City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER

MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of Housing Preservation and Development's Controls over the Awarding of Housing Incentive Projects

MJ17-065A

June 27, 2017

http://comptroller.nyc.gov

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the New York City Department of Housing Preservation and Development (HPD) to determine whether it has adequate controls to ensure that its housing incentive projects are awarded to responsible property owners and developers. We perform audits such as this to increase accountability and to ensure that applicable rules, policies and procedures are followed.

The audit found that although HPD appears to have established adequate controls to ensure that affordable housing incentives are awarded to property owners and developers (referred to by HPD as sponsors) that meet program requirements, the agency's practices and procedures limit its ability to assess potential sponsors' prior performance. The audit also found that none of the reviewed sampled files contained evidence of assessments having been conducted of the applicants' performance as affordable housing sponsors, except where the applicants were involved with one of two federally-funded programs. In addition, the audit found that there was no evidence that HPD systematically reviewed the proposed sponsors' performance records to determine the quality of their performance in any of the numerous other affordable housing programs it administers. Further, the audit found that such a review would be extremely difficult to perform because HPD does not centrally track compliance information for affordable housing sponsors in any programs other than for the two federally funded programs.

The audit made four recommendations, including that HPD should review and assess applicants' compliance with affordable housing program requirements on prior HPD projects before permitting applicants to participate in new projects. Further, the audit recommended that HPD should monitor affordable housing projects' performance in meeting program goals and maintain a centralized database documenting its assessment results.

The results of the audit have been discussed with HPD officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

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EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (the City) Department of Housing Preservation and Development (HPD) has adequate controls to ensure that its housing incentive projects are awarded to responsible property owners and developers that: (1) meet all program requirements; (2) have the requisite ability to create or preserve the required affordable housing units, in accordance with program guidelines; and (3) have the business integrity and reliability, including a satisfactory record of performance, that will assure good faith performance.

The mission of HPD is to promote the construction and preservation of affordable housing for low- and moderate-income families throughout the City. Housing is considered affordable when a household spends no more than 30 percent of its income on rent. The federal government calculates income limits for affordable housing programs using the Area Median Income (AMI), which is defined each year by the U.S. Department of Housing and Urban Development (HUD).

HPD's Office of Development is charged with implementing the City's *Housing New York* (HNY) plan to create and preserve 200,000 affordable housing units by the end of Fiscal Year (FY) 2024. The Office of Development was responsible for overseeing 30 different affordable housing programs during our audit scope period, including eight real property tax benefit programs authorized by State and City laws to facilitate private and publicly-subsidized rehabilitation and new construction throughout the City.

To become an affordable housing sponsor (i.e., developer of affordable housing units under one of the HPD programs), interested applicants are generally required to submit a proposal that meets minimum program standards unique to each program, as specified in a program term sheet. HPD program personnel assess the proposals, and if a proposal is accepted, aid the applicant in obtaining the support specified in the term sheets that will enable the applicant to become an affordable housing sponsor. As part of the application and approval process, applicants must also submit to HPD's Sponsor Review Unit (SRU) completed and satisfactory disclosure documents for the individuals and entities involved in the project.[1] SRU staff conduct a series of reviews and background checks on the sponsors. Also, during the sponsor vetting process, HPD program staff analyze the physical condition and financial health of applicants' other properties and work with those applicants prior to loan closing to ensure that corrective actions have been taken to address any outstanding violations and/or arrears attached to those properties.

According to HPD's Affordable Housing Production data, during FYs 2015 and 2016, 624 HPD-related projects comprising 30,083 affordable units were either preserved or created.

Audit Findings and Conclusion

Our audit found that although HPD appears to have established adequate controls to ensure that affordable housing incentives are awarded to property owners and developers that meet program requirements and have the capacity to perform, the agency's practices and procedures limit its ability to assess the quality of potential sponsors' prior performance with affordable housing programs in which they previously participated.

We reviewed a sample of 12 program files for affordable housing incentive projects and found that the property owners and developers generally met program requirements, as outlined in each program's term sheet, and that sufficient and adequate documentation was on file to support HPD's determination. We also found general compliance with HPD's sponsor review process, although HPD's Assistant Commissioners did not always sign off on the sponsor review reports prior to closing, as required by HPD's procedures.

However, we also found that none of the 12 sampled files contained evidence of assessments being conducted of the applicants' performance as affordable housing sponsors except where the applicants were previously involved with one of two federally-funded programs—(1) federal Low Income Housing Tax Credits (LIHTC), and (2) the federal HOME funds.[2] HPD had no evidence in the 12 sampled files documenting that it systematically reviewed the proposed sponsors' performance records to determine the quality of their performance in any of the many other affordable housing programs HPD administers. Moreover, we note that HPD does not centrally track compliance information for affordable housing sponsors in any programs other than where LIHTC or HOME funds are involved. Thus, the ability of analysts to seek such information is severely limited.

Audit Recommendations

Based on the audit, we make the following four recommendations:

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[1] Disclosure documents include: (1) disclosure statements from individuals and entities that have not worked with HPD on a development project in the preceding 36 months; and (2) an Affidavit of No Change issued by individuals or entities that have worked with HPD on a development project in the preceding 3 years.

[2] The LIHTC program provides tax credits intended to reduce affordable housing investors' corporate federal income tax bill. HPD is legally required to monitor compliance to ensure continued affordability and habitability, and to notify the IRS of non-compliance with LIHTC provisions. U.S. Treasury Regulation §1.42-5(c)(2)(ii)(A) and (B) stipulates the conditions with which building owners receiving LIHTC must comply.

HOME funds are federal block grant funds designed exclusively to create affordable housing for low-income households in the nation, and are provided through the HOME Investment Partnerships (HOME) program administered by HUD. HPD utilizes the federal HOME funds to finance the construction of new and the rehabilitation of existing housing, and requires owners to meet certain federal requirements.

The Comptroller performed an audit of these two federal programs that was released on June 29, 2016, *Audit Report on the Department of Housing Preservation and Development's Monitoring of Building Owners' Compliance with Affordable Housing Provisions and Requirements* (Audit #MG15-118A).

