New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Low-Income Housing Trust Fund Program

New York State Homes and Community Renewal

Report 2013-S-32 August 2014

Executive Summary

Purpose

To determine whether Low-Income Housing Trust Fund Program (Program) funds are being awarded and disbursed in an efficient manner to help meet the State's critical low-income housing needs. The audit covers the period April 1, 2008 through December 11, 2013.

Background

The Housing Trust Fund Corporation's (Corporation) mission is to create decent affordable housing for persons of low income by providing loans and grants for the rehabilitation of existing housing or the construction of new housing. One way the Corporation accomplishes this mission is through the Program. Each year since 1985, the Program was appropriated between $25 million and $39 million to be used in conjunction with other State, Federal, or private financing for low-income housing projects. Generally, the Program provides up to $125,000 per unit, or a total of up to $2.4 million per project. The Corporation receives staff and administrative support from the Division of Housing and Community Renewal (Division) to administer these activities.

Key Findings

- A significant number of projects are being delayed at least six months, for about 4,400 low-income housing units, due to: questionable award decisions; lax monitoring or enforcement of expectations; and delays in key approvals or other Division actions.
- The Program does not consistently adhere to its own policies regarding the project award process. During our audit period, the Program awarded funding to six projects that staff review had deemed "infeasible," and 13 others were deemed "feasible but not recommended." The Program does not adequately document management decisions to award funding to projects that have scored lower than others based on criteria such as community impact/revitalization, financial leveraging, and project readiness. The lack of both compliance with policies and transparency regarding awards challenges the integrity of the Program.

Key Recommendations

- Adhere more closely to the policies and procedures in place for awarding low-income housing projects.
- Document the reasons for any management decisions to fund projects that do not adhere to the established criteria at the time of the funding award.
- Develop a more formalized monitoring system that produces routine internal management reports, to monitor all aspects of the program - including the pre-construction phase - to ensure low-income housing units are produced more timely.

Other Related Audits/Reports of Interest

Division of Housing and Community Renewal: Housing Preference for Disabled Veterans (2010-S-42)

Housing Affordability in New York State (March 2014)

State of New York
Office of the State Comptroller

Division of State Government Accountability

August 25, 2014

Mr. Darryl C. Towns
Commissioner/CEO
NYS Homes and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12235

Dear Commissioner Towns:

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

Following is a report of our audit of NYS Homes and Community Renewal entitled *Low-Income Housing Trust Fund Program*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8, of the State Finance Law.

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

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The Low-Income Housing Trust Fund Program (Program) is one of a series of State-sponsored measures aimed at addressing the critical housing needs that communities statewide are facing. Since 2000, many New Yorkers have been increasingly challenged to find - and maintain their residence in - affordable housing, in the face of stagnant or declining income and rising housing costs. As of 2012, more than 50 percent of renters and 30 percent of homeowners in the State exceeded the U.S. Department of Housing and Urban Development's "home affordability threshold" of 30 percent (i.e., percentage of income spent on housing costs), and more than 1.5 million households spent more than half their income on housing. Thus, for a growing number of citizens, affordable housing is beyond reach.

To address this need, the Program - in concert with other State and Federal programs available to assist individuals and families in need, including rent subsidization and home ownership through mortgage and down payment assistance - strives to increase the availability and quality of affordable housing by funding existing home and building rehabilitation and new housing construction projects for occupancy by low-income homesteaders, tenants, tenants-cooperators, or condominium owners. In each State fiscal year since 1985, the Program has received funding between $25 million and $39 million to be used in conjunction with other State, Federal, or private financing for low-income housing projects.

The Housing Trust Fund Corporation (Corporation), established as a public benefit corporation in 1985 under Section 45-a of the Private Housing Finance Law, administers the Program under the guidance of a governing Board of Directors, on which the Commissioner of the Division of Housing and Community Renewal (Division) serves as Chairperson and receives staff and administrative support from the Division to administer these activities. Applications for project funding undergo several stages of evaluation, including assessment of applicant and project eligibility based on specific Program criteria as well as a systematic, rigorous review process to analyze, among other factors, community impact/revitalization, financial leveraging, and project readiness.

For projects selected to receive funding, the Program generally provides up to $125,000 per housing unit or a total of up to $2.4 million per project. During the five-year scope of our audit, about $209 million in Program funds were awarded for 111 housing projects developing more than 5,850 housing units across the State. Of those projects awarded Program funds:

- 26 projects totaling $53 million have yet to begin construction;
- 40 projects totaling $72 million are in the construction phase; and
- 45 projects totaling $84 million have completed construction.

