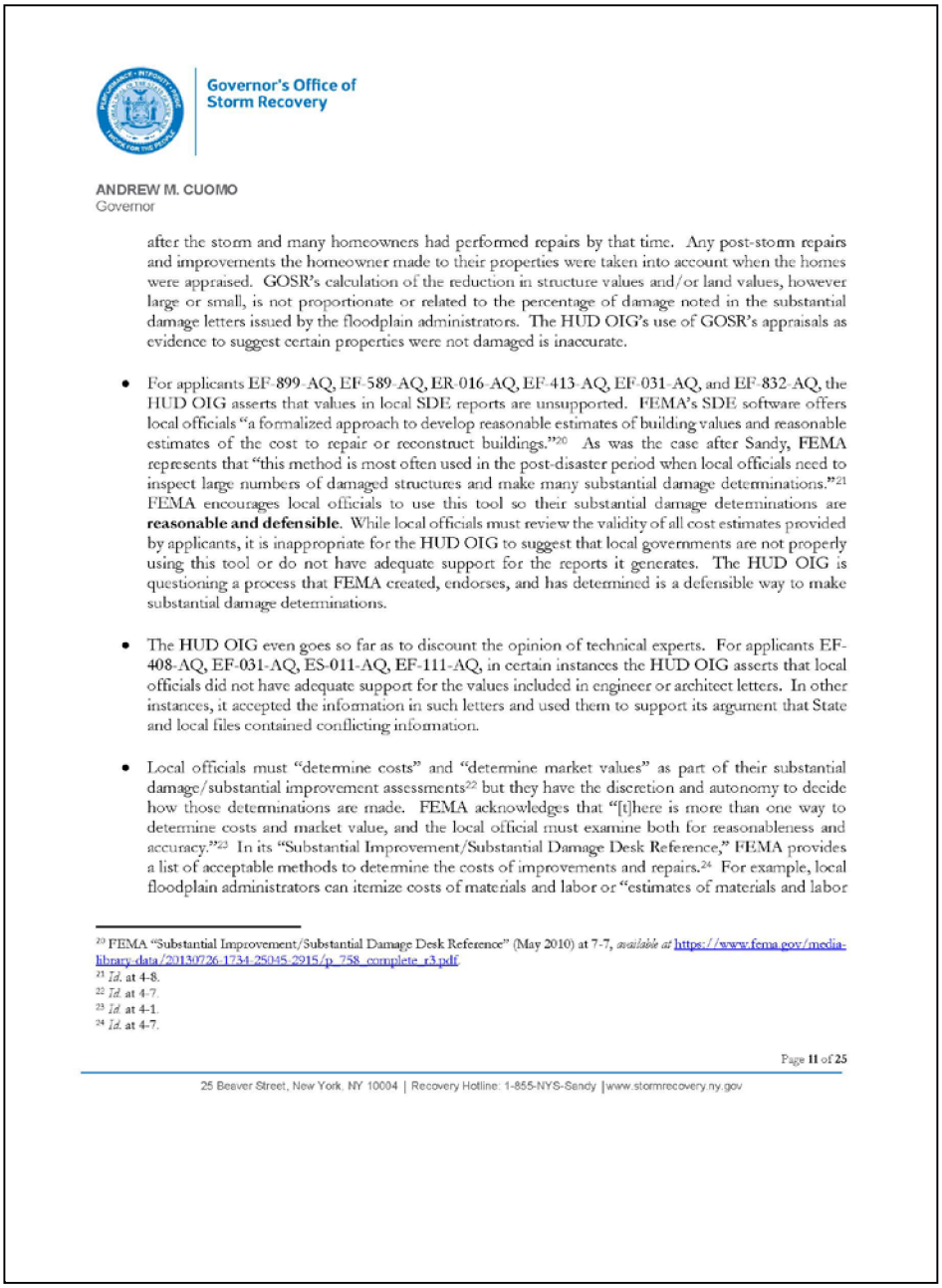

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after the storm and many homeowners had performed repairs by that time. Any post-storm repairs and improvements the homeowner made to their properties were taken into account when the homes were appraised. GOSR's calculation of the reduction in structure values and/or land values, however large or small, is not proportionate or related to the percentage of damage noted in the substantial damage letters issued by the floodplain administrators. The HUD OIG's use of GOSR's appraisals as evidence to suggest certain properties were not damaged is inaccurate.

- For applicants EF-899-AQ, EF-589-AQ, ER-016-AQ, EF-413-AQ, EF-031-AQ, and EF-832-AQ, the HUD OIG asserts that values in local SDE reports are unsupported. FEMA's SDE software offers local officials "a formalized approach to develop reasonable estimates of building values and reasonable estimates of the cost to repair or reconstruct buildings."[20] As was the case after Sandy, FEMA represents that "this method is most often used in the post-disaster period when local officials need to inspect large numbers of damaged structures and make many substantial damage determinations."[21] FEMA encourages local officials to use this tool so their substantial damage determinations are **reasonable and defensible**. While local officials must review the validity of all cost estimates provided by applicants, it is inappropriate for the HUD OIG to suggest that local governments are not properly using this tool or do not have adequate support for the reports it generates. The HUD OIG is questioning a process that FEMA created, endorses, and has determined is a defensible way to make substantial damage determinations.

- The HUD OIG even goes so far as to discount the opinion of technical experts. For applicants EF-408-AQ, EF-031-AQ, ES-011-AQ, EF-111-AQ, in certain instances the HUD OIG asserts that local officials did not have adequate support for the values included in engineer or architect letters. In other instances, it accepted the information in such letters and used them to support its argument that State and local files contained conflicting information.

- Local officials must "determine costs" and "determine market values" as part of their substantial damage/substantial improvement assessments[22] but they have the discretion and autonomy to decide how those determinations are made. FEMA acknowledges that "[t]here is more than one way to determine costs and market value, and the local official must examine both for reasonableness and accuracy."[23] In its "Substantial Improvement/Substantial Damage Desk Reference," FEMA provides a list of acceptable methods to determine the costs of improvements and repairs.[24] For example, local floodplain administrators can itemize costs of materials and labor or "estimates of materials and labor

[20] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010) at 7-7, *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.
[21] *Id.* at 4-8.
[22] *Id.* at 4-7.
[23] *Id.* at 4-1.
[24] *Id.* at 4-7.

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| Ref to OIG Evaluation | Auditee Comments |
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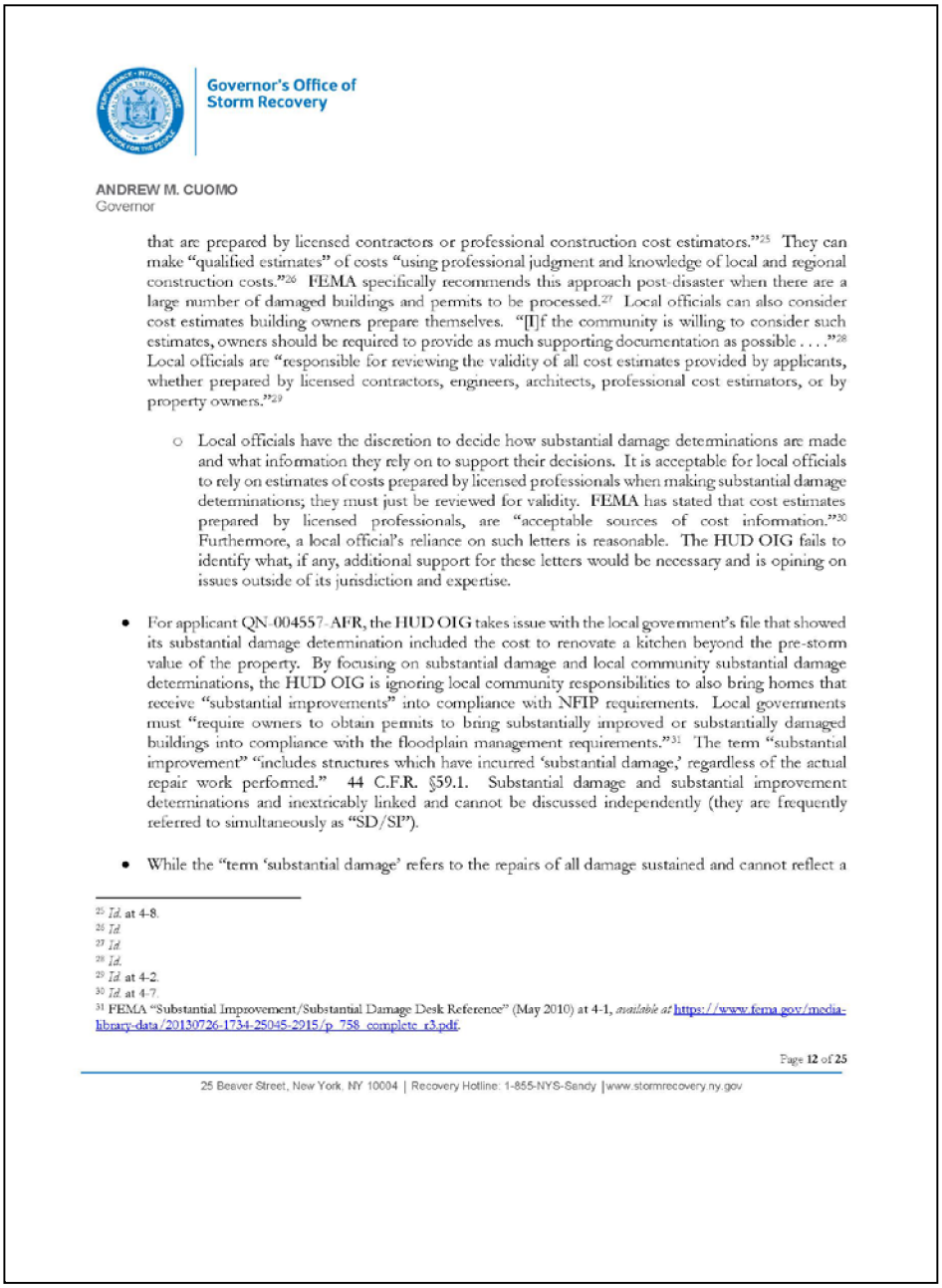

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that are prepared by licensed contractors or professional construction cost estimators."[25] They can make "qualified estimates" of costs "using professional judgment and knowledge of local and regional construction costs."[26] FEMA specifically recommends this approach post-disaster when there are a large number of damaged buildings and permits to be processed.[27] Local officials can also consider cost estimates building owners prepare themselves. "[I]f the community is willing to consider such estimates, owners should be required to provide as much supporting documentation as possible . . . ."[28] Local officials are "responsible for reviewing the validity of all cost estimates provided by applicants, whether prepared by licensed contractors, engineers, architects, professional cost estimators, or by property owners."[29]

- Local officials have the discretion to decide how substantial damage determinations are made and what information they rely on to support their decisions. It is acceptable for local officials to rely on estimates of costs prepared by licensed professionals when making substantial damage determinations; they must just be reviewed for validity. FEMA has stated that cost estimates prepared by licensed professionals, are "acceptable sources of cost information."[30] Furthermore, a local official's reliance on such letters is reasonable. The HUD OIG fails to identify what, if any, additional support for these letters would be necessary and is opining on issues outside of its jurisdiction and expertise.