- HPD should reinforce its requirement that the Assistant Commissioners sign the sponsor review reports and maintain the signed reports on file as a measure to ensure and provide assurance that they reviewed the report and approve the project to proceed to closing.
- HPD should centrally track the signed sponsor review reports to ensure that projects are not allowed to proceed or to close without the responsible Assistant Commissioner's signature on the sponsor review reports.
- HPD project managers should review and assess applicants' compliance with affordable housing program requirements on all prior HPD projects to ensure that they have complied with the requirements specified in previous regulatory agreements before being permitted to participate in new projects. Such inquiries and reviews should be formally documented in the project files prior to project closing.
- HPD should continually monitor and assess all affordable housing projects' performance in meeting program goals and complying with program requirements and maintain a centralized database documenting its assessment results.

Agency Response

In its response, HPD expressly agreed with the recommendation that it reinforce the existing requirement of Assistant Commissioner sign-off on sponsor review reports and appears to agree in principal with the recommendation that it develop a centralized database that documents assessment results by stating that it is "investing in a suite of technologies that will . . . centralize compliance reporting." However, it disagreed with the remaining two recommendations, claiming that the agency was already in compliance. HPD also disagreed with the audit's finding that the agency's practices and procedures limit its ability to assess the quality of potential sponsors' prior performance with affordable housing programs in which they previously participated. After carefully reviewing HPD's arguments, we find no basis to alter the audit's findings and conclusions.

AUDIT REPORT

Background

The mission of HPD is to promote the construction and preservation of affordable housing for low- and moderate-income families throughout the City. Housing is considered affordable when a household spends no more than 30 percent of its income on rent. The federal government calculates income limits for affordable housing programs using the Area Median Income (AMI), which is defined each year by HUD. The 2016 AMI for the New York City region was $81,600 for a three-person family. For 2017, the AMI increased to $85,900. (See Appendix I for a more complete breakdown of the AMI for this region.)

HPD's Office of Development is charged with implementing the City's HNY plan, a comprehensive plan to create and preserve 200,000 affordable housing units by the end of FY 2024. The Office of Development collaborates with other City and State governmental entities including the New York City Housing Development Corporation (HDC) in the development and preservation of affordable housing throughout the City.[3] HPD's HNY plan encompasses all types of housing, including single- and multi-family homes, senior housing, and supportive housing for formerly homeless and disabled individuals. The plan lays out targets for new construction, housing preservation and the incomes of households that will be served. To accomplish those desired results, HPD works with affordable housing developers who use City, New York State (State) and federal subsidies to help finance the creation of affordable units. In addition, developers can apply for the City's low-interest loans, federally-authorized tax credits, and other incentives in exchange for building affordable housing, referred to in this report as "housing incentive programs."

The Office of Development was responsible for overseeing 30 affordable housing programs during our audit scope period, including eight real property tax benefit programs authorized by State and City laws to facilitate private and publicly-subsidized rehabilitation and new construction throughout the City. (See Appendix II for a complete list and brief description of the 30 affordable housing programs that were in effect during FYs 2015 and/or 2016.) Each program provides entities interested in developing affordable housing with program term sheets that, among other things, provide a program description and set forth definitions of eligible sponsors, loan terms, maximum initial rents, design and construction requirements, and construction loan closing requirements.

Interested applicants seeking to be program sponsors are generally required to submit a proposal, which includes the project location and description, development and operating budgets, and the proposed individuals and entities that will constitute the development team (e.g., the borrower, contractor, architect, and management firm). In addition, the proposal must meet certain minimum program standards unique to each program, as specified on the applicable program term sheet. For example, according to the term sheet for HPD's Mixed Income Program, which funds new construction of mixed income multi-family rental projects, the development team must have "demonstrated a track record of successfully developing, marketing, and managing the type of facility proposed or must form a joint venture with an entity with such expertise." In addition, applicants must demonstrate that they have sufficient financial stability and liquidity to construct and operate the proposed project. Further, projects are required to meet applicable architectural,

[3] HDC is a public benefit corporation that was created by the New York State Legislature to function as means of supplying financing for affordable housing that would be independent from the City's capital budget. HDC is primarily responsible for sponsor reviews on projects it funds, and it provides HPD with a letter documenting the results of its reviews. For Fiscal Years 2015 and 2016, approximately 50 (8 percent) of HPD's 624 projects involved HDC funding. For our sample of 12 projects, 3 (25 percent) of the files we reviewed involved HDC participation for which HDC was responsible for performing the sponsor review.

engineering, environmental and construction design guidelines. HPD program personnel assess the proposals, and if a proposal is accepted, aid the applicant in obtaining the benefits specified in the term sheets.

As part of the application and approval process, applicants must also submit to SRU completed and satisfactory disclosure documents for all applicable sponsors. According to HPD's website, its sponsor review process "is intended to verify the integrity and competence of individuals and entities seeking to do business with HPD."

In connection with the sponsor review process, SRU staff conduct a series of reviews and background checks on the sponsors, some of which are performed in consultation with the City's Department of Investigation. The reviews include checks of various databases, including:

(1) the City's Vendor Information Exchange System (VENDEX), a computerized database of information concerning vendors who do business with the City, maintained by the Mayor's Office of Contract Services to help City agencies make decisions regarding vendor responsibility;

(2) LEXIS/NEXIS, an electronic database that provides legal and public-records-related information;

(3) the State Department of Labor's list of employers that are debarred and ineligible to bid on or be awarded a State public work contract; and

(4) other City agency websites, such as those maintained by the City's Department of Finance (DOF) and the Department of Environmental Protection (DEP), to determine whether any property taxes or water and sewer bills, respectively, are in arrears.