Of the 45 projects that have been completed, 28 projects - totaling $53 million - have received full disbursement and 17 - totaling $31 million - have received partial disbursement.

Our audit of the Program addresses whether affordable housing units are being created timely.

Audit Findings and Recommendations

Overall, a significant number of projects funded by the Program are being delayed as a result of actions within the Division's control, including: questionable award decisions; lax monitoring or enforcement of expectations; and the Division's own inability to meet expected time frames for key approvals and actions. During our audit period, these problems directly contributed to delays in occupancy of six months or more for 87 projects involving nearly 4,400 low-income housing units. Specifically, we found the Program did not diligently enforce application deadlines or follow the Division's Capital Programs Manual (Manual) guidelines during different stages of the project award process. For example, we found commitments that were more than two years late in being finalized. Other Division's inactions significantly impeded progress on these 87 projects, totaling $162 million, negatively affecting low-income residents/families in need of housing.

During the course of our audit, we found the Division does not always adhere to Manual guidelines in awarding projects based on ranking and feasibility determinations. As a result, the highest-scoring project proposals, which have been vetted and deemed sound investments of State funds, are not necessarily the ones that are awarded funding. For example, the Division awarded over $10 million to six projects that, upon review, Division staff determined to be "infeasible." Two of these projects, totaling $1.8 million, experienced delays of over 590 days and 690 days for issues that were identified during the project award process. In addition, prior to our audit, the Division did not always document their decisions by which these projects were selected. This lack of transparency challenges the integrity of the project award process. We also found the Division does not consistently monitor critical milestone dates to ensure more timely completion of projects.

On average, there is a 10-month lag between project completion and disbursement of funds to the applicant. We found this lag does not add further delay to the projected date of occupancy. As projects near completion, certificates of occupancy are obtained and people can begin living in the housing units immediately.

Funding Is Not Always Awarded to the Most Feasible Projects

At least annually, the Division issues Requests for Proposals for low-income housing. Interested parties generally have about three to four months to submit proposals through an online application process. Applications are vetted for applicant and project eligibility based on established criteria and requirements. Regional and technical staff (Staff) from the Division's design (architects), legal, and financial services units then conduct a lengthy - almost six months long - rigorous, systematic review and scoring process, during which proposals are judged and scored based on, among other factors, community impact/revitalization, financial leveraging, and project readiness. The scoring method and instrument were developed on the basis of Manual guidelines to ensure that rules of judgment are applied consistently and appropriately.

Project feasibility is, likewise, a critical component in the assessment process. Following Manual guidelines, Staff make a determination as to whether projects are feasible, feasible with conditions, feasible but not recommended, or infeasible. According to the Manual, applications that are identified as incomplete, ineligible, infeasible, or non-competitive are not selected for funding. Staff confirmed that, if such applications are funded, this deviates from the normal award process.

Once the review process is complete, according to the Manual, the scores and feasibility determinations are supposed to be used to recommend a range of projects for award. However, we found the Staff does not do this. Also, the Staff does not prepare a summary listing all projects and their scores and feasibility determinations, nor do they otherwise rank the projects or make specific recommendations. Rather, the review results are submitted to Project Managers, Regional Directors, and Division officials as the basis for further vetting and ultimately award decision making. Division officials stated that their award decisions are not based solely on scores and feasibility, but on other factors as well, such as availability of Program funds and geographic location. However, we found Division officials do not document the basis for their award decisions and, up until our audit, did not have a step in place to ensure Staff's results are congruent with - and thus support - the final award decisions.

As the last step in the process, the Board makes a resolution to award the projects that Division officials recommend. We found the Board is given only summary paragraphs describing the projects and does not routinely see the feasibility determinations and scores for all projects, or the projects' individual scores on specific factors such as collaboration with other State agencies. Division officials stated that Board members could request this information, but generally do not.

After the award phase, the Division sends Funding Commitment Letters to the successful applicants. These commitment letters describe the project and detail information such as the number of project units, project financing assumptions, operating costs, and critical timeframes for the project. Applicants are expected to comply with the terms of these executed commitment letters. Although Division officials stated it isn't likely, failure to comply could result in termination of funding.

During the period April 1, 2008 through December 11, 2013, the Corporation completed seven funding rounds, encompassing 513 application submissions that were narrowed down to 111 project awards, totaling $209 million, for more than 5,850 housing units. We examined project data from the four most recent funding rounds, representing 279 applications. We found that of 62 projects awarded more than $119.4 million, six (valued at $10.1 million) were identified during the review as "infeasible," and 13 (valued at $23.8 million) were identified as "feasible but not recommended." At the same time, other higher-scoring projects identified as "feasible" were denied. In fact, 61 feasible projects scored higher than the lowest-scored awarded project, yet were not selected for award. Division officials stated that, at times, technical reviews are not accurate and officials may not have always agreed with Staff's feasibility determinations. However, the Division had no documentation to support their selection.

