# New York City Industrial Development Agency

## Administration and Monitoring of Financial Assistance to New York City Businesses

Report 2021-N-6 | June 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller
Division of State Government Accountability

# Audit Highlights

## Objectives

To determine whether the New York City Industrial Development Agency (NYCIDA) has policies and procedures in place to approve, monitor, and measure project performance and whether they were followed. We also determined whether NYCIDA recaptured public benefits in accordance with the project and/or lease agreements. The audit covered the period from July 2013 through August 2021.

## About the Program

NYCIDA was created by the New York City Council in 1974 “to promote the economic welfare of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration.”

NYCIDA provides financial assistance to companies in New York City through tax waivers of City and State sales and use tax, local property tax abatements, and reductions to City and State mortgage recording tax. Companies requesting financial assistance must provide a reason why, if not for the financial assistance provided by NYCIDA, the company would not be able to undertake the project. Businesses are also required to estimate the capital cost of the project, provide the financing sources, and project the full-time equivalent (FTE) jobs that would be created or retained if the financial assistance request is granted.

If NYCIDA determines that a business meets certain eligibility criteria, as set forth in NYCIDA’s uniform tax exemption policy, it engages with the company to discuss potential projects. The business must be able to show that its project would not occur without NYCIDA’s assistance as well as make a commitment to hire under the HireNYC program, a workforce development program that creates local employment opportunities.

## Key Findings

NYCIDA did not have policies and procedures in place that address factors related to the projects selected for financial assistance. Specifically, NYCIDA did not:

- Maintain detailed records of prospective projects and intake actions, resulting in a lack of assurance that the financial assistance process is fair and equitable to all businesses seeking assistance. Information on businesses deemed ineligible or whose applications stalled prior to award either is not kept or is incomplete. Additionally, not all required application documentation was maintained.
- Obtain required supplementary application documents from 21 of the 23 projects sampled. These documents could have provided more information about the businesses applying for financial assistance. For example, among the missing documentation was the past 3 years’ financial statements (13 applicants) and copies of certificate of liability insurance (10 applicants). Two businesses were not required to submit an application because their projects were a continuation of benefits from another project.
- Perform accurate financial feasibility analysis. We selected 17 of the 23 projects in our sample to review NYCIDA’s financial feasibility analyses. For 15 of the 17 projects, either NYCIDA did not do an analysis or the analysis was done incorrectly. For the remaining two projects, NYCIDA did

not provide any documentation to show whether an analysis was performed, as NYCIDA relied on demand and development studies provided by third parties for these development projects instead of performing the analysis. NYCIDA officials stated that there is a 0% rejection rate of formal applications presented to the Board because NYCIDA staff performed due diligence on every application.

- Focus on creating or retaining jobs. The 23 projects we sampled had 2,517 employees and anticipated hiring an additional 4,559 FTEs within 3 years of project completion. However, two projects that expected to hire 472 FTEs were granted multiple extensions (8 months and 36 months) for completion of construction. As the projects have not yet completed construction, the City has not received any of the expected benefits. These two projects received approximately $2.67 million in sales tax, property tax, and mortgage recording tax exemptions. Additionally, two projects that were terminated had the same number of employees as when they started, yet they received benefits of $113,950.
- Collect the appropriate recapture or repayment amount. Of a judgmental sample of 28 projects with recapture payments, 15 had multiple recapture or repayment calculation errors. These errors resulted in a net undercollection by NYCIDA of $674,894 in 15 recaptures and repayments.

## Key Recommendations

- Document and retain application inquiry, intake, and approval decisions regardless of applicant status.
- Revise NYCIDA's lease agreement to include penalty clauses that reduce benefits to projects that do not create the anticipated number of jobs.
- Revise the financial analysis template to ensure the template formulas are correct and capture all relevant information to determine a project's financial feasibility.

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

June 12, 2024

Andrew Kimball
Chair
New York City Industrial Development Agency
1 Liberty Plaza, 14th Floor
New York, NY 10006

Dear Chair Kimball:

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

Following is a report of our audit entitled *Administration and Monitoring of Financial Assistance to New York City Businesses*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Article III of the General Municipal Law.

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

Respectfully submitted,

*Division of State Government Accountability*

# Contents

# Glossary of Terms

| Term | Description | Identifier |
|---|---|---|
| NYCIDA | New York City Industrial Development Agency | *Auditee* |
| | | |
| ABO | Authorities Budget Office | *Oversight Office* |
| Board | NYCIDA's Board of Directors | *Key Term* |
| DOF | New York City Department of Finance | *City Agency* |
| Financial assistance | Proceeds of bonds issued, straight leases, or exemptions from taxation | *Key Term* |
| FTE | Full-time equivalent | *Key Term* |
| HireNYC | Program to develop New York City's workforce and assist businesses with hiring employees | *NYC Program* |
| Law | General Municipal Law Article 18-A | *Key Term* |
| NYCEDC | New York City Economic Development Corporation | *City Agency* |
| PILOT | Payment in Lieu of Taxes | *Key Term* |
| Project | A business at one location receiving tax benefits for a specific purpose | *Key Term* |
| UTEP | Uniform tax exemption policy | *Key Term* |

# Background

The New York City Industrial Development Agency (NYCIDA) supports business growth, relocation, and expansion across the five boroughs by lowering the cost of capital investment. NYCIDA offers tax incentive programs to businesses that have a need for financial assistance and can demonstrate there will be a positive economic impact to the City, such as employment growth, increase in tax revenues to the City, or other public benefits resulting from their proposed projects.

Established under Article 18-A of the General Municipal Law (Law) – also referred to as the Industrial Development Agency Act – NYCIDA screens prospective businesses for eligibility for financial assistance, which could include:

- Abatement of property tax for up to 25 years (i.e., Payment in Lieu of Taxes [PILOT]).
- Reduction of mortgage recording tax applicable to a project mortgage from 2.8% to 0.3%, lowering up-front costs.
- Waiver of the 8.875% City and State sales tax on purchases of materials and equipment related to construction in the first 2 years or so of the project.

Companies requesting financial assistance must provide a reason why, if not for the financial assistance provided by NYCIDA, the company would not be able to undertake the project. Companies are also required to estimate the capital cost of the project, provide the financing sources, and project the full-time equivalent (FTE) jobs that would be created or retained if the financial assistance request is granted.

If NYCIDA determines that a business meets certain eligibility criteria, as set forth in NYCIDA's uniform tax exemption policy (UTEP), it engages with the company to discuss potential projects. The business must be able to show that its project would not occur without NYCIDA's assistance as well as make a commitment to hire under the HireNYC program, a workforce development program that creates local employment opportunities.

NYCIDA will then offer the business an application. During the application process, NYCIDA performs due diligence, conducting background checks on the company and a cost-benefit analysis. Additionally, NYCIDA must post a notice of and conduct a public hearing. NYCIDA then presents an Executive Summary to its Board of Directors (Board) for its review and vote on approval. Financial assistance includes State and local sales and use tax exemptions, State and local mortgage recording tax deferrals or exemptions, and real property tax exemptions or abatements.

Once authorized by the Board, the project application will move to closing. At this stage, the company signs a multi-year contract with NYCIDA, including the lease or bond agreement, that records the financial assistance provided and sets the terms for the project to remain in good standing to continue to receive financial assistance. Post-closing, the project's status is active and it is subject to monitoring by NYCIDA's Compliance Unit, which monitors the project throughout its life. Leases may be for a duration of up to 30 years.

When projects fail to comply with the requirements of the governing agreement, such as timely payment of PILOT, NYCIDA may send the project a Notice of Default and provide an opportunity for the project to cure (allows a party to a contract to have the opportunity to correct their performance to align with their obligations in the contract) or remedy the default within a specified time frame. Failure to cure will result in an Event of Default Notice, where NYCIDA may state an intent to terminate the agreement and/or begin proceedings to have the financial assistance recaptured (required to be returned).

NYCIDA project managers use an in-house application to track projects. The application dashboard, DASH, is a repository of information such as the amount and terms of financial assistance, important project dates, and annual project employment counts. Project documents are not kept in DASH; instead, they are kept separately in another web-based application.

NYCIDA reports to the Authorities Budget Office (ABO), New York City Mayor's Office, New York City Council, and Department of Taxation and Finance regarding projects with which it has entered into agreements. The primary method of reporting to ABO is through the Public Authorities Reporting Information System. This required reporting includes the jobs created and/or retained and the method of financial assistance used by the project.

