

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**VISITING NURSE SERVICE
OF NEW YORK BUDGETED COSTS
THAT WERE NOT APPROPRIATE
AND CLAIMED SOME
UNALLOWABLE HURRICANE SANDY
DISASTER RELIEF ACT FUNDS**

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EXECUTIVE SUMMARY

Visiting Nurse Service of New York, an Administration for Children and Families grantee, claimed almost \$400,000 in unallowable Hurricane Sandy disaster relief funding over a 6-month period and budgeted Hurricane Sandy disaster relief funds for almost \$2.5 million that were not appropriate.

WHY WE DID THIS REVIEW

The Disaster Relief Appropriations Act of 2013 (Disaster Relief Act), in part, provided the Department of Health and Human Services (the Department) approximately \$800 million in funding for use in aiding Hurricane Sandy disaster victims and their communities. Of this amount, the Administration for Children and Families (ACF) received \$577 million, of which \$95 million was allocated to assist Head Start and Early Head Start grantees with program response, recovery, and other activities related to the impact of Hurricane Sandy. ACF awarded approximately \$4.8 million of these Disaster Relief Act funds to Visiting Nurse Service of New York (VNSNY) for Head Start and Early Head Start program expenses directly related to Hurricane Sandy. (We refer to these funds as VNSNY’s “Disaster Relief Act funds.”)

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

The objectives of this review were to determine whether VNSNY’s Disaster Relief Act budgeted costs were appropriate and VNSNY’s claimed costs were allowable in accordance with Federal requirements.

BACKGROUND

Hurricane Sandy made landfall on October 29, 2012, devastating portions of the mid-Atlantic and northeastern United States and leaving victims of the storm and their communities in need of disaster relief aid. On January 29, 2013, the President signed into law the Disaster Relief Act, which, in part, provided the Department approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy. After sequestration, the Department received \$759.5 million in Disaster Relief Act funding, \$577 million of which was allocated to ACF.

For the period September 1, 2013, through August 31, 2017, ACF awarded approximately \$4.8 million in Disaster Relief Act funds to VNSNY, a not-for-profit home health care agency that operated Head Start and Early Head Start programs in New York, New York, at two locations in the Rockaway section of the borough of Queens. The funds were for program expenses directly related to Hurricane Sandy, including nearly \$800,000 for repairs and renovations at one of VNSNY’s two locations. VNSNY subsequently abandoned its plans to repair and renovate the location and opted to consolidate its Head Start and Early Head Start programs into its other location. Effective July 1, 2015, VNSNY relinquished its Disaster Relief

Act grant and, as of August 31, 2015, ceased operating its Head Start and Early Head Start programs.

The purpose statute permits ACF to obligate funds “only to the objects for which the appropriations were made except as otherwise provided by law.” To correct a purpose violation, ACF should adjust its accounts and charge the obligations that were for costs not directly related to Hurricane Sandy to the correct grant account. If there are insufficient funds available in the appropriation to which these obligations should have been charged, the Antideficiency Act prohibits Federal agencies from making or authorizing an expenditure that exceeds an amount available in an appropriation or fund for the expenditure or obligation. If there is an insufficient balance in the correct appropriation, then the Federal agency must report a violation of the Antideficiency Act.

HOW WE CONDUCTED THIS REVIEW

We reviewed budgeted costs totaling \$4,838,294 included in VNSNY’s request for Disaster Relief Act funds for the period September 1, 2013, through August 31, 2017. As of June 30, 2015, VNSNY had claimed a total of \$4,147,077 in Disaster Relief Act funding. Of this amount, we reviewed \$760,066 that VNSNY claimed during the period September 1, 2013, through February 28, 2014, for Head Start and Early Head Start program expenses resulting from Hurricane Sandy. We did not review the remaining \$3,387,011 in costs claimed.

WHAT WE FOUND

Of the \$760,066 in Disaster Relief Act costs that we reviewed, \$375,405 complied with applicable Federal requirements. However, VNSNY claimed some Disaster Relief Act costs that did not comply with applicable Federal requirements. Specifically, VNSNY improperly claimed costs totaling \$384,661 that were not directly related to Hurricane Sandy. VNSNY used Disaster Relief Act funds for Head Start program normal operating costs (i.e., rent and rent-related costs, renovation and supplies costs) that were not directly related to Hurricane Sandy. In addition, VNSNY budgeted Disaster Relief Act costs totaling \$2,472,695 that were not appropriate, including fireproofing and Head Start program costs that were not directly related to Hurricane Sandy and construction costs that were not appropriate once VNSNY abandoned its plan to repair and renovate one of its locations.

These deficiencies occurred because ACF (1) inappropriately authorized VNSNY to budget and claim Disaster Relief Act grant funds for costs that were not directly related to Hurricane Sandy and (2) did not require VNSNY to revise its budget in accordance with Federal requirements.

WHAT WE RECOMMEND

We recommend that ACF:

- Adjust its grant accounts by deobligating \$384,661 in inappropriate Disaster Relief Act expenditures and obligating funds available for these expenditures. If appropriate funds are not available, ACF must report the overobligation as a violation of the Antideficiency Act, and VNSNY must refund the amount, or ACF must seek additional appropriations to cover these obligations.
- Work with VNSNY to determine whether \$3,387,011 in Disaster Relief Act expenditures claimed (\$4,147,077 that VNSNY claimed as of June 30, 2015, less \$760,066 that we reviewed) were allowable in accordance with Federal requirements and refund any unallowable amounts. If any expenses incurred were not directly related to Hurricane Sandy, ACF must adjust its grant accounts by obligating appropriate funds. If appropriate funds are not available, ACF must report the overobligation as a violation of the Antideficiency Act, and VNSNY must refund the amount, or ACF must seek additional appropriations to cover these obligations.

VISITING NURSE SERVICE OF NEW YORK COMMENTS AND OUR RESPONSE

In comments on our draft report, VNSNY disagreed with our findings and recommendations. VNSNY stated that OIG takes “an overly narrow interpretation” of what expenses were “directly related” to Hurricane Sandy without any legislative or regulatory guidance on how that phrase was to be applied. VNSNY officials stated that, after Hurricane Sandy struck, ACF directed VNSNY to apply for Disaster Relief Act funds for VNSNY’s Early Head Start and Head Start programs. The officials stated that they used the Disaster Relief Act funds they were awarded “exactly as provided in ACF’s award.” VNSNY officials further stated that VNSNY did not receive duplicate funding through its Disaster Relief Act and Head Start base grants. Finally, VNSNY officials stated that ACF properly awarded funds to VNSNY under the Disaster Relief Act grant program and, if OIG concludes differently, ACF should reallocate the funds from VNSNY’s Disaster Relief Act grant to VNSNY’s Head Start base grant.

After reviewing VNSNY’s comments, we maintain that our findings are valid. However, we revised our recommendations to clarify that ACF should adjust its grant accounts to ensure that Disaster Relief Act funds were available only for “expenses directly related to Hurricane Sandy.”

ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS AND OUR RESPONSE

In comments on our draft report, ACF disagreed with our first recommendation, agreed with our second recommendation, and described actions it has taken and plans to take to address it. Specifically, ACF stated that it disagreed with the approach we took in our analysis of Disaster Relief Act funds as well as our conclusions. ACF stated that the \$384,661 we identified as costs not directly related to Hurricane Sandy were properly charged by VNSNY to its Disaster Relief Act awards. ACF further stated that all funds awarded to VNSNY were for necessary

expenditures resulting from Hurricane Sandy and were properly paid with Disaster Relief Act funds. ACF also stated that it will continue its oversight activities to ensure that Hurricane Sandy funds are used only for their intended purpose.