Also, during the sponsor vetting process, HPD program staff analyze the physical condition and financial health of applicants' other properties and work with those applicants prior to loan closing to ensure that corrective actions have been taken to address any outstanding violations and/or arrears attached to those properties. In part, program staff review HPD's Building and Land Information System (BLIS), which among other things would show whether any non-compliance issues involving the proposed sponsor had been logged in the agency's Tax Credit and HOME Non-Compliance database relating to HPD projects that received federal tax credits or HOME funds. If no outstanding issues are present, HPD and the applicant proceed to loan closing which will require all parties to sign a regulatory agreement, among other things. The regulatory agreement spells out the terms of the affordable housing aspects of the project.

According to HPD's Affordable Housing Production data, during FYs 2015 and 2016, 624 HPD-related projects comprising 30,083 affordable units were either preserved or created.

Objective

The objective of this audit was to determine whether HPD has adequate controls to ensure that its housing incentive projects are awarded to responsible property owners and developers that:

- meet all program requirements;
- have the requisite ability to create or preserve the required affordable housing units, as required by program guidelines; and
- have the business integrity and reliability, including a satisfactory record of performance that will assure good faith performance.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope period covered FYs 2015 and 2016 (July 1, 2014, through June 30, 2016). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results with HPD

The matters covered in this report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD and discussed at an exit conference held on May 24, 2017. On June 7, 2017, we submitted a draft report to HPD with a request for comments. We received a written response from HPD on June 21, 2017. In its response, HPD expressly agreed with the recommendation that it reinforce its existing requirement of Assistant Commissioner sign-off on sponsor review reports. It further appears to agree in principal with the recommendation that it develop a centralized database that documents assessment results, stating that it is “investing in a suite of technologies that will . . . centralize compliance reporting.” However, HPD appears to disagree with our recommendations that it centrally track the signed sponsor review reports and that project managers should review and assess applicants’ compliance with affordable housing requirements on all prior projects, claiming that these practices are already in place.

HPD also disagreed with the audit’s finding that the agency’s practices and procedures limit its ability to assess the quality of potential sponsors’ prior performance with affordable housing programs in which they previously participated, stating that “the audit did not find that any projects or incentives were awarded to developers with a track record of non-compliance, which reflects the effectiveness of our current practices and procedures.” However, in making this statement, HPD ignores the fact that it failed to provide the auditors with any evidence that it tracks and monitors the performance of all of its affordable housing projects on an aggregate level. Absent such a system, neither we nor HPD would have the necessary information to identify developers (property owners) who have demonstrated a pattern of non-compliant behavior. HPD’s claimed “system . . . to identify issues through informal meetings and consultation across HPD divisions” is no substitute for a centralized monitoring and reporting system, particularly in an agency with upwards of 30 active different housing incentive programs at any given time.

After carefully reviewing HPD’s arguments, we find no basis to alter the audit’s findings and conclusions.

The full text of HPD’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

HPD appears to have established adequate controls to ensure that affordable housing incentives are awarded to property owners and developers that meet program requirements and have the capacity to perform. However, the agency's practices and procedures limit its ability to assess potential sponsors' prior performance in meeting the requirements of affordable housing programs in which they previously participated.

We reviewed a sample of 12 program files for affordable housing incentive projects and found that the property owners and developers generally met program requirements, as outlined in each program's term sheet, and that sufficient and adequate documentation was on file to support HPD's determination. We also found general compliance with HPD's sponsor review process, although HPD's Assistant Commissioners did not always sign-off on the sponsor review reports prior to closing, as required by HPD's procedures.

However, we also found that none of the 12 sampled files contained evidence of any effort to identify all previous instances of the proposed sponsors' participation in HPD's affordable housing projects. Our observations during walk-throughs of HPD's procedures with HPD staff and our reviews of HPD project files established that, generally, HPD's documented reviews of proposed sponsors' past performance in the agency's affordable housing projects requirements were limited to checking its Tax Credit and HOME Non-Compliance database relating to HPD projects that received LIHTC credits or HOME funds and following-up on any issues found therein. HPD had no documentary evidence that it systematically reviewed the proposed sponsors' broader histories of compliance in the other affordable housing programs it administers. In fact, such a review would be extremely difficult to perform because HPD does not centrally track property owners' compliance with regulatory agreements unless federal tax credits or HOME funds are involved.

These matters are discussed in greater detail below.

Assistant Commissioner's Approval on Sponsor Review Report Not Consistently Obtained

Based on our review of a sample of projects, we found that SRU performed the required sponsor reviews and provided its findings to the groups responsible for each project. However, we also found that the Assistant Commissioners responsible for the projects did not consistently sign off on those reviews prior to the projects' closings. HPD was unable to provide evidence that the Assistant Commissioners signed, or even received, the sponsor review reports in five (56 percent) of the nine sampled project files for which an HPD-performed sponsor review was required.[4]

HPD's sponsor review process is a key component of its overall determination of the qualifications, integrity and competence of individuals and entities that seek to do business with HPD. As part of that review process, project managers are required to search HPD's online database to identify all properties owned and/or managed by potential sponsors and to determine whether any outstanding "C" violations are attached to those properties. "C" violations are the most hazardous housing maintenance code violations and include lead-based paint, lack of window guards, and lack of heat or hot water. Accordingly, HPD requires property owners to

[4] HPD does not generally perform the sponsor review process when HDC funds are involved in a project. Instead, HDC in conjunction with the Department of Investigation conducts its own reviews. For 3 of the 12 sampled projects, HDC funds were involved and did not have an HPD sponsor review.

resolve all open “C” violations prior to closing on a new project. Project managers are also required to check other agencies’ databases, including those maintained by DOF and DEP, to identify any tax arrears, outstanding water and sewer charges, or other City charges. Those, too, are supposed to be resolved prior to the sponsor’s closing on a new project with HPD. Our review of the files for the 12 sampled projects revealed that project managers conducted the required reviews, and that the property owners awarded sponsorship at the time of closing had either addressed or were in the process of addressing any outstanding “C” violations on their buildings to HPD’s satisfaction, and either owed no money to the City or were current on established payment plans.