NYCIDA reported 320 active projects in fiscal year 2021 (originating as far back as the 1980s) that received financial assistance benefits, such as PILOT, valued at $512,240,113 and projected 35,912 FTE employees.

# Audit Findings and Recommendations

NYCIDA did not obtain or document all the necessary information from businesses during the application process. For example, 13 of 21 projects (from a sample of 23 projects) required 3 years of financial statements as part of the application process, but they were not in NYCIDA files provided for our review. NYCIDA also made errors in its financial feasibility analyses, such as incorrect formulas in its templates and mistakes from manual data entry. The debt service coverage ratio, for instance, was incorrect, which resulted in NYCIDA's financial feasibility analysis overstating how much cash flow projects have to service debt obligations. The 23 projects we sampled had 2,517 employees and anticipated hiring 4,559 FTEs within 3 years of project completion. However, two projects that expected to hire 472 FTEs were granted multiple extensions (8 months and 36 months) for completion of construction. As the projects have not been completed, the City has not received the benefits from the employment of the FTEs. These two projects received approximately $2.67 million in sales tax, property tax, and mortgage recording tax exemptions. Two additional projects that were terminated had no increase in employment, yet received benefits of $113,950. In addition, NYCIDA did not sufficiently monitor projects once they were active to ensure the projects were in compliance with the lease agreements and met their commitments to the hiring and retention of jobs in the City. Further, when NYCIDA was required to recapture financial assistance previously provided through a project, it made errors in its calculations, resulting in both overpayment and underpayment of recapture amounts.

## Compliance With the General Municipal Law

Under the Law, NYCIDA is required to have a UTEP, which sets out guidelines to claim financial assistance for a project. NYCIDA is also required to have a standard application that a business must complete. In addition, NYCIDA developed a checklist of supplementary documentation to be submitted along with the application, including:

- An environmental assessment report
- A background investigation questionnaire
- 3 years of financial statements
- 3-year operating pro forma statement
- Four quarters of payroll tax records
- A contract of sale for the project location
- An inducement letter stating why the project needs financial assistance from NYCIDA

We reviewed a sample of 23 projects. We found that, of the 21 businesses required to submit an application, none provided all the supplementary documentation. For example, among the missing documentation was the past 3 years' financial statements (13 applicants) and copies of certificate of liability insurance (10 applicants). Two businesses were not required to submit an application because their projects were a continuation of benefits from another project.

Further, NYCIDA officials stated there is a 0% rejection rate of formal applications presented to the Board because NYCIDA staff performed due diligence on every application. Because NYCIDA did not adhere to its application process and collect all the required documentation before accepting project applications and presenting them to the Board, it is possible the Board approved projects without having all the necessary information.

In responding to our preliminary findings, NYCIDA did not address the missing documentation. Instead, it focused on the fact that the checklist is not a required document. While the checklist is not a required document, several of the documents listed on it are. Having incomplete information to authorize financial assistance may impact the NYCIDA Board's decision on whether to approve a project.

## Recommendation

1. Develop a formal procedure for the intake process that includes but is not limited to:
   - A tracking mechanism that retains detailed information, such as status change dates, documents received and pending, and approaching deadlines.
   - Instructing staff to obtain and retain intake documents.

## Intake Process

The intake process is made up of an inquiry and the application. During the inquiry, NYCIDA engages with companies to discuss potential projects that could benefit from financial assistance and determines whether the projects meet certain eligibility criteria. Companies must also make an inducement argument, stating why financial assistance is needed. If NYCIDA ultimately determines that a project will not meet the eligibility criteria, the company is not invited to officially apply. For a project that NYCIDA determines meets the eligibility criteria, NYCIDA invites the business to apply, at which point the project moves to the application stage. After application receipt, NYCIDA performs due diligence, including a cost-benefit analysis and background check of the company.

### Tracking of Inquiries and Applications

NYCIDA uses a spreadsheet to keep a record of inquiries from companies, but these records are incomplete – lacking information such as businesses with projects that go through inquiry but are found ineligible and, therefore, not invited to apply. When businesses are invited to apply and are approved for financial assistance but fail to make it to the closing stage of the application process, these projects can remain outstanding for years without formal resolution. For example, one company submitted an application for a project and was purportedly approved by the Board in December 2017; however, as of December 2021 (when we received and reviewed the spreadsheet), there was no record of whether the business decided to receive or forgo financial assistance for its project. We requested documentation to support inquiries NYCIDA received from businesses for all potential projects regardless of whether they move to the application stage and are ultimately approved. The decisions either by the projects not to continue or by NYCIDA to reject them were not documented anywhere, or if they were, no current NYCIDA staff could find and provide them to the audit team. Without a complete record of the actions taken by NYCIDA, there is a lack of assurance that the intake process is fair or equitable.

An August 2021 internal audit report recommended that NYCIDA improve the application status tracking process and update the application intake policies and procedures, which NYCIDA estimated would be addressed no later than the end of the second quarter of fiscal year 2022 (December 2021). Despite multiple requests, NYCIDA officials did not provide any documentation that changes were made.

## Financial Feasibility and Cost-Benefit Analyses

As part of the application process, businesses are required to submit the following supplementary documentation with their application: employment information, project cost budget, financial statements, and pro forma operating statements. NYCIDA uses this information to perform a cost-benefit analysis for New York City by comparing the cost of the financial assistance to the project with the estimated benefit of additional economic activity generated by the project (e.g., tax revenues from employment and business income). As part of the cost-benefit analysis, NYCIDA performs a financial feasibility analysis to determine the ability of the applicant to achieve sufficient income, credit, and cash flow to financially sustain the project over the long term and meet all debt obligations. The cost-benefit analyses (including the financial feasibility analyses) are included in an Executive Summary intended to provide the Board with sufficient financial information when deciding whether to approve a project. NYCIDA officials stated that the cost-benefit analysis is the most critical component of its application review process because the goal is to evaluate the financial impact of the project on the City and to ensure that the cost to the City from the NYCIDA tax incentives is outweighed by the expected return. However, none of the staff members involved with the project intake process had a background in accounting or finance. During our audit, NYCIDA officials advised us they had hired an additional person whose responsibility was to review the financial analyses.

We selected 17 of the 23 projects in our sample to review NYCIDA's financial feasibility analyses. We found that NYCIDA did not collect sufficient financial information to perform a financial feasibility analysis for each project considered. Of the 17 projects that we selected, only nine had either a cash flow statement or a breakdown of the cash flow statement necessary for a financial feasibility analysis. Further, NYCIDA relied on demand and development studies provided by third parties for two of these development projects instead of performing the analysis themselves.

For the 15 projects where NYCIDA performed its own financial feasibility analysis, NYCIDA did not complete financial feasibility analyses for eight. Despite not having these critical analyses, the Board approved these eight projects. For the other seven projects, NYCIDA transcribed the information from the businesses' financial statements or tax returns into its own financial statement and feasibility analysis templates and subsequently into the Executive Summary. However, we found that NYCIDA made errors when transcribing the information into its templates, especially for three of the six businesses that provided tax returns instead of actual financial statements. NYCIDA stated that it also stopped accepting tax returns and now accepts only CPA-prepared or certified financial statements with applications.

We found errors with the seven for which NYCIDA did prepare analyses, including typos, entering totals instead of using formulas, and not separating assets and liabilities between current (within one year) and long-term (over one year). We also found that the analysis templates NYCIDA used from fiscal years 2012 until 2021 had incorrect financial formulas. For example, the debt service coverage ratio was incorrect for all 15 projects reviewed. As a result of the error in this formula, NYCIDA's financial feasibility analyses overstated how much cash flow the businesses had available to meet their debt obligations. When we brought these issues to NYCIDA's attention, officials stated that the template was revised to capture the relevant and applicable information from applicant materials. However, our review of the revised template found no material change.

The Executive Summary for seven projects NYCIDA presented to the Board stated that the projects were financially feasible; however, other documents provided showed that the analyses done for three of these projects were flawed due to incomplete calculations or incorrect financial data being used. For example, one project was terminated 4 years after closing and was subject to recapture of the financial assistance provided. The project submitted tax returns with its application, which NYCIDA used to transcribe the data into financial statement information to present to the Board. NYCIDA's analysis included accounting errors, such as an incorrect calculation of cash flow. The error in the debt service calculation resulted in an overstatement of the company's ability to meet its debt obligations. NYCIDA discovered the project had several tax liens against it 16 months before the project decided to terminate. The project terminated 6 months after informing NYCIDA of its intent to terminate the agreement and cease operations. NYCIDA referred the project's outstanding unpaid PILOT amount to the NYC Law Department for collection, but as of January 2023, the amount ($8,904) remains uncollected.