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

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INTRODUCTION

WHY WE DID THIS REVIEW

Hurricane Sandy made landfall on October 29, 2012, devastating portions of the mid-Atlantic and northeastern United States and leaving victims of the storm and their communities in need of disaster relief aid. On January 29, 2013, the President signed into law the Disaster Relief Appropriations Act of 2013, P.L. No. 113-2 (Disaster Relief Act), which, in part, provided the Department of Health and Human Services (the Department) approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy.¹

After sequestration, the Department received \$759.5 million in Disaster Relief Act funding, \$577 million of which was allocated to the Administration for Children and Families (ACF). Of this amount, \$95 million was allocated to assist Head Start and Early Head Start grantees with program response, recovery, and other activities related to the impact of Hurricane Sandy. ACF awarded approximately \$4.8 million of the Disaster Relief Act funds to Visiting Nurse Service of New York (VNSNY) for Head Start and Early Head Start² program expenses directly related to Hurricane Sandy. (We refer to these funds as VNSNY’s “Disaster Relief Act funds.”)

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

OBJECTIVES

Our objectives were to determine whether VNSNY’s Disaster Relief Act budgeted costs were appropriate and VNSNY’s claimed costs were allowable in accordance with Federal requirements.

BACKGROUND

Administration for Children and Families

Within the Department, ACF is the agency responsible for promoting the economic and social well-being of families, children, individuals and communities. Through its Office of Head Start, ACF administers grant funding and oversees agencies that provide Head Start and Early Head Start services. ACF received \$577 million in Disaster Relief Act funding, including \$95 million

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

² Head Start serves children from age 3 until age 5. Early Head Start serves children from birth until age 3.

to assist Head Start and Early Head Start grantees with program response, recovery, and other activities related to the impact of Hurricane Sandy.

By accepting Disaster Relief Act funds, ACF grantees agreed to claim for reimbursement allowable costs that were in accordance with grant terms and submit updates on their grant-related activities, including required reports, to ACF. The purpose statute, 31 U.S.C. § 1301(a), permits ACF to obligate funds “only to the objects for which the appropriations were made except as otherwise provided by law.” To correct a purpose violation, ACF should adjust its accounts and charge the obligations that were for costs not directly related to Hurricane Sandy to the correct grant account. If there are insufficient funds available in the appropriation to which these obligations should have been charged, the Antideficiency Act prohibits Federal agencies from making or authorizing an expenditure that exceeds an amount available in an appropriation or fund for the expenditure or obligation (31 U.S.C. § 1341(a)(1)(A)). If there is an insufficient balance in the correct appropriation, then the Federal agency must report a violation of the Antideficiency Act (31 U.S.C. § 1351). See Appendix B for details on the Federal requirements related to Department funds.

Visiting Nurse Service of New York

VNSNY is a not-for-profit home health care agency that operated Head Start and Early Head Start programs in New York, New York, at two locations in the Rockaway section of the borough of Queens. Prior to Hurricane Sandy, VNSNY operated an Early Head Start program at 86-01 Rockaway Beach Boulevard, which we refer to as its “Rockaway Beach Boulevard location.” Three months before the storm, VNSNY applied for funding to begin operating a Head Start program. In its application, VNSNY stated that it planned to house both the new Head Start program and the existing Early Head Start program at a four-story building located at 216-220 Beach 87th Street, which we refer to as its “Beach 87th Street location.”

Hurricane Sandy Damage to Visiting Nurse Service of New York Properties

Hurricane Sandy inflicted substantial damage to VNSNY’s Rockaway Beach Boulevard location and its planned Beach 87th Street location. According to VNSNY, a full renovation of the Rockaway Beach Boulevard location was not cost-effective; therefore, it developed a plan to move its Early Head Start program to the first and fourth floors of the Beach 87th Street location.³ However, the entire location needed to be renovated before VNSNY could provide any childcare services. VNSNY provided Early Head Start services during the interim using a home-based model.

On July 1, 2013, more than 8 months after Hurricane Sandy made landfall, ACF approved VNSNY’s application for Head Start program funding. VNSNY subsequently used the Disaster Relief Act funds to renovate the second and third floors of the Beach 87th Street location that were not damaged by Hurricane Sandy and, in May 2014, began offering Head Start services on

³ According to VNSNY, Early Head Start classrooms were to be located on the first floor of the building. The fourth floor of the building was to be used mainly for group socialization activities.

these floors.⁴ As of August 2015, fourth-floor renovations at the location were complete, and some Early Head Start services were being provided on the floor; however, first-floor renovations were not complete, and Early Head Start classroom services were not being provided.

Disaster Relief Act Funding

On July 24, 2013, VNSNY applied for Disaster Relief Act funding. ACF subsequently awarded VNSNY approximately \$4.8 million in Disaster Relief Act funds for Head Start and Early Head Start program expenses directly related to Hurricane Sandy.^{5,6} The funds were for program expenses directly related to Hurricane Sandy, including nearly \$800,000 for repairs and renovations at the Rockaway Beach Boulevard location. VNSNY subsequently abandoned its plans to repair and renovate the location and opted to consolidate its Head Start and Early Head Start programs into its Beach 87th Street location. Effective July 1, 2015, VNSNY relinquished its Disaster Relief Act grant and, as of August 31, 2015, ceased operating its Head Start and Early Head Start programs. ACF appointed an interim grantee to operate the programs. The interim grantee took over the Head Start and Early Head Start program operations at the Beach 87th Street location. As of December 2015, the interim grantee was still not providing Early Head Start services on the first floor of that location.

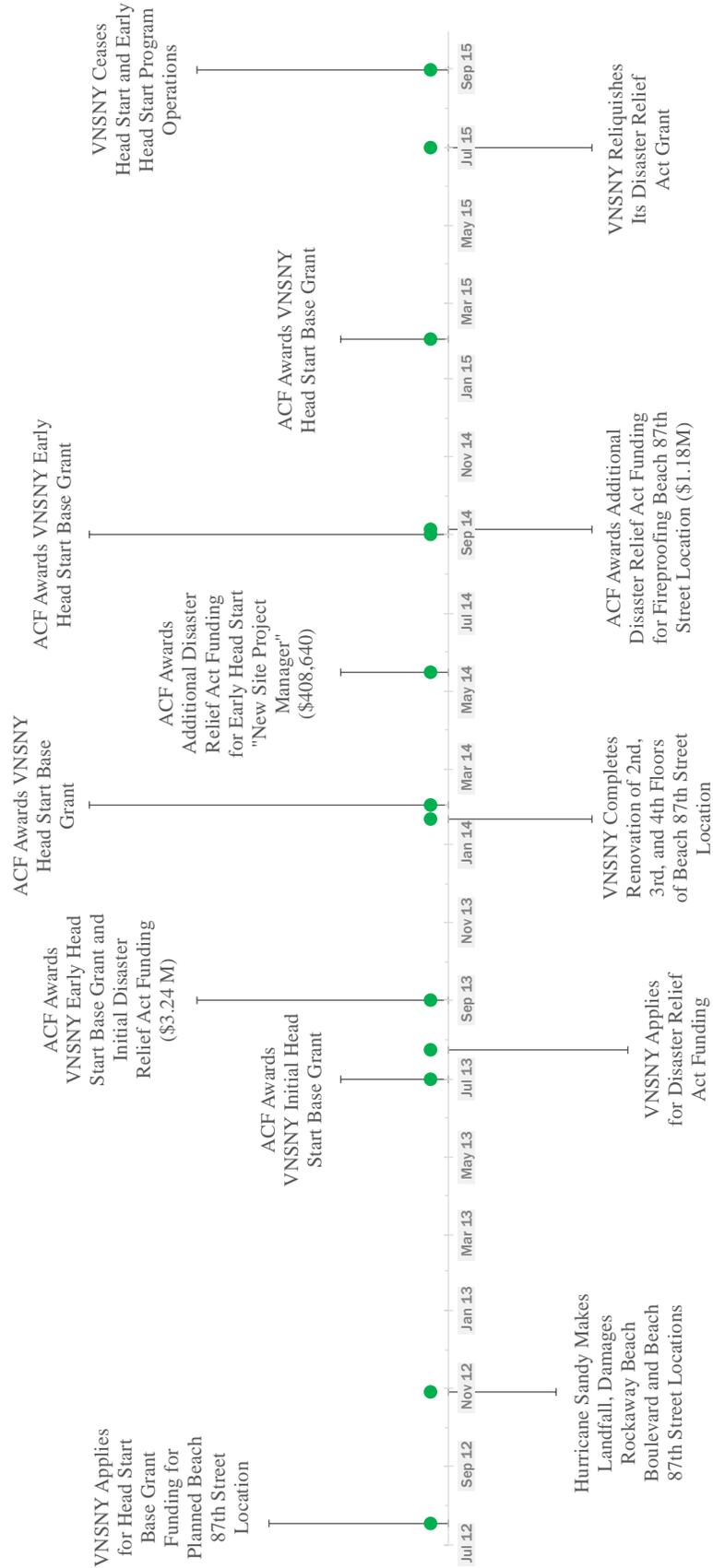
The following chart details the timeline of VNSNY’s Disaster Relief Act, Head Start, and Early Head Start grant funding, as well as its planned activities at its Rockaway Beach Boulevard and Beach 87th Street locations.