- For applicant QN-004557-AFR, the HUD OIG takes issue with the local government's file that showed its substantial damage determination included the cost to renovate a kitchen beyond the pre-storm value of the property. By focusing on substantial damage and local community substantial damage determinations, the HUD OIG is ignoring local community responsibilities to also bring homes that receive "substantial improvements" into compliance with NFIP requirements. Local governments must "require owners to obtain permits to bring substantially improved or substantially damaged buildings into compliance with the floodplain management requirements."[31] The term "substantial improvement" "includes structures which have incurred 'substantial damage,' regardless of the actual repair work performed." 44 C.F.R. §59.1. Substantial damage and substantial improvement determinations and inextricably linked and cannot be discussed independently (they are frequently referred to simultaneously as "SD/SI").

- While the "term 'substantial damage' refers to the repairs of all damage sustained and cannot reflect a

[25] *Id.* at 4-8.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* at 4-2.
[30] *Id.* at 4-7.
[31] FEMA "Substantial Improvement/Substantial Damage Desk Reference" (May 2010) at 4-1, *available at* https://www.fema.gov/media-library-data/20130726-1734-25045-2915/p_758_complete_r3.pdf.

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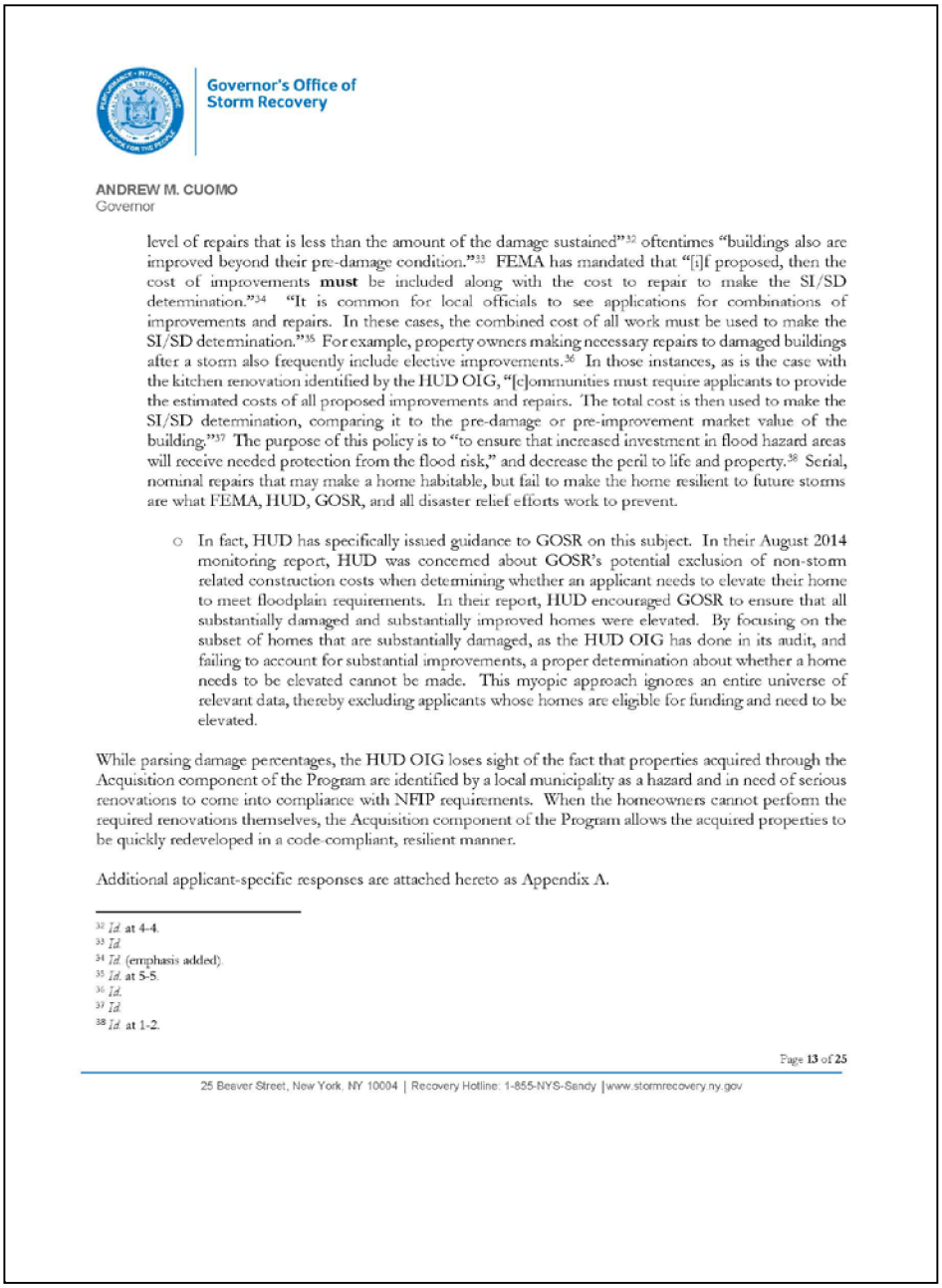

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level of repairs that is less than the amount of the damage sustained"[32] oftentimes "buildings also are improved beyond their pre-damage condition."[33] FEMA has mandated that "[i]f proposed, then the cost of improvements **must** be included along with the cost to repair to make the SI/SD determination."[34] "It is common for local officials to see applications for combinations of improvements and repairs. In these cases, the combined cost of all work must be used to make the SI/SD determination."[35] For example, property owners making necessary repairs to damaged buildings after a storm also frequently include elective improvements.[36] In those instances, as is the case with the kitchen renovation identified by the HUD OIG, "[c]ommunities must require applicants to provide the estimated costs of all proposed improvements and repairs. The total cost is then used to make the SI/SD determination, comparing it to the pre-damage or pre-improvement market value of the building."[37] The purpose of this policy is to "to ensure that increased investment in flood hazard areas will receive needed protection from the flood risk," and decrease the peril to life and property.[38] Serial, nominal repairs that may make a home habitable, but fail to make the home resilient to future storms are what FEMA, HUD, GOSR, and all disaster relief efforts work to prevent.

- In fact, HUD has specifically issued guidance to GOSR on this subject. In their August 2014 monitoring report, HUD was concerned about GOSR's potential exclusion of non-storm related construction costs when determining whether an applicant needs to elevate their home to meet floodplain requirements. In their report, HUD encouraged GOSR to ensure that all substantially damaged and substantially improved homes were elevated. By focusing on the subset of homes that are substantially damaged, as the HUD OIG has done in its audit, and failing to account for substantial improvements, a proper determination about whether a home needs to be elevated cannot be made. This myopic approach ignores an entire universe of relevant data, thereby excluding applicants whose homes are eligible for funding and need to be elevated.

While parsing damage percentages, the HUD OIG loses sight of the fact that properties acquired through the Acquisition component of the Program are identified by a local municipality as a hazard and in need of serious renovations to come into compliance with NFIP requirements. When the homeowners cannot perform the required renovations themselves, the Acquisition component of the Program allows the acquired properties to be quickly redeveloped in a code-compliant, resilient manner.

Additional applicant-specific responses are attached hereto as Appendix A.

[32] *Id.* at 4-4.
[33] *Id.*
[34] *Id.* (emphasis added).
[35] *Id.* at 5-5.
[36] *Id.*
[37] *Id.*
[38] *Id.* at 1-2.

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**(b) HUD OIG COMMENT: Properties Did Not Comply With Flood Insurance Requirements**

**GOSR RESPONSE:**
The HUD OIG says that "the State **may have** improperly purchased five properties that did not comply with flood insurance requirements." (emphasis added). It is difficult for GOSR to respond to this portion of the Finding, due to the HUD OIG's lack clarity. If the HUD OIG has not determined whether a problem has occurred, then this information should be omitted from their final report. Certainly, any recommendations and questioned costs related to a deficiency that may or may not exist are not appropriate.

Regardless, contrary to the HUD OIG's assertion, the acquisition or purchase of FEMA non-compliant properties is not prohibited. The March 5th Federal Register Notice, citing 42 U.S.C. § 5154(a), prohibits the provision of Federal disaster relief assistance to a person for the repair, replacement, or restoration of a storm-damaged property if that person failed to obtain and maintain flood insurance. The Acquisition component of the Program does not provide assistance to applicants for the repair, replacement, or restoration of FEMA non-compliant, storm-damaged properties. Rather, the Program purchases or acquires these storm-damaged properties to achieve a FEMA-allowed mitigation purpose. The acquisition or purchase of a storm-damaged property is a separate eligible activity and is not the same as repairing, replacing, or restoring the storm-damaged property. Further, the acquisition of a property is deemed by FEMA to be a mitigation activity not a repair activity, and the prohibition on providing Federal disaster assistance is not applicable. Additionally, GOSR has confirmed with FEMA and HUD that FEMA non-compliant properties can be purchased as part of the Acquisition component of the Program.