NYCIDA officials responded that NYCIDA conducts and documents a financial feasibility analysis for all projects, which is shared with its Finance Committee and then included in the Executive Summary presented to the Board. Further, NYCIDA stated that it also stopped accepting tax returns and only CPA-prepared or certified financial statements are now accepted with applications.

In response to our preliminary findings, NYCIDA officials stated that the template was revised to capture the relevant and applicable information from applicant materials. However, our review of the revised template found no material change. During the audit, NYCIDA officials advised us they hired a person with responsibility for reviewing the analyses because no staff member involved with the project intake process had a background in accounting or finance.

## Recommendations

2. Document and retain application inquiry, intake, and approval decisions regardless of applicant status.
3. Ensure employees have expertise in interpreting financial statements and conducting a financial feasibility analysis.
4. Revise the financial analysis template to ensure the template formulas are correct and capture all relevant information to determine a project's financial feasibility.
5. Develop controls and procedures to ensure sufficient financial information is collected prior to determining financial feasibility, such as, but not limited to, acquiring the income statement, balance sheet, cash flow statement, and financial statement notes with accounting assumptions.
6. Document the analyses and assumptions used in assessing the financial feasibility of projects.

## Monitoring of Project Compliance

Project companies for all NYCIDA projects are required to annually submit an Employment and Benefits Report (with applicable attachments). According to NYCIDA, "It is important we know this information because it helps us to monitor our deals, keeping them in compliance with their agreements." NYCIDA has procedures for monitoring project compliance, including a self-audit every 5 years that reviews the details of the project and the project's business from the lease agreement, searches for any public information about the project company, and potentially includes a visit to the project by NYCIDA staff.

Three of the 23 projects in our sample did not have a self-audit within 5 years of the last self-audit or from its closing date. NYCIDA officials stated that employees were redeployed during the COVID-19 pandemic, putting the self-audit process on pause until the latter half of 2021. However, two of the three projects should have had two self-audits prior to the pandemic. Further, three projects that had been self-audited were missing key dates, such as the project completion date and the agreement maturity date. In response to our preliminary findings, NYCIDA officials agreed that self-audits should be performed in accordance with Compliance Unit procedures.

Our review of NYCIDA's compliance monitoring review of the 23 projects also found:

- Two projects had no project construction completion date.
- One project had an agreement without a stated maturity date, meaning the project seemingly could go on in perpetuity.
- For two projects, the amounts in the Executive Summary, lease agreement, and closing information statement for the mortgage recording tax, sales tax savings (exemption), project cost, and project fee did not always match. For example, one project's maximum sales tax savings amount differed in each

of the three documents – the Executive Summary stated $2,250, the closing information statement listed a $5,000 benefit, and the lease agreement did not state an amount.

Once an approved project has a lease agreement, NYCIDA sends the New York City Department of Finance (DOF) a copy of the lease agreement. DOF has no input in the PILOT formula. DOF interprets the agreement and applies the PILOT formula in the agreement to the assessed property value. The DOF-prepared PILOT Notice of Calculation is then shared with both the project and NYCIDA.

An examination of NYCIDA's lease agreement and respective PILOT calculation spreadsheet found that one project had been underpaying for 9 years. We reviewed the formula and the PILOT spreadsheet and found that a carve-out for a separate business on the property was not included in the PILOT bill. NYCIDA confirmed that the 2.5% carve-out was not correctly reflected in the PILOT bills. The original PILOT bill calculation resulted in an underpayment of approximately $16,000 in taxes over 9 years. The error was brought to NYCIDA's attention, but NYCIDA chose not to take any action because DOF has responsibility for the PILOT calculation. The lack of periodic review of PILOT billing may lead to more projects with complicated PILOT calculations underpaying the City.

We also note that, during a judicial proceeding for one project, the court determined there was a factual question regarding the project's operations commencement date, given the lack of a fixed definition in NYCIDA's agreement. As NYCIDA did not visit the project's premises to confirm operation commencement despite having had several years to do so, NYCIDA was precluded from asserting that the project was completed, and operations commenced on a later date, resulting in less recapture money to the City.

## Job Retention and Creation

NYCIDA was created for the purpose of preventing unemployment and economic deterioration by encouraging and attracting economically sound commerce and industry. One of the expected outcomes of projects that receive financial assistance through NYCIDA is the creation and/or retention of jobs in the City. HireNYC, a 2016 New York City mayoral employment initiative operated by the New York City Economic Development Corporation (NYCEDC), connects jobs created through NYCIDA's projects with locally sourced and qualified job seekers.

At the time of their applications, the 23 sampled projects cumulatively employed 2,517 people throughout New York City. The projects anticipated hiring an additional 4,559 FTE employees within 3 years of project construction completion. Two of the projects, which expected to hire 2,653 FTEs, were still in their original construction period during our audit and thus had no opportunity to hire any employees. Another project that terminated before it completed construction had been expected to create 94 FTEs. In total, the remaining 20 projects employed 2,368 FTEs at the 2021 fiscal year end. In addition:

- Seven projects met or exceeded their FTE expectations.
- Two projects terminated with the same number of FTEs as when they initially applied.
- Four projects had fewer FTEs than when they applied.
- Three projects did not meet their estimated FTEs but have created jobs.
- Two projects did not have FTE creation estimates because they did not submit applications; however, these projects reported no FTEs in fiscal year 2021.

The remaining two projects, which were expected to hire 472 FTEs, were granted multiple extensions (8 months and 36 months) for completion of construction. As the projects have not completed construction, the City has not received any of the expected benefits (i.e., income tax) from the employment of the expected FTEs. These two projects have received approximately $2.67 million in sales tax, property tax, and mortgage recording tax exemptions. At the beginning of 2023, both projects were still under construction.

The only benefit of job retention for businesses applying for financial assistance is in NYCIDA's lease agreement PILOT calculation, whereby hiring more employees increases the PILOT benefit. Conversely, businesses that don't retain employees have their PILOT benefit reduced. If the PILOT reduction clause was not written into a lease, a project would face no consequence of not hiring or retaining employees. NYCIDA officials stated that it is unfair to penalize projects for being unable to meet employment projections.

HireNYC, a New York City mayoral employment initiative, has been included in NYCIDA lease agreements since the initiative's launch in 2016. Under the HireNYC program, projects are expected to make efforts to hire workers, promote new hires, and provide training and higher educational opportunities. Seven of the 23 projects we reviewed had HireNYC requirements in their agreements. Three of the seven projects were in construction and could not fulfill the HireNYC requirements. NYCIDA could not provide documentation that the remaining four projects were being monitored for compliance with the requirements.

NYCIDA officials stated that NYCEDC collects employment data for HireNYC projects, but there was no documentation in NYCIDA's in-house application, DASH, to support this statement for one of the seven projects that should have had the information at the time of our review. Moreover, after a project's termination or maturity, NYCIDA performs no analysis of the actual cost and benefit to the City compared to the estimated cost and benefit at project approval. NYCIDA claims that HireNYC projects participated in more than 3,000 jobs in the City.

While it may be difficult to determine whether the financial benefits to the City occurred when a project is not completed or the number of employees planned is not achieved, there is a need for such information to assess the value of NYCIDA's program/decisions.

## Recommendations

7. Ensure each self-audit is conducted in accordance with NYCIDA's processes and procedures.
8. Review the DOF-prepared PILOT Notice of Calculation for accuracy.
9. Revise NYCIDA's lease agreement to include penalty clauses that would reduce benefits to projects that do not create the anticipated number of jobs.
10. Require that NYCIDA program managers and other employees use the HireNYC program to increase employment in NYCIDA projects.
11. Require and document a cost-benefit analysis or other method for all projects to measure the benefit to the City.

## Recapture of Financial Assistance

If a project fails to uphold the requirements of its agreement, such as non-payment of PILOT, NYCIDA may send the business a Notice of Default requesting the project cure or remedy the default within a specified time frame. Failure to cure will result in an Event of Default Notice, where NYCIDA may state an intent to terminate the agreement and/or begin proceedings to have the financial assistance recaptured (required to be returned). A project may also be subject to recapture if it terminates the agreement during the recapture period. A project must make repayments when sales and use tax benefits have been misused or unauthorized.