⁴ On July 3, 2013, VNSNY signed a lease for the Beach 87th Street location. Less than 2 weeks later, it terminated its lease for its Rockaway Beach Boulevard location.

⁵ ACF initially awarded VNSNY Hurricane Sandy Disaster Relief Act funding totaling \$3,244,954 for the period September 1, 2013, through August 31, 2015. On May 16, 2014, ACF awarded VNSNY an additional \$408,640 (through an award amendment) for expenses related to an Early Head Start “new site project manager” for a 2-year period within the budget period of September 1, 2013, through August 31, 2017. On September 5, 2014, ACF amended the award providing an additional \$1,184,700 to VNSNY for fireproofing the Beach 87th Street location. ACF awarded the funds based on its approvals of VNSNY’s budgeted costs.

⁶ ACF also awarded VNSNY annual Head Start and Early Head Start base grants totaling approximately \$4.4 million for the periods July 1, 2013, through January 31, 2015, and September 1, 2013, through August 31, 2015, respectively.

Chart: Timeline of ACF Disaster Relief Act, Head Start, and Early Head Start Grant Funding to Visiting Nurse Service of New York July 2012 Through August 2015



HOW WE CONDUCTED THIS REVIEW

We reviewed budgeted costs totaling \$4,838,294 included in VNSNY's request for Disaster Relief Act funds for the period September 1, 2013, through August 31, 2017.⁷ As of June 30, 2015, VNSNY had claimed a total of \$4,147,077 in Disaster Relief Act funding.⁸ Of this amount, we reviewed \$760,066 that VNSNY claimed during the period September 1, 2013, through February 28, 2014, for Head Start and Early Head Start program expenses resulting from Hurricane Sandy. We did not review the remaining \$3,387,011 in costs claimed.

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

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

FINDINGS

Of the \$760,066 in Disaster Relief Act costs that we reviewed, \$375,405 complied with applicable Federal requirements. However, VNSNY claimed some Disaster Relief Act costs that did not comply with applicable Federal requirements. Specifically, VNSNY improperly claimed costs totaling \$384,661 that were not directly related to Hurricane Sandy. VNSNY used Disaster Relief Act funds for normal Head Start program operating costs (i.e., rent and rent-related costs, renovation and supplies costs) that were not directly related to Hurricane Sandy.

In addition, VNSNY budgeted Disaster Relief Act costs totaling \$2,472,695 that were not appropriate, including fireproofing and Head Start program costs that were not directly related to Hurricane Sandy and construction costs that were not appropriate once VNSNY abandoned its plan to repair and renovate one of its locations. Specifically:

- VNSNY budgeted \$1,184,700 in Disaster Relief Act funds for fireproofing costs that were normal operating costs and not directly related to Hurricane Sandy.
- VNSNY budgeted \$546,546 in Disaster Relief Act funds for Head Start program costs that were normal operating costs and not directly related to Hurricane Sandy.

⁷ Of this amount, \$3,244,954 was for the initial funding period September 1, 2013, through August 31, 2015; \$408,640 was for an Early Head Start "new site project manager," and \$1,184,700 was for fireproofing of the Beach 87th Street location.

⁸ According to ACF officials, VNSNY's remaining Disaster Relief Act funding totaling \$691,217 was recaptured and awarded to the interim grantee for acquisition costs and to continue remodeling the Beach 87th Street location.

- VNSNY had \$741,449 remaining in its budget for demolition and repair costs that it had no plans to incur. These costs were no longer appropriate once VNSNY abandoned its plan to repair and renovate its Rockaway Beach Boulevard location and decided instead to locate its Early Head Start program in its Beach 87th Street location.

These deficiencies occurred because ACF (1) inappropriately authorized VNSNY to budget and claim Disaster Relief Act grant funds for costs that were not directly related to Hurricane Sandy and (2) did not require VNSNY to revise its budget in accordance with Federal requirements.

Appendix D contains details on our calculations of VNSNY's allowable and unallowable costs claimed under the Hurricane Sandy Disaster Relief Act grant.

CLAIMED COSTS NOT DIRECTLY RELATED TO HURRICANE SANDY

A cost is allocable to a Federal award if it is incurred specifically for the award. Costs may not be shifted to other Federal awards to overcome funding deficiencies (2 CFR part 230, Appendix A, § A.4). The Disaster Relief Act provided emergency funding for disaster response and recovery and other expenses directly related to Hurricane Sandy (Disaster Relief Act, Title X, Chapter 8). In addition, an ACF Program Instruction issued to Head Start and Early Head Start programs stated that Head Start agencies may be eligible for emergency relief funds if their programs were directly impacted by Hurricane Sandy.⁹

ACF awarded Disaster Relief Act funds to VNSNY for the costs of renovations of its Beach 87th Street location and for rent and rent-related expenditures associated with Hurricane Sandy. VNSNY used these funds to renovate all four floors of the building and to cover the rent for all four floors. However, we determined that Hurricane Sandy did not damage the second and third floors of the Beach 87th Street location, which were the floors designated for the new Head Start program. In addition, VNSNY did not provide any evidence that it was unable to cover its portion of rent and rent-related expenditures for the new Head Start program as a result of Hurricane Sandy. Therefore, costs totaling \$384,661 claimed for the period September 1, 2013, through February 28, 2014, for rent and rent-related expenses and for renovation and supplies for these floors should have been considered startup costs tied to VNSNY's Head Start base grant,¹⁰ not its Disaster Relief Act grant.¹¹

⁹ ACF Program Instruction ACF-PI-HS-13-02 (April 15, 2013).

¹⁰ A "base grant" is the amount of permanent ongoing funding, with limited exceptions, provided to Head Start and Early Head Start agencies for that fiscal year (§ 640(a)(7) of the Head Start Act (42 USC § 9825(a)(7)).

¹¹ Specifically, VNSNY claimed rent and rent-related costs totaling \$223,078 and renovation and supplies costs totaling \$161,583 for these floors that were not related to Hurricane Sandy. We allocated the costs claimed between Head Start and Early Head Start programs on the basis of the same allocation percentages VNSNY used in its Hurricane Sandy funding applications (i.e., square footage of the floors occupied by each program).

BUDGETED COSTS WERE NOT APPROPRIATE

VNSNY budgeted Disaster Relief Act costs totaling \$2,472,695 that were not appropriate, including costs that were not directly related to Hurricane Sandy and construction costs that were not appropriate once VNSNY abandoned its plan to repair and renovate one of its locations. We note that VNSNY subsequently claimed some of these costs after our audit period.