The HUD OIG argues that GOSR's Acquisition component of the Program is a "replacement" program. They rely on a single sentence issued under the November 16, 2011 Federal Register Notice, which states that replacement funds "assist a [homeowner] to secure a replacement home **in the event their disaster-affected home cannot be rehabilitated**… [and] includes …the acquisition of damaged property." (Emphasis added). The acquisition of properties under GOSR's Program is not "replacement funding" as defined in the November 16th Notice, as GOSR is not purchasing the homes because the homes cannot be rehabilitated. Instead, the homes are being purchased because homeowners are either unwilling or unable to withstand the rehabilitation process.

As stated in the State's Action Plan, the Acquisition component of the Program was developed and provides awards to avoid damage and loss of life in a future storm and make the parcels acquired more resilient. The Acquisition properties achieve a mitigation goal, as the properties are either demolished and restricted as open space (via a change of use) or are sold at auction to be redeveloped and elevated. Applicants who are determined to be FEMA non-compliant are offered post-storm FMV without resettlement incentives. This is a fraction of what it would cost an applicant to purchase a new home. Moreover, GOSR's Program policies do not require the applicants to purchase a new home as a condition of assistance. For these reasons, the acquisition or purchase of FEMA non-compliant properties is eligible, despite the HUD OIG's assertions to



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the contrary.

GOSR's applicant-specific responses are attached hereto as Appendix B.

**(c) HUD OIG COMMENT: Properties Did Not Comply With Flood Hazard Requirements**

**GOSR RESPONSE:**
First, it should be noted the issue that properties in the Coastal Erosion Hazard Area ("CEHA") were not identified in the State's Action Plan was discussed by GOSR and HUD monitors in September 2016. Recognizing these properties were in a dangerous situation due to erosion and would soon be in the floodplain or completely collapsed, HUD's corrective action was for GOSR to make hardship determinations to allow these properties to be eligible for acquisition. GOSR implemented the corrective action, and HUD was satisfied. The HUD OIG now, two (2) years later, fails to acknowledge that this issue was already resolved by HUD. Per current Acquisition Program policy, properties in the CEHA are eligible for purchase by the Program through a hardship determination. In fact, Program policy allows GOSR to make any eligibility exceptions through a hardship determination process.

GOSR appropriately granted hardship exceptions to properties that may not have been in the 500-year floodplain due to their elevation, but were in CEHAs, in imminent danger due to erosion, and/or deemed unbuildable by local and State officials. These are precisely the type of properties that should be purchased by the State in a disaster recovery program. If a property cannot be reconstructed, the Program returns the land to its natural state, transforming flood-prone and storm-ravaged lots into reserves that serve as protective buffers against coastal flooding. Without the flexibility to grant such properties a hardship, the owners would not be able to move, and the properties would remain in a dangerous, dilapidated state, threatening the health and safety of the occupants and surrounding residents.

GOSR granted this type of hardship for one of the properties (ER-031-AQ) the HUD OIG now claims GOSR could not show was eligible or had properly received a hardship. GOSR's file includes a hardship letter documenting the reasons for the hardship. The HUD OIG faults GOSR for dating the letter after the purchase was made and for not providing documentation to support the hardship or show that the homeowner applied for hardship status.

First, there is no GOSR policy, or Federal law or regulation, that requires hardship letters to be dated prior to the purchase of properties or that GOSR must prove a homeowner applied for a hardship. The HUD OIG's efforts to use these arguments to justify the property's ineligibility are overreaching.

Second, the hardship letter itself contains and appends documentation to support the hardship. As the letter explains, even though the property was not in the 100- or 500-year floodplain, the land erosion was severe. The bluff where the house was situated was eroding and the parcel was too dangerous to build a new home



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on. The previous owner lost the backyard to the storm, and thirty (30) additional feet of cliff was destroyed during Hurricane Sandy northeast of the property (see picture below). The homeowners were unable to rebuild or resell their home in the condition it was in and due to the high likelihood of the home falling into the flood zone, and GOSR determined the case to be a significant hardship and allowed the property to be purchased through the Program. GOSR verified this information through an inspection of the property. The OIG's assertion that GOSR could not show that this property had properly received a hardship is, again, overreaching. In making this determination, GOSR followed the procedure for CEHA properties agreed to by HUD two (2) years ago.

During the exit conference, the HUD OIG argued that GOSR granted the hardship due to financial circumstances. As explained above and in the hardship letter, this belief is untrue. The hardship was granted solely because the high likelihood that the home would fall off a cliff.

GOSR's applicant-specific responses are attached hereto as Appendix C.

**The HUD OIG's Finding Should be Dismissed**

In light of the above, GOSR submits that Recommendations 1A-1H are unfounded, reimbursement of funds is unenforceable, and the HUD OIG's Finding should be dismissed. As explained in detail herein, both the HUD OIG and GOSR lack authority to review and opine on substantial damage determinations performed by local floodplain administrators, and GOSR's reliance on local substantial damage determinations is appropriate and reasonable. Furthermore, the acquisition of FEMA non-compliant properties is allowable, and GOSR can allow ineligible properties, via hardship, to participate in the Acquisition component of the Program. Additional review of the universe of properties purchased by the Program is unwarranted.



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Importantly, the HUD OIG has not alleged any meaningful non-compliance with applicable Federal laws or regulations; therefore, any Recommendations disallowing or questioning costs are without merit and unenforceable. Regarding Recommendations 1A, 1B, 1C, 1E, 1F, and 1G, Disaster Recovery funds used to acquire and dispose of the properties identified in the HUD OIG Draft Report were part of GOSR's overall program administration costs for the Acquisition component of the Program and, as such, remain eligible Federal expenditures regardless of the ultimate status of individual properties. Program Administration costs for Federally-funded programs include those related to cases that do not ultimately receive Federal awards. Thus, with regard to costs to acquire and dispose of properties discussed in the Draft Report, it is not relevant whether a specific property was eligible to be purchased with Disaster Recovery funds.

The Draft Report is primarily grounded on GOSR's alleged non-compliance with its own policies, which GOSR can amend at any time, and which the HUD OIG has consistently misinterpreted. HUD does have full assurance that CDBG-DR costs were supported, used for eligible expenses, and put to their intended use because they were disbursed by a Program that is in full compliance with all applicable laws and regulations and has robust internal controls. The HUD OIG's audit has failed, in any meaningful way, to demonstrate otherwise.

Should you require further information, please feel free to contact me via email at cassiah.ward@stormrecovery.ny.gov or by phone at (212)480-6457.

Sincerely,

Cassiah M. Ward
Director of Monitoring and Compliance/Senior Counsel
New York Governor's Office of Storm Recovery

Cc: Daniel Greene, General Counsel, GOSR
Emily Thompson, Deputy General Counsel, GOSR
Thehbia Hiwot, Executive Director of Housing, Buyout, and Acquisition Programs, GOSR
Alana Agosto, Managing Director, Housing and Resiliency Programs, GOSR
Jane Brogan, Chief Policy & Research Officer, GOSR

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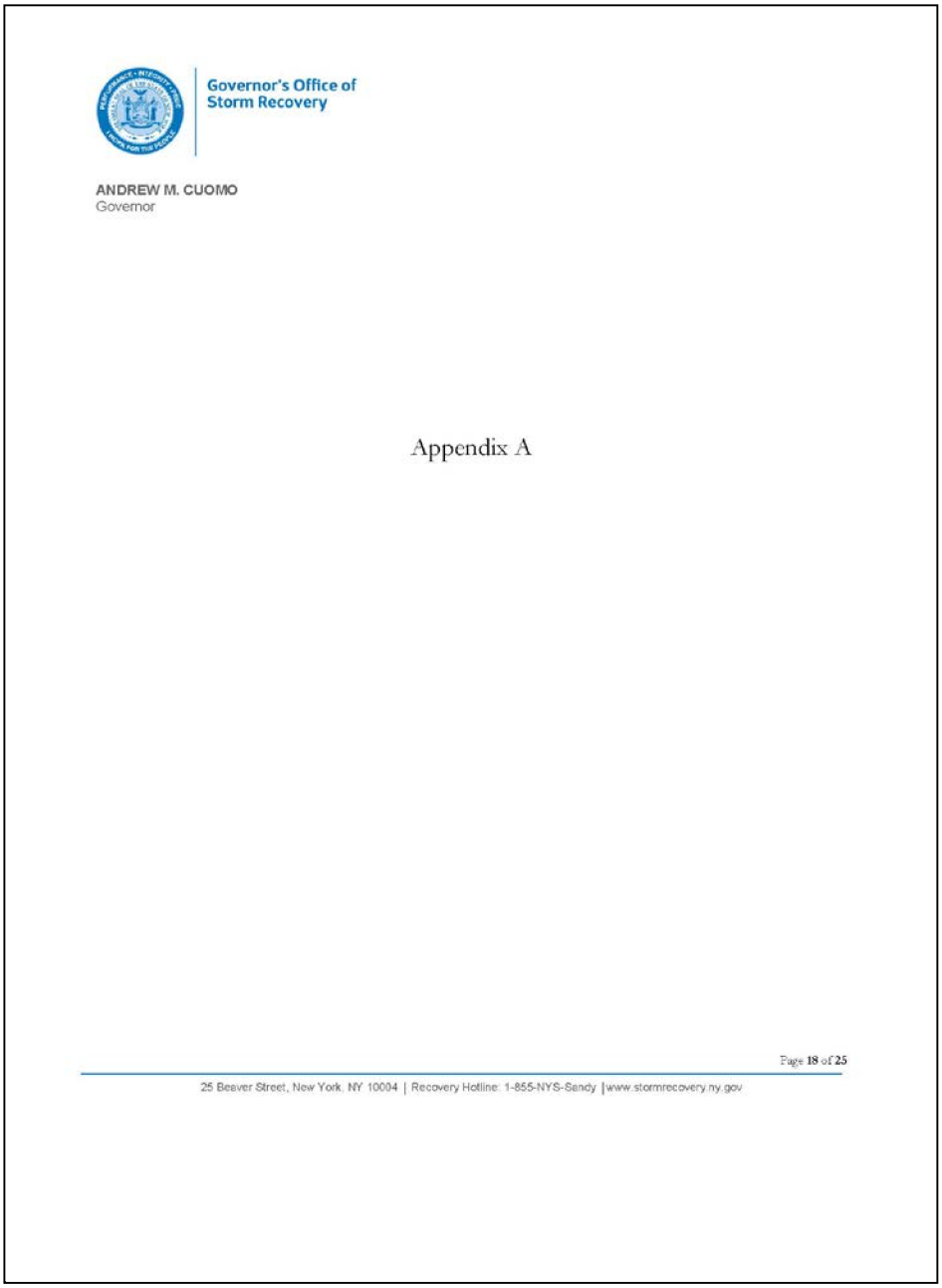