For example, in 2010 one project - a 24-unit apartment facility in Brooklyn - had the lowest score of all projects in the funding round and was identified as infeasible, yet was selected and awarded over $2 million. During their assessment, Staff noted that this project's application was poorly assembled, and they had questions on almost all of its exhibits. In addition, Staff indicated that information in the exhibits not only was entirely incorrect, but also lacking in details. Of the competing projects that Division officials did not select for award, ten had higher scores and feasibility determinations. Another nine projects also scored higher and may have been feasible; however, we were unable to assess this because the Division could not provide the reviews. In the same year, almost $2 million was awarded for a project to construct 78 housing units in Rome, which Staff identified as ineligible, despite Division policies that clearly state such projects are disqualified from consideration.

Our audit also uncovered other questionable awards. During a 2011 funding round, a project to create 15 housing units in New York City was identified as infeasible but still awarded $670,000, while nine competing projects with higher scores and feasible determinations were not selected for award. More recently, in 2012, an Ulster County project to develop 82 housing units was identified as infeasible but was awarded $2 million, while 11 others that scored higher and had feasible determinations were denied.

In each case, Division officials stated that documentation did not exist to support Program Managers' recommendations presented during the competitive review process. In addition, Division officials did not develop documentation to support their award decisions, which is especially critical when the selections deviate from the competitive ranking of applications generated from their own scoring methodology. Similarly, Division officials could not provide documentation to support their recommendation of infeasible projects over other feasible projects. Because documentation supporting the award decisions was not available for our review, we could not determine whether lower scored or infeasible projects were selected in order to address some specific unmet low-income housing needs, such as targeting a specific geographic area with a unique shortage of housing.

By not adhering to the established award process, and not maintaining documentation to support their selection of what appear to be less competitive projects, Division officials have created an environment that is not sufficiently transparent or accountable. Operating in a transparent environment allows others to readily observe the transactions that occur, the basis for those transactions, and the results that are achieved. Accountability incorporates the concepts of standards of behavior and integrity as they relate to both explaining and taking responsibility for decisions and actions. Transparency and accountability, coupled together, create an environment of control over public funds and decision making that is open, honest, and fair, which is the essence of an efficient award process.

As a result of our audit findings, Division officials indicated they now better recognize the importance of supporting their award selection and stated that, toward this end, they are currently maintaining additional evidentiary documentation. The Division has also implemented a more thorough review process to ensure the feasibility determination is most appropriate. Supervisors are now required to reconcile the applications' reviews and scores to ensure they are consistent with - and thus support - Division officials' award decisions.

Better Monitoring and Selection Practices Could Help Avoid Delays

The Division is responsible for monitoring all milestones and general project oversight to ensure any delays are identified early and mitigated. At times, projects incurring delays have unique reasons for the setbacks (e.g., environmental hazards, lack of documents submitted by the applicant, private investors choosing to terminate their investment). However, our audit identified that the Division does not keep track of all past due documents or unmet deadlines. For example, critical target dates and time frames - from time of application submission deadline to the issuing of the award letter, or from the award date to commitment-letter date - are not tracked in order to monitor timeliness. In addition, the Division does not track all critical time frames established in the commitment letters. In some instances, instead, Division officials simply rely on Staff to ensure key dates are being met. As a result, an unnecessary amount of time can pass between required milestones.

Staff and Division officials monitor the status of projects through an informal process of routine meetings, phone calls, and e-mails. We did find Staff maintained communication with the project developers and were able to demonstrate that projects were monitored, at least in some aspects, throughout project phases. In addition, the Division inputs some project information into its Statewide Housing and Activity Database System, but both Division officials and Staff informed us that the database is not up to date or accurate and, therefore, cannot solely be relied on for monitoring. As a result, the Division uses tracking spreadsheets to supplement the data, which, according to officials, are always evolving to meet the needs of the Division. However, our audit identified that not all projects are tracked on these spreadsheets.

We judgmentally sampled 34 projects that appeared to have had delays, with a value of $54.8 million, to determine whether there was a correlation between cause of delay and the feasibility determination generated during the award process. Of the projects selected, 21 were judged to be "feasible" or "feasible with conditions," five were rated as "infeasible," and six were "feasible but not recommended." Feasibility determinations for two projects were not available.