Once SRU personnel complete the background checks, the SRU Director prepares a sponsor review report that summarizes the results and is submitted it to the applicable program director. The Assistant Commissioner responsible for overseeing that program director is required to approve the sponsor review report to verify that the Assistant Commissioner has received, reviewed, and evaluated the findings. Through that process of review and evaluation, the results of the sponsor reviews are supposed to be considered in connection with HPD’s determination as to whether each individual or entity involved in a project as a sponsor has the requisite capacity and integrity to do business with the City.

We found that the missing Assistant Commissioner sign-offs were a consequence of HPD’s failure to establish controls that would ensure that the responsible Assistant Commissioners had received and reviewed the sponsor review reports prior to the agency’s closing on projects. The absence of such controls results in the risk that the Assistant Commissioner responsible for approving the project did not receive the sponsor review reports, was not made aware of any issues that were identified therein, and therefore did not evaluate the proposed sponsor’s fitness in light of such information.

Disregard of the Assistant Commissioner-signature requirement increases the risk that projects could proceed and be allowed to close with unresolved and potentially disqualifying issues. In addition, as discussed below, although HPD checks the applicants’ history for any documented instances of non-compliance with affordable housing requirements in two specific programs, the agency did not have documentary evidence that it comprehensively assesses their past performance across a broader range of HPD’s other affordable housing programs.

Recommendations

1. HPD should reinforce its requirement that the Assistant Commissioners sign the sponsor review reports and maintain the signed reports on file as a measure to ensure and provide assurance that they reviewed the report and approve the project to proceed to closing.

   HPD Response: “We . . . concur with the Audit Report’s more technical recommendations regarding sign-off on the Sponsor Review process, and HPD has already reinforced its existing procedures to ensure sign-off procedures are followed going forward. . . . Importantly, [Assistant Commissioner] approval was actually provided in all cases, despite imperfect record keeping; we cannot and do not close a project without [Assistant Commissioner] approval and comprehensive credit review with participation from other HPD Divisions and our partners.”

   Auditor Comment: While HPD claims that no project will close without the Assistant Commissioner approval, that overall approval is not an indication, in and of itself, that the Assistant Commissioner has reviewed and considered the sponsor review reports when providing the approval decision. The signature HPD specifically requires is intended to be an attestation that the Assistant Commissioner has reviewed and evaluated the findings (if any) noted on the sponsor review reports. Notwithstanding, we are pleased that HPD plans to address this issue by intending to ensure that Assistant Commissioner sign-offs are obtained prior to closing.

2. HPD should centrally track the signed sponsor review reports to ensure that projects are not allowed to proceed or to close without obtaining the Assistant Commissioner's signature on the sponsor review reports.

   HPD Response: "The recommended procedure is already a part of our process. The Deputy Commissioner of Development's office reinforced the existing procedures relating to the requirement for [Assistant Commissioner] signatures on sponsor review reports. As noted above, we cannot and do not close a project without [Assistant Commissioner] approval."

   Auditor Comment: Although HPD contends that it already centrally tracks the signed sponsor review reports as part of its process, it provided us with no evidence of such tracking. Consequently, HPD did not prove that this procedure has been put into practice and that the sponsor review reports are being reviewed by the applicable Assistant Commissioner. We therefore urge HPD to ensure that this recommendation is implemented.

HPD Does Not Comprehensively Review Proposed Sponsors' Past Performance in Meeting Affordable Housing Requirements

According to HPD officials, the agency's program staff review and consider the performance of potential sponsors in prior affordable housing projects and their compliance with affordable housing requirements in connection with those projects. However, HPD did not produce sufficient evidence to establish that such reviews are conducted of all the affordable housing projects that sponsor applicants may have participated in. Rather, the evidence provided by HPD demonstrated that its reviews would disclose whether entries regarding applicants' properties had been made in an HPD database that tracks particular instances of non-compliance in connection with only two federal housing incentive programs, specifically projects that received: (1) federal tax credits; and/or (2) loans through a federal program known as HOME. Thus, unless an applicant had been associated with a documented instance of non-compliance in one of those two programs, the current review process would yield no information regarding the applicant's prior performance in HPD projects, even if the applicant *had* participated in other HPD affordable housing programs. Without reviewing applicants' past performance more comprehensively, HPD has limited ability to determine whether they honored their previous affordable housing agreements before it decides whether the new projects should proceed to closing, and to determine whether additional monitoring is necessary to assess applicants' compliance on the new project. HPD's current sponsor-review process is described more particularly below.

As noted, in reviewing proposals by prospective sponsors, HPD assesses whether they have the requisite business integrity and reliability by, among other things, determining whether properties owned and/or managed by the prospective sponsors have any serious violations outstanding or money due the City. In addition, according to the SRU procedures, for potential sponsors of affordable housing projects that had received federal tax credits and federal HOME funds in connection with earlier projects, HPD requires project managers to check each block and lot against HPD's Building Land and Information System (BLIS), which in part captures information from HPD's Tax Credit and HOME Non-Compliance database provided by HPD's Tax Credit and

Home Compliance Unit (TCHCU).[5] The procedures further state that if non-compliance issues are identified, the project manager must (1) direct the owner to cure the non-compliance; (2) obtain confirmation from the TCHCU that the non-compliance has been cured; and (3) inform SRU that the applicant is in full compliance before proceeding with the closing.

However, HPD does not formally assess each prospective sponsor's compliance with regulatory agreements for projects that did not involve federal tax credits or HOME funds, such as whether the correct number of affordable housing units are being offered and whether the tenants are being charged the correct rent amount based on the AMI.[6] HPD officials stated that the agency's current processes—including the sponsor review process, review of HPD's BLIS and project discussion meetings with the Division of Asset Management—are sufficient to identify any past performance issues. However, our review of the sampled project files revealed that HPD had no evidence that project managers attempted to ascertain whether the potential sponsors had previously participated in any affordable housing projects and, if so, review their performance and records of compliance on such projects.