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Appendix A



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| Applicant Number | Response to the OIG | Required Action Under GOSR Policies/Procedures |
|---|---|---|
| EF-036-AQ | The applicant provided a substantial damage letter from the Town of Hempstead on April 14, 2014. | No further action required pertaining to this portion of the OIG's finding. See Appendix C for further information regarding this Applicant. |
| EF-111-AQ | The applicant provided a substantial damage letter from the Town of Oyster Bay on September 11, 2013. | No further action required. |
| EF-188-AQ | The applicant provided a substantial damage letter from the City of Long Beach on April 23, 2013. The Program is unaware if the applicant received an additional substantial damage letter. It appears that the applicant may have appealed the substantial damage determination to the local municipality when the applicant was proceeding with the NY Rising Homeowner's Program. | The Program is investigating the file further and will transfer the file to Recapture, if warranted. |
| EF-408-AQ | The applicant provided a substantial damage letter from the Village of Amityville on August 27, 2015. | No further action required. |
| EF-413-AQ | The applicant provided a substantial damage letter from the Town of Brookhaven on December 20, 2013. | No further action required. |
| EF-484-AQ | The applicant provided a substantial damage letter from the Village of Babylon on August 28, 2014. | No further action required. |
| EF-505-AQ | The applicant provided a substantial damage letter from the City of Long Beach on April 8, 2013. The Program is unaware if the applicant received an additional substantial damage letter. It appears that the applicant may have appealed the substantial damage determination to the local municipality when the applicant was proceeding with the NY Rising Homeowner's program.<br><br>The property was purchased consistent with the Acquisition Program's FEMA non-compliant guidelines. | The Program is investigating the file further and will transfer the file to Recapture, if warranted. |
| EF-506-AQ | The applicant provided a substantial damage letter from the City of Long Beach on April 8, 2013. | No further action required. |

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| EF-516-AQ | The applicant was admitted to the Program based upon a FEMA DCMS Loss Verification Report. A memorandum regarding this decision is included in the applicant's file. | The Program is investigating the file further and will transfer the file to Recapture, if warranted. |
| EF-589-AQ | The applicant provided a substantial damage letter from the Incorporated Village of Freeport on May 21, 2014. | No further action required. |
| EF-709-AQ | The applicant provided a substantial damage letter from the City of Long Beach on April 8, 2013. The Program is unaware if the applicant received an additional substantial damage letter. It appears that the applicant may have appealed the substantial damage determination to the local municipality when the applicant was proceeding with the NY Rising Homeowner's Program. | The Program is investigating the file further and will transfer the file to Recapture, if warranted. |
| EF-791-AQ | The applicant provided a substantial damage letter from the Town of Oyster Bay on November 11, 2017. | No further action required. |
| EF-810-AQ | The applicant provided a substantial damage letter from the he Town of Hempstead on September 13, 2016.<br><br>If the local municipality chose to use a damage assessment issued under the unrelated NY Rising Single Family program (the ECR) to make its substantial damage calculation, then it is up to FEMA to determine if doing so is in compliance with FEMA and NFIP floodplain regulations and substantial damage calculations standards. | No further action required. |
| EF-820-AQ | The applicant provided a substantial damage letter from the Village of Amityville on March 17, 2015. | No further action required. |
| EF-832-AQ | The applicant provided a substantial damage letter from the Town of Esperance on May 30, 2015. | No further action required. |
| EF-853-AQ | The applicant provided a substantial damage letter from the Village of Babylon on August 11, 2015. | No further action required. |
| EF-858-AQ | The applicant provided a substantial damage letter from the Town of Islip on September 21, 2015. | No further action required. |
| EF-899-AQ | The applicant provided a substantial damage letter from the Town of Babylon on June 14, 2016. | No further action required. |
| ER-016-AQ | The applicant provided a substantial damage letter from the Incorporated Village of Mastic Beach on December 1, 2015. | No further action required. |

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| ER-031-AQ | The applicant provided a substantial damage letter from the Town of Brookhaven on December 11, 2013. | No further action required. |
| EF-207-AQ | The applicant provided a substantial damage letter from the Town of Oyster Bay on June 16, 2014. | No further action required pertaining to this portion of the OIG's finding. See Appendix B for further information regarding this Applicant. |
| ES-011-AQ | The applicant provided a substantial damage letter from the Town of Deer Park on July 14, 2014. | No further action required pertaining to this portion of the OIG's finding. See Appendix B for further information regarding this Applicant. |
| QN-004557-AFR | The applicant provided a substantial damage letter from New York City on June 4, 2015. | No further action required. |



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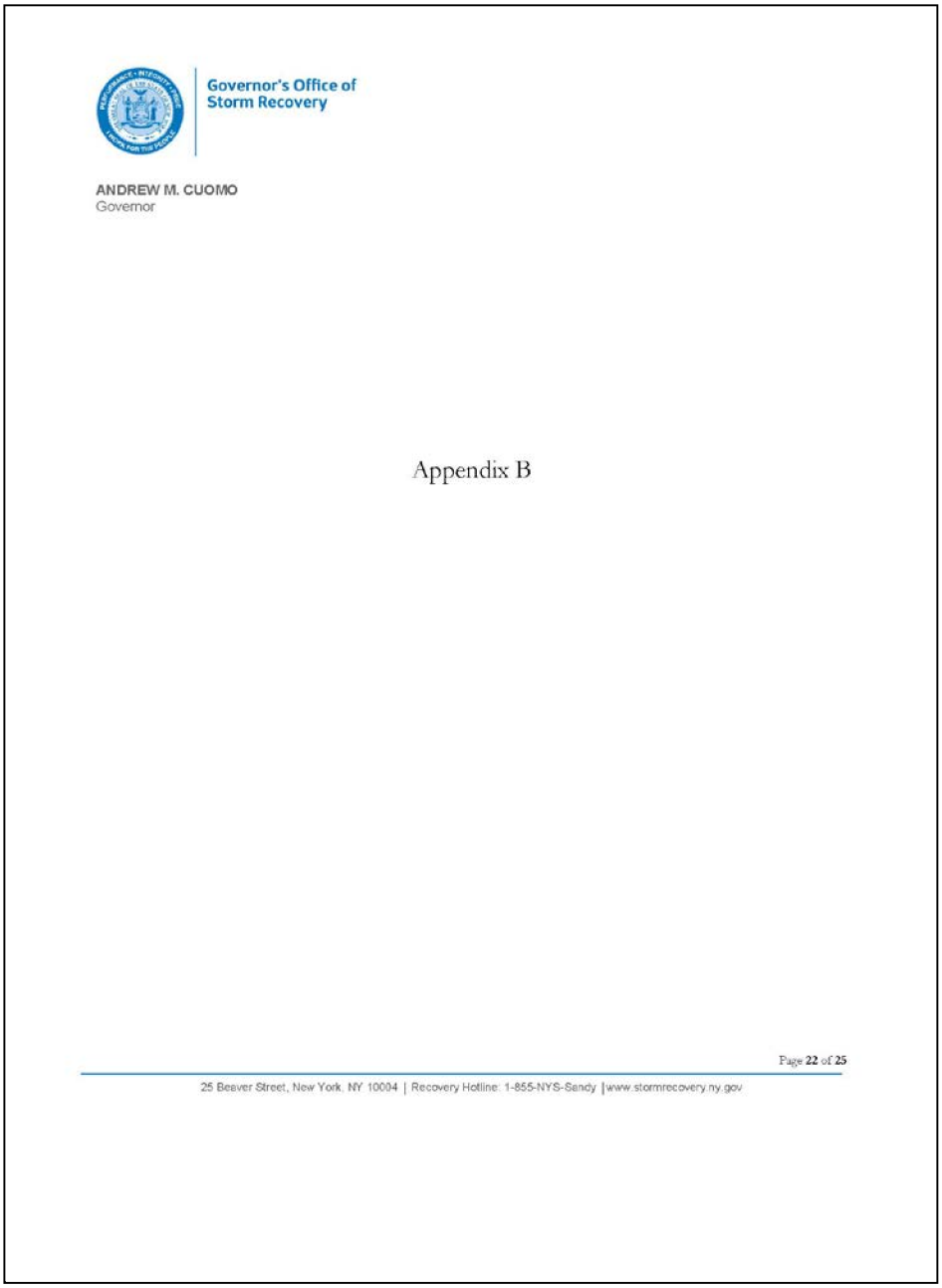