For five of the 32 projects with feasibility determinations, our review found the flaw identified in the feasibility assessment was the major cause of delay. As of August 2013, these five projects, totaling about $7.9 million and accounting for 204 housing units, had delays ranging from 602 to 1,268 days. Had the Division relied on the feasibility reports and opted for more qualified candidates, these delays may have been avoided. In some cases, these projects were awarded funding despite serious deficiencies identified by Staff. In fact, Staff determined two of these five projects, totaling $1.8 million, were infeasible and also not consistent with some requirements specified in the Manual guidelines.

For example, one infeasible project, valued at $1.1 million for 23 housing units located in Brooklyn, received its commitment letter in November 2010 but did not begin construction until June 2012, more than 590 days later. According to Division officials, the main reason for the delay was financing gaps, consistent with Staff's basis for labeling the project as infeasible, specifically because of a financing deficit of $2.3 million. Staff also noted that operating budget documentation was lacking, projected operating costs were unreasonable, and one particular funding source was merely a preliminary eligibility letter from New York City Department of Housing Preservation & Development, described by Staff as “far from a commitment.” When questioned, the Program Manager for this project explained that waiting for formal City approval for funding was too time consuming. During the same funding round, four projects that were not selected had higher scores and better feasibility determinations than this project. Additionally, four more projects may also have been deemed feasible; however, we were unable to make that determination because the Division could not provide feasibility documentation.

Pre-Construction Issues Often Delay Project Completion

Even in cases where projects are expected to be feasible from the start, we found the Division needs to place greater emphasis on timeliness. Our review of the pre-construction phase of projects indicates officials often allow situations to occur that collectively result in significant cumulative delays even though each individual situation may be deemed minor. These range from accepting late applications, to delays in preparing and finalizing funding agreements and receiving responses from applicants. Our analysis of the 111 projects showed that 87 projects involving 4,392 housing units were delayed by at least six months as a direct result of these pre-construction issues.

According to Manual guidelines, the Division should prepare and send award letters to all applicants within 150 calendar days of the application submission deadline. In contrast, we found that for the majority of the projects, the Division was significantly late in issuing award letters, on average more than six months past the 150-day expected deadline. For 27 projects, the Division issued award letters between 197 and 223 days late.

Once an award is made, the Division develops a more formal commitment letter detailing specific project requirements, which is signed and acknowledged by the developer. The Manual stipulates that these commitment letters will be issued within 45 to 60 business days of the award letter. Applicants are then given 30 days from receipt to review and return the signed letter.

We found the Division routinely received signed letters well beyond this deadline. While the Division did not retain data that was useful to assess whether it issued commitment letters timely, we did find that about 80 percent of the 111 signed commitment letters were returned more than 90 days after the award - on average, about 231 days or more than four months late. In extreme cases, we found commitments that were more than two years late in being finalized. These included one 33-unit project in Cortland County with a value of $1.9 million, which took 885 days, and another 64-unit project in New York City, valued at $2.2 million, which took 888 days.

We also observed developers took, on average, 116 days to begin construction on projects once there was an executed commitment letter in place. For projects that did not yet start construction but had a signed commitment letter, the amount of time that elapsed ranged from 45 days to 1,173 days for a 74-unit project in New York City valued at $2.1 million.

On average, there is a 10-month lag between project completion and disbursement of funds to the applicant. We found this lag does not add further delay to the projected date of occupancy.

As projects near completion, certificates of occupancy are obtained and people can begin living in the housing units immediately.

Recommendations

1. Adhere more closely to the policies and procedures in place for awarding low-income housing projects.

2. Document the reasons for any management decisions to fund projects that do not adhere to the established criteria.

3. Develop a more formalized monitoring system that produces routine internal management reports, to monitor all aspects of the program - including the pre-construction phase - to ensure low-income housing units are produced more timely.

Audit Scope and Methodology

The objective of our audit was to determine if Low-Income Housing Trust Fund Program funds were being awarded and disbursed in an efficient manner to help meet the State's critical low-income household housing needs. The audit covers the period of April 1, 2008 through December 11, 2013.

To accomplish our audit objectives, and determine whether associated internal controls are adequate, we reviewed relevant State laws, as well as applicable policies and procedures. We interviewed Division officials, Project Managers, and other Staff to gain an understanding of their processes for the awarding and monitoring of projects. We also analyzed Division data to determine whether projects were progressing or completed efficiently and we judgmentally sampled 34 projects that appeared to be delayed to determine the obstacles to projects being completed timely.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

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

Reporting Requirements

We have provided a draft copy of this report to Division officials for their review and comment. Their comments have been considered in preparing this report and are attached in their entirety. In responding our draft report, agency officials take exception to certain aspects of our analyses, but also report that some actions have already been taken to address each of our recommendations.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of NYS Homes and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and where not implemented, the reasons why.