Costs Not Directly Related to Hurricane Sandy

A cost is allocable to a Federal award if it is incurred specifically for the award. Costs may not be shifted to other Federal awards to overcome funding deficiencies (2 CFR part 230, Appendix A, § A.4). The Disaster Relief Act provided emergency funding for disaster response and recovery and other expenses directly related to Hurricane Sandy (Disaster Relief Act, Title X, Chapter 8). In addition, an ACF Program Instruction issued to Head Start and Early Head Start programs stated that Head Start agencies may be eligible for emergency relief funds if their programs were directly impacted by Hurricane Sandy.¹²

Fireproofing Costs

In September 2014, ACF awarded Disaster Relief Act funds to VNSNY totaling \$1,184,700 for fireproofing the Beach 87th Street location.¹³ In its funding request to ACF, VNSNY stated that the building's landlord was not willing to incur the expense. According to VNSNY, during first-floor renovations, an architect discovered that there was no fireproofing throughout the building. To comply with local building codes and licensing requirements and continue to provide childcare services, VNSNY requested the Disaster Relief Act funds to correct the problem for the entire building. However, the lack of fireproofing existed before Hurricane Sandy and was not a result of Hurricane Sandy damage. Therefore, these costs should have been considered normal operating costs tied to VNSNY's Head Start and Early Head Start base grants, not its Disaster Relief Act grant.

Head Start Program Costs

ACF awarded Disaster Relief Act funds to VNSNY for rent and rent-related costs, and renovation and supplies costs for its Head Start program at the Beach 87th Street location. However, as described above, Hurricane Sandy did not damage the floors on which VNSNY planned to operate its new Head Start program; therefore, these costs should not have been included in VNSNY's Disaster Relief Act funding budget, but instead should have been included in VNSNY's Head Start base grant. As of February 28, 2014, VNSNY had \$546,546 remaining

¹² ACF Program Instruction ACF-PI-HS-13-02 (April 15, 2013).

¹³ On the basis of VNSNY's quarterly reports to ACF, we determined that VNSNY claimed some of these costs after our audit period.

in its Disaster Relief Act budget for Head Start program costs that were not related to Hurricane Sandy.^{14,15}

Early Head Start Budget Not Revised for Program Costs Not Incurred

Recipients are required to report deviations for budget and program plans (45 CFR § 74.25). In addition, Disaster Relief Act funds must be expended within the 24-month period following the Federal obligation of those funds and must be returned if not expended within that 24-month period (Disaster Relief Act, Title IX, § 904(c)).

On July 3, 2013, VNSNY signed a lease for its Beach 87th Street location, where it planned to co-locate its Head Start and Early Head Start programs. Less than 2 weeks later, it terminated its lease for its Rockaway Beach Boulevard location. VNSNY budgeted \$774,828 in Disaster Relief Act funds for demolition and repair costs at the Rockaway Beach Boulevard location. Of this amount, VNSNY incurred demolition costs totaling \$33,379.¹⁶ However, VNSNY did not revise its budgeted costs to reflect that it had abandoned its plan to repair and renovate its Rockaway Beach Boulevard location and had located its Early Head Start program in its Beach 87th Street location. As of the end of our fieldwork, VNSNY had not revised its budget for the remaining \$741,449 demolition and repair costs that it had no plans to incur.¹⁷

RECOMMENDATIONS

We recommend that ACF:

- Adjust its grant accounts by deobligating \$384,661 in inappropriate Disaster Relief Act expenditures and obligating funds available for these expenditures. If appropriate funds are not available, ACF must report the overobligation as a violation of the Antideficiency Act, and VNSNY must refund the amount, or ACF must seek additional appropriations to cover these obligations.

¹⁴ The remaining budgeted costs for rent and rent-related costs and renovation and supplies costs were \$435,284 and \$111,262, respectively. We allocated the budgeted costs between Head Start and Early Head Start programs on the basis of the same allocation percentages VNSNY used in its Hurricane Sandy funding applications (i.e., square footage of the floors occupied by each program).

¹⁵ On the basis of VNSNY's quarterly reports to ACF, we determined that VNSNY subsequently claimed some of these costs after our audit period.

¹⁶ VNSNY budgeted a total of \$177,946 for demolition costs. It incurred demolition costs totaling \$88,729, of which the Federal Emergency Management Agency reimbursed it \$55,350.

¹⁷ VNSNY's budgeted costs at the Rockaway Beach Boulevard location that it had no plans to incur included costs for repairing and rebuilding the location (\$596,882) as well as demolition costs (\$144,567).

- Work with VNSNY to determine whether \$3,387,011 in Disaster Relief Act expenditures claimed (\$4,147,077 that VNSNY claimed as of June 30, 2015, less \$760,066 that we reviewed) were allowable in accordance with Federal requirements and refund any unallowable amounts. If any expenses incurred were not directly related to Hurricane Sandy, ACF must adjust its grant accounts by obligating appropriate funds. If appropriate funds are not available, ACF must report the overobligation as a violation of the Antideficiency Act, and VNSNY must refund the amount, or ACF must seek additional appropriations to cover these obligations.

VISITING NURSE SERVICE OF NEW YORK COMMENTS

In comments on our draft report, VNSNY disagreed with our findings and recommendations. VNSNY officials stated that, after Hurricane Sandy struck, they worked with ACF to obtain financial assistance in relocating VNSNY’s Early Head Start program and opening a Head Start program. The officials stated that OIG takes “an overly narrow interpretation” of what expenses were “directly related” to Hurricane Sandy without any legislative or regulatory guidance on how that phrase was to be applied. The officials stated that ACF directed VNSNY to apply for Disaster Relief Act funds for VNSNY’s Early Head Start and Head Start programs. The officials stated that they were transparent with ACF about the funds they needed and how VNSNY would use those funds. VNSNY officials also stated that they used their awarded Disaster Relief Act funds “exactly as provided in ACF’s award.”

VNSNY officials further stated that ACF directed VNSNY to budget certain Head Start program startup costs in its Disaster Relief Act grant—not its Head Start base grant—and that it did not receive duplicate funding through the two grants.

VNSNY officials stated that ACF properly awarded funds to VNSNY under the Disaster Relief Act grant program and that VNSNY is indifferent as to whether the funds came from its Head Start base grant or the Disaster Relief Act grant. The officials stated that, if OIG concludes differently, ACF should reallocate the funds from VNSNY’s Disaster Relief Act grant to VNSNY’s Head Start base grant.

VNSNY’s comments are included in their entirety as Appendix E.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing VNSNY’s comments, we maintain that our findings are valid. However, we revised our recommendations to clarify that ACF should adjust its grant accounts to ensure that Disaster Relief Act funds were available only for “expenses directly related to Hurricane Sandy.”

ACF’s Disaster Relief Act appropriation was available only for “expenses directly related to Hurricane Sandy” (Disaster Relief Act, Title X, Chapter 8). We determined that ACF obligated funds to VNSNY for expenses that were not directly related to Hurricane Sandy, including costs for the second and third floors of VNSNY’s Beach 87th Street location—two floors that VNSNY

designated for a new Head Start program.¹⁸ In addition, we acknowledge that ACF approved VNSNY's Disaster Relief Act budget and that, for the period September 1, 2013, through February 28, 2014, VNSNY claimed Disaster Relief Act costs according to the approved budget.

ACF should adjust its grant accounts to ensure that Disaster Relief Act funds were available only for "expenses directly related to Hurricane Sandy." If, after adjusting its accounts, ACF has insufficient funds available, ACF should report an Antideficiency Act violation under 31 U.S.C. § 1351 and recover the grant funds from VNSNY. Alternatively, ACF may request additional appropriations to cover any obligations.

ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS

In comments on our draft report, ACF disagreed with our first recommendation, agreed with our second recommendation, and described actions it has taken and plans to take to address it. Specifically, ACF stated that it disagreed with the approach we took in our analysis of Disaster Relief Act funds as well as our conclusions. ACF stated that the \$384,661 we identified as costs not directly related to Hurricane Sandy were properly charged by VNSNY to its Disaster Relief Act awards. ACF further stated that all funds that it awarded to VNSNY were for necessary expenditures resulting from Hurricane Sandy and were properly paid with Disaster Relief Act funds.