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| Applicant Number | Response to the OIG | Required Action Under GOSR Policies/Procedures |
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| EF-111-AQ | Program determined that though this applicant was eligible for and received post-storm FMV, the applicant also mistakenly received the resettlement incentive. | As the State previously informed the OIG both verbally and in writing, this file has been transferred to Recapture to recover the resettlement incentive amount. |
| EF-408-AQ | See the above response to Finding (1)(c). | No further action required. |
| EF-810-AQ | See the above response to Finding (1)(c).<br><br>The property was purchased consistent with the Acquisition Program's FEMA non-compliant guidelines. | No further action required. |
| EF-832-AQ | As the State previously informed the OIG, both verbally and in writing, the applicant is not FEMA non-compliant. After consultation with FEMA and conversations between FEMA and GOSR, Program determined that this property was listed as FEMA non-compliant in error. As a result, and pursuant to Program policy, the applicant was eligible for the post-storm FMV plus a resettlement incentive. | No further action required. |
| EF-853-AQ | See the above response to Finding (1)(c). | No further action required. |

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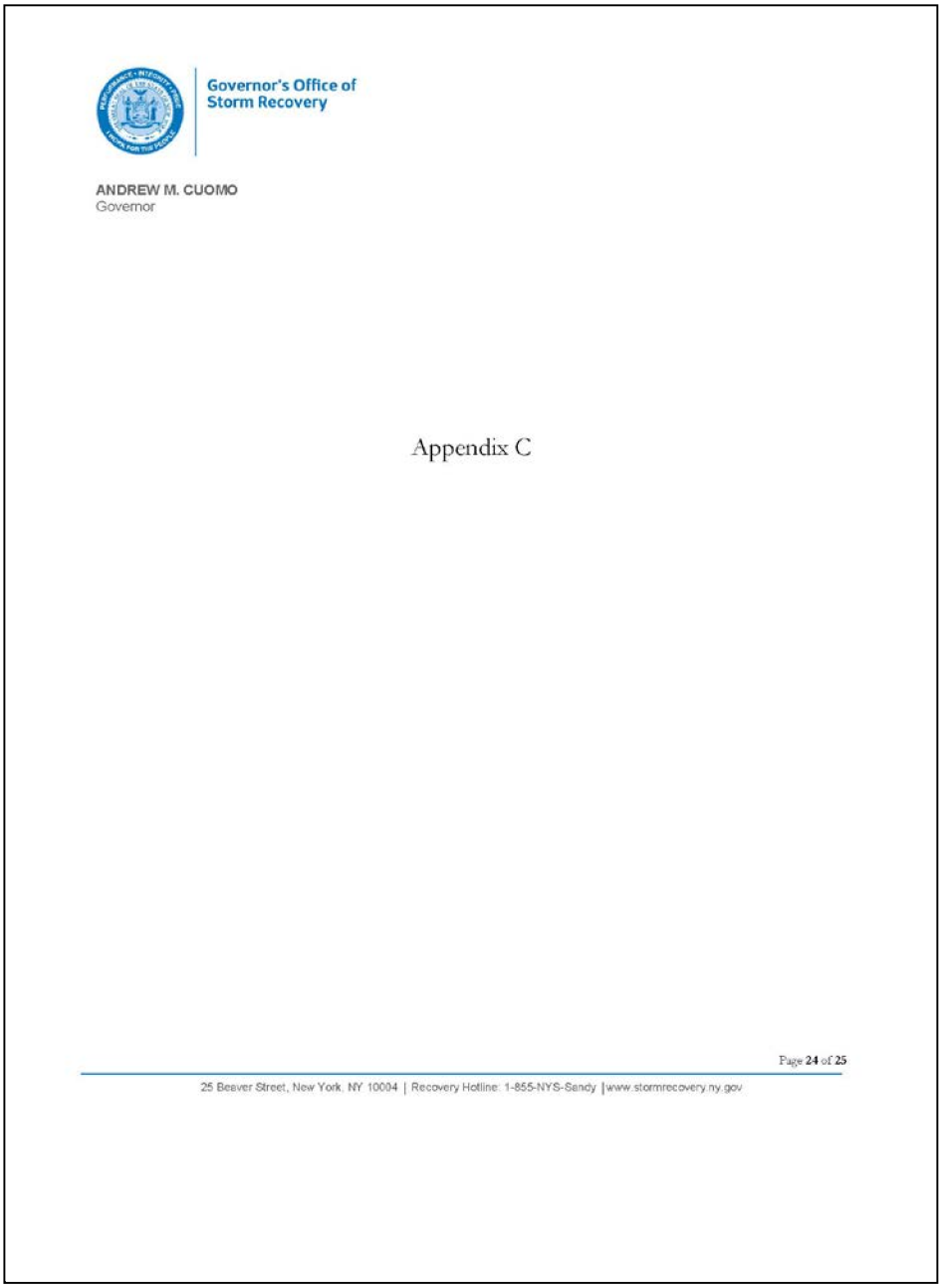

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| Applicant Number | Response to the OIG | Required Action Under GOSR Policies/Procedures |
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| EF-207-AQ | Program has determined that this property was not in the 100-year, 500-year, or Coastal Erosion Hazard Area. | As the State previously informed the OIG, both verbally and in writing, this file has been transferred to Recapture. |
| ER-031-AQ | Per Program Policy, the property is eligible because it is located in the Coastal Erosion Hazard Area (CEHA). CEHA properties are determined to be eligible via a hardship process. | The hardship memo is contained in the applicant file, along with supporting documentation to substantiate the hardship (e.g., photos of the property sliding off the cliff). |
| ES-011-AQ | At the time of the purchase, the Program's vendor had mistakenly identified this property as within the 100 year flood zone. The property is in fact located in the floodway and was eligible for purchase under the Buyout component, not Acquisition. | The Program is investigating the file further and will transfer to Recapture, if warranted. |



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## OIG Evaluation of Auditee Comments

Comment 1 The State maintained that it should be afforded "maximum feasible deference" when interpreting requirements. We acknowledge that State grantees are afforded maximum feasible deference and believe that we afforded it to the State. Public Law 113-2 required the State to administer funds in accordance with all applicable laws and regulations, and the March 5, 2013, Federal Register notice required it to certify that activities would be administered consistent with its HUD-approved action plans and have procedures to verify the accuracy of information provided by applicants. We measured the sampled cases against the eligibility criteria established by the State in the HUD-approved action plan it developed. To fully evaluate whether the cases sampled met the eligibility criteria, we performed work that went beyond what the State's policies and procedures required. For example, as part of our audit work, we contacted the local governments to confirm that the letters submitted by applicants (1) matched the letters or determinations on file with local officials and (2) represented the most recent substantial damage determination made by local officials. We then met with the local officials to obtain an understanding of each case and documentation supporting their substantial damage determinations and compared information from their files to documentation in the State's files. As discussed in the finding, the results of our audit show that the controls established by the State were not sufficient to ensure compliance with its HUD-approved action plan.

Comment 2 The State maintained that the substantial damage requirement was used solely as a threshold eligibility criterion for entrance into its program and was not required by HUD or any Federal law. Further, it maintained that under FEMA policy, a property must be issued a substantial damage letter by the local floodplain administrator to be deemed substantially damaged and explained that the State's policy was that if an applicant had such a letter, he or she met the threshold eligibility criterion. We do not disagree with the State's assertion that a property must be issued a substantial damage letter to be deemed substantially damaged. However, the March 5, 2013, Federal Register notice required the State to administer activities consistent with its HUD-approved action plans. For the acquisition component of this program, the HUD-approved action plan established the substantial damage requirement as threshold eligibility criteria, but did not specify that this would be achieved only through receipt of a letter through the applicant. As shown by the results of our report, we have concerns with the controls the State put into place. In one case, the State's file did not contain a substantial damage letter, and the documentation maintained by the local government showed that it had determined that the property was not substantially damaged. Further, in three additional cases, by contacting the local governments, we determined that the homeowners had appealed the initial substantial damage determinations and the three properties were later determined to not be substantially damaged, which means that they would not meet the eligibility

criteria established by the State. Because the State did not have adequate controls to ensure that it obtained the required letters and relied only on information and letters provided by the applicants, it was not able to detect these issues.

Comment 3 The State maintained that the issues identified during the audit were mainly about actions taken by local municipalities and stated that because the Governor's Office of Storm Recovery (GOSR) does not have jurisdiction to control the actions of local officials or second-guess their technical determinations, it made no sense to fault GOSR for relying on the work of these local governments. We disagree with the State. While GOSR was appointed by the State to administer its Disaster Recovery funds, the State is the grantee and our auditee. Our report critiques the State and not GOSR specifically. Further, the National Flood Insurance Program established distinct responsibilities for the Federal, State, and local levels of government. As noted in the Substantial Improvement and Substantial Damage Desk Reference, FEMA P-758, dated May 2010, States are generally responsible for providing technical assistance to local governments, monitoring local government programs, and coordinating between local governments and the National Flood Insurance Program. Some States also administer regulatory programs, and many are engaged in flood hazard mapping initiatives. In this case, the State's Department of Environmental Conservation was its National Flood Insurance Program coordinator, and it could guide and assist local governments with implementing floodplain management regulations as required by 44 CFR (Code of Federal Regulations) 60.25. For example, according to the State's website, for local governments in New York to join the National Flood Insurance Program, they are required to be approved by the State's Department of Environmental Conservation and FEMA. This requirement shows that the State does have some authority or ability to ask questions regarding the actions of local officials.