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Vision

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments

NEW YORK STATE
Homes & Community Renewal

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GOVERNOR

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HOUSING TRUST FUND CORPORATION

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STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY

TOBACCO SETTLEMENT FINANCING CORPORATION

June 18, 2014

John Buyce
Audit Director
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Division of State Government Accountability
110 State Street, 11th Floor
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Dear Mr. Buyce:

Thank you for the opportunity to review draft report 2013-S-32, Low Income Housing Trust Fund Program. We have responded to all of the recommendations contained in the report and offer our detailed responses below.

Sincerely,

Marian Zucker
President, Finance & Development

cc: Darryl C. Towns, Commissioner
Kevin G. Kelly
Sharon Devine
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38-40 State Street, Albany, NY 12207

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Below please find the response from New York State Homes and Community Renewal to the Office of the State Comptroller's draft audit report 2013-S-32 titled, "Low Income Housing Trust Fund Program."

Response Summary

The Office of the State Comptroller's draft audit report 2013-S-32 focuses on whether Low-Income Housing Trust Fund Program (HTF) funds are being awarded and disbursed in an efficient manner to help meet the State's critical low-income housing needs.

HCR was pleased to work collaboratively with the Office of the State Comptroller in undertaking this program review as we are committed to managing resources efficiently and effectively. In general, HCR has benefitted from the audit process and from the perspectives of the audit team members whose unfamiliarity with multi-family housing development required Agency staff to reexamine and explain basic housing development concepts as well as policies and practices that have been in place for many years. The insights gained from this process as well as the policy and procedural refinements that have already been implemented will further strengthen HCR's administration of this valuable public resource.

The draft report covers nearly six years of HTF program activity, spanning three different gubernatorial administrations, three HCR Commissioners, and covering a timeframe during which HCR underwent a fundamental reorganization of the Agency's overall program management and administrative structure. Given the expansive reach of the review and the significant changes in both Agency organization and program administration that have occurred during the audit period, the draft report has undertaken the difficult task of fairly and accurately distinguishing the current administration of the HTF program from past practices and policies that no longer apply. However, due to the challenging nature of the audit, the draft report frequently blurs the line between past and current practice and thereby presents a misleading picture of HCR's current management practices.

*
Comment
1

The draft report makes several findings and recommendations regarding the administration of the HTF program, as well as numerous statements in support of those findings and recommendations. In some cases, because of the expansive time frame covered, HCR had already implemented new policies and procedures prior to the audit. In other cases, HCR has acknowledged that improvements could be made in its management of the HTF program and the Agency has already implemented policy and procedural improvements as a result of the feedback provided through the audit process. However, in many instances, the draft report overstates claims or fails to accurately describe past or current HCR policies and practices.

Also, the draft report sometimes presents information in a manner that could be misleading to readers. For example, the introduction to the Audit Findings and Recommendations on page five states that actions within the HTFC control directly contributed to nearly 4,400 units being delayed. The last sentence of that same paragraph goes on to say that "Other Division's inactions significantly impeded progress on 87 projects…" The draft report fails to make clear that these two sentences refer to the very same projects. As a result, the report appears to exaggerate its findings by making the same claim twice, albeit in a slightly different way that suggests that the 87 projects are in addition to the 4,400 units referenced in the first sentence.

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Comment
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HCR recognizes the challenges and limitations faced by audit teams in examining a multitude of complex programs across a wide-range of State agencies and hopes this response contributes to

* See State Comptroller's Comments on page 20.

the overall understanding of the multi-family development process and how HCR administers the HTF program. Consistent with that goal, this response to the draft audit report does not attempt to address each specific claim made in the report, but rather seeks to address the broader issues raised in the report.

This response to the draft audit report will briefly summarize the conclusions found in each section of the draft audit report and respond to the concerns raised in that section. HCR will also respond directly to the recommendations made at the conclusion of the report.

Section 1: Funding is Not Always Awarded to the Most Feasible Projects

* Comment 3

This section of the report focuses on the review and selection process used to award HTF program funds and concludes that HCR does not adhere to the established award process and has not maintained sufficient documentation to support award decisions.

While HCR has openly acknowledged past weaknesses in the documentation of its award decisions and had already undertaken many reforms prior to the start of the audit, the Agency believes the report does not fully and accurately describe the award process that is established in HCR's annual Request for Proposals (RFP) and in its Capital Programs Manual (CPM). As a result, the draft report in some instances significantly overstates its conclusions.