Because HPD does not review a potential sponsor's past performance in complying with affordable housing requirements, except for specific projects that involved federal tax credits or HOME funds, the agency cannot demonstrate that all of the property owners who are approved for housing incentive programs have favorable overall performance records. A significant number of affordable housing projects administered by HPD do not involve federal tax credits or HOME funds. As reported by HPD, 292 (47 percent) of the 624 affordable housing projects that closed in Fiscal Years 2015 and 2016 did not involve federal tax credits or HOME funds. Those 292 projects are estimated to create or preserve 13,984 (46 percent) of the total 30,083 affordable housing units reported to be created or preserved by the 624 affordable housing projects.

A formal, comprehensive review of sponsors' performance on past affordable housing projects would provide reasonable assurance that future projects are awarded to responsible property owners and sponsors that have histories of satisfactory performance in previous affordable housing projects.

HPD Does Not Centrally Track Property Owners' Compliance with Regulatory Agreements

The development of affordable housing is a key mission of HPD which is accomplished through the implementation of various projects. Comptroller's Directive #1 states that senior management should consistently track major agency business achievement indicators and compare them to agency plans, goals and objectives.

However, HPD has no evidence that the performance of those projects is tracked and monitored on an aggregate level. According to officials, the Division of Asset Management actively monitors the performance of City affordable housing projects and utilizes various resources to monitor the compliance of property owners and developers, but there is no structured mechanism in place to track the results of that monitoring on an aggregate level. Without central tracking, however, it is

[5] HPD's BLIS is a property lookup tool that allows HPD to monitor buildings' financial and physical performance using administrative data produced by the City. BLIS contains real-time performance information about municipal tax from DOF, water arrears from DEP, Housing Maintenance Code violations and HPD's Emergency Repairs. In addition, for projects under its purview, TCHCU maintains the Tax Credit and HOME Non-Compliance database, a compliance data system to record activities as they relate to projects receiving federal tax credits and HOME funds.

[6] One significant factor preventing such a review is that HPD does not centrally track the performance of property owners in complying with the terms of their regulatory agreements.

more difficult for HPD to identify and monitor those property owners who may have demonstrated a pattern of non-compliant behavior.

The absence of a mechanism to monitor performance on an aggregate level poses the risk that property owners with a history of non-compliance could be awarded future affordable housing projects, and tenants could be at increased risk for being overcharged or improperly denied housing opportunities for which they are eligible.

Recommendations

3. HPD project managers should review and assess applicants' compliance with affordable housing requirements on all prior projects to ensure that they have complied with the requirements specified in previous regulatory agreements before being permitted to participate in new projects. Such inquiries and reviews should be formally documented in the project files prior to project closing.

   HPD Response: "HPD's project managers review and assess applicants' past performance through routine and systematic communication between divisions to identify developers with poor performance. HPD's investment in new technology systems will allow for more detailed and formal information sharing across multiple divisions at HPD."

   Auditor Comment: Despite numerous requests throughout the audit, HPD provided us with *no* evidence of any reviews or inter-division communications, systematic or otherwise, regarding sampled sponsors' past performance on prior projects. In addition, as previously mentioned, there was no evidence in the sampled files to demonstrate that project managers attempted to determine whether the applicants had previously participated in any affordable housing projects. Formally documenting such reviews and communications would enable better oversight by providing reasonable assurance that a review and assessment of sponsors' performance on past projects was performed prior to awarding sponsors with new housing projects. Consequently, we urge HPD to fully implement our recommendation.

4. HPD should continually monitor and assess all affordable housing projects' performance in meeting program goals and complying with program requirements and maintain a centralized database documenting its assessment results.

   HPD Response: "HPD is investing in a suite of technologies that will significantly enhance our asset management capabilities and centralize compliance reporting. . . . HPD will integrate this new compliance information obtained through these systems into our developer review processes prior to and after closings, dramatically enhancing our capacity to centrally monitor affordable housing projects."

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope period for this audit covered Fiscal Years 2015 and 2016 (July 1, 2014, through June 30, 2016).

To obtain a general understanding of the policies, procedures and regulations governing HPD's awarding of affordable housing incentive projects to responsible owners and developers and the applicable requirements for its affordable housing programs, we reviewed and used as criteria information obtained from HPD's website detailing its various affordable housing programs and program term sheets.

To obtain an initial understanding of HPD's organizational structure, as it relates to the affordable housing programs, we reviewed HPD's organization charts to identify the reporting structures for the various affordable housing programs, and each unit's description, as provided by HPD officials.

To obtain an understanding of the various roles and responsibilities of HPD personnel regarding the awarding of affordable housing incentives, we conducted walkthroughs and interviewed the following HPD officials:

- Deputy Commissioner of the Office of Development;
- Chief of Staff of the Office of Development;
- Associate Commissioner and the Assistant Commissioner of the Housing Incentives Unit;
- Assistant Commissioner of Performance Management and Analytics (PMA);
- Executive Director of the Tax Credit Unit; and
- Director of the Tax Incentive Programs.

We also interviewed the Assistant Commissioner of the Division of Asset Management pertaining to the unit's monitoring of the financial health of affordable housing projects, and the process of obtaining and reviewing annual owner certification reports. In addition, we met with the Director of the Tax Credit and HOME Compliance Unit, within the Division of Asset Management, to discuss the unit's monitoring of projects that received Low Income Housing Tax Credits and federal HOME funding. Further, we met with the Director of the Sponsor Review Unit to obtain an overview of the agency's vetting process of the property owners, developers and other key parties affiliated with the proposed project. We obtained and used as criteria Sponsor Review's written policies and procedures over HPD's sponsor review process and agency requirements relating to such reviews.

We met with HPD's Deputy Director of the PMA Unit pertaining to HPD's Building and Land Information System (BLIS) to obtain an understanding of BLIS and its functions. BLIS logs various building information, including data on multiple dwelling registrations, building violations, emergency repair statuses, arrears in DOF and DEP charges and mortgage payments, as well as results of reviews performed by the Tax Credit and HOME Compliance unit.