Comment 4 The State maintained that we lacked the statutory authority and expertise to review, analyze, and opine on local substantial damage determinations. Further, it stated that our assertions that certain properties were not substantially damaged or that GOSR did not have adequate documentation to support substantial damage determinations were without merit. We disagree with the State. The Inspector General Act of 1978, as amended, provides that the HUD Office of Inspector General's (OIG) purpose and authority is to conduct and supervise audits and investigations relating to the programs and operations of HUD. We are tasked with identifying and preventing fraud, waste, and abuse and also with promoting the efficiency and economy of these programs. In this case, the State is using Disaster Recovery funds provided by HUD to purchase properties under the acquisition component of its New York Rising Buyout and Acquisition program. HUD OIG has authority to conduct audits related to Disaster Recovery funds. While the State is correct that the National Flood Insurance Program falls under FEMA, it chose to use the substantial damage determinations to determine eligibility for its program and compliance with the HUD-approved action plan

that it was required to follow, as discussed in comment 1. Therefore, our review of the determinations is consistent with HUD OIG's authority to conduct audits related to those funds. We conducted this audit in accordance with generally accepted government auditing standards and believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Comment 5 The State maintained that our expansion of its investigation into local government operations was improper because private citizens were the recipients of the Disaster Recovery funds, not the local governments. We disagree. We did not conduct an investigation but, rather, conducted an audit related to the eligibility requirements of the State's program. Paragraph 6.16 of the United States Government Accountability Office's Government Auditing Standards, 2011 Revision, required us to obtain an understanding of internal controls that are significant within the context of our audit objectives. Further, paragraphs 6.30 and 6.58 required us to gather and assess information to assess the risk of fraud occurring that is significant within the context of our audit objectives and to identify potential sources of information that could be used as evidence for our conclusions. Paragraph 6.59 required us to use our professional judgment in determining the sufficiency and appropriateness of evidence, and paragraph 6.58 discussed the possibility of obtaining corroborating evidence when testing the reliability of evidence. Further, the March 5, 2013, Federal Register notice required the State to have procedures to verify the accuracy of information provided by applicants. In this case, we determined that the State's controls to ensure that properties met eligibility criteria were significant to our objective. As part of our audit work, we contacted local governments to confirm that the letters submitted by applicants (1) matched the letters or determinations on file with local officials and (2) represented the most recent substantial damage determination made by local officials. We believe this work was necessary to adequately evaluate the State's controls and the eligibility of the properties reviewed and that it fell squarely within our audit objective.

Comment 6 The State maintained that we did not properly apply the provision of the March 5, 2013, Federal Register notice related to verifying the accuracy of information provided by applicants. It stated that in accordance with the notice, the State required applicants to submit the substantial damage letter issued by their local floodplain administrator rather than relying solely on the applicants' word that their properties were substantially damaged. The State noted that we implied that the submission of the letter was not sufficient and that we wrongly suggested that it monitor the substantial damage calculations. It then claimed that not only is the State in no position to question the veracity of the letters, but that doing so would be impractical and a wasteful duplication of efforts and that additional controls are unnecessary.

We disagree. The March 5, 2013, Federal Register notice states that a grantee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the grantee will verify the accuracy of information provided by applicants. In this case, rather than relying on the word of applicants, it relied on substantial damage determination letters provided by the applicants. Because the State's policy did not require it to communicate directly with local officials, it did not verify whether the letters provided by applicants were the official and most recent determination or whether those determinations were supported. Our review identified three key situations that illustrate why the State's procedures were not sufficient and why additional controls are necessary.

- The first situation is that the State's files did not contain the required letter for one property. This deficiency shows that the State did not have sufficient controls to ensure compliance with its policy to obtain the letters from applicants.
- The second situation is that for three properties, or 10 percent of the cases reviewed, the State's files contained only the initial substantial damage letters, although the local communities later determined that the properties were not substantially damaged after the homeowners appealed the initial determinations. This deficiency shows that the State's reliance solely on the letter provided by the applicant was not sufficient and that additional controls were necessary. For example, the State could have a process to request confirmation from the local community that the letter provided by the applicant matches the letter the local community has on file and that it is the most recent determination.
- The third situation is that the substantial damage determinations were not always supported. In many cases, neither the State's files nor the local government's files contained support for the substantial damage determinations. Further, the information in the files sometimes showed conflicting information or showed that the properties were not substantially damaged. For example, in one case, while the local government's file did not contain the FEMA proof of loss statement required by its policy, the State's file contained the statement, and the percentage of loss was less than 50 percent when calculated using this statement, thus making the property ineligible for the program.

While the State's response focuses primarily on whether it may question the determination made by the local floodplain administrator, it is important to note that in four of the six cases in which we determined that the properties were not substantially damaged, our determination matched that of the local floodplain administrator. If the State had sufficient procedures to ensure that it obtained the letters from applicants and verified the substantial damage determinations with local officials, it could have detected the situations discussed above and taken appropriate action.

Comment 7 The State maintained that questioning the veracity of substantial damage letters would be improper, impractical, and a wasteful duplication of efforts by an agency that does not possess the authority or expertise to question the inherent validity of official documents issued by another governmental entity. We disagree. As discussed in comment 3, we believe the State does have the Authority to question the letters. Further, we disagree that it would be impractical and wasteful. If GOSR does not have the authority or expertise, the State does, through its Department of Environmental Conservation, which is its National Flood Insurance Program coordinator. Beyond reviewing the support and inherent validity of the letters, the State could also work with local officials to confirm that the letters submitted by applicants (1) matched the letters or determinations on file with local officials and (2) represented the most recent substantial damage determination made by local officials. Taking this step would have identified the four properties[15] discussed in our report, which the local officials determined were not substantially damaged. The State used nearly $1.6 million in Disaster Recovery funds to purchase these four ineligible properties. We believe this shows that implementing additional controls would not have been wasteful but, instead, would have prevented waste.

Comment 8 The State maintained that its current procedures have been reviewed and approved by HUD and that additional controls are unnecessary and would waste time and money. We disagree. The State has not provided documentation to show that HUD approved its procedures. While HUD approved the State's action plan, the plan established that properties needed to be substantially damaged and did not detail the State's intention to rely only on letters submitted to it by the applicants.

Comment 9 The State maintained that the most appropriate course of action would be for us to raise this issue directly with FEMA or the U.S. Department of Homeland Security OIG. The objective of our audit was to determine whether the State ensured that properties purchased under the acquisition component of its program met applicable HUD, Federal, and State requirements, which included the substantial damage requirement laid out in the State's HUD-approved action plan. Therefore, this report addressed issues identified with the State's controls and included recommendations addressed to HUD for actions we believe the State needs to take to address the issues identified. While we often share information identified with other Federal agencies, this report is focused on the State's actions and controls.

Comment 10 The State maintained that our file review showed a lack of experience with the subject matter at issue and a selective and arbitrary use of information to justify

[15] This includes one property for which the State's file did not have a substantial damage determination letter and three properties for which the State's file did not have the most recent substantial damage determination letter.

the finding. We disagree with the State. As discussed in the report as well as several of our comments in this section, such as comments 1, 2, and 5, we measured the cases sampled against the criteria established by the State in its HUD-approved action plan. We conducted our audit in accordance with generally accepted government auditing standards and believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objective.

Comment 11 The State maintained that we included pictures of properties in our draft report, taken months or years after the storm, seemingly to imply that the properties were not substantially damaged. Further, it noted that most homes were damaged by flood water inundation, which causes damage that would not be reflected in a picture of the outside of a property taken long after the storm. In figure 1, we showed a home that had kitchen renovation costs improperly included in its damage estimate. The substantial damage determination for the home pictured in figure 2 was improperly based on how high the flood water reached instead of by comparing the estimated cost of repair against the prestorm value of the home as required. In both cases, we noted how long after the storm the picture was taken. We provided these pictures as context so that a reader could see the homes being purchased with Disaster Recovery funds. We do not disagree that flood water can cause damage that would not be reflected in such pictures. However, the State was not able to provide documentation to show that the substantial damage determinations for the two properties were prepared in compliance with applicable requirements, and our review found that they were not properly prepared.

Comment 12 The State maintained that our draft report and finding lacked clarity and transparency and failed to identify the auditing standards used to make our determinations. In addition, the State indicated that the draft report did not include applicant-specific information other than a high-level summary and that it was provided to the State only upon request. We disagree with the State. As discussed in the Scope and Methodology section as well as comments 5, and 10 above, we conducted our audit in accordance with generally accepted government auditing standards and believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our draft report summarized the results of our review and provided detailed examples, although it did not include details on every case. However, we provided the State detailed information about each property reviewed on January 31, 2018, and June 22, 2018, to which it then provided written responses. We also provided a finding outline on July 30, 2018, to which the State chose not to provide a response.

Comment 13 The State maintained that we should not have used eligible repair receipts contained in its files to calculate the cost of repairs and damage percentage for five properties. Specifically, the State noted that repair receipts were collected from applicants for a different program and offset duplication of benefits and that

these receipts were not collected to verify an applicant's total damage and did not account for the total reconstruction costs. Further, the State noted that any damage calculation performed using such receipts would be low because the cost of volunteer labor, homeowner labor, and donated and discounted materials would not be represented in the receipts. The properties discussed by the State were classified as unsupported because the State's and local government's files did not contain adequate support for substantial damage calculations and the local government's files sometimes contained conflicting information or conflicted with documentation in the State's files. In such cases, we did not add up applicant repair receipts but, rather, used the repair receipt amounts established by the State to estimate the percentage of damage and assess the accuracy of the substantial damage determinations. We also reviewed the condition of the properties reflected in the State's poststorm appraisals and other documentation maintained by local governments to assess the accuracy of the substantial damage determination. We did not use this information to conclude that the properties were ineligible but, instead, concluded that the substantial damage determinations were not supported. As a result, we recommended that HUD require the State to provide additional documentation to show that the properties were substantially damaged or reimburse HUD from non-Federal funds for the settlement costs paid to purchase the properties.

Comment 14 The State maintained that we should not have used the State's appraisals as evidence to suggest that certain properties were not damaged because they did not and were not intended to reflect the condition of the property immediately after the storm nor were the appraisals used to determine the amount of damage after the storm. We acknowledge that (1) the poststorm appraisals were sometimes performed years after the storm; (2) the poststorm appraisals reflected the value of the properties at the time the appraisals were performed; and (3) homeowners may have performed repairs or improvements by that time, which would have been taken into account in the poststorm appraised values. However, while we did not rely on the appraised values and appraisal reports as evidence that properties were ineligible, we considered the difference in the prestorm and poststorm appraised fair market values to be a useful tool in identifying properties that may have a higher likelihood of not meeting the substantial damage requirement. During our audit, we used the appraised values and appraisals in two ways.