Citing the CPM, the draft report states that application scores and feasibility reviews are supposed to be used to recommend a range of projects for award. While HCR agrees that scores and feasibility are certainly important considerations in award decisions, the draft report's narrow description of the CPM award process fails to note that both the CPM and annual RFP also clearly describe a long list of other considerations that are used by the Agency to make award decisions.

For example, the RFP for the 2012 Unified Funding round states that in addition to considering scores HCR will also consider development team experience, overall project costs, proximity to locally undesirable land uses, whether projects advance State housing objectives, and whether awards will achieve a geographic distribution of funding across the State. The RFP also states that HCR will consider the extent to which an application supplements or advances a coordinated investment by State agencies, federal government and local partners, and whether a proposed project clearly advances New York State's housing goals and objectives, including any goals set forth by the Regional Economic Development Council strategic plan applicable to the area in which the project is located. Likewise the Capital Programs Manual states that in addition to scoring and feasibility HCR will also consider the State's housing goals including, but not limited to preservation of affordable housing, community renewal, green building technologies and practices, and collaboration with other government agencies.

In planning and executing funding rounds HCR takes into account State housing goals and often makes awards to projects that advance those goals. For example, one of the projects identified in the draft report as a low scoring project that received funds was Beaver Meadows in Watertown, a project that will provide much needed new housing opportunities in the Fort Drum area. Fort Drum is widely recognized as a critical State asset and new housing has been consistently identified as being needed to accommodate troops returning permanently from overseas deployment. In its November 2011 strategic plan, the North Country Regional Economic Development Council identified the availability of affordable housing as a, "priority opportunity for successfully growing aerospace, aviation, and defense employment in the North Country." Creating affordable housing based solely on high scores would not allow HCR to pursue important policy objectives that meet New York's changing needs, such as investments HCR has made to support the expansion of Fort Drum.

Moreover, because the draft report does not take into account HCR's clearly stated objective of achieving a geographic distribution of funds across the state, it significantly overstates various claims about lower scoring projects being funded over higher scoring projects. For example, the draft report asserts that, "61 feasible projects scored higher than the lowest-scored awarded project, yet were not selected for award." Since the draft report fails to account for the fact that applications do not compete on a statewide basis, but rather only within the specific geographic regions in which the proposed projects are located, the report incorrectly compares the scores of project applications that were never in competition with each other. For example, the audit team identified the Beaver Meadows project in Watertown as the lowest scored project in the 2011 Consolidated Funding Application round. Beaver Meadows is located in the North Country Region which includes Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence counties. As such, Beaver Meadows would only compete against other project applications in the North County Region. However, the draft report incorrectly compares the score of the Beaver Meadows project to dozens of projects that were proposed in other regions of the state and against which Beavers Meadows did not compete. The regional nature of the HTF competitive process is clearly communicated at application workshops that are conducted around the State prior to each funding round and the process is well understood by project applicants.

Also, this section of the report fails to take into account that HCR uses several different scoring instruments to evaluate projects in any one funding round. The scoring instrument that is used to rate a project is based on which housing program resource provides the greatest financial benefit to the project. Different scoring instruments exist for the Low Income Housing Tax Credit Program (LIHC), the State Low Income Housing Tax Credit Program (SLIHC), and the HTF Program and HOME Program. These different rating instruments can result in considerably different scores, with HTF scored projects typically receiving much lower scores as a general rule. For example, the HTF-only applications in the 2011 CFA round had scores that ranged from 20 to 38. However, in the same 2011 CFA round, over 75% of the LIHC applications scored above 60. For this reason, HCR only compares HTF scored projects to other HTF scored projects when evaluating project applications in the same geographic region. Despite this, the draft audit report incorrectly compares HTF scored projects with projects that were scored using the LIHC scoring instrument. As a result, the audit report significantly overstates its concerns about lower scoring projects.

* Comment 4

Section 2: Better Monitoring and Selection Practices Could Help Avoid Delays

This section of the report focuses on HCR's monitoring of projects that are awarded HTF funds and concludes that HCR does not adequately monitor projects by not keeping track of all past due documents or unmet deadlines. The audit report also states that HCR's Statewide Housing Activity Reporting System (SHARS) is not up to date or accurate and that HCR needs to develop a more formalized monitoring system.

