

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**ECONOMIC OPPORTUNITY COMMISSION
OF NASSAU COUNTY, INC.,
CLAIMED SOME UNALLOWABLE
HURRICANE SANDY
DISASTER RELIEF ACT FUNDS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



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Deputy Inspector General
for Audit Services

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Office of Inspector General

<https://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

Economic Opportunity Commission of Nassau County, Inc., an Administration for Children and Families grantee, claimed approximately \$614,000 in unallowable Hurricane Sandy Disaster Relief Act funds.

WHY WE DID THIS REVIEW

The Disaster Relief Appropriations Act of 2013 (Disaster Relief Act) in part provided the Department of Health and Human Services (the Department) approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy. Of this amount, the Administration for Children and Families (ACF) received \$577.2 million, of which \$95 million was allocated to assist Head Start and Early Head Start grantees with program response, recovery, and other activities related to the impact of Hurricane Sandy. ACF awarded \$8.1 million of these Disaster Relief Act funds to the Economic Opportunity Commission of Nassau County, Inc. (EOC), for construction and other expenses resulting from Hurricane Sandy.

The Disaster Relief Act mandated the Department's Office of Inspector General (OIG) to perform oversight, accountability, and evaluation of programs, projects, or activities supported with Disaster Relief Act funds. This review is part of OIG's Disaster Relief Act oversight activities.

The objective of this review was to determine whether EOC claimed Disaster Relief Act costs that complied with Federal requirements.

BACKGROUND

Hurricane Sandy made landfall on October 29, 2012, devastating portions of the Mid-Atlantic and Northeastern United States and leaving victims of the storm and their communities in need of disaster relief aid. On January 29, 2013, the President signed into law the Disaster Relief Act, which, in part, provided the Department approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy. After sequestration, the Department received \$759.5 million in Disaster Relief Act funding, \$577.2 million of which was allocated to ACF. ACF awarded \$95 million of the Disaster Relief Act funds it received to assist Head Start and Early Head Start programs impacted by Hurricane Sandy.

For the period September 1, 2013, through September 30, 2015, ACF awarded \$8,117,056 in Disaster Relief Act funding to EOC for (1) the demolition of EOC's Head Start center destroyed by Hurricane Sandy; (2) the construction of a steel-framed, "state-of-the-art super structure"; and (3) costs related to EOC's temporary relocation during the project. To comply with the requirement that Disaster Relief Act funds be obligated within 24 months of the funds being awarded, ACF subsequently deobligated \$3,386,045 of the \$8,117,056, resulting in a revised

award amount of \$4,731,011 and a revised grant period of September 1, 2013, through August 31, 2015 (audit period).

Title 45, part 74, of the Code of Federal Regulations establishes uniform administrative requirements governing Department grants and agreements awarded to nonprofit organizations. As a nonprofit organization in receipt of Federal funds, EOC must comply with Federal cost principles in 2 CFR part 230, *Cost Principles for Non-Profit Organizations*. These cost principles require that grant expenditures submitted for Federal reimbursement be reasonable, allocable, and otherwise allowable.

HOW WE CONDUCTED THIS REVIEW

We reviewed \$3,621,997 of the \$4,731,011 in Disaster Relief Act funding that EOC claimed during our audit period for the demolition and construction of the Long Beach Head Start center and for temporary relocation costs. We did not review the remaining \$1,109,014 because the work associated with these funds was ongoing at the time we completed our fieldwork.

WHAT WE FOUND

EOC claimed Disaster Relief Act costs that did not comply with Federal requirements. Of the \$3,621,997 in costs that we reviewed, \$3,007,719 complied with applicable Federal requirements. However, EOC claimed \$614,278 in unallowable Disaster Relief Act costs because it (1) claimed construction costs, salaries, and fringe benefits on the basis of budgeted, not actual, costs; (2) claimed construction management and design costs that were not allocable to the grant; and (3) claimed costs that had been separately reimbursed by insurance.

WHAT WE RECOMMEND

We recommend that ACF ensure that:

- EOC refunds \$614,278 to the Federal Government for Disaster Relief Act costs that did not comply with Federal requirements and
- the \$1,109,014 in Disaster Relief Act costs associated with EOC's ongoing work complies with Federal requirements.

ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY, INC., COMMENTS AND OUR RESPONSE

In written comments on our draft report, EOC, through its attorneys, generally disagreed with our findings and provided additional documentation to support some of its claimed Disaster Relief Act costs.

After reviewing EOC's comments and additional documentation, we revised our findings related to unallowable construction costs, salaries, and fringe benefits and the first recommendation accordingly. We maintain that our remaining findings are valid.

ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS AND OUR RESPONSE

In written comments on our draft report, ACF concurred in part with our first recommendation (financial disallowance). Specifically, ACF agreed that EOC claimed costs based on budgeted rather than actual costs and claimed Disaster Relief Act funds that had already been reimbursed by other insurance. However, ACF disagreed with our recommendation to disallow costs identified as not allocable to the grant. ACF concurred with our second recommendation and indicated steps that it planned to take to ensure that costs associated with EOC's ongoing work comply with Federal requirements.

After reviewing ACF's comments, we maintain that our findings and recommendation are valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

Hurricane Sandy made landfall on October 29, 2012, devastating portions of the mid-Atlantic and northeastern United States and leaving victims of the storm and their communities in need of disaster relief aid. On January 29, 2013, the President signed into law the Disaster Relief Appropriations Act of 2013, P.L. No. 113-2 (Disaster Relief Act), which, in part, provided the Department of Health and Human Services (the Department) approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy.¹ After sequestration, the Department received \$759.5 million in Disaster Relief Act funding, \$577.2 million of which was allocated to the Administration for Children and Families (ACF). ACF awarded \$95 million of the Disaster Relief Act funds it received to assist Head Start and Early Head Start programs impacted by Hurricane Sandy. ACF awarded \$8.1 million of these funds to the Economic Opportunity Commission of Nassau County, Inc. (EOC), for construction and other expenses resulting from Hurricane Sandy.

The Disaster Relief Act mandated the Department's Office of Inspector General (OIG) to perform oversight, accountability, and evaluation of programs, projects, or activities supported with Disaster Relief Act funds. This review is part of OIG's Disaster Relief Act oversight activities. Appendix A contains a list of OIG reports related to the Disaster Relief Act.

OBJECTIVE

Our objective was to determine whether EOC claimed Disaster Relief Act costs that complied with Federal requirements.

BACKGROUND

Administration for Children and Families

Within the Department, ACF is the agency responsible for promoting the economic and social well-being of families, children, individuals, and communities. ACF's mission is to foster health and well-being by providing Federal leadership, partnership, and resources for the compassionate and effective delivery of human services. ACF received \$577.2 million in Disaster Relief Act funds, including \$95 million for Head Start and Early Head Start program activities. The Head Start program provides grants to local public and private nonprofit and for-profit agencies to promote the school readiness of children from low-income families by enhancing their cognitive, social, and emotional development.

¹ The Budget Control Act of 2011 (P.L. No. 112-25) reduced the Hurricane Sandy disaster relief funds the Department received from approximately \$800 million to \$759.5 million. The law imposed automatic spending cuts, known as "sequestration," designed to reduce the Federal deficit. The Office of Management and Budget determined that disaster relief funds were subject to sequestration, and as a result, disaster relief funds received by the Department were reduced by approximately \$40.5 million.

Economic Opportunity Commission of Nassau County, Inc.

EOC is a nonprofit organization that operates Head Start programs that serve more than 500 low-income families at 7 centers throughout Nassau County, New York. EOC is primarily funded by Federal, State, and local government agencies.

Hurricane Sandy severely flooded and damaged EOC's Head Start center in Long Beach, one of seven EOC Head Start locations at the time of the storm. Hurricane Sandy left the one-story center uninhabitable and unsalvageable. Because of the damage, EOC applied for and was awarded Disaster Relief Act funds to demolish the facility and construct a "state-of-the-art super structure" (EOC grant application). Specifically, for the period September 1, 2013, through September 30, 2015, ACF awarded EOC \$8,117,056 in Disaster Relief Act funding to demolish the Long Beach center, construct a new facility, and reimburse EOC for costs related to the temporary relocation of its Head Start program during the project.² To comply with the requirement that Disaster Relief Act funds be obligated within 24 months of the funds being awarded, ACF deobligated \$3,386,045 of the \$8,117,056, resulting in a revised award amount of \$4,731,011 and a revised grant period of September 1, 2013, through August 31, 2015 (audit period).³

The following photographs depict the demolition of EOC's Long Beach Head Start center following Hurricane Sandy and a June 2016 image of the new facility.

² Approximately \$252,500 of the \$8.1 million awarded was for costs related to the temporary relocation of the Long Beach Head Start program.

³ On September 16, 2015, ACF reawarded the deobligated funds to EOC under a separate grant number (02SD0023). These funds were not part of our review.