The recapture period is 10 years beginning with the commencement of a project's operations. The recapture percentage in the UTEP allows NYCIDA to recapture a maximum 130% of financial assistance it provided for any given project (prior to October 2017, the maximum recapture was 100%). The recapture percentage is calculated using a formula in an Excel template. NYCIDA's recapture percentage formula was incorrect for 10 of 28 projects. The error affected one project's 2019 recapture amount, causing an overcharge of $9,833. This same error occurred with another project that had its financial assistance recaptured in May 2022; however, the error did not impact the recaptured amount.

### Calculation Errors

Of a judgmental sample of 28 projects, 15 had multiple recapture or repayment calculation errors, including:

- Miscalculated interest on financial assistance
- Incorrect proration of PILOT benefits
- Inclusion of incorrect tax rates and property assessment values
- Calculation errors

These errors resulted in a net undercollection by NYCIDA of $674,894 in 15 recaptures and repayments.

For example, one project had an incomplete calculation for the partial recapture of mortgage recording tax. In response to our preliminary findings, NYCIDA acknowledged that the mortgage amount was not included but did not provide a reason why. The recapture calculation for another project failed to include the project's $13.2 million mortgage, resulting in a probable loss of $373,436 in mortgage recording tax and interest recapture. NYCIDA officials could not explain why the mortgage was excluded from the recapture calculation, and it is now too late to recapture the lost amount because all claims were released as part of the litigation settlement and the case cannot be reopened. NYCIDA was not timely in starting recapture procedures because it declared the project in default 2 years after the default event.

### Recapture Distribution

The Law explicitly states that the State's portion of recaptured sales tax be returned to the State. NYCIDA officials claimed that NYCIDA is allowed to keep the State's portion of the recaptured mortgage recording tax because the Law is silent on the return of this tax. However, NYCIDA did not follow that policy with one project, remitting recaptured mortgage recording tax to the Department of Taxation and Finance. Officials stated that the remittance was a mistake. NYCIDA also keeps the Business Incentive Rate benefit, due to a separate agreement between a project and its utility company.

## Recommendations

12. Train employees on how to calculate recapture amounts, including but not limited to accurately prorating the last semi-annual PILOT period, ensuring all the PILOT benefits are included, interpreting the Notice of Calculation correctly, and confirming the interest computation per the terms of the lease agreement.
13. Ensure the recapture percentage formula in the recapture template is correct.
14. Review the undercollected recapture amounts or refund overcollected recapture (repayment) amounts to projects where the time for such actions has not expired, as appropriate.

# Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether NYCIDA has policies and procedures in place to approve, monitor, and measure project performance and whether they were followed. We also determined whether NYCIDA recaptured public benefits in accordance with the project and/or lease agreements. The audit covered the period from July 2013 through August 2021.

To accomplish our objectives and assess related internal controls, we interviewed NYCIDA management and staff responsible for intake, compliance, and recapture processes. We also interviewed DOF officials regarding recaptured financial benefits. In addition, we reviewed NYCIDA policies and procedures.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations. Our samples include:

- A sample of 23 of 306 active projects during the audit scope period. We first judgmentally selected eight of the 306, based on factors such as project type, project status, dollar amount, and date closed. We then identified 120 projects that, based on our audit work, warranted additional review, and selected both bond transactions and a random sample of 13 for a total of 15 additional projects. We reviewed intake applications and supplementary materials, public and Board meeting minutes, and Executive Summaries provided to the Board for project approval for compliance with General Municipal Law Article 18-A. We conducted site visits to verify that the projects were located in New York City.
- We had originally intended to review all 41 projects with recaptures or repayments during the audit scope period to determine whether NYCIDA recaptured financial assistance in accordance with project or lease agreements. However, because NYCIDA imposed significant delays on our access to the necessary records, we were only able to review a total of 28 of these projects. We reviewed letters, notices of default, and termination documents. We interviewed NYCIDA Compliance Managers, and we recalculated the recapture and repayment calculations. In addition, we confirmed the recapture disbursements with disbursement checks, banks statements, and wire instructions to external agencies.

We obtained information from DASH (electronic records of monitoring by NYCIDA's Compliance Unit) and E-file, where electronic copies of project files are kept, and assessed the reliability of that data by reviewing existing information, interviewing officials knowledgeable about the system, and tracing to and from source data. We determined the data from these systems were sufficiently reliable for the purpose this report.

# Statutory Requirements

## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Article III of the General Municipal Law.

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

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, NYCIDA officials informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from agency officials that all relevant information was provided to us during the audit.

## Reporting Requirements

We provided a draft copy of this report to NYCIDA officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report.

In their response to our draft report, NYCIDA officials disagreed with several of the findings and conclusions, especially where we reported that documents essential to the presentation of projects for Board approval, such as the financial feasibility analysis and the cost-benefit analysis, were not provided to us, were incomplete, and contained errors. In addition, we noted that the intake process was not well documented and the updates regarding the applications and inquiries were not always done in a timely manner. Notwithstanding, NYCIDA officials stated that they now have a formalized intake process, and the recent digitization of the application process has greatly improved document retention, organization, and retrieval. Future improvements include selecting a firm to develop a new online platform for the intake and management of prospective applications. Although several of the projects we reviewed did not achieve the additional jobs stated in their applications, NYCIDA officials replied that there were benefits to the City from the existing workers. However, the businesses are required to project the FTE jobs that would be created or retained if the financial assistance is granted. There is a need for NYCIDA to ensure that the project companies make every effort to earn the financial benefits. Our responses addressing certain NYCIDA remarks are included in our State Comptroller's Comments, which are embedded within NYCIDA's response.

Within 180 days after final release of this report, we request that the Chair of the New York City Industrial Development Agency report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

NYCIDA
New York City Industrial Development Agency

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March 21, 2024

Via USPS Certified Mail and E-mail

Ms. Carmen Maldonado Audit Director
Office of the New York State Comptroller
59 Maiden Lane, 21'1 Floor
New York, NY 10038

Re: Audit Report 2021-N-06

Dear Ms. Maldonado:

Please accept this letter as the formal response from the New York City Industrial Development Agency ("NYCIDA" or "IDA") to the draft report, New York City Industrial Development Agency – Administration and Monitoring of Financial Assistance to New York City Businesses (2021-N-6) by the Office of the New York State Comptroller ("OSC"), received via email on February 21, 2024.

The stated purpose of the audit was to determine whether NYCIDA has policies and procedures in place to approve, monitor, and measure project performance and whether they were followed. We have reviewed the audit findings and recommendations as set forth in the draft report. We appreciate the lessons learned from this engagement. Since July 30, 2021, when NYCIDA first received a letter from OSC requesting 15 sets of documents and information, we have duly cooperated by diligently making available over 2,500 pieces of both digital and paper documents for review by OSC auditors. We provided meetings with OSC auditors three dozen times to help them better understand our activities and practices. With that said, after nearly three years of engaging with OSC, we are left perplexed as to the purpose and intent of this audit after reviewing the final draft report.

**State Comptroller's Comment** – The purpose of this audit is to provide objective analyses, findings, and conclusions to help NYCIDA and those charged with governance improve program performance and operations and to contribute to public accountability. However, for the process to work, NYCIDA must be receptive to it. Part of a good control environment is openness and responsiveness to issues raised as part of internal and external audits. Instead, NYCIDA took actions that delayed the completion of the audit, calling into question whether NYCIDA's control environment promotes a supportive attitude. Standards require that when auditors use information that audited entity officials provide as part of their evidence, auditors need to evaluate whether the audited entity's actions result in lower-quality evidence, and so the auditors need to obtain additional evidence. During our audit, NYCIDA declined to provide direct access to view certain key electronic records and instead required auditors to sit with NYCIDA staff, who controlled access to the system of record. For example, our auditors watched as a NYCIDA official navigated through key records for the DASH system, which stores and tracks data for projects that the NYCIDA Compliance Unit monitors. Further, by its own admission, the agency allowed an average of only one meeting a month. The direct result of NYCIDA's actions (not providing direct access and limiting the availability of NYCIDA staff to provide access) directly impacted the quality of the evidence we based our audit conclusions on. As a result of the lack of timely access to information that should have been readily available, more evidence was needed to ensure that we could support our conclusions. In addition, NYCIDA provided information primarily in hard copy rather than electronic, which also prolonged the audit. Moreover, because NYCIDA controlled access to the information and did not provide access on a timely basis, the reliance we could place on the information obtained from their systems was lessened.