To assess the adequacy of HPD's internal controls as it relates to our audit objective, we obtained and analyzed HPD's affordable housing production data containing 624 affordable housing projects that were closed within Fiscal Years 2015 and 2016. We excluded 384 projects that: (1) were for programs that had ended and no new applications were being received by HPD; and (2) had programs targeting individual homeowners seeking improvement loans or mortgage assistance for their homes and did not have major impact on the preservation or creation of affordable housing units. From the remaining 240 projects, we randomly selected a sample of 12 projects to determine whether HPD awarded the affordable housing incentives to responsible parties. Projects from the following affordable housing programs were included in our sample:

- Inclusionary Housing Program;
- Extremely Low and Low Income Affordability;
- Multi-Family Rental-Mix and Match;
- Multifamily Housing Rehabilitation Program;
- Low Income Housing Tax Credit Year 15;
- Affordable Neighborhood Cooperative Program; and
- Supportive Housing-New Construction.

For each sampled project, we met with program staff and requested and reviewed the associated program's project files and determined whether:

- the applicant met all program requirements (key aspects on the project's closing checklist were completed and adequately supported);[7]
- SRU completed the required background checks, when applicable, and the signed Sponsor Review Report (by the appropriate Assistant Commissioner) was found; and
- DOI clearance was obtained.

We requested and received a copy of the SRU database for HNY and New Housing Marketplace Plan projects detailing sponsor review tracking data from January 2009 through December 2016, including the project names, associated programs, projects' addresses and key parties associated with the proposed affordable housing projects.[8] We reviewed the SRU database to identify the key parties of the sampled projects and determined whether any had other affordable housing projects with HPD. If other projects were identified, we determined whether there was evidence in the file that compliance with affordable housing requirements on prior HPD affordable housing projects was considered when awarding the current affordable housing incentives. We also reviewed the files to determine whether there was anything in the file that identified all past projects, and that efforts were made by program personnel to contact other units within HPD to obtain information on those projects' performance, including compliance with affordable housing requirements.

[7]Programs within the Office of Development utilize checklists outlining required procedures and steps prior to closing on loans or entering into regulatory agreements. The required steps outlined include areas such as project plans, underwriting, legal, and sponsor review.

[8]The New Housing Marketplace Plan, the predecessor to HNY, was a multi-billion dollar initiative that was launched in 2003 by Mayor Michael R. Bloomberg to finance 165,000 affordable housing units for half a million New Yorkers by the close of Fiscal Year 2014.

The results of the above test, while not statistically projected to their respective populations, provided a reasonable basis for us to assess the consistency of HPD's controls over its awarding of affordable housing incentives for the building and preservation of affordable housing projects.

APPENDIX I

AMI Breakdown for the New York City Region for Calendar Years 2016 and 2017

Family Size	30 percent of AMI	40 percent of AMI	50 percent of AMI	60 percent of AMI	80 percent of AMI	100 percent of AMI	130 percent of AMI	165 percent of AMI
Calendar Year 2016								
1	$19,050	$25,400	$31,750	$38,100	$50,750	$63,500	$82,550	$104,775
2	$21,800	$29,000	$36,250	$43,500	$58,000	$72,500	$94,250	$119,625
3	$24,500	$32,640	$40,800	$48,960	$62,250	$81,600	$106,080	$134,640
4	$27,200	$36,240	$45,300	$54,360	$72,500	$90,600	$117,780	$149,490
5	$29,400	$36,160	$48,950	$58,740	$78,300	$97,900	$127,270	$161,535
Calendar Year 2017								
1	$22,040	$26,720	$33,400	$40,080	$53,440	$66,800	$86,840	$110,220
2	$22,920	$30,560	$38,200	$45,840	$61,120	$76,400	$99,320	$126,060
3	$25,770	$34,360	$42,950	$51,540	$68,720	$85,900	$111,670	$141,735
4	$28,620	$38,160	$47,700	$57,240	$76,320	$95,400	$124,020	$157,410
5	$30,930	$41,240	$51,550	$61,860	$82,480	$103,100	$134,030	$170,115

APPENDIX II

List and Description of the 30 Affordable Housing Programs by HPD Division That Were in Effect During Fiscal Years 2015 and/or 2016

	Program Name	Earliest Project Start Date (Calendar Year)	Program Description
		HPD Division: New Construction	
1	Extremely Low & Low-Income Affordability (ELLA)	2015	**ELLA** Program funds the new construction of low income multi-family rental projects affordable to households earning a range of incomes from 30 percent to 60 percent of AMI.
2	HomeFirst Down Payment Assistance Program	2004	**HomeFirst** provides qualified homebuyers with up to $25,000 toward the down payment or closing costs on a 1-4 family home, a condominium, or a cooperative in one of the five boroughs of New York City.
3	Mixed-Middle-Income Program (M2)	2015	**(M^2)** Program funds the new construction of multi-family rental housing affordable to low-, moderate- and middle-income families up to 165 percent of AMI.
4	Mixed Income Program: Mix & Match	2015	**Mix & Match** funds the new construction of mixed income multi-family rental projects in which 50 percent of the units are at low income rents affordable to households earning up to 60 percent of AMI and the other 50 percent of units would have rents affordable to moderate and/or middle income households earning up to 130 percent of AMI. Projects may have a range of affordability tiers.
5	Neighborhood Construction Program (NCP)	2016	**NCP** funds the new construction of infill rental housing with up to 30 units affordable to low, moderate and middle income households earning up to 165 percent AMI.
6	New Infill Homeownership Opportunities Program (NIHOP)/Small Homes Large Scale	NIHOP: 2015, Small Homes Large Scale: 2011	**NIHOP** promotes the construction of new homes affordable to New York City's workforce community. NIHOP seeks to promote mixed-income communities with affordable homeownership opportunities for moderate and middle-income households. Preference will be given to projects with one-third of the units affordable to households earning up to 80-90 percent of AMI.
		HPD Division: Preservation Finance	
7	Green Housing Preservation Program (GHPP)	2016	**GHPP** provides low- or no-interest loans to finance energy efficiency and water conservation improvements along with moderate rehabilitation work. The program is designed to assist small- and mid-size building owners improve building conditions and lower operating expenses to ensure the long-term physical and financial health of the building and to preserve safe, affordable housing for low- and moderate-income households.
8	HUD Multifamily Program	2005	The **Multifamily Program** leverages public resources and private sector financing to rehabilitate, recapitalize and preserve privately-owned HUD-assisted rental housing throughout New York City.