Figure 1: Demolition of EOC's Long Beach Head Start Center Damaged by Hurricane Sandy



(Source: ACF Web site)

Figure 2: Long Beach Head Start Center (Post-Hurricane Sandy)



(Source: Department of Health and Human Services, Office of Inspector General)

Federal Requirements

Title 45, part 74, of the Code of Federal Regulations establishes uniform administrative requirements governing Department grants and agreements awarded to nonprofit organizations.

As a nonprofit organization in receipt of Federal funds, EOC must comply with Federal cost principles in 2 CFR part 230, *Cost Principles for Non-Profit Organizations*.⁴ These cost principles require that grant expenditures submitted for Federal reimbursement be reasonable, allocable, and otherwise allowable.

HOW WE CONDUCTED THIS REVIEW

We reviewed \$3,621,997 of the \$4,731,011 in Disaster Relief Act funding claimed by EOC during our audit period for the demolition and construction of the Long Beach Head Start center and for temporary relocation costs. We did not review the remaining \$1,109,014 because the work associated with these funds was ongoing at the time we completed our fieldwork.

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.

Appendix B contains the details of our audit scope and methodology.

FINDINGS

EOC claimed Disaster Relief Act costs that did not comply with Federal requirements. Of the \$3,621,997 in costs that we reviewed, \$3,007,719 complied with applicable Federal requirements. However, EOC claimed \$614,278 in unallowable Disaster Relief Act costs because it (1) claimed construction costs, salaries, and fringe benefits on the basis of budgeted, not actual, costs; (2) claimed construction management and design costs that were not allocable to the grant; and (3) claimed costs that had been separately reimbursed by insurance.

CLAIMED COSTS BASED ON BUDGETED, NOT ACTUAL, COSTS

To be allowable under an award, costs must be reasonable for the performance of the award and adequately documented (2 CFR part 230, Appendix A, §§ A.2.a. and g). Additionally, charges to awards for salaries and wages must be based on documented payrolls and supported by personnel activity reports that reflect the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards (2 CFR part 230, Appendix B, §§ 8(m)(1) and (2)(a)).

EOC claimed unallowable construction costs, salaries, and fringe benefits totaling \$110,459 on the basis of budgeted, not actual, costs. Specifically, EOC claimed \$2,910,691 for demolition, construction, and related costs, including \$1,834,456 in budgeted demolition costs and costs related to pilings, earthwork, foundation, and steel framing. However, EOC's actual payments

⁴ The Office of Management and Budget (OMB) Circular No. A-122, *Cost Principles for Non-Profit Organizations*, was relocated to 2 CFR part 230 and made applicable by 45 CFR § 74.27(a). Although not applicable to this audit, HHS promulgated new grant regulations at 45 CFR part 75. The new regulation applies only to awards made on or after December 26, 2014.

for these budgeted services totaled \$1,730,364. As a result, EOC claimed a total of \$104,092 in unsupported construction costs.⁵

EOC also claimed salaries and fringe benefits totaling \$89,991 on the basis of budgeted, not actual, costs for three employees who worked on the Hurricane Sandy grant. Specifically, for these three employees, EOC claimed \$6,367 in salaries and fringe benefits for which it did not provide personnel activity reports, or the reports did not support the salaries claimed.

According to EOC officials, these costs were claimed on the basis of higher budgeted amounts and not actual costs in order to have funds on hand to readily pay subcontractors. EOC expected that, in some cases, actual costs would exceed budgeted costs and, therefore, it would not have claimed any excess funds at the end of the grant period.

UNALLOCABLE CONSTRUCTION MANAGEMENT AND DESIGN SERVICES COSTS

To be allowable under an award, costs must be allocable. A cost is allocable to a Federal award if it is incurred specifically for the award (2 CFR part 230, Appendix A, § A.4.a(1)).

EOC claimed construction management and design services costs of \$570,360 and \$383,200, respectively. EOC derived these costs on a percentage of its estimated construction costs⁶ included in its budget for its Disaster Relief Act grant. However, when ACF deobligated some of EOC's Disaster Relief Act funds, EOC failed to adjust the construction costs base accordingly. As a result, EOC claimed construction management and design services costs totaling \$501,982 that were not allocable to the grant.⁷

CLAIMED COSTS REIMBURSED BY OTHER INSURANCE

Federal cost principles require that grant expenditures submitted for Federal reimbursement be reasonable, allocable, and otherwise allowable (2 CFR part 230). Further, the Disaster Relief Act states that funds appropriated under it shall not be available for costs that are reimbursed by the Federal Emergency Management Agency, under a contract for insurance, or by self-insurance (Division A, Title VI of the Disaster Relief Act).