HCR recognizes that monitoring the unique development pathways of individual projects is always challenging. As such, HCR does actively track all HTF awarded projects using SHARS, a centralized, comprehensive database and reporting system that has been in place since 1990. It was the SHARS database that produced the many detailed reports that were requested by the audit team. These reports provided timely and accurate information on every HTF request and every HTF award made over the nearly six year audit timeframe. Despite this and despite repeated clarifications from HCR staff, the draft audit report continues to claim that SHARS is

* Comment 5

not up to date or accurate. This claim is not correct. However, because maintaining high quality data is a constant challenge, HCR regularly supplements and cross-checks the data contained in SHARS through the use of spreadsheets and reports provided by project management staff. Between SHARS and individual tracking spreadsheets, HCR does centrally track critical milestone and document submission dates. While it is true that HCR does not centrally track every milestone and deliverable listed in its funding commitment letters, the milestones and deliverables that are not tracked centrally are tracked by project managers, development directors, and/or asset managers and cannot be fairly described as "critical timeframes" that impair HCR's ability to monitor projects. Tracking every potential milestone would be needlessly cumbersome and inefficient.

* Comment 6

This section of the draft report also describes issues involving the feasibility of projects and their impact on the timely delivery of units. As was noted in HCR's response to the previous preliminary finding, HCR made organizational changes and modified its underwriting review procedures during the period covered by the audit. Since 2011, preliminary underwriting determinations, such as the ones identified in the draft report, have been subject to subsequent review and final determination by a supervising underwriter. The purpose of this supervisory review is to ensure greater consistency in the application of Agency underwriting policies and to guard against any personal bias in the review process. The draft report mischaracterizes the purpose of these supervisory reviews, perhaps inadvertently, by saying that they , "ensure they are consistent with – and thus support – Division officials' award decisions." It was HCR's understanding based on discussions with the audit team on this subject that OSC understood and applauded this review process as an appropriate mechanism to ensure consistent application of Agency policies.

* Comment 7

Section 3: Pre-Construction Issues Often Delay Project Completion

This section of the draft report raises concerns about delays in the development process that occur after awards had been made to applicants. The report claims that 87 projects were delayed by at least six months as a direct result of pre-construction issues ranging from accepting late applications to delays in preparing and finalizing funding agreements and receiving responses from applicants. The report points to HCR's Capital Program Manual (CPM) which states that funding commitment letters (FCLs) will be issued within approximately 45 – 60 business days after the issuance of an award letter. The CPM goes on to say that awardees will be given 30 days from the receipt of the FCL to return it signed to the Agency. The report states that HCR exceeded these approximate timeframes and claims that 87 projects were delayed by at least six months as a direct result of inactions on the part of HCR. In an effort to better understand this claim, HCR requested a list of the specific inactions deemed by the audit team to have delayed these projects. The audit team declined to provide such a list.

* Comment 8

By claiming that HCR inactions unnecessarily delayed projects, the draft report appears to minimize the complexities involved in developing affordable housing. It is widely recognized that the development timelines for large-scale multi-family projects are dependent on a wide range of variables outside the control of project developers and state housing officials. For example, a long list of local approvals is typically required before these projects can proceed to construction. Localities will often move cautiously through the approvals process so as to afford their constituents an opportunity to understand the scope and potential impact of these projects. In some cases, local opposition to affordable housing causes delays. In other cases, broad-based economic disruptions, like the collapse of the credit and equity markets in 2008 and 2009, can and did result in significant delays for awarded projects. Even environmental factors ranging from inclement weather to environmental contamination can further slow the delivery of units. It is extremely important for HCR to maintain its support for projects as these issues arise if it is to achieve state housing goals.

For example, routine groundwater testing at the site of the Carriage Factory Special Needs Apartments identified a need to further investigate the level of contamination, causing the project's original investors from the National Equity Fund to abandon the project. To address the concerns of potential tax credit investors, the project developer applied to participate in the State's Brownfield Clean-Up Program (BCP). While the project was significantly delayed, HCR chose not to recapture its HTF funding because of the project's importance to the City of Rochester's ongoing revitalization, the importance of creating special needs and affordable housing of this type, and because the remediation of the environmental contamination was important to the public welfare. Participation in the BCP ultimately resolved the issues and allowed the project to proceed. While the preliminary audit report correctly stated that it took over 180 days from the time of award for the Carriage Factory project to execute a funding commitment with HCR, had the Agency rigidly adhered to the approximate processing timeframes outlined in the CPM, the project would have lost its funding and the project would have stalled. Instead, this important project is now nearly 80% complete and a long vacant building is being transformed from a blight on the community to a neighborhood asset.

Recommendations

The draft audit report makes three specific recommendations for improving the administration of the HTF Program. Each recommendation is listed in italics and followed by HCR's response to the recommendation.