	Program Name	Earliest Project Start Date (Calendar Year)	Program Description
9	Low Income Housing Tax Credit Portfolio Preservation (Year 15)	2008	The **Low-Income Housing Tax Credit Portfolio Preservation (Year 15) Program** ensures the future financial and physical viability and preserves the long-term affordability of Low Income Housing Tax Credit ("tax credit") properties that are reaching or have reached the end of the initial tax credit compliance period. The program works with the owner to evaluate the needs of each project and develop a repositioning strategy to address the project's financial and capital needs as part of the Year 15 tax credit investor exit review. Repositioning strategies may include extensions or modifications of existing mortgages, securing additional subsidy, and/or leveraging private debt.
10	Multifamily Housing Rehabilitation Program (HRP; formerly known as Article 8A)	HRP: 2015, Article 8A: late 1970s	**HRP** provides rehabilitation loans to help owners undertake improvements to existing multi-family buildings. Eligible rehabilitation includes the upgrading or replacement of major building systems, including but not limited to roof replacement, building envelope work including Local Law 11 and pointing, and upgrades to the heating, electrical, and/or plumbing systems.
11	Participation Loan Program (PLP)	Late 1970s	**PLP** provides low-interest loans and/or tax exemptions to multifamily building owners to facilitate the moderate or substantial rehabilitation and affordability of housing for low-to-moderate income households.
12	Primary Prevention Programs (PPP)	1997	**PPP** (Lead Hazard Control and Healthy Homes) offers federally-funded grants for reduction of lead-based paint hazards to owners of residential buildings constructed prior to 1960, as well as healthy homes interventions for eligible projects. The grants are provided as forgivable loans, averaging $10,000 per apartment.
HPD Division: Property Disposition & Finance			
13	Affordable Neighborhood Cooperative Program (ANCP)	2015	**ANCP** designates qualified sponsors to rehabilitate distressed City-owned occupied multi-family properties, managed by the Tenant Interim Lease Program, in order to create affordable cooperatives for low- and moderate-income households.
14	Home Improvement Program (HIP)	1982	**HIP** was developed in cooperation with private banks and credit unions, offering loans of up to $30,000 to owner/occupants of one- to four-family homes located throughout the City.
15	Multifamily Preservation Loan Program (MPLP)	2013	**MPLP** designate qualified sponsors to purchase and rehabilitate distressed vacant and occupied multi-family properties in order to improve and preserve housing affordable to low- to moderate-income households.
16	Neighborhood Housing Services Revolving Loan Fund (RLF or NHS)	RLF: 1988, NHS: 1982	The NHS program in partnership with Neighborhood Housing Services of New York City, provides direct, low-interest home improvement loans to owners of one-to four-family homes in the five boroughs.
17	Senior Citizen Home Assistance Program (SCHAP)	1999	In partnership with the Parodneck Foundation, **SCHAP** assists low- and moderate-income seniors in making necessary home repairs. A maximum of $40,000 is available for single-family homes. For homeowners of two- to four-family homes, a maximum of $30,000 per dwelling unit is available.
18	Small Homes Rehab – NYCHA	2015	Vacant family homes made available by NYCHA and HPD to non-profit organizations that purchase, rehabilitate and resell vacant single family homes.

	Program Name	Earliest Project Start Date (Calendar Year)	Program Description
19	Third Party Transfer (TPT)	2011	**TPT** designate qualified sponsors to purchase and rehabilitate distressed vacant and occupied multi-family properties in order to improve and preserve housing affordable to low- to moderate-income households.
	HPD Division: Special Needs Housing		
20	Senior Housing/Senior Affordable Rental Apartments (SARA)	Senior Housing: 2011, SARA: 2015	The **SARA** Program provides gap financing in the form of low interest loans to support the construction and renovation of affordable housing for seniors, 62+ years in age, with low incomes. Projects developed with SARA funding must also set aside 30 percent of units for homeless seniors referred by a City or State agency, typically the New York City Department of Homeless Services.
21	Supportive Housing Loan Program (SHLP)	1988	**SHLP** makes loans to non-profit and for-profit developers of permanent supportive housing with on-site social services. Projects developed with SHLP funding must provide 60 percent of units for homeless, disabled individuals or homeless families with a disabled head-of-household. The remaining 40 percent can be rented to households from the community earning up to 60 percent of AMI.
	HPD Division: Housing Incentives		
22	Inclusionary Housing Program (IHP)	1988	**IHP** promotes economic integration in areas of the City undergoing substantial new residential development by offering an optional floor area bonus in exchange for the creation or preservation of affordable housing, on-site or off-site, principally for low-income households.
23	J-51	1955	As-of-right tax exemption and abatement for residential rehabilitation or conversion to multiple dwellings.
24	421-a	1971	Partial tax exemption for new multiple dwellings.
25	420-c	1992	Complete or partial tax exemption for low-income housing developed with tax credits.
26	UDAAP	N/A	Tax exemption for rehabilitation or new construction of housing in UDAAP areas.
27	Article XI	1967	Tax exemption for HDFC-owned new construction or rehabilitation.
28	420-a	1982	Complete tax exemption for HDFC-owned housing with on-site social services.
29	4 percent Low Income Housing Tax Credits	1986	HPD awards Tax Credits to new construction or substantial rehabilitation projects in New York City where at least 20 percent of apartments are reserved for low-income households. HPD allocates the 4 percent credits throughout the year.
30	9 percent Low Income Housing Tax Credits	1986	HPD awards Tax Credits to new construction or substantial rehabilitation projects in New York City where at least 20 percent of apartments are reserved for low-income households. HPD holds one annual funding round for the 9 percent competitive credits.