Before providing responses to specific areas identified by the audit team in the draft report, there were some inaccuracies and clarifications needed on various findings. Furthermore, we have a serious reservation about the method of sampling projects selected by the audit team. We strongly believe that the audit team did not select a representative sample which reflects how NYCIDA operates presently. The audit team's selection consisted of many outdated projects for which enforcement actions took place prior to July 1, 2013, the beginning date of the scope of this audit quoted by the audit team. For that reason, OSC's findings are skewed toward outdated processes that have already been improved. NYCIDA has shared a significant amount of information and procedural materials to explain how NYCIDA has progressively improved its compliance enforcement process since 2013. The audit team's focus on the enforcement activities on outdated projects seems to be counterproductive in assessing the accuracy, effectiveness, and efficacy of NYCIDA's current operating practices.

**State Comptroller's Comment** – The sampled projects represent NYCIDA's operations at the time of the audit. Thirteen of the projects were selected using a random number generator, and 10 were selected based on factors such as the project size, location, commercial/industrial, and type of benefits (PILOT, MRT, sales tax exemptions). The projects were reviewed based on NYCIDA processes (written and verbal) and documents NYCIDA provided to support its handling of projects from intake to their status at the time they were reviewed. Thus, a project could be terminated, in default, or operating as planned. For the recaptures section of the audit, we planned to review all 41 recaptures but stopped at 28 because of the onerous process put in place by the agency to obtain information, which was time consuming and delayed the timeliness of the audit.

The progressive improvements made to all facets of our processes, including the application, project approval, and post-execution monitoring of projects have helped NYCIDA to uphold the highest standards as an exemplary public authority as the largest IDA in the State of New York.

NYCIDA has the following main concerns with the findings of the audit:

- The audit team's sample selection and resulting findings do not reflect NYCIDA's current operating practices and procedures. Critical findings presented by the audit team were heavily skewed to outdated events, failing to recognize improvements implemented in recent years or current practices. Examples discussed in our response include (1) the OSC's observations related to outdated practices involving intake and application practices, which have since been revised and improved; (2) an observation about construction completion monitoring practices for activities that occurred in the early 2000's and does not reflect current practices; and (3) an alleged error in recapture calculation for a recapture settlement that occurred in 2014.

**State Comptroller's Comment** – All the projects reviewed were active during the period under audit. Many of NYCIDA's projects are active for several decades, and the findings in some cases reflect the long-term nature of these projects. Additionally, due to the lack of evidence, other findings remained unchanged despite the agency's assertions that changes had been made. Specifically:

- The agency states that observations related to the intake and application process relate to outdated practices that have been revised and improved. However, the audit notes that

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"Despite multiple requests, NYCIDA officials did not provide any documentation that changes were made." As a result, the findings were unchanged.

- The agency states that observations related to construction monitoring relate to practices that are no longer in place. This finding does not relate to construction monitoring but to the need for continuous monitoring and checking compliance with the terms of the agreements throughout the life of the agreements, as many of the agreements are active for decades. Information such as construction completion dates impacts other compliance terms such as job creation, which is measured in some cases after construction completion. Failure to monitor terms throughout the life of the agreement can therefore impact future compliance monitoring.
- The agency notes that one recapture error was made in 2014; however, this project was still active at the time of the audit. The recommendation states that the agency should correct these errors "where the time for such actions has not expired, as appropriate." If the time for action has expired, the agency should note that.

- Perfunctory descriptions of observations and findings may mislead readers about the impact and outcomes of NYCIDA's programs and activities and the nature of our operations. Examples discussed in our response here include but are not limited to (1) incorrect observations and/or inferences that NYCIDA did not collect required financial statements and insurance certificates for certain projects and a misleading statement that "it is possible the Board [of Directors] approved projects without having all the necessary information;" (2) observations involving our intake and application process that do not recognize the extraordinarily vigorous vetting process that every benefits application goes through and the continuing improvements in our document tracking and retention procedures; (3) statements about missing construction completion dates and maturity dates in transaction documents that OSC never discussed with us during the course of the audit that we may have rebutted if given the chance; (4) an incorrect observation about a underpayment of PILOT for one project because we "chose not to take action" in regard to a carve-out from PILOT of a separate business at the project site; (5) a wholly inadequate assessment of NYCIDA's job retention and creation results, based on a small sample of only 23 projects, that fails to recognize NYCIDA's tremendous success in supporting the retention and creation of jobs, often exceeding initial job creation expectations, across the full portfolio of NYCIDA projects.

- The OSC makes a claim that NYCIDA does not collect all supplemental documents required by its application checklist during the application process. As we explained to the OSC before, all documents on the checklist are not applicable to every application and therefore not every applicant is expected or required to submit every item on the checklist. NYCIDA also notes and further elaborates herein that the OSC does not accurately describe our application checklist, as the report states that only seven supplemental documents are included in the checklist, while our current checklist includes 19 potential supplemental documents. As noted above, the OSC also states that financial statements and certificates of insurance liability are missing for certain projects, a claim that we dispute in our response herein.

**State Comptroller's Comment** – The audit covered the documents required at the time of our review. NYCIDA indicates that improvements such as a formalized intake process have been implemented and additional actions are planned; however, the agency did not provide support for such changes. If we engage a follow-up review, it will examine and assess the changes and corrective actions NYCIDA reported it has made.

In addition to the main concerns noted above, NYCIDA's detailed response to the OSC's audit findings and recommendations are set forth in the Attachment, responses are categorized under the various headings in the Audit Findings and Recommendations section of the draft report.

1. Compliance with the General Municipal Law
2. Intake Process
3. Monitoring of Project Compliance
4. Recapture of Financial Assistance

NYCIDA remains committed to providing unwavering support to preserve New York's industrial and manufacturing bases. We also play a critical role in New York City's ongoing effort to make strategic investments to encourage private investments in projects to grow innovative sectors. NYCIDA is an integral component in the City's commitment to investing in the life sciences industry by encouraging private investments in creating new business infrastructures to drive innovation in this multi-disciplinary sector that can unlock modern therapeutics and life-saving medicines, vaccines, diagnostics, and devices, all for the advancement of humanity.

While outside the scope of the audit, NYCIDA recently launched the Manhattan Commercial Revitalization program to provide tax incentives for owners who are making substantial investments to modernize and make energy-efficient buildings that will attract world-class tenants and decrease vacancies. The program is expected to transform up to 10 million square feet of Manhattan commercial office space, generate around $2.3 billion in construction and employment activity, increase City tax revenues, and boost street activity and small business opportunities.

NYCIDA is a key player in catalyzing investments to deliver the green economy, enabling the public and private sectors to deliver on ambitious climate and decarbonization goals. Our battery energy storage projects are helping to facilitate the City's goal of reducing greenhouse gas emissions. Our assistance is leveraging federal, state, and private investments to activate the South Brooklyn Marine terminal into a world-class offshore wind port. Our participation in the construction of a converter station in Astoria, Queens will be an integral part of the Champlain Hudson Power Express to deliver 1,250 MW of Canadian hydroelectric power to the NYC electricity grid – enough to power more than one million homes, contributing to fulfill the monumental clean energy mandate to make New York State's electricity grid 100% zero-emission by 2040.

We are very proud of NYCIDA's significant contributions to the economy and people of New York, as empowered and intended pursuant to the General Municipal Law. NYCIDA's accomplishments are evident. Since January 2002 the Agency has closed on 482 projects, leveraging discretionary incentives to induce approximately $33.7 billion in private investment to retain and create nearly 176,287 jobs. (Results are as of June 30, 2023).

Thank you again for the opportunity to submit this response.

Sincerely,

Emily Marcus Falda

Emily Marcus Falda
Executive Director
New York City Industrial Development Agency

CC: Andrew Kimball, NYCIDA Chairperson

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ATTACHMENT

1. Compliance with General Municipal Law

In response to the OSC's finding under this section, that “of the 21 businesses required to submit an application, none provided all the supplementary documentation”, we note that while all applicants are required to submit a standard form of application plus numerous supplemental forms, NYCIDA staff work closely with each applicant to identify which documents are required for submission and to ensure that they are submitted. NYCIDA has robust project management processes in place to ensure that all required documentation is submitted.