EOC received \$30,000 from its property insurance carrier for Hurricane Sandy-related damage. However, because of what EOC officials described as an oversight, EOC reduced its costs

⁵ EOC claimed \$76,456 in demolition costs and \$1,758,000 for pilings, earthwork, foundation, and steel framing. Actual payments made to vendors for these services were \$76,314 and \$1,654,050, respectively, resulting in unsupported demolition costs of \$142 and unsupported building costs of \$103,950.

⁶ EOC's construction management and design services costs represented 10 percent and 6 percent of construction costs, respectively.

⁷ To arrive at construction management and design services costs allocable to the grant, we recalculated the construction costs base to reflect the deobligated funds and to remove the unallowable costs identified. We then applied 10 percent and 6 percent to the recalculated construction costs base to determine the allocable amount of construction management and design services costs, respectively.

claimed to the Hurricane Sandy grant by \$28,163. As a result, EOC received \$1,837 in Disaster Relief Act funds that had already been reimbursed by other insurance.

RECOMMENDATIONS

We recommend that ACF ensure that:

- EOC refunds \$614,278 to the Federal Government for Disaster Relief Act costs that did not comply with Federal requirements and
- the \$1,109,014 in Disaster Relief Act costs associated with EOC's ongoing work complies with Federal requirements.

ECONOMIC OPPORTUNITY COMMISSION OF NASSAU COUNTY, INC., COMMENTS

In written comments on our draft report, EOC, through its attorneys, generally disagreed with our findings and provided additional documentation to support some of its claimed Disaster Relief Act costs. EOC stated that it claimed actual construction costs, not budgeted costs, because payments to third-party vendors by its construction management company (acting as an agent) constituted expenses. EOC stated that it placed funds with its construction management company, which placed them in escrow for anticipated construction costs.

EOC provided additional evidence of construction costs related to pilings, earthwork, foundation, and steel framing totaling \$207,963 that EOC officials stated could not be located during our fieldwork and clarified that demolition expenses for \$26,083 were inadvertently not included in the documentation it initially provided, owing, in part, to a mathematical error in the documentation. EOC also provided additional documentation in support of the salaries claimed for two employees and stated that it agreed with our disallowance of the salaries claimed for one employee.

EOC stated that ACF did not deobligate some of EOC's Disaster Relief Act funds until after our audit period, and therefore, the construction management and design services costs it claimed were based on total construction costs at the time of the audit and were within the percentages provided in its contract with its agent.

Finally, EOC stated that it used \$30,000 in insurance funds to replace business assets totaling \$28,163, and these costs were not part of its claim for Disaster Relief Act funds.

EOC's comments are included as Appendix C.⁸

⁸ We did not include exhibits submitted as attachments to EOC's comments because they were voluminous. Further, some exhibits contained personally identifiable information.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing EOC's comments and additional documentation, we revised our findings related to unallowable construction costs, salaries, and fringe benefits and the first recommendation accordingly. We maintain that our remaining findings are valid.

We maintain our assertion that construction costs were based on budgeted, not actual, costs, as EOC's accounting records clearly indicated that budgeted construction costs were claimed and posted to EOC's general ledger. Placement of funds in escrow by an agent for anticipated costs does not constitute actual costs. Federal cost principles require costs to be allocable in accordance with benefits received, and payments to budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.⁹

In regard to the additional documentation EOC submitted to support unallowable pilings, earthwork, foundation, and steel framing costs, documentation for \$100,000 of the \$207,963 related to the \$1,109,014 in claimed funds that we did not review because the work associated with the funds was ongoing at the time we completed our fieldwork. We accepted the documentation for the remaining \$107,963 and the documentation for \$26,083 in demolition costs not previously submitted and revised the amount reported for unallowable construction costs. In addition, we revised unallowable salaries and fringe benefits, as the additional documentation EOC submitted supported some of the salaries for the two employees in question.

Although we agree that the deobligation of grant funds occurred after our audit period, we maintain that EOC should have adjusted its construction cost base to account for this. The deobligation affected construction management and design costs during the audit period; therefore, the construction cost base upon which those allocated costs were based should have been reduced. We revised the amount reported for unallocable construction management and design costs to reflect the change in unallowable construction costs.

Finally, we maintain that EOC should have offset the entire \$30,000 in insurance funds that it received against costs claimed for replacing business assets that were covered by insurance. EOC offset only \$28,163 in costs claimed for temporary relocation expenses following Hurricane Sandy.

ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS

In written comments on our draft report, ACF concurred in part with our first recommendation (financial disallowance) and concurred with our second recommendation.