1. *Adhere more closely to the policies and procedures in place for awarding low-income housing projects.*

   HCR Response: HCR believes it is complying with program policies and procedures in awarding funds to low income housing projects. HCR management staff considers a number of factors in determining which projects are ultimately recommended for selection. As a final step in the process, all projects are presented to the Housing Trust Fund Corporation Board for their review and approval. Procedures already put in place by the Agency have addressed many of the documentation issues raised in the report.

2. *Document the reasons for any management decisions to fund projects that do not adhere to the established criteria.*

   HCR Response: Prior to the audit, HCR had already implemented changes to improve the openness of the HTF award process and to better document its decisions. To ensure greater transparency, HCR posts Commissioner's Determinations on its web site to highlight the specific reasons why lower scoring projects are selected for funding. HCR will continue to use and refine this practice in future funding rounds. These Determinations can be accessed through the following link to the Agency's webpage:

   http://www.nysHCR.org/Funding/UnifiedFundingMaterials/2012/CommissionerDeterminations.htm

3. *Develop a more formalized monitoring system that produces routine internal management reports, to monitor all aspects of the program – including the pre-construction phase – to ensure low-income housing units are produced more timely.*

HCR Response: HCR already invests considerable time and staff resources to expedite the delivery of affordable housing. HCR does have a centralized reporting and monitoring system that is actively supplemented, verified, and updated using data provided through tracking spreadsheets and regular reports from project managers and development directors. Due to the complex nature of many HTF projects, delays occur that most often have nothing to do with the quality of HCR monitoring. The draft report's suggestion that deficiencies in project monitoring increase the likelihood of project delays is unsupported by evidence. In fact, the draft report itself acknowledges that, "projects incurring delays have unique reasons for the setbacks." HCR will continue working to evaluate and further improve its project tracking capabilities in order to ensure that it can identify project delays earlier and address those delays effectively. HCR shares the Comptroller's concern about the timely production of affordable housing. Consistent with that concern and the need for transparency in its operations, HCR has implemented a reporting process that will provide the HTFC Board of Directorswith comprehensive information on the status of all prior awards on at least a quarterly basis.

We hope that the final audit report will take the foregoing responses into account. Thank you in advance for your consideration.

State Comptroller's Comments

1. The purpose of our audit was to examine the award and disbursement of program funds over the audit period, which began April 1, 2008. As such, our findings and conclusions relate to administration of the program over the full audit period and our recommendations are directed at ways to improve future operations. Our audit indicates management decisions regarding project awards and lax monitoring or enforcement of expected timeframes negatively impacted the State's low-income housing stock over this period. Our report does not attempt, nor did it intend, to parse out either credit for successes or blame for failures among changing administrations.
2. We do not agree that our statements are misleading. Rather, the cited section highlights some of the many management deviations from established policy and procedure that contributed to delays for these projects. Still, we have modified our wording to remove any apparent confusion regarding these 87 projects.
3. On page 6 of our report, we specifically acknowledge the other factors that are intended to be considered when awarding projects. We also acknowledge Division officials' assertion that these other factors, including availability of Program funds and geographic location, impacted award decisions. As part of our testing, we specifically considered geographic location as a potential basis for award decisions, but documentation to support the influence of these factors was never made available for review. As a result of our audit, the Division has represented that they are now documenting the basis for project awards.
4. We do not agree that our comparisons are flawed. During our audit, in response to our inquiries, officials asserted that the various scoring instruments used were comparable, although their response now contends there are significant differences. We compared project scores based on whatever instrument was used by the Division. In fact, very few applicants applied only for HTF funding; so almost all projects we examined were scored using the LIHC instrument.
5. During the course of our audit, we noted several inconsistencies with the data obtained from the Division. In each case, we communicated with agency staff and reviewed hard-copy documents to obtain correct information and update the SHARS data for our analysis. On several occasions, the agency staff we worked with told us that, in their opinion, the SHARS data was not always up to date and could not always be relied on.
6. Several of the timeframes that are not currently tracked reflect performance related to critical milestones as identified in the Division's Capital Program Manual. Examples include the elapsed time from application to award date, and from award date to the funding commitment letter. We believe these performance measures warrant routine monitoring by program management.
7. We agree that this new process is an important internal control that can help ensure that management's award decisions are consistent with agency policy and supported by the associated application review and scoring.
8. The assertion that we declined to share audit information is false. In fact, during the 30-day response period following our draft report, we received no less than six requests for information from the Division, each of which was answered and fulfilled within one day. On June 11, 2014 - two days before their formal response was due - officials requested

information about the 87 projects we cited as delayed by at least six months. This requested information was provided on June 12. We note that this information was also previously provided in January 2014 as part of our preliminary report on the subject and discussed at our closing conference in February.