For each application, NYCIDA typically collects dozens of documents and supplemental forms, which are each carefully reviewed. The OSC specifically mentions seven supplementary forms in their report, but the full, current version of the NYCIDA checklist includes 19. Agency staff have explained to the OSC that not every document on the checklist is relevant to every application, and thus not every applicant is expected or required to submit every item on the checklist. For example, if an applicant is a new venture and has no financial operating history, it is unable to provide 3 years of financial statements. Agency staff would review the 3-year operating pro forma statement in lieu of the retrospective financial statements.

The application checklist has been continuously updated and improved over the years. The OSC states that copies of certificates of liability insurance were missing for ten applicants, but this document was only added to the checklist after 2015. Older projects in the audit sample would not have been asked to submit a copy of their certificate of liability insurance at the time of application submission, though they would have to submit as a condition precedent prior to closing.

**State Comptroller's Comment** – As noted in the report, based on the documentation provided, 10 applicants did not have support for liability insurance.

Of the 21 sample projects that were required to submit an application, 16 were approved by the NYCIDA Board of Directors prior to 2018. This means that most submitted applications were more than six years ago, during the period where applicants were required to fill out a paper application and to submit the original copy to NYCIDA. The sample selection of projects fails to represent our current practice, as many of the sampled projects predate the full digitization of our file system. NYCIDA fully digitized its application process and document storage system in 2018 and no longer requires or collects physical documents. This ensures robust file retention, organization, and retrieval capabilities.

Additionally, the OSC states that copies of financial statements were missing for 13 applicants. NYCIDA staff verified NYCIDA had received required financial information from these projects because their financial information was provided in the corresponding Executive Summaries when the NYCIDA Board of Directors approved their inducement and/or authorizing resolution. NYCIDA strongly objects to the characterization that “the Board of [Directors] approved projects without having all the necessary information”. The Executive Summaries for these applications, which have been provided to OSC staff, clearly demonstrate that the required information was received and reviewed by NYCIDA staff and Board members had access to a comprehensive set of information on each project presented for approval.

**State Comptroller's Comment** – As noted in the report, based on the documentation provided,13 applicants did not have the 3-year financial statements.

Further, NYCIDA staff requests that the statement about a "0% rejection rate" be removed entirely from this audit report. The OSC audit team may have misconstrued NYCIDA staff's comment. This anecdotal reference was meant to illustrate that: a) NYCIDA staff performed thorough diligence on every application prior to presentation to the NYCIDA Board of Directors for approval and b) that there are clear program parameters and requirements, as outlined by the UTEP, that allow NYCIDA staff to scrupulously accept and process eligible and viable applications. As presented in this draft audit report, the statement lacks the appropriate context and reads like a definitive fact. Every member of the NYCIDA Board of Directors is fully empowered to make an independent decision to cast a vote on any project proposal, including objections and motions to defer a vote.

**State Comptroller's Comment** – The report was revised based on the response to the draft.

In response to OSC's recommendation under this section regarding NYCIDA developing a formal procedure for the intake process, NYCIDA staff would like to reiterate that NYCIDA has a formalized intake process in place, and that the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. NYCIDA staff are instructed to retain all documentation submitted with an application, in addition to any key communications. NYCIDA staff also notes that in October 2023, a Request for Proposals was issued to solicit software development and technology firms to submit proposals for an application software for the intake and management of prospective applications. It is our hope to select the winning vendor later this spring, and we anticipate that the software will include a robust tracking mechanism that retains all recommended information, including status change dates, documents received and pending, and approaching deadlines.

> *Recommendation 1:* Develop a formal procedure for the intake process that includes but is not limited to: a) A tracking mechanism that retains detailed information, such as status change dates, documents received and pending, and approaching deadlines and b) Instructing staff to obtain and retain intake documents.
>
> *NYCIDA Response:* NYCIDA has a formalized intake process in place, and the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. We are in the process of selecting a new online platform for the intake and management of prospective applications.

2. Intake Process

In managing the intake of prospective applicants, NYCIDA retains and maintains information about any outreach and inquiries received related to potential projects. Since August 2021, all inquiry emails have been archived and saved. Additionally, the spreadsheet provided to the OSC dated October 2021 has two tabs titled "Pipeline" and "Inquiries" which document the name and available details of any inquiries received via email or phone. This spreadsheet is regularly updated, especially on any leads with eligible and viable prospects. The spreadsheet also includes non-project specific information and general inquiries that do not require extensive notes. With those general inquiries, we do not initiate follow-ups.

Further, under the direction of the current Executive Director, NYCIDA took corrective action to address the findings of its in-house audit team in August 2021. Since then, NYCIDA has adopted a policy of creating internal memos to document when something unusual occurs with a project application. Such a memo can document certain instances, including but not limited to: a) a project withdrawing or delaying its application in advance of a public hearing or board of directors meeting; b) a project withdrawing from closing after obtaining Board of Directors authorization; or: c) a project encountering significant obstacles to proceeding with the application process. Additionally, a list of key communications and materials outside of the standard application package submissions was examined by the in-house audit team. The in-house audit team eventually closed out the examination of the in-take processes after NYCIDA Executive Director addressed the steps to implement recommendations from the in-house audit team.

**State Comptroller's Comment** – NYCIDA officials responded that corrective action was taken in response to its in-house audit team's findings related to the intake process. However, despite repeated requests, NYCIDA did not provide any documentation to show any changes were made.

As previously mentioned, in October 2023, a Request for Proposals was issued to solicit software development and technology firms to submit proposals for application software for the intake and management of prospective applications. It is our hope to select the winning vendor later this spring, and we anticipate that the software will include a robust tracking mechanism that retains all recommended information, including information about inquiries and status change dates of potential applications. We plan to incorporate OSC's recommendations to "document and retain application inquiry, intake, and approval decisions regardless of applicant status" through the use of this software. The adoption of new software and technological platform will fully address Recommendation 2.

Regarding OSC's findings related to the Financial Feasibility analysis, NYCIDA would like to clarify that the OSC's audit findings are based on the review of project applications conducted between four and twelve years ago. One particular example highlighted findings in this section occurred during the spring of 2013.

**State Comptroller's Comment** – As noted previously, due to the nature of these projects, many will be active for decades. Actions that occur throughout the life of a project impact future compliance terms, and thus there is a need for continuous monitoring and compliance checks throughout the life of the project. Financial assistance such as sales tax and mortgage recording taxes exemptions are made with the expectation that the City will accrue long-term benefits from a project being located in the City. For instance, 20 years is used in the calculation of the benefits to the City from "Operations and Renovation" and "Jobs to be Created." If a project fails to uphold the terms of the agreement, NYCIDA may end the agreement early. Moreover, if the agreement ends due to non-compliance, NYCIDA may recapture the benefits provided up to 10 years after the commencement of the project's operations. Thus, the review of project applications can and does have an impact decades later.

The NYCIDA appreciates OSC's recommendations related to the Financial Feasibility analysis, and notes that many improvements have been implemented over the years to its internal procedures for review and analysis of financial statements and information provided by applicants. Those improvements include, but are not limited to:

- A department manager's review and sign-off of the financial analysis performed by a project manager.
- The financial analysis template has been revised to appropriately capture the relevant and applicable information from materials submitted by applicants, along with the clearly noted non-standard

assumptions used. Further, NYCIDA has further supplemented the revised template to appropriately incorporate additional information to reflect applicants' unique industry and/or business models.

- NYCIDA has stopped accepting tax returns from applicants, and will only accept certified or CPA prepared financial statements.
- NYCIDA is committed to testing the validity of the financial analysis template each year. NYCIDA will make periodic updates and improvements as appropriate.

We, however, respectfully disagree with OSC's conclusion that there is a causal relationship between NYCIDA's financial analysis done before presenting this specific project to its board of directors for inducement and authorization and the project's post-closing failure to meet its obligations under its agreements with NYCIDA, which ultimately led to the termination of the NYCIDA project agreements. There are many market factors that affect the company's business operations in the years following closing that cannot be attributed to a pre-approval financial review of a project company's application for financial assistance.

**State Comptroller's Comment** – We do not comment on the reason for any specific project's failure to meet its obligations. However, NYCIDA financial analysis is, in part, the basis for the Board's decision in approving financial benefits to a business and impacts the Board's assessment of the probability of a project's ultimate success. While many factors can contribute to a project's failure, a faulty financial analysis can result in the approval of a project that has a low probability of success and may ultimately fail.