ACF agreed that EOC claimed costs totaling \$110,459 based on budgeted rather than actual costs and claimed \$1,837 in Disaster Relief Act funds that had already been reimbursed by other insurance. However, ACF disagreed that \$501,982 in costs were not allocable to the grant. Specifically, ACF stated that, owing to an error in the project period noted on award 02SD0008, it was necessary to deobligate funds from this award and immediately reaward the funds as grant 02SD0023 with a corrected project period. ACF asserted that the deobligation and reawarding of

⁹ 2 CFR part 230, Appendix A, § A.4.a, and Appendix B, §§ 8(m)(1) and (2)(a).

the funds did not change the overall amount awarded or EOC's original project budget. Nevertheless, ACF stated that it will ensure that project management and design services costs are properly allocated to EOC's Disaster Relief Act awards and are not duplicated between the original (02SD0008) and replacement (02SD0023) awards.

ACF's comments are included in their entirety as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing ACF's comments, we maintain that our findings and recommendations are valid. Although the deobligation of grant funds may not have changed the overall amount awarded to EOC or EOC's original project budget, by reducing the grant amount for grant 02SD0008, the cost basis on which construction management and design services costs were calculated was also reduced. These construction management and design services costs should have been a percentage of the now-reduced amount, but EOC failed to reduce the costs that were allocated to grant 02SD0008. As a result, the cost basis for allocating these costs to grant 02SD0008 incorrectly included funds for a different grant (02SD0023) and for a different project period. While we acknowledge that these costs are allocable to the subsequent grant (02SD0023) and may otherwise be allowable, we continue to recommend that ACF disallow or otherwise remove these costs from grant 02SD0008, because they are not allocable to this grant. Therefore, we maintain that EOC should have reduced this cost basis to account for the deobligated funds and to ensure project management and design services costs are properly allocated to EOC's Disaster Relief Act awards and are not duplicated.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

| Report Title | Report Number | Date Issued |
|---|--------------------------------------|--------------------|
| <i>New Jersey Should Strengthen Hurricane Sandy Social Services Block Grant Internal Controls</i> | <u>A-02-14-02010</u> | 1/17/2017 |
| <i>Visiting Nurse Service of New York Budgeted Costs That Were Not Appropriate and Claimed Some Unallowable Hurricane Sandy Disaster Relief Act Funds</i> | <u>A-02-14-02012</u> | 11/28/2016 |
| <i>Columbia University Claimed Allowable Hurricane Sandy Disaster Relief Act Funds</i> | <u>A-02-15-02007</u> | 5/18/2016 |
| <i>New York Implemented Effective Internal Controls Over Hurricane Sandy Social Services Block Grant Funds and Appropriately Budgeted and Claimed Allowable Costs</i> | <u>A-02-14-02009</u> | 5/18/2016 |
| <i>Bayview Nursing and Rehabilitation Center Claimed Allowable Hurricane Sandy Disaster Relief Act Funds</i> | <u>A-02-15-02010</u> | 4/4/2016 |
| <i>Link2Health Solutions, Inc., Budgeted Costs That Were Not Appropriate and Claimed Some Unallowable Hurricane Sandy Disaster Relief Act Funds</i> | <u>A-02-14-02013</u> | 3/23/2016 |
| <i>Health Research, Inc., Budgeted Costs That Were Appropriate and Claimed Allowable Hurricane Sandy Disaster Relief Act Funds Under Grant Number 1U01TP000567</i> | <u>A-02-15-02006</u> | 2/2/2016 |
| <i>New York University School of Medicine Budgeted Costs That Were Appropriate and Claimed Allowable Hurricane Sandy Disaster Relief Act Funds</i> | <u>A-02-14-02011</u> | 12/7/2015 |
| <i>The Department of Health and Human Services Designed Its Internal Controls Over Hurricane Sandy Disaster Relief Funds To Include Elements Specified by the Office of Management and Budget</i> | <u>A-02-13-02010</u> | 7/24/2014 |

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed \$3,621,997 of the \$4,731,011 in Disaster Relief Act funding awarded to EOC under grant number 02SD0008-01 and claimed by EOC during the period September 1, 2013, through August 31, 2015, for the demolition and construction of the Long Beach Head Start center and for temporary relocation costs. We did not review the remaining \$1,109,014 because the work associated with these funds was ongoing at the time we completed our fieldwork.

We did not assess the overall internal control structure of EOC. Rather, we reviewed the internal controls that EOC implemented to manage Disaster Relief Act funds.