City of New York
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MARIA TORRES-SPRINGER
Commissioner

June 21, 2017

Marjorie Landa
Deputy Comptroller for Audit
Office of the New York City Comptroller
One Centre Street, Room 1100
New York, New York 10007

Re: Audit Report on the Department of Housing Preservation and Development's Controls over the Awarding of Housing Incentive Projects, MJ17-065A

Dear Deputy Comptroller Landa,

Thank you for the opportunity to respond to your Audit Report on the Department of Housing Preservation and Development's Controls over the Awarding of Housing Incentive Projects (the "Audit Report"). We appreciate the time and consideration that you gave to auditing our work with this important portfolio.

We are pleased that your report indicates HPD has established adequate controls to ensure that affordable housing incentives are awarded to property owners and developers that meet program requirements and have the capacity to perform. As detailed in the attached Audit Response, we look forward to continuing to improve our ability to monitor these projects as a result of this administration's significant investments in technology.

We disagree with your statement that the Agency's practices and procedures limit its ability to assess potential sponsors' prior performance in meeting the requirements of affordable housing programs in which they previously participated. Notably, the audit revealed no instance in which HPD awarded a project or incentive to a developer with a track record of non-compliance, reflecting the effectiveness of our current practices and procedures.

We do concur with the Audit Report's more technical recommendations regarding sign-off on the Sponsor Review process, and HPD has already reinforced its existing procedures to ensure sign-off procedures are followed going forward.

Once again, thank you for providing the opportunity to comment on the Audit Report. I would be happy to discuss our response with you further.

Sincerely,

Maria Torres-Springer

Agency Response to NYC Comptroller Audit Report on HPD and Development's Controls over the Awarding of Housing Incentive Projects
MJ17-065A
June 21, 2017

Thank you for the opportunity to respond to your Audit Report on the Department of Housing Preservation and Development's Controls over the Awarding of Housing Incentive Projects (the "Audit Report"). HPD has well-established controls in place to ensure that affordable housing projects and incentives are awarded to developers and owners with the capacity to perform and comply with program requirements. We disagree with the Audit Report finding that the agency's ability to assess the quality of potential sponsors is limited. The audit did not find that any projects or incentives were awarded to developers with a track record of non-compliance, which reflects the effectiveness of our current practices and procedures.

Projects are subject to a detailed due diligence process prior to loan closing and a robust compliance program after loan closing. HPD projects fall into three main categories: first, projects whose developers or owners are in some kind of regulatory agreement with the agency on prior projects; second, developers being granted as-of-right benefits; and third, projects whose developers or owners have no prior history with our programs and who will undergo future compliance monitoring.

Among projects in the first group – those whose developers or owners have a history with the agency – an overwhelming majority have a portfolio of projects subject to tightly monitored federal affordability compliance requirements and/or rigorous affordability oversight through HPD's marketing or homeless re-rental leasing process. A system is in place to identify issues through informal meetings and consultation across HPD divisions. For the second group – developers being granted as-of right-benefits – projects undergo affordability compliance review prior to lease up and administering agents review ongoing affordability requirements after occupancy.

HPD utilizes multiple processes to review building portfolios before, during, and after construction. HPD uses an internal data aggregation system which provides insight into buildings' physical, financial and management status.

HPD is committed to strengthening its monitoring capabilities across the agency and is investing in a suite of technologies that will significantly enhance our asset management capabilities and centralize compliance reporting. Planned technology enhancements include developing an electronic rent roll collection technology and procuring a comprehensive asset management data system. HPD will integrate the new compliance information obtained through these systems into our developer selection and review processes. Notably, this administration's technology investments are compensating for a lack of previous investment in these areas.

Our specific responses to the four (4) audit recommendations are as follows:

Audit Recommendations

1. HPD should reinforce its requirement that the Assistant Commissioners sign the sponsor review reports and maintain the signed reports on file as a measure to ensure and provide assurance that they reviewed the report and approve the project to proceed to closing.

Agency Response to Recommendation 1

The audit found that Assistant Commissioners (AC) did not always sign-off on the sponsor review reports prior to closing, as required by HPD's procedures. This record keeping issue has been addressed internally through measures that will ensure AC sign-off occurs whenever required. Importantly, AC approval was actually provided in all cases, despite imperfect record keeping; we cannot and do not close a project without AC approval and comprehensive credit review with participation from other HPD Divisions and our partners.

2. HPD should centrally track the signed sponsor review reports to ensure that projects are not allowed to proceed or to close without obtaining the Assistant Commissioner's signature on the sponsor review reports.

Agency Response to Recommendation 2
The recommended procedure is already a part of our process. The Deputy Commissioner of Development's office reinforced the existing procedures relating to the requirement for AC signatures on sponsor review reports. As noted above, we cannot and do not close a project without AC approval.

3. HPD project managers should review and assess applicants' compliance with affordable housing requirements on all prior projects to ensure that they have complied with the requirements specified in previous regulatory agreements before being permitted to participate in new projects. Such inquiries and reviews should be formally documented in the project files prior to project closing.

Agency Response to Recommendation 3
For multi-family developers who have previous regulatory agreements with HPD, the agency does review and assess their compliance. An overwhelming majority of our projects are part of federal programs with tight affordability compliance management at initial rental and during tenancy. HPD's project managers review and assess applicants' past performance through routine and systematic communication between divisions to identify developers with poor performance. HPD's investment in new technology systems will allow for more detailed and formal information sharing across multiple divisions at HPD.

4. HPD should continually monitor and assess all affordable housing projects' performance in meeting program goals and complying with program requirements and maintain a centralized database documenting its assessment results.

Agency Response to Recommendation 4
HPD is monitoring and assessing affordable housing requirements through various systems. Prospectively, HPD is investing in a suite of technologies that will significantly enhance our asset management capabilities and centralize compliance reporting. Planned technology enhancements include developing electronic rent roll collection technology and procuring a comprehensive asset management data system. HPD will integrate the new compliance information obtained through these systems into our developer review processes prior to and after closings, dramatically enhancing our capacity to centrally monitor affordable housing projects.