In concluding our response in this section, NYCIDA would like to further clarify that, immediately after the declaration of the project default, NYCIDA promptly took enforcement actions against the project company cited in this draft audit report. NYCIDA revoked and terminated the project's PILOT benefits, and its property was placed back on the tax rolls. The project company filed for bankruptcy and was promptly referred to the NYC Law Department for investigation and further legal action.

*Recommendation 2:* Document and retain application inquiry, intake, and approval decisions regardless of applicant status.

*NYCIDA Response:* As previously stated, NYCIDA has a formalized intake process in place, and the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. We are in the process of selecting a new online platform for the intake and management of prospective applications.

*Recommendation 3:* Ensure employees have expertise in interpreting financial statements and conducting a financial feasibility analysis.

*NYCIDA Response:* NYCIDA confirms that we have current employees who have expertise in analyzing financial documents and conducting necessary financial due diligence.

*Recommendation 4:* Revise the financial analysis template to ensure the template formulas are correct and capture all relevant information to determine a project's financial feasibility.

*NYCIDA Response:* NYCIDA confirms that necessary revisions to the financial analysis template have been implemented.

*Recommendation 5:* Develop controls and procedures to ensure sufficient financial information is collected prior to determining financial feasibility, such as, but not limited to, acquiring the income statement, balance sheet, cash flow statement, and financial statement notes with accounting assumptions.

*Recommendation 6:* Document the analyses and assumptions used in assessing the financial feasibility of projects.

*NYCIDA Response (to Recommendations 5 and 6):* One particular example the audit team cited in this draft report occurred during the spring of 2013. Since then, a series of improvements have been made and implemented to our internal procedures for review and analysis of financial statements and information provided by applicants.

**State Comptroller's Comment** – The audit notes multiple issues related to financial information throughout the projects being audited. Moreover, as discussed, it is important that past errors be corrected due to their impact on current compliance terms. As these projects in many cases have 20- to 25-year terms and decisions made in the past can impact current compliance, there is a need for NYCIDA to make sure its new system contains a record of the "analyses and assumptions."

3. Monitoring of Project Compliance

NYCIDA's current practice of monitoring and verifying project completion and operations commencement is both robust and thorough. We find various omissions of facts in this report to be arbitrary. Over two years, NYCIDA staff reviewed three rounds of OSC's preliminary findings and provided exhaustive, contemplative responses to address points previously raised by OSC. Without the clarification provided by NYCIDA during the protracted audit engagement period, a reader of this report would have the impression based on the OSC's cursory descriptions that NYCIDA engaged in only limited monitoring and verification activities with respect to these projects, which is highly inaccurate.

The self-audit review process is complementary to many other control mechanisms in place for post-closing project review. The self-audit review is an internal self-directed procedure and not a legal or statutory requirement. The practice and implementation of the process reflects NYCIDA's efforts to go beyond the requirements in both project documents and applicable statutory and regulatory requirements to evaluate and monitor project compliance. NYCIDA's Compliance team had to suspend all self-audit work at the onset of the COVID-19 pandemic in February 2020. NYCIDA staff extensively engaged in communicating with the portfolio of project companies and other small businesses to help them access emergency financial assistance programs made available through the federal Small Business Administration. Upon the reimplementation of the self-audit review process in the second half of calendar year 2021, NYCIDA gradually reinstated its practice of auditing a sample of its active portfolio.

The OSC makes three specific claims that NYCIDA cannot verify but will address each of them in turn:

- The OSC claims that "two projects had no project construction completion date." NYCIDA does not recall this being brought to its attention during the audit. NYCIDA is unaware what projects the OSC is referring to in this claim, but one possible reason why there would not be a construction completion deadline is because the projects involved may not have had construction requirements because the benefit recipient was acquiring or refinancing (such as in the case of an NYCIDA bond transaction) a building that was already

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fully constructed and outfitted for project operations, with a pre-existing valid certificate of occupancy from the Department of Buildings. If the OSC would provide NYCIDA with the names of these two projects, NYCIDA can investigate further and provide any clarity needed.

- The OSC claims "[o]ne project had an agreement without a stated maturity date, meaning the project seemingly could go on in perpetuity." While NYCIDA also does not recall this ever being brought to its attention during the course of the audit and is unaware what project the OSC is referring to, NYCIDA finds this claim highly unlikely. Even in the event a project did not have a defined "maturity date" in the relevant transaction documents, there likely would be an end date stipulated for any benefits, such as PILOT benefits (or a phase out of PILOT benefits described in the transaction documents and implemented by DOF) and sales tax benefits received, and as a result, those could not be utilized in perpetuity. NYCIDA can investigate further and provide any clarity needed, if the name of this project is provided to us.

- The OSC also claims that for "two projects, the amounts in the Executive Summary, lease agreement, and closing information statement for the mortgage recording tax, sales tax saving (exemption), project cost, and project fee did not always match. For example, one project's maximum sales tax savings amount differed in each of the three documents – the Executive Summary stated $2,250, the closing information statement listed a $5,000 benefit, and the lease agreement did not state an amount." First, it should be noted that the closing information statement is an internal document with no legal effect. Second, it is not uncommon that there are certain changes in project costs and benefit values due to the nature of these transactions in between board authorization and closing, for example as a result in changes in estimated construction costs, and therefore the amounts in an executive summary and a lease agreement may have some expected differences. Third, prior to 2013, NYCIDA was not including maximum sales tax savings amounts in its lease agreements, as it was not legally required to. Currently, NYCIDA includes maximum sales tax savings amounts in its lease agreements, so this finding does not reflect NYCIDA's current practices. Once again, if the OSC would provide NYCIDA with the names of these two projects, NYCIDA can investigate further and provide any clarity needed.

**State Comptroller's Comment** – Throughout the so-called extensive process we engaged with NYCIDA, we have no record that NYCIDA requested the details related to any of these projects.

The OSC claims that one project had been underpaying PILOT for nine years because there was no subtenant carve out for 2.5% of the facility space that was occupied by a subtenant. OSC states "The error was brought to NYCIDA's attention, but NYCIDA did not take any action because DOF has responsibility for the PILOT calculation." NYCIDA strongly disputes this characterization. During the second phase of this audit, DOF reached out to NYCIDA to review its PILOT calculation for this project. NYCIDA provided additional details to DOF to properly calculate PILOT accounting for the subleased space. DOF subsequently issued an accurate bill to the benefit recipient with additional PILOT owed for the subleased space, which was paid in full.

**State Comptroller's Comment** – The report reflects NYCIDA's response to our preliminary findings. If NYCIDA took subsequent action, then such information should have been provided to the audit team. The audit can only report on information that the agency provides.

The OSC's claim regarding the failure to verify the operations commencement date resulting In NYCIDA being precluded in a judicial proceeding from stating the date the project was completed happened in the early 2000's, well before the scope of the audit period and further this dispute arose in part because of contradictory filings by the project company as to when the operations commencement date occurred.

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**State Comptroller's Comment** – As noted previously, due to the long-term nature of these projects, actions taken many years ago can impact current compliance.

Job Retention and Creation

As stated in NYCIDA's response to its response to the OSC's second preliminary audit findings ("Phase 2 PAF"), NYCIDA notes that the OSC's findings regarding job creation rely on a sample of 23 projects out of hundreds of projects that received benefits during the scope of the audit. As NYCIDA previously pointed out, our publicly available annual investments project reports show that there has been significant job growth amongst projects receiving financial assistance with NYCIDA. The annual investments project report for the period ending June 30, 2021, the end date of the audit scope, shows that in the largest of NYCIDA's programs, the Industrial Incentive program, as of June 30, 2021, project companies cumulatively employed 44.5% higher that the number of jobs these companies employed at the time of application at locations receiving financial assistance from NYCIDA. NYCIDA takes pride in the tremendous success of our programs in retaining and creating jobs when looked at holistically, rather than assessing job creation and retention efforts through a narrow look at only 23 projects. In fact, a great many of our projects exceed initial job creation estimates. NYCIDA has seen great success in keeping businesses from relocating operations out of the City, providing crucial support to capital investments that improve facilities that otherwise would not happen without NYCIDA's assistance, and in generating tax revenue for the City through the creation and retention of jobs. NYCIDA cannot allow the OSC's narrow observations to mislead readers into believing that NYCIDA's programs do not as a whole result in net benefits for the City and its residents.