ACF stated that it will continue its oversight activities, including onsite assessments, in-person meetings, and training sessions, to ensure that Hurricane Sandy funds are used only for their intended purpose. ACF's comments are included in their entirety as Appendix F.

OFFICE OF INSPECTOR GENERAL RESPONSE

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

Prior to Hurricane Sandy, VNSNY only operated an Early Head Start program in its Rockaway Beach Boulevard location, a one-story facility. After Hurricane Sandy, ACF approved VNSNY's Head Start program application, and VNSNY decided to house both the pre-existing Early Head Start and the new Head Start programs in its Beach 87th Street location, a four-story building. However, Hurricane Sandy did not damage the two floors designated for VNSNY's new Head Start program (i.e., the second and third floors of the Beach 87th Street location). VNSNY would have had to incur rent and rent-related costs, as well as renovation and supplies costs for these floors associated with its newly approved Head Start program even if Hurricane Sandy had not struck. Therefore, we determined that costs for the second and third floors (rent and rent-related expenditures, and renovation and supplies costs) were not directly related to

¹⁸ We acknowledge that the Early Head Start program used a portion of the second and third floors of the Beach 87th Street location for administrative offices, as described in VNSNY's comments. Likewise, as also stated in VNSNY's comments, the fourth floor contained shared meeting and playground space for both Early Head Start and Head Start programs. To be consistent, we used the same allocation basis that VNSNY used in its Disaster Relief Act funding applications to allocate costs between the two programs, which was that the first and fourth floors were allocated for the Early Head Start program and the second and third floors were allocated for the Head Start program.

Hurricane Sandy.¹⁹ Rather, these costs were for Head Start program normal operating costs and should have been charged to VNSNY's Head Start base grant. ACF provided no justification in its comments for how the program costs for the newly approved Head Start program were directly related to Hurricane Sandy. Instead, ACF explained that costs should only be allocable to Disaster Relief Act funds if the costs were necessary for the grantee to incur on account of Hurricane Sandy. We agree.

¹⁹ In its comments, ACF indicated that, in our draft report, we provided only an aggregate total of costs that we determined were not directly related to Hurricane Sandy. To assist ACF in its addressing the allowability of these costs, we added a table in Appendix D that accounts for these unallowable expenditures.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

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

APPENDIX B: FEDERAL REQUIREMENTS RELATED TO DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS

FEDERAL REQUIREMENTS

The Disaster Relief Appropriations Act of 2013, P.L. No. 113-2, Title X, Chapter 8, makes funding available for “other expenses directly related to Hurricane Sandy, including making payments under the Head Start Act.”

Appropriations shall be obligated by the Federal agency only for the purposes for which the appropriations were made except as otherwise provided by law (31 U.S.C. § 1301(a)).

The Antideficiency Act requires that an officer or employee of the United States Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation (31 U.S.C. § 1341(a)(1)(A)). If the requirement is violated, the head of the agency must report immediately to the President and Congress all relevant facts and a statement of actions taken (31 U.S.C. § 1351).

Title 45, part 74, of the Code of Federal Regulations establishes uniform administrative requirements governing Department grants and agreements awarded to nonprofit organizations. As a nonprofit organization in receipt of Federal funds, VNSNY must comply with Federal cost principles in 2 CFR part 230, *Cost Principles for Non-Profit Organizations*.²⁰ These cost principles require that grant expenditures submitted for Federal reimbursement be reasonable, allocable, and otherwise allowable.

To be allowable under an award, costs must be reasonable for the performance of the award and be allocable under these principles (2 CFR part 230, Appendix A, § A.2). A cost is allocable to a Federal award if it is incurred specifically for the award. Costs allocable to a particular award may not be shifted to other Federal awards to overcome funding deficiencies (2 CFR part 230, Appendix A, § A.4).

Pursuant to 45 CFR § 74.21(b)(1), grantees must maintain financial management systems that provide accurate, current, and complete disclosure of the financial results of each Department-sponsored project or program. The system must also provide accounting records that are supported by source documentation (45 CFR § 74.21(b)(7)). The system must provide effective control over and accountability for all funds, property, and other assets. Grantees must adequately safeguard all such assets and assure they are used solely for authorized purposes (45 CFR § 74.21(b)(3)).

Pursuant to 45 CFR § 74.25(b)-(c), recipients are required to report deviations for budget and program plans, and request prior approvals for budget and program plan revisions when there is a

²⁰ The Office of Management and Budget (OMB) Circular No. A-122, *Cost Principles for Non-Profit Organizations*, was relocated to 2 CFR part 230 and made applicable by 45 CFR § 74.27(a). Although not applicable to this audit, HHS promulgated new grant regulations at 45 CFR part 75. The new regulation applies only to awards made on or after December 26, 2014.

change in the scope or the objective of the project or program, even if there is no associated budget revision requiring prior written approval.

The Department of Health and Human Services “Grants Policy Statement” states that a grantee indicates acceptance of an award and its associated Terms and Conditions by requesting and accepting funds. The Notice of Award is binding unless and until it is modified by a revised Notice of Award signed by the Grants Management Officer (part II, page 1).

ACF Program Instruction ACF-PI-HS-13-02 (April 15, 2013) stated that Head Start agencies were eligible for emergency relief funds if their programs were directly impacted by Hurricane Sandy.

APPENDIX C: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed \$4,838,294 in Disaster Relief Act funds awarded by ACF to VNSNY for the period September 1, 2013, through August 31, 2017.²¹ We also reviewed \$760,066 in Disaster Relief Act funds that VNSNY claimed during the period September 1, 2013, through February 28, 2014, for Head Start and Early Head Start program expenses resulting from Hurricane Sandy.

We did not review the overall internal control structure of VNSNY or ACF's grant management program. Rather, we reviewed only those controls related to our objective.

We performed fieldwork in New York, New York, at VNSNY's main offices in the borough of Manhattan and program offices in the borough of Queens, from April through November 2014.

METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable Federal laws, regulations, and guidance;
- met with ACF officials to gain an understanding of ACF's requirements for grantees receiving Disaster Relief Act funds;
- met with VNSNY officials to gain an understanding of their policies and procedures for managing Federal grant funds; specifically, we:
 - reviewed VNSNY's policies and procedures for operating Federal awards, procurement and contract management, and authorizing and approving transactions and
 - reviewed financial management controls related to Disaster Relief Act funds, including VNSNY's procedures for segregation of accounting duties, maintenance of accounting records, processing cash receipts and disbursements, maintaining bank statements, and performing bank reconciliations;
- reviewed VNSNY's funding application for Disaster Relief Act funds and determined whether proposed budgeted costs were appropriate;

²¹ Of this amount, \$3,244,954 was the initial funding for the budget period September 1, 2013, through August 31, 2015; \$408,640 was the Early Head Start "new site project manager" funding for a 2-year period within the September 1, 2013, through August 31, 2017, budget period; and \$1,184,700 was for fireproofing of VNSNY's Beach 87th location within the same budget period.

- reviewed VNSNY's claimed Head Start and Early Head Start program costs for quarters ended November 30, 2013, and February 28, 2014, to determine whether the costs were allowable for reimbursement;
- held subsequent discussions with ACF officials regarding the status of VNSNY's Disaster Relief Act grant and costs claimed after our fieldwork; and
- discussed the results of our review with ACF and VNSNY officials.