We performed our fieldwork at EOC's office in Hempstead, New York, from July 2015 through January 2016.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- met with ACF officials to gain an understanding of the Disaster Relief Act funds awarded to EOC;
- met with EOC officials and reviewed EOC's policies and procedures for managing and claiming Disaster Relief Act funds;
- reviewed EOC's funding applications for the demolition and construction of the Long Beach Head Start center and for costs related to the temporary relocation of the program, as well as ACF's notices of award, to gain an understanding of the project, its objectives, and the terms and conditions of the awards;
- reconciled EOC's reported Disaster Relief Act expenditures to its accounting records;
- reviewed EOC's claimed Disaster Relief Act costs and supporting documentation to determine compliance with Federal requirements; and
- discussed the results of our review with EOC officials.

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.

**APPENDIX C: ECONOMIC OPPORTUNITY COMMISSION
OF NASSAU COUNTY, INC., COMMENTS**



August 31, 2016

BY HAND DELIVERY & ELECTRONIC MAIL

Mr. James P. Edert
Regional Inspector General for Audit Services
U.S. Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Re: Economic Opportunity Commission of Nassau County, Inc., Report Number A-02-15-0200

Dear Mr. Edert:

We represent the above named organization and are in receipt of your letter dated July 28, 2016. The Economic Opportunity Commission of Nassau County, Inc. (hereinafter "EOC") is currently being cited for failure to comply with the Federal reporting requirements relating to Disaster Relief Act costs. The Office of Inspector General (hereinafter "OIG") intends to recommend that the Administration for Children and Families (hereinafter "ACF") ensure that EOC refund \$773,329 to the Federal Government for Disaster Relief Act costs that did not comply with Federal requirements. Upon a thorough review of the facts and circumstances in this matter and in connection with relevant legal authority, we conclude that EOC has complied with Federal Regulations in its administration of Disaster Relief Act funds, and therefore, should not be required to refund \$773,329 of its Disaster Relief Act funding, as it has complied with Federal Regulations.

The scope of the OIG review included an analysis of \$3,621,997 of Disaster Relief Act Funding during the period of September 1, 2013 thru August 31, 2015, relating to the demolition and construction of EOC's Long Beach Head Start Center, as well as for temporary relocation costs. From this review emerged three assertions of unallowable expenses under the Disaster Relief Act which include:

1. *Claimed construction costs, salaries, and fringe benefits on the basis of budgeted, not actual costs;*
2. *Claimed construction management and design costs that were not allocable to the grant; and*
3. *Claimed costs that had been separately reimbursed by insurance.*

Hence our analysis of these assertions are outlined below.

425 Broadhollow Rd, Suite 400 | Melville, NY 11747 | O (631) 492-1520 | F (631) 492-1521 | mccoylecoltd.com

OIG Assertion 1

“EOC claimed construction costs, salaries, and fringe benefits on the basis of budgeted, not actual costs.”

Analyses of budgeted vs. actual expenses in the instant case begins with an understanding of the business relationship between EOC and Universal Design and Construction Management LLC (herein “Agent”). Universal’s relationship with EOC was both the architect and construction manager, acting as Agent for EOC with respect to the independent subcontractors who performed the actual construction services (see Construction Management Contract, Art 2.1 marked **Exhibit 1**).

Hence, the flow of operations required EOC to place requested sums with the Agent who placed those funds in escrow for anticipated construction costs (see Construction Management Contract, Art. 5.2 marked **Exhibit 1**). However, these funds were not expended until the Agent disbursed the funds to the subcontractors based on various stages of completion of the construction in progress. Therefore, checks written by EOC to its Agent, in advance of completed construction, which placed the funds in escrow is not an expenditure. Rather, the payment by the Agent of those funds to third parties manifested the expenditure. Therefore, the costs claimed by EOC are actual rather than budgeted costs.

Agent served as construction manager and, acting on behalf of EOC, entered into agreements with subcontractors who performed the work for this project. In this role, Agent was also responsible for approving and making payments to subcontractors (based on the progress of each vendor project), quality control oversight, arranging building code inspections, etc. The Agent held EOC funds in escrow during the construction project to this end. We also note that final payments were not released by Agent to any subcontractor unless work was completed and approved by Agent and/or city inspectors. EOC also reconciled invoices with Agent after Agent paid the subcontractors in full.