Regarding the OSC's claim that the City lost out on tax revenue as a result of construction delays that resulted in delayed operations commencement, NYCIDA notes that depending on which projects the OSC is referring to, these companies may still be generating tax revenue through income taxes paid by employees at existing premises in the City.

**State Comptroller's Comment** – Although NYCIDA officials state that the companies may still be generating tax revenues from the employees at the existing premises, they did not provide any support for their statements.

We strongly believe the construction completion extensions granted are warranted by a variety of circumstances. These may include delays from regulatory bodies in issuing permits and approvals, unforeseen construction difficulties, and other justifiable reasons for extending construction completion deadlines. We also believe that ultimately after projects that receive extensions to complete construction, the long-term results include better equipped facilities in the City (after significant capital improvements are made by benefit recipients) and tax generating job retention and creation that otherwise would not exist without NYCIDA's assistance.

The OSC claims that HireNYC requirements are in seven agreements, yet IDA could not provide documentation that those projects were being monitored for compliance with the requirements. NYCIDA strongly disagrees with this claim. At the meeting to discuss NYCIDA's response to the Phase 2 PAF, the OSC said they might sample some projects for HireNYC compliance after we stated that we collect HireNYC employment reports. However, the OSC never requested any samples. The OSC also claims that "NYCIDA officials stated that NYCEDC collects employment data for HireNYC projects, but there was no documentation in NYCIDA's in-house application, DASH, to support this statement." This is also untrue. There is a reporting and tracking functionality in DASH for HireNYC reporting, which includes the collection of reports dating back to 2018.

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**State Comptroller's Comment** – Contrary to NYCIDA's response, we requested HireNYC information. NYCIDA provided a list of 42 projects that had the HireNYC requirement. Four of the 42 projects were inactive. Two of the three projects cited for not having a self-audit were required to have one prior to the pandemic.

The OSC also states that "NYCIDA claims that HireNYC projects have created more than 3,000 jobs in the City with little evidence to support the claim." This was not precisely what we claimed. Rather, we claimed that over 3,000 positions were filled through HireNYC, which is different than job creation, and NYCIDA can support this with data from a combination of reports from recruitment partners who refer candidates to employers with HireNYC requirements and HireNYC data submitted by employers.

Following please find NYCIDA's response to a group of recommendations by OSC under this section of the draft report:

> *Recommendation 7:* Ensure each self-audit is conducted in accordance with the NYCIDA processes and procedures.
>
> *NYCIDA Response:* NYCIDA generally agrees with the recommendation and that is what we always strive to do, but it completely disregards certain extraordinary circumstances such as the protracted global pandemic that forced us to adapt our practices.
>
> *Recommendation 8:* Review the DOF-prepared PILOT Notice of Calculation for accuracy.
>
> *NYCIDA Response:* As we previously explained to OSC, the establishment of the existing PILOT administration arrangement with the delineation of responsibility was promulgated during the 1990s through a series of agreements, between DOF, the New York City Office of Management and Budget, and NYCIDA, setting forth the procedures for PILOT billing as first conceived in 1990, renewed in 1992, and again renewed in 1996. This recommendation will cause confusion for all parties involved, including project companies. The purpose of the PILOT billing arrangement was to consolidate billing and collections. By reviewing the DOF's calculations NYCIDA would unduly insert itself into the DOF's process. In our view, this recommendation would result in delays in PILOT billing, calculations, and overall administration of PILOT accounts, to the detriment of projects that "promote the economic welfare" of the State. This is not to say we will take a hands-off approach with PILOT billing. To the contrary, we have and will always provide clarity and guidance on the interpretation of any section of a NYCIDA Agency Lease Agreement as requested by DOF but NYCIDA should not and will not overstep DOF's responsibility or role, in contravention of the series of agreements in place today and as were first promulgated in 1990.
>
> *Recommendation 9:* The OSC stated recommendation is that NYCIDA revise the lease agreement to include penalty clauses that would reduce benefits to projects that do not create the anticipated number of jobs.
>
> *NYCIDA Response:* Reiterating what we previously responded in the Phase 2 PAF, NYCIDA believes it would be too shortsighted to apply this change in its agreements across the board. NYCIDA cannot unilaterally impose a new penalty for missing job creation projections after contracts were executed. Including imposing penalties in all NYCIDA's projects merely for not meeting job projections could have detrimental and unintended consequences. Many industrial businesses tend to be cyclical. Such a penalty for a temporary setback could conceivably cause an undue financial burden that threatens their operations. Had

NYCIDA penalized our projects during the COVID-19 pandemic, for instance, it could have had terrible consequences for the goal in General Municipal Law Article 18-A of preventing unemployment and economic deterioration. NYCIDA welcomes carefully considered and practical recommendations to assist us. However, considering the lack of mandatory job creation requirements under the General Municipal Law, taking the "one size fits all" approach would be irresponsible and indifferent to possible consequences that threaten not only job retention, but also the ability of certain businesses to continue generating tax revenue for the people of both the City and State of New York.

**State Comptroller's Comment** – The recommendation does not suggest that NYCIDA take a "one size fits all" approach, nor take actions on past agreements, but rather that such terms be considered for future leases so that if a project does not meet expectations, action can be taken as appropriate, consistent with NYCIDA policy that one of the expected outcomes is creation and retention of jobs in the City, and that if a project fails to meet those agreements, it may be subject to a Notice of Default and a recapture provision.

*Recommendation 10:* Require that program managers and other employees use the HireNYC program to increase employment in NYCIDA projects.

*NYCIDA Response:* NYCIDA is pleased to participate in New York City's workforce development programs to connect employers with job-ready, qualified New Yorkers. NYCIDA reiterates that utilizing the HireNYC program is a method to increase access to existing jobs openings for lower-income local candidates, not to increase the level of employment in NYCIDA projects.

*Recommendation 11:* Require and document a cost-benefit analysis or other method for all projects to measure the benefit to the City.

*NYCIDA Response:* A Cost Benefit Analysis is performed for every project application prior to being presented to the Board of Directors. Agency staff provided OSC with Cost Benefit Analysis workbooks for all requested projects. The Cost Benefit Analysis is one of the most important elements for the Board of Directors review, as it shows that the return to the City will be greater than the cost to the City for a specific project. The Cost Benefit Analysis template is routinely updated and improved to ensure accuracy.

**State Comptroller's Comment** – Although NYCIDA replied that a cost-benefit analysis is performed for every project, we were not provided with a cost-benefit analysis for all requested projects. Our review of 17 projects found that a cost-benefit analysis was not done for 10 projects (eight were not completed and for two, no cost-benefit analysis workbook was provided).

4. Recapture of Financial Assistance

The OSC further alleges the incorrect calculations result in a net under collection of $674,894. NYCIDA does not dispute that over time, certain errors have occurred in recapture calculations. However, NYCIDA believes the OSC provides an incomplete picture of these recapture errors' scope. Since the beginning of FY 2013, NYCIDA has recovered approximately $45 million. NYCIDA is proud of its efforts to recover a large amount of money for the City and State. In tandem with the tax revenue generated by NYCIDA's projects, the total amount recaptured speaks to NYCIDA's ability to investigate and pursue enforcement actions for amounts that otherwise may not be realized or recovered.

Please find NYCIDA's response to a group of recommendations by OSC under this section of the draft report:

*Recommendation 12:* Train employees on how to calculate recapture amounts, including but not limited to accurately prorating the last semi-annual PILOT period, ensuring all PILOT benefits are included, interpreting the Notice of Calculation correctly, and confirming the interest computation per the terms of the lease agreement.

*NYCIDA Response:* NYCIDA has and will train employees to accurately calculate recapture. NYCIDA ensures proper administration of the recapture calculation not only by training employees, but NYCIDA closely coordinates with DOF to provide further verification of accurate calculation and distribution before finalizing the calculation.

*Recommendation 13:* Ensure the recapture percentage formula in the recapture template is correct.

*NYCIDA Response:* NYCIDA agrees to this recommendation and currently conducts periodic review of the template.

*Recommendation 14:* Review the under collected recapture amounts or refund over collected recapture (repayment) amounts to projects where the time for such actions has not expired, as appropriate.

*NYCIDA Response:* NYCIDA will verify that an under collection occurred to the extent alleged by the OSC, unless such under collected case was escalated to litigation.

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