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

APPENDIX D: SUMMARY SCHEDULE OF ALLOWABLE AND UNALLOWABLE COSTS CLAIMED

Table 1: Total Costs Claimed and Reviewed

For Budget Period September 1, 2013, Through August 31, 2017

Total Costs Claimed	Claimed Costs Reviewed (9/1/13–2/28/14)	Allowable Costs	Unallowable Costs	Claimed Costs Allowability To Be Determined
\$4,147,077	\$760,066	\$375,405	\$384,661	\$3,387,011

Table 2: Head Start and Early Head Start Program Costs Claimed and Reviewed

For Period September 1, 2013, Through February 28, 2014

	Early Head Start Program	Head Start Program	Total
Unallowable rent and rent-related costs	\$0	\$223,078	\$223,078
Unallowable renovation and supplies costs	0	161,583	161,583
Total unallowable costs	0	384,661	384,661
Total allowable costs	372,768	2,277	375,405*
Total Costs Claimed and Reviewed	\$372,768	\$386,938	\$760,066

*VNSNY claimed \$360 in Disaster Relief Act funds that were for its other program locations. For reporting purposes, we did not include this amount in the unallowable costs.

APPENDIX E: VISITING NURSE SERVICE OF NEW YORK COMMENTS



Visiting Nurse Service of New York
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May 6, 2016

Ms. Brenda M. Tierney
Acting Regional Inspector General
for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, New York 10278

Re: Draft Report "*Visiting Nurse Service of New York Budgeted Costs That Were Not Appropriate and Claimed Some Unallowable Hurricane Sandy Disaster Relief Act Funds*" Dated May 30, 2016 [Report No. A-02-14-02012]

Dear Ms. Tierney:

This submission is made on behalf of Visiting Nurse Service of New York ("VNSNY") in response to your letter dated March 30, 2016, requesting comments to the above-referenced draft report. We are grateful for the courtesy of extending the time to submit our comments to May 6, 2016.

As the draft report notes, the Administration for Children and Families ("ACF") awarded VNSNY \$4,838,294 pursuant to the Disaster Relief Appropriations Act of 2013 ("Disaster Relief") for VNSNY's Head Start and Early Head Start program expenses related to Hurricane Sandy. VNSNY submits that OIG's findings and recommendations in the draft report in connection with this award are inappropriate, for the reasons set forth below.

I. SUMMARY OF VNSNY'S COMMENTS

Already operating an Early Head Start program in Rockaway, Queens under the auspices of ACF, VNSNY in 2012 determined to serve additional children and families through the Head Start program and initially sought funding through a Head Start base grant. However, by the time ACF awarded funds to VNSNY through the base grant, the Rockaways were a very different place. Ravaged by Hurricane Sandy in October of 2012, homes, buildings, and other infrastructure were destroyed, including the location that housed VNSNY's Early Head Start program. In response, the United States Congress enacted the Disaster Relief Act to provide funds expeditiously to service organizations adversely impacted by the damage caused by Hurricane Sandy.

ACF administered both the Early Head Start and Head Start programs and base grants. That same agency was chosen to also administer and oversee the funds disbursed pursuant to the Disaster Relief Act to Early Head Start and Head Start programs. In the aftermath of Hurricane Sandy, VNSNY turned to ACF for financial assistance in relocating its Early Head Start program and opening its Head Start program. ACF recognized the dire circumstances and the imperative to get the funds as soon as practicable to where they were needed the most. To that end, ACF directed VNSNY to apply for a Disaster Relief grant to help get its programs back up and running. ACF approved relief under the Disaster Relief Act for VNSNY's Early Head Start and Head Start programs, specifically to renovate the only viable location in the Rockaways at the time to operate the programs.

At the same time, ACF took seriously its charge to "monitor all Disaster Relief grant awards." From the outset and throughout the grant process, ACF worked closely with VNSNY to vet VNSNY grant applications and secure Disaster Relief funds for both the Early Head Start and Head Start programs. ACF visited the new location where VNSNY sought to operate its programs; reviewed drafts of the grant applications; and otherwise shepherded VNSNY through the process to obtain Disaster Relief grants that the OIG is now claiming were improper. With literally boots on the ground, ACF had every opportunity to, and did, carefully scrutinize the funds sought by VNSNY before approving the Disaster Relief grant. For its part, VNSNY was wholly transparent with ACF about what funds it needed and how it would use those funds.

Likewise, ACF was able to ensure that funds were properly allocated between Disaster Relief grants and the base grants as ACF administered both grant programs. On the other hand, under the terms of the Disaster Relief grant, VNSNY was required to "carry out the project according to the application as approved by" ACF. In fact, VNSNY used the funds awarded in the Disaster Relief grant exactly as provided in ACF's award; OIG makes no allegation to the contrary. From VNSNY's perspective, the regulatory agency overseeing and monitoring the grants was the arbiter of what funds were "directly related" to Hurricane Sandy.

It makes no difference to VNSNY whether it obtained needed funds from the Head Start base grant or the Disaster Relief grant. What is relevant is that VNSNY followed ACF's direction and obtained its approval for Disaster Relief funding. In fact, ACF specifically directed VNSNY to budget \$369,974 of its requested startup funds for its Head Start program in its Disaster Relief grant, not the base grant. There was no duplication of funds received by VNSNY under the base grant and the Disaster Relief grant.

OIG, in retrospect, has applied an overly narrow interpretation of what expenses are "directly related" to Hurricane Sandy, and has questioned ACF's determination to grant funding under the Disaster Relief Act. VNSNY submits that OIG's after-the-fact construction is erroneous and that ACF properly awarded the subject funds to VNSNY under the Disaster Relief grant program. If OIG concludes differently, ACF should reallocate the funds awarded to VNSNY from the Disaster Relief grant to the Head Start base grant. Even OIG does not dispute that the funds received by VNSNY could have properly been included in the Head Start base grant. VNSNY should not now be made to be twice the victim, once by Hurricane Sandy, and now by being entangled in a bureaucratic web.

II. BACKGROUND

1. VNSNY Early Head Start/Head Start Programs

VNSNY is a not-for-profit corporation that provides skilled nursing care, rehabilitation therapies and other professional services, as well as home health aide services to Medicare and Medicaid recipients in all five boroughs of New York City. Established in 1893, VNSNY has built upon its century long experience of providing quality care to those individuals most in need.

During the period under audit, VNSNY operated Early Head Start and Head Start programs in Rockaway, New York. The programs offered to young children age-appropriate learning, social interaction, health screenings, nutrition education, family development, and encouraged strong parental involvement so that each child experienced a rich environment for learning and developing.

A. Early Head Start Program

VNSNY's Early Head Start program provided comprehensive services for pregnant women and children through age three. This program began operations in 1997 in a center located at 86-01 Rockaway Beach Boulevard, Rockaway, New York (the "Rockaway Beach Location"). As a result of the devastation to the Rockaway Beach Location caused by Hurricane Sandy, VNSNY was required to relocate the Early Head Start program to 216-20 Beach 87th Street, Rockaway, New York (the "87th Street Location").

B. Head Start Program

The Head Start program provided services to children from ages three to five. VNSNY applied to ACF for a base grant in July 2012 to operate a Head Start program in the Rockaways. ACF approved the base grant through a Notice of Award dated June 20, 2013 in the amount of \$730,504.

Notably, VNSNY had requested funding for various startup costs, as detailed below:

ITEM NUMBER	ITEM	COSTS
1.	Indoor furniture	\$151,844
2.	Parent/Policy Council Learning Development Room	\$30,000
3.	Outdoor Furniture / two play roofs	\$75,000
4.	Kitchen Equipment	\$70,000
5.	Computer/software	\$26,834
6.	Office equipment	\$52,790
7.	Washer & Dryer	\$2,000
8.	Painting and repairs	\$88,500
9.	Fire Alarm System	\$9,000
10.	Security systems	\$15,850

ACF approved a revised budget in a Notice of Award dated July 18, 2013 (the "Base Grant Notice of Award") for \$882,348 that included funds for startup costs under "Supplies" (indoor furniture) only, in the amount of \$151,844.