- Sample selection – As discussed in the Scope and Methodology section, we used the prestorm and poststorm appraised values from the State's data to calculate an estimated percentage of damage from the storm, then selected properties for review by focusing on those with the lowest estimated damage percentage and those in cities with the highest number of properties. For example, the poststorm fair market value of the property listed below was only $17,000, or 4.05 percent, lower than the property's prestorm fair market value. In this case, we found that the local government initially classified the property as substantially damaged but later reclassified it as not being

substantially damaged, which means that the property was not eligible for the acquisition component of the State's program.

| Application no. | Prestorm appraised fair market value | Poststorm appraisal date | Poststorm appraised fair market value |
|---|---|---|---|
| EF-505-AQ | $420,000 | 3/21/2014 | $403,000 |

- Sample review – As discussed in the finding, we compared information from the local governments' files to documentation in the State's files, such as appraisals. In some cases, this comparison raised red flags indicating that properties may not have been substantially damaged. For example, in one case, the substantial damage determination was based on a November 2012 contractor estimate and listed the cost of repairs as more than $149,000. However, a February 2015 poststorm appraisal in the State's file stated that the property was in "very good condition," although there was no evidence that substantial repairs had been made before the appraisal to justify the condition. For instance, the State's files contained receipts for only $10,000 in repairs made before the appraisal, and local records did not show that the homeowner had applied for permits to complete repairs.

Comment 15 The State explained that FEMA encouraged local officials to use its Substantial Damage Estimator software so that their substantial damage determinations were reasonable and defensible. Further, it maintained that while local officials must review the validity of cost estimates provided by applicants, it was inappropriate for us to suggest that local governments did not properly use the software or did not have adequate support for the reports it generates. We disagree. As discussed in the Scope and Methodology section as well as comments 5, 10, and 12 above, we conducted this audit in accordance with generally accepted government auditing standards and believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objective. For example, we used our professional judgment in determining the sufficiency and appropriateness of evidence and by using corroborating evidence to help evaluate the reliability of the substantial damage determinations. In this case, we noted that section 4.2 of FEMA's Substantial Improvement and Damage Desk Reference Guide stated that local officials should document their substantial damage and substantial improvement decisions and the documentation should be retained in the community's permit records. Therefore, we reviewed documentation maintained by local officials as well as documentation from the State's files to assess the accuracy of the substantial damage determinations. The properties mentioned by the State were questioned as unsupported because the local government's files did not adequately support the determinations or because information in the local government's files conflicted with other information, such as documentation maintained in the State's files.

Comment 16 The State maintained that we discounted the opinion of technical experts. Specifically, the State noted that in some cases, we claimed that local officials did not have adequate support for the values included in engineer or architect letters and in other instances, we accepted the information in the letters and cited the State and local files for containing conflicting information. As part of our audit work, we met with local officials and compared information from their files to documentation in the State's files for each of the properties sampled. It is not unusual for us to come to different conclusions for each sampled item because each case is unique and the State and local files may have more documentation for one case than for another. As discussed on page 4 of the report, we concluded that of the 30 properties reviewed, 7 properties were substantially damaged, 6 properties were not substantially damaged, and the substantial damage determinations for the remaining 17 properties were not adequately supported.

Comment 17 The State explained that while local officials must determine costs and market values as part of their substantial damage assessments, they have discretion and autonomy to decide how those determinations are made. It further noted that FEMA provides a list of acceptable methods to determine the costs of improvements and repairs. The State maintained that we failed to identify what, if any, additional support would be necessary in the cases we cited as unsupported. As noted above, each case is unique. Therefore, the method used to resolve the findings for each case may vary. For example, in cases in which it appeared that the local official used the wrong square footage when making the substantial damage determination, we would expect to see documentation explaining the discrepancy and a recalculation of substantial damage if needed.

Comment 18 The State claimed that substantial damage may not reflect a level of repairs that is less than the amount of damage sustained but may include improvements beyond their predamage condition. Further, it claimed that FEMA mandated that when proposed, the cost of improvements must be included with the cost of repair to make the substantial improvement or substantial damage determination, as local officials did for the case involving kitchen renovation. The State also maintained that in August 2014, HUD encouraged it to ensure that all substantially damaged and substantially improved homes were elevated and that by focusing on only homes that were substantially damaged as we did, a proper determination about whether a home needs to be elevated cannot be made.

We disagree with the State's claim that the cost of improvements must be included with the cost of repair when making the substantial damage determination. FEMA's Substantial Improvement and Damage Desk Reference Guide clearly defines substantial damage as damage whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. The guide explains that all substantially damaged homes are considered substantially improved, even if the repair work is not performed, but it does not indicate that improvements

should be considered when calculating whether a home qualifies as substantially damaged. The State was accurate when it noted that HUD was concerned in August 2014 about whether it was enforcing the requirement that substantially improved homes be elevated. However, HUD was also clear that substantially damaged homes are only a subset of the universe of rehabilitated homes that are substantially improved. Further, it is important to note that the State's HUD-approved action plan and its policy manual required homes to be substantially damaged, not substantially improved, and these documents did not include discussion related to improving homes beyond the prestorm value.

Comment 19 The State maintained that it was difficult to respond to the section of the finding about FEMA-noncompliant properties because it lacked clarity. Further, it noted that if we had not determined whether a problem had occurred, the information should be omitted from the final report and recommendations and questioned costs related to the information are not appropriate. We disagree. The Inspector General Act of 1978 defines the term "unsupported cost" as a cost that, at the time of the audit, is not supported by adequate documentation. As explained in Appendix A, unsupported costs require a decision by HUD program officials and might involve a legal interpretation or clarification of departmental policies and procedures. On March 14, 2019, HUD provided a legal opinion that partly addresses the concerns raised in the report. We will review the legal opinion during the audit resolution process to help determine whether the properties were eligible for the acquisition component of the State's program.

The State also maintained that the acquisition of FEMA-noncompliant properties was prohibited only if the assistance was for the repair, replacement, or restoration of a storm-damaged property. While it acknowledged that a sentence in the November 16, 2011, Federal Register notice stated that replacement housing can include the replacement of damaged properties, the State stated that its program did not provide assistance to applicants for this purpose. Rather, the State indicated that it purchased storm-damaged properties to achieve a FEMA-allowed mitigation purpose. We disagree with the State. The State did not provide documentation to support its statement that it purchased properties to achieve a FEMA-allowed mitigation purpose. Further, while the State's policy manual did not discuss the purchase of homes to meet a FEMA-allowed mitigation purpose, it did align with a November 16, 2011, Federal Register notice, which states that the purpose of replacement housing is to equip an individual or household with the funds necessary to gain replacement housing. The notice also states that replacement housing includes the acquisition of damaged properties and specifically notes that if award amounts for the acquisition of damaged properties are related to property values, HUD considers them to be for the purpose of replacement housing. For the five cases in question, the award amounts were tied to property values. Further, the highest amount paid for the five properties was nearly $467,000, and the average amount paid was

more than $300,000, which would place the homeowners in a position to gain replacement housing.

Comment 20 The State maintained that in response to discussions with HUD monitors in September 2016, it made hardship determinations to allow properties in Coastal Erosion Hazard Areas to be eligible for the acquisition component of its program. Further, the State maintained that it appropriately granted hardship exceptions to properties that were in Coastal Erosion Hazard Areas, in imminent danger due to erosion, or deemed unbuildable by local and State officials. The State noted that it granted this type of hardship for one of the properties reviewed but that we faulted it for (1) dating the letter after the purchase was made, (2) not providing documentation to support the hardship, and (3) not showing that the homeowner applied for hardship status. The State then noted that there was no State policy or Federal law or regulation requiring hardship letters to be dated before the purchase of properties or requiring the State to prove that a homeowner applied for the hardship. Further, it stated that the hardship letter contained and appended documentation to support the hardship and maintained that the hardship was granted because the homeowners were unable to rebuild or resell their home and due to the risk of the home's falling into the flood zone. The State maintained that it verified this information through an inspection of the property and that when it made the hardship determination, it was following the procedure for Coastal Erosion Hazard Areas agreed to by HUD. On page 25 of its response, the State again noted that the property was located in the Coastal Erosion Hazard Area and was, therefore, eligible through the hardship process.

We acknowledge that the State updated its policy manual and made several hardship determinations in response to HUD's September 2016 monitoring review. According to HUD's monitoring review report, during the exit conference for the review, HUD advised the State that to resolve a finding related to the purchase of a property in a State-designated Coastal Erosion Hazard Area that did not qualify under the program criteria, the State could either (1) repay the funds used to acquire and dispose of the property, (2) request the applicant to apply for a hardship, or (3) revise its policies to include homes in the Coastal Erosion Hazard Area. The State then informed HUD that it had updated its policy to include language stating that eligibility criteria may be waived by a hardship determination.

However, for the property in question, the memorandum that the State provided to support the hardship letter explained that the property was not located in the Coastal Erosion Hazard Area. Instead, the property was located next to the designated area on the 1994 map, and the State anticipated that updates to the 1994 map "would likely include" the property in question within the Coastal Erosion Hazard Area. The State also provided three pictures with the hardship letter, including the picture provided on page 16 of its response. Contrary to the claims in its response to our report, the property was not located in the Coastal

Erosion Hazard Area, and the State did not provide documentation showing that the property was later classified as being in the designated area. Further, the documentation provided did not adequately support the State's claims that the homeowner could not rebuild or resell the home. In contrast, for the property HUD reviewed in September 2016, the State was able to show that the property was located in the Coastal Erosion Hazard Area and provide a letter from the local community supporting its claim that rebuilding was not allowed.