1. **Demolition** – EOC initially claimed \$76,456 for demolition expenses of its Long Beach Head Start center. At the time of audit, EOC provided invoices and canceled checks totaling \$50,231. However, additional expenses relating to demolition totaling \$26,083 were inadvertently not included with the initial submission of expenses (see **Exhibit 2**). Hence, EOC can support a claim in the amount of \$76,314 with canceled checks and invoices expended during the audit period, and therefore meets the standard of allowability within the meaning of 2 CFR, Part 230, Appendix A, §§ A.2.a and g. In addition, OIG’s assessment of unsupported expenses of \$26,083 was due in part to a mathematical error on EOC documentation of \$10,333 which was overlooked by auditors.
2. **Pilings, Earthwork, Foundation & Steel Framing** – EOC claimed \$1,758,000 for several phases of this project. The documents initially submitted included invoices and canceled checks during the audit totaling \$1,546,087. As a result, the OIG disallowed \$211,913 because there was no supporting documentation for those particular expenses at the time of the audit. In **Exhibit 3**, please see evidence of additional expenses totaling \$207,962.57 which could not be located during the audit and are provided here, all of which supports EOC’s claim in the amount of \$1,754,049.57. Therefore, being supported by canceled checks and invoices EOC’s costs meet the standard of allowability within the meaning of 2 CFR, Part 230, Appendix A, §§ A.2.a and g.
3. **Salaries & Fringe Benefits** – EOC claimed \$89,991 for salaries & fringe benefits. During the audit, EOC provided all details as requested by the OIG; however, the OIG reported it was not in receipt of salary documentation for two of EOC’s employees. Accordingly, see **Exhibit 4** as

a resubmission of documents previously provided for [REDACTED] and [REDACTED]. After re-review of [REDACTED]' payroll documents, EOC agrees with the OIG's disallowance of \$4,664.00 which represents a portion of his salary during the audit period.

OIG Assertion 2

"EOC claimed construction management and design costs that were not allocable to the grant."

A cost in accordance with 2 CFR, Part 230, Appendix A, § A.4.a, is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances, and if it:

- 1) Is incurred specifically for the award;
- 2) Benefits both the award and other work, and can be distributed in reasonable proportion to the benefit received; or
- 3) Is necessary to the overall operation of the organization

Here, OIG asserts that EOC's costs for construction management and design services, which total \$570,360 and \$383,200 respectively during the audit period are not allocable to the Disaster Relief Act grant because EOC failed to adjust the construction cost base when ACF deobligated some of EOC's Disaster Relief Act funds. This assertion is incorrect, and the cost for construction management and design services are allocable and therefore allowable for two reasons.

First, as the OIG correctly points out, EOC's construction management and design fees are based on a fixed percentage of the value of construction which is 10% for construction management and 6% for design services. Pursuant to the Design Services Contract between Agent and EOC, these costs become fully due upon completion of the finalized building plans (see Exhibit 5, Design Services Contract, Article 4.3). This payment structure is a customary business practice in the architectural industry for design services. Likewise, the Contract Management Contract between EOC and Agent provides for a monthly payment of \$23,210 towards the total value of construction. These terms were made to accommodate EOC's ability to pay incrementally as it received its Disaster Relief Act funds. Hence, the manner in which payment for contract management and design services were made was wholly consistent with that of the architectural and construction industries; related specifically to expenditures for the Federal award to build a new Head Start Facility; benefited the award in that its use was to achieve the construction of the new Head Start facility; and was distributed in reasonable proportion to the benefits received as the fees were based on the total value of construction which is the normal and customary practice in the construction industry and paid incrementally as EOC received it funds. Therefore, the construction management and design services payments are allocable with respect to the nature, character, and structure of the payments within the meaning of 2 CFR, Part 230, Appendix A, § A.4.a.1,2 and 3.

Moreover, OIG's assertion that EOC's cost for construction management and design costs are not allocable for failure to adjust the construction cost base is without merit as the record shows that ACF did not deobligate some of EOC's Disaster Relief Act funds until September 3, 2015, which was after the audit period and long after sums due for construction management and design services had accrued (see Exhibit 5, Notice of Award with addendum). Hence, the construction cost base at the time of the audit was \$7,493,453, and EOC paid Agent the sum of \$570,360 in construction management fees which were within the percentage provided for by the contract and therefore allocable. In addition, the design services payments by EOC to Agent of \$383,200 is also allocable as it represents less than the contract amount and was fully due and payable at the audit date.

Economic Opportunity Commission of Nassau County, Inc.
Response to DHHS OIG July 2016 Report
Re: Hurricane Sandy Disaster Relief Act Funds (A-02-15-02009)

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Office of Inspector General Note – The deleted text has been redacted because it is personally identifiable information.

In its footnote 7, the OIG stated that it recalculated the construction costs base to reflect the deobligated funds and removed the unallowable costs identified. This conclusion is incorrect since funds were deobligated as of September 3, 2015, not during the audit period. The allocable costs during the audit period for construction management and design service costs remained 16% of the total construction cost at the time. That is, 6% for design services and 10% for construction management. EOC's claim for these fees did not exceed 16% of the allocable costs during the audit period.