2. Hurricane Sandy

A. The Rockaway Beach Location

On October 29, 2012, Hurricane Sandy made landfall in New York City, and the Rockaways experienced widespread devastation. In particular, the Rockaway Beach Location was inundated with four feet of water and sewage, ruining the classrooms and administrative office. The devastation required VNSNY's Early Head Start program to temporarily transition to a home-based model, providing one-on-one case management to each family serviced. VNSNY staff often held staff meetings and weekly socializations events for program families in the parking lot outside of the Rockaway Beach Location, the local library and other community centers in Rockaway. Such an arrangement was untenable to sustain, and necessitated prompt action to either restore the Rockaway Beach Location or move into another suitable location.

In an effort to remain at the Rockaway Beach location, VNSNY attempted to clean the center and remove damaged furniture and equipment. Despite its initial efforts, VNSNY ultimately determined that it could not return to the Rockaway Beach Location due to potential safety issues related to mold and other continued structural damage.

B. The 87th Street Location

Prior to Hurricane Sandy, VNSNY had contemplated moving to a space that would accommodate the Early Head Start and Head Start programs, and identified the 87th Street Location for that purpose. The Early Head Start program would provide child care on the first floor with the Head Start program classrooms located on the second and third floors. Notably, administrative offices shared by both programs would be located on the second and third floors. The fourth floor would contain shared meeting and playground space for both programs.

Hurricane Sandy dramatically accelerated the process to house both programs under one roof. Because the Rockaway Beach Location suffered so much storm damage, VNSNY was constrained to promptly move to its new location to continue its Early Head Start program and to begin its Head Start program. With the Rockaway Beach Location uninhabitable, relocating became a matter of both necessity and urgency.

3. Disaster Relief Grant

In early 2013, ACF notified VNSNY that funds were available under the Disaster Relief Act and could be disbursed expeditiously through the grant program to mitigate the impact of Hurricane Sandy. Accordingly, ACF and VNSNY began to work collaboratively throughout the process to obtain the funds necessary to relocate and to renovate, if necessary, at a new location. With the Rockaways damage widespread, VNSNY and ACF had limited choices for a replacement site. In fact, the four story building at the 87th Street Location was essentially the only viable option at the time in the immediate area to accommodate both the Early Head Start and Head Start

programs. However, this location was not optimal; as a result of severe flooding, there were issues with mold that required stripping the first floor and 20 inches of sheet rock. Nonetheless, in order to continue providing services in the Rockaways, ACF and VNSNY moved forward with repairing and renovating the 87th Street Location as soon as practicable.

Every single grant application or amendment submitted by VNSNY, and every award granted to VNSNY under the Disaster Relief Act, was done with ACF's full input and knowledge.

A. September 12, 2013

In the Notice of Award dated September 12, 2013 (the "Disaster Relief Notice of Award"), ACF initially awarded VNSNY \$3,244,954 for the period of September 1, 2013 through August 31, 2015. With respect to the Head Start program, ACF specifically allocated funds in the following manner:

ITEM NUMBER	HEAD START PROGRAM ITEMS	COSTS
1.	Parent PC Development Room	\$30,000
2.	Outdoor Playground Supplies	\$75,000
3.	Kitchen Equipment	\$70,000
4.	Computer/Software	\$26,834
5.	Office Supplies	\$52,790
6.	Washer / Dryer	\$2,000
7.	Painting and Repairs	\$88,500
8.	Fire Alarm System	\$9,000
9.	Security Systems	\$15,850
10.	Telephone System and Installation	\$50,584
11.	Rent and Rent Related Expenses for Two Years	\$658,362

Note that item numbers 1 through 9 were previously included in VNSNY's base grant application as the startup costs for its Head Start program. With that knowledge, ACF determined to approve those startup costs in the Disaster Relief budget. The Base Grant Notice of Award did allocate \$151,844 in costs for indoor furniture as part of startup costs. However, ACF did not provide VNSNY with funding for the remaining startup costs through the Base Grant Notice of Award, but directed VNSNY to include them in its budget for the Disaster Relief grant. As such, there was no duplication of funding through the two grants being administered by ACF.

B. May 16, 2014

The Disaster Relief Notice of Award was amended to increase the award to \$3,653,594 on May 16, 2014 to include additional expenses for a project manager to oversee the selection of a new site and related construction for the Early Head Start program. Moreover, ACF increased the period of the award from August 31, 2015 to August 31, 2017.

C. September 5, 2014

While repairing the mold on the ceiling in the first floor of the 87th Street Location, VNSNY discovered that the ceiling, and in turn, the whole building lacked fire protection. VNSNY immediately advised ACF that the building needed to be fireproofed. In response, [REDACTED], Senior Advisor of the Office of Head Start,¹ stated that this “situation is not unusual, in that damage can declare itself for years after the event. . . . I think this helps cement the concept that your new facility might best be built from the ground up i[f] at all possible. Let me know if there is any way I can help move the real property acquisition forward.” See email of July 28, 2014 from [REDACTED] to Vivian Torres-Suarez, VNSNY’s Vice President of Children and Family Services.²

ACF honored its commitment to VNSNY to assist, and awarded additional funds under VNSNY’s Disaster Relief grant to VNSNY to fireproof the 87th Street Location. Specifically, ACF amended the Disaster Relief Notice of Award on September 5, 2014 and increased the award by \$1,184,700 (as noted below) to \$4,838,294 within one week of first discussing this issue with VNSNY. In so doing, ACF stated that the additional funds were intended to make facility “repairs at the Head Start/Early Head Start site damaged by Hurricanes Sandy.”

ITEM NUMBER	HEAD START PROGRAM ITEMS	COSTS
1.	Contractual (general and contractor fees)	\$210,000
2.	Furniture and equipment removal and reinstall	\$65,000
3.	Acoustic ceiling tile system removal and reinstall	\$160,000
4.	Light fixtures removal and reinstall	\$180,000
5.	Mechanical diffusers and air return registers removal and reinstall	\$12,000
6.	Spray on fireproofing	\$360,000
7.	Protection of interiors	\$45,000
8.	Professional fees/inspections	\$45,000
9.	Contingency at 10% of costs	\$107,700

Soon after this amendment, [REDACTED] followed up with VNSNY to confirm that VNSNY would use Disaster Relief funds to spend “a little over a \$1 million to bring the fire barrier between the floors up to code.” See email of October 3, 2014 from [REDACTED] to Ms. Torres-Suarez.

¹ [REDACTED] an attorney, was VNSNY’s ACF contact with respect to the Disaster Relief grant.

² VNSNY would be pleased to furnish OIG with any referenced email or correspondence upon request.

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

D. April 2, 2015

The Disaster Relief Notice of Award was once again amended on April 2, 2015, to limit the grant period with an end date of September 30, 2015 rather than August 31, 2017.

E. VNSNY September 1, 2013 Through February 28, 2014 Expenses Under Sandy

Throughout the referenced six-month period, VNSNY drew down \$760,066 from its Disaster Relief grant for its Early Head Start and Head Start programs. Specifically, VNSNY used these dollars in the following manner:

ITEM NUMBER	PROGRAM ITEMS	EXPENSES
1.	Capital Construction	\$201,545
2.	Rent and related expenses	\$490,532
3.	Minor moveable equipment	\$56,874
4.	Moving expenses	\$4,785
5.	Repair and maintenance	\$4,609
6.	Consultants	\$1,650
7.	Courier service	\$72

III. OBJECTIONS TO OIG'S FINDINGS AND RECOMMENDATIONS

1. No Basis To Require Refund Of \$384,661

The OIG reviewed \$760,066 of the Disaster Relief funds received by VNSNY from September 1, 2013, through February 28, 2014, and concluded that \$384,661 did not "directly relate" to Hurricane Sandy. Specifically, OIG alleges that these funds were used for "normal operating costs (i.e., rent and rent-related costs, renovation and supplies) for Head Start program activities that were not directly related to Hurricane Sandy." However, as ACF was well aware, the "operating costs" incurred by VNSNY, to make habitable the only viable site at the time in the Rockaways, were anything but "normal." Moreover, ACF collaborated with VNSNY to provide funding in the most expeditious manner possible, and ACF determined to award those funds through the Disaster Relief grant, not the base grant.