Comment 21 The State maintained that we did not allege meaningful noncompliance with applicable Federal laws or regulations and that any recommendations disallowing or questioning costs are without merit and unenforceable. We disagree and believe that the work performed supports the finding and recommendations made in this report. Further, based on the appendixes provided with the State's comments, it appears that the State agrees with some of our recommendations. For example, in appendix A, the State agreed to investigate four cases in which we determined that local officials concluded that the properties were not substantially damaged and to transfer the files to recapture if warranted. Further, in appendixes B and C, the State agreed that two properties purchased were ineligible and that it had transferred the files to recapture, and it agreed to investigate another property.

Comment 22 The State maintained that the Disaster Recovery funds used to acquire and dispose of the properties identified were program administration costs and were, therefore, eligible Federal expenditures, regardless of the ultimate status of individual properties. We disagree and believe the State is misinterpreting the requirements related to program administration costs. As discussed in HUD's Office of Community Planning and Development (CPD) Notice CPD 13-07, dated August 23, 2013, examples of program administration costs include salaries of executive officers and staff members with general program oversight responsibilities and staff time spent for development of the action plan as well as policies and procedures. In contrast, any costs incurred for implementing and carrying out eligible activities, such as the acquisition component of the State's program, would be charged to the activity and subject to applicable eligibility requirements.

Comment 23 The State maintained that our draft report was based primarily on the State's alleged noncompliance with its own policies, which it can amend at any time and which we have consistently misinterpreted. Further, it stated that HUD has assurance that costs were supported, used for eligible expenses, and put to their intended use because they were disbursed by a program that was in full compliance with all applicable laws and regulations and had robust internal controls. We disagree. As discussed in comment 1, Public Law 113-2 required the State to administer funds in accordance with all applicable laws and regulations, and the March 5, 2013, Federal Register notice required it to certify that activities would be administered consistent with its HUD-approved action

plans and have procedures to verify the accuracy of information provided by applicants. We measured the sampled cases against the eligibility criteria established by the State in the HUD-approved action plan it developed. As discussed in the finding, the State did not ensure that properties purchased under the acquisition component of its program met the eligibility criteria outlined in its HUD-approved action plan. The deficiencies identified occurred because the State did not have adequate controls and relied on applicants and other entities to ensure compliance with requirements. While the State can propose amendments to its HUD-approved action plan at any time, amendments to its eligibility criteria would be considered a substantial amendment. According to the March 5, 2013, Federal Register notice, substantial amendments require the State to allow opportunities for (1) citizen comments and (2) citizens' access to information on the use of grant funds. Further, the November 18, 2013, Federal Register notice required the State to provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds. In this case, because the acquisition component of its program is generally complete, proposing an amendment to the eligibility criteria would not allow it to provide reasonable and timely access to such information to citizens, local governments, and other interested parties.

Comment 24 The State maintained that several applicants provided substantial damage letters from their local governments and noted that no further action was required. However, as discussed in the finding, we noted that substantial damage determinations were not always adequately supported. Further, we found that the State did not have a process to verify that all files contained the required letter and that the letters submitted by applicants (1) matched the letters or determinations on file with local officials and (2) represented the most recent substantial damage determination made by local officials. As a result, we recommend that HUD require the State to provide additional documentation to show that the properties were substantially damaged when acquired.

Comment 25 The State maintained that the applicants in three cases provided substantial damage letters from the local governments and that it was unaware of whether the applicant received an additional substantial damage letter. The State then acknowledged that it appeared that the applicants may have appealed the substantial determination letters, stated that it was investigating the files further, and committed to transferring the files to recapture if warranted. We first discussed one of the cases with the State in January 2018 and discussed the other two cases with the State in June 2018, but we are not aware of the State's taking any action to investigate the three cases to date. However, when the State reviews the information and documentation, it will find that each of the three applicants appealed the initial letters and received a second substantial damage determination, indicating that the properties were not substantially damaged. We agree with the State's plan to transfer the files to recapture. However, regardless

of whether the State is able to recapture the funds from the applicant, it should reimburse HUD from non-Federal funds the nearly $1.2 million[16] paid to purchase the ineligible properties. Further, it should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the properties.

Comment 26 The State maintained that the applicant was admitted to the program based on a FEMA Disaster Credit Management System loss verification report, but stated that it was investigating the file and would transfer it to recapture if warranted. Based on the loss verification report contained in the State's file, we determined that the report was from the Small Business Administration and not from FEMA. Further, the use of the loss verification report did not align with the State's policy requirement for applicants to provide letters from local floodplain administrators or similar officials showing that properties were substantially damaged. When we contacted local officials and reviewed the documentation they maintained for this property, we found that it was not substantially damaged. We agree with the State's plan to transfer the files to recapture. However, regardless of whether the State is able to recapture the funds from the applicant, it should reimburse HUD from non-Federal funds the $427,107 paid to purchase the ineligible property. Further, it should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the properties.

Comment 27 The State maintained that the applicant was eligible for the poststorm fair market value received when it purchased the property but that the applicant mistakenly received the resettlement incentive and the file had been transferred to recapture. We agree with the State's plan to recapture. However, regardless of whether the State is able to recapture the funds from the applicant, it should reimburse HUD from non-Federal funds the $183,500 in incentive paid. Further, as discussed on pages 8 to 9 of the report and in comment 19, the State's purchase of a property that did not comply with flood insurance requirements may have been improper.

Comment 28 The State maintained that after consulting with FEMA, it determined that the property was listed as FEMA-noncompliant in error and that the applicant was, therefore, eligible to receive the poststorm fair market value of the property plus a resettlement incentive. However, after reviewing the documentation maintained by the State, we determined that FEMA had an ongoing investigation regarding the homeowner's compliance with requirements. If FEMA determines that the property was noncompliant, the State should reimburse HUD from non-Federal funds for the incentive paid. Further, if the property is found to be noncompliant, the State's purchase of the property may have been improper.

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[16] The nearly $1.2 million includes $354,945 for application number EF-188-AQ, $394,280 for application number EF-505-AQ, and $421,538 for applicant number EF-709-AQ.

Comment 29 The State agreed that the property was not in the 100-year flood zone, the 500-year flood zone, or a Coastal Erosion Hazard Area. Further, it stated that the file had been transferred to recapture. We agree with the State's plan to recapture the funds. However, regardless of whether the State is able to recapture the funds from the applicant, it should reimburse HUD from non-Federal funds the $536,283 paid to purchase the ineligible property. Further, the State should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the property.

Comment 30 The State explained that its vendor mistakenly identified the property as being within the 100-year flood zone at the time of the purchase. It stated that the property was located within a floodway and was eligible under the buyout component of its program instead of the acquisition component. However, the State indicated that it would investigate the file further and transfer the case to recapture if warranted. We agree that the property would have been eligible under the buyout component of its program because it was located in a floodway. However, because the State has already sold the property for redevelopment, the property does not fall under the buyout component[17] of its program. Therefore, regardless of whether the State is able to recapture the funds from the applicant, it should reimburse HUD from non-Federal funds the $247,288 paid to purchase the ineligible property. Further, it should identify and reimburse from non-Federal funds any additional Disaster Recovery funds used to acquire and dispose of the property.

[17] While properties purchased under the acquisition component were eligible for redevelopment in a resilient manner to protect future occupants, properties purchased under the buyout component were to be transformed into wetlands, open space, or stormwater management systems to create a natural coastal buffer to safeguard against future storms and improve the resilience of the larger community.

# Appendix C

## Summary of Deficiencies

| # | Application no. | Property not substantially damaged | Substantial damage determination not supported | Property did not meet flood hazard requirements | Homeowner failed to maintain flood insurance | Amount ineligible | Amount unsupported |
|---|---|---|---|---|---|---|---|
| 1 | EF-036-AQ | X | | | | $428,063 | |
| 2 | EF-111-AQ | | X | | X[18] | 183,500 | $202,523 |
| 3 | EF-188-AQ | X | | | | 354,945 | |
| 4 | EF-408-AQ | | X | | X | | 358,963 |
| 5 | EF-413-AQ | | X | | | | 449,198 |
| 6 | EF-484-AQ | | X | | | | 739,358 |
| 7 | EF-505-AQ | X | | | | 394,280 | |
| 8 | EF-506-AQ | | X | | | | 305,242 |
| 9 | EF-516-AQ | X | | | | 427,107 | |
| 10 | EF-589-AQ | | X | | | | 372,449 |
| 11 | EF-709-AQ | X | | | | 421,538 | |
| 12 | EF-791-AQ | | X | | | | 735,828 |
| 13 | EF-810-AQ | | X | | X | | 253,903 |
| 14 | EF-820-AQ | | X | | | | 671,556 |
| 15 | EF-832-AQ | | X | | X[19] | | 54,909 |
| 16 | EF-853-AQ | | X | | X | | 466,585 |
| 17 | EF-858-AQ | | X | | | | 517,334 |
| 18 | EF-899-AQ | | X | | | | 193,915 |
| 19 | ER-016-AQ | | X | | | | 173,956 |
| 20 | ER-031-AQ | | X | X[20] | | | 435,069 |
| 21 | ER-207-AQ | | X | X | | 536,283 | |
| 22 | ES-011-AQ | | X | X | | 247,288 | |
| 23 | QN-004557-AFR | X | | | | 569,194 | |
| **Totals** | | **6** | **17** | **3** | **5** | **3,562,198** | **5,930,788** |

[18] The State improperly paid incentives on this property. The incentive amount is classified as ineligible, and the rest of the settlement is classified as unsupported.

[19] The State paid $29,700 in incentives for this property, which would be ineligible if the property is FEMA-noncompliant. However, due to an ongoing FEMA investigation related to whether the homeowner was required to maintain flood insurance, we classified this amount as unsupported with the rest of the settlement costs for the property.

[20] The State stated that this property was eligible because it had provided a hardship to the homeowner. However, the State did not provide documentation to support the hardship or to show that the homeowner applied for it.