OIG Assertion 3

"EOC claimed costs that had been separately reimbursed by insurance."

EOC received \$30,000 from its property insurance carrier for Hurricane Sandy-related damage. These funds were never included in EOC's claim for Disaster Relief Act funds, nor did EOC receive \$1,837 as the OIG's report indicates. During the audit, EOC demonstrated its use of the insurance funds that replaced business assets totaling \$28,163 which were separate and apart from its Disaster Relief Act claim. EOC made no claim for any part of its insurance reimbursement. Therefore, the OIG's report improperly concludes that EOC claimed reimbursement for such funds.

CONCLUSION

Based on the aforementioned facts provided herein, EOC, after careful review of the findings in the OIG's report, concedes that it should reimburse the Federal Government the sum of \$8,756 which consists of \$4,664 in salary disallowance for [REDACTED], \$142 for unsupported demolition costs, and \$3,950 for unsupported pilings, earthwork, foundation and steel framing costs, and conclude that all other expenditures claimed by EOC are fully allowable. I am,

Yours truly,



William McCoy, J.D., EA
Attorney for Economic Opportunity Commission
of Nassau County, Inc.

WM:rph

Enclosures

APPENDIX D: ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS



ADMINISTRATION FOR
CHILDREN & FAMILIES
Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034
Washington, DC 20201 | www.acf.hhs.gov

December 16, 2016

Ms. Gloria L. Jarmon
Deputy Inspector General for Audit Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Jarmon:

The Administration for Children and Families (ACF) appreciates the opportunity to respond to the Office of Inspector General's (OIG) report "Economic Opportunity Commission of Nassau County, Inc., Claimed Some Unallowable Hurricane Sandy Disaster Relief Act Funds (Report Number A-02-15-02009)". This review was performed as part of the OIG's Hurricane Sandy oversight activities.

The following are ACF's comments to each of the OIG's recommendations:

Recommendation #1:

The OIG recommends that ACF ensure that EOC refunds \$614,278 to the Federal Government for Disaster Relief Act costs that did not comply with Federal Requirements.

Response:

ACF concurs in part with this recommendation. The report identifies \$110,459 of claimed costs based on budgeted rather than actual costs and \$1,837 in Disaster Relief Act funds that had already been reimbursed by other insurance. ACF agrees that these two identified amounts did not comply with Federal Requirements.

ACF does not concur with the recommendation to disallow \$501,982 identified as not allocable to the grant (02SD0008). Due to an error in the project period noted on award 02SD0008, ACF determined that it was necessary to de-obligate \$3,386,045 of funds from award 02SD0008 effective August 31, 2015 and immediately re-award them on September 1, 2015 as award 02SD0023 with a corrected project period. The de-obligation and re-award of funds was required by ACF and did not change the overall amount awarded or affect the project budget originally submitted by the grantee. ACF does agree, however, that ACF must assure that project management and design service costs are allocable to either award 02SD0008 or 02SD0023 and not duplicated as between the original and replacement awards.

Page 2 – Ms. Gloria L. Jarmon

ACF will continue to require regular submission by the awardee of detailed budget information to the ACF Hurricane Sandy auditor and Program Specialist in Region II, engage in onsite project inspections and review individual transactions for improper payments. Moving forward, ACF will pay particular attention to project management and design service costs to assure they are properly allocable to each of the grantee's three Hurricane Sandy Disaster Relief Act awards.

Recommendation #2:

The OIG recommends that ACF ensure that the \$1,109,014 in Disaster Relief Act costs associated with EOC's ongoing work complies with Federal requirements.

Response:

ACF concurs with this recommendation and will continue to require regular submission by the awardee of detailed budget information to the ACF Hurricane Sandy auditor and Program Specialist in Region II, engage in onsite project inspections and review individual transactions for improper payments. Moving forward, ACF will conduct the following activities:

- Continue the activities noted previously for all Disaster Relief Act fund awardees;
- Review budgets and grant awards for grantees when funds were de-obligated and re-awarded to assure proper allocability of costs between awards;
- Provide affected grantees with training and technical assistance as needed.

In closing, ACF understands that the OIG is mandated to perform oversight, accountability, and evaluation of programs, projects, or activities supported with Disaster Relief Act funds. ACF supports OIG's in these efforts including in determining whether claimed Disaster Relief Act costs complied with Federal requirements. Please direct any follow-up inquiries to our OIG liaison Scott Logan, Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,


Mark H. Greenberg
Acting Assistant Secretary
for Children and Families