A. ACF Directed VNSNY To Include Funding In Its Grant Application Under The Disaster Relief Act

According to OIG, any rent, renovation and supply costs attributable to the second and third floors of the 87th Street Location were not allowable under the Disaster Relief grant on the ground that those floors were not damaged by Hurricane Sandy. In particular, OIG takes an exceedingly narrow view of what expenses are "directly related" to Hurricane Sandy. OIG does so without any legislative or regulatory guidance on how that phrase is to be applied. In addition, OIG's interpretation is in direct conflict with the contemporaneous interpretation of the

agency that was charged with making the determination as to what qualified for Disaster Relief funding.

Contrary to OIG's interpretation, and consistent with ACF's, the subject costs were incurred as a direct result of Hurricane Sandy, because (a) VNSNY needed to quickly transition the Early Head Start and Head Start programs to the 87th Street Location and (b) with the scope of damage to the Rockaways so broad and extensive, Hurricane Sandy left VNSNY with no viable alternative location at the time for its programs. Furthermore, due to the exigency of moving to a viable location, VNSNY had to immediately expend funds to prepare and clean the building for use.³ As such, VNSNY had to undertake these actions "directly" because of Hurricane Sandy's devastation. Significantly, ACF interpreted VNSNY's needs for funding to be consistent with the Disaster Relief Act.

To reiterate, OIG does not allege (nor could it) that VNSNY either misled ACF in how it intended to use the funds under the Disaster Relief grant, or that VNSNY used the funds in a manner inconsistent with the uses for which ACF approved the grant. ACF, through its Office of Head Start, advised Head Start programs that it would "closely monitor all Disaster Relief grant awards." VNSNY and ACF remained in constant dialogue and engaged in many meetings and discussions, before, during, and after VNSNY applied for Disaster Relief grant relief. The meetings included a site visit by ACF to the 87th Street Location. What is more, VNSNY shared drafts of its grant applications with ACF before submitting them for approval, and followed ACF's direction throughout the process. Moreover, ACF engaged in ongoing oversight of the Disaster Relief grant to ensure VNSNY's compliance with the terms of the grant. Significantly, ACF did not identify to VNSNY any issues over whether the expenditures it had approved and was monitoring were inappropriate or inconsistent with the Disaster Relief grant.

In fact, prior to awarding the Disaster Relief grant, ACF suggested that, instead of entering into a lease with the landlord of the 87th Street Location, VNSNY consider purchasing the property outright. In this regard ██████████ recommended that VNSNY "consider negotiations to purchase the building" and that "any offer of purchase for the building and property" be contingent upon the "[a]vailability and award of Hurricane Disaster Relief funds for acquisition and renovation." See email of June 10, 2013 from ██████████ to Carmen Ayala, VNSNY's Early Head Start Program Director, and Ms. Torres-Suarez (emphasis added). ██████████ further advised that the offer price of \$6 million for the property was a "reasonable price." Notably, the \$6 million purchase price would be almost double the amount of the initial Disaster Relief Notice of Award. VNSNY ultimately chose not to purchase the property, potentially saving the government millions of dollars. It would defy logic, and law, that ACF could have awarded funds under the Disaster Relief Act to purchase the property, but should not have approved them for rent and repair of the same property.

³ Contrary to OIG's assertions, VNSNY's Early Head Start program did use a portion of the second and third floors of the 87th Street Location for administrative offices. There can be no dispute that the Early Head Start program had to be relocated due to the damage of the Rockaway Beach Location caused by Hurricane Sandy.

B. VNSNY Did Not Receive Duplicate Funds Under The Head Start Base Grant And Disaster Relief Grant

OIG asserts that the \$384,661 “should have been considered startup costs tied to VNSNY’s Head Start base grant, not its Disaster Relief Act grant.” It may be true that, in the absence of Hurricane Sandy and the exigent circumstances it created, VNSNY could have obtained or drawn down funds under the Base Grant Notice of Award for necessary startup costs. In the draft report, OIG now seeks to hold ACF, and by extension, VNSNY, accountable for ACF’s decision not to process the funds under the base grant as if Hurricane Sandy had not struck.

But the impact of Hurricane Sandy may well have compelled ACF to provide funding through the Disaster Relief grant instead. With the exception of the cost of the Head Start program’s indoor furniture, VNSNY’s remaining Head Start program startup costs -- with not only ACF’s approval, but its direction -- were included in and funded through the Disaster Relief grant. Notably, VNSNY did not receive any duplication of funds from the two grant programs.

More fundamentally, ACF is the very agency charged with overseeing both the base grant and the Disaster Relief grant. It is ACF that approved and directed that the funds for VNSNY’s Head Start program be disbursed from the Disaster Relief grant rather than the base grant it had previously awarded. Faced with the crisis left in the wake of Hurricane Sandy, and with financial assistance sorely needed on an expedited basis, VNSNY was in no position to question ACF’s actions in approving funds through the Disaster Relief grant rather than the base grant.

To the contrary, under the terms of the Disaster Relief Notice of Award, VNSNY was to “carry out the project according to the application as approved by” ACF. In this regard, OIG has made no claim that VNSNY did not expend funds in accordance with the terms of the Disaster Relief grant as “approved by” ACF. Rather, VNSNY followed exactly the letter of ACF’s Disaster Relief award. Compare OIG Report A-02-15-02010, “Bayview Nursing and Rehabilitation Center Claimed Allowable Hurricane Sandy Disaster Relief Act Funds,” (April 2016) (OIG did not recommend that Bayview Nursing and Rehabilitation Center (“Bayview”) return any funds received pursuant to the Disaster Relief Act despite Bayview’s failure to “follow usual Federal procurement requirements” and “requirements for separately tracking and accounting for all grant expenditures”).

2. No Basis For ACF To Review The Remaining \$3,387,011 in Disaster Relief Funds

Of the remaining \$3,387,011 in funds awarded to VNSNY under the Disaster Relief Act for periods subsequent to February 28, 2014, OIG asserts that at least \$2,472,695 of the budgeted amounts were not appropriate. As detailed below, ACF also approved and directed that the costs at issue be paid for through VNSNY’s Disaster Relief grant.

A. ACF Properly Awarded Fireproofing Costs Of \$1,184,700 Under The Disaster Relief Grant

ACF was acutely aware of the need to fireproof the 87th Street Location prior to occupancy, and approved and directed VNSNY to include the associated costs in the Disaster Relief grant. As discussed above, one week after learning from VNSNY that the entire building located at the 87th Street Location required fireproofing, ACF amended the Disaster Relief Notice of Award specifically to add \$1,184,700 for facility “repairs at the Head Start/Early Head Start site damaged by Hurricanes Sandy.” Moreover, after amending the Disaster Relief Notice of Award, ACF confirmed with VNSNY that the additional funds were going to be used “to bring the fire barrier between the floors up to code.” See email of October 3, 2014 from [REDACTED] to Ms. Torres-Suarez.

As grantee, VNSNY had no authority to question ACF’s judgment on how to administer the two grant programs, or whether, in particular, fireproofing costs should be awarded under a Disaster Relief grant. Nor is there any allegation that VNSNY used these funds for purposes other than fireproofing the building, as approved by ACF. In any event, ACF correctly determined that the fireproofing costs arose as a direct result of Hurricane Sandy and were allowable. Because of Hurricane Sandy, there were no other viable locations at the time in the Rockaways for VNSNY’s two programs, and VNSNY had no choice but undertake the fireproofing at the 87th Street Location location to make the space suitable for occupancy. Put simply, VNSNY could not secure another location at the time to run its programs to avoid this expense.

B. Remaining Rent, Renovation and Supply Costs of \$546,546 Were Properly Included In The Disaster Relief Grant

OIG also maintains that the rent and rent-related costs (\$435,284) and renovation and supply costs (\$111,262) that were budgeted for periods subsequent to February 28, 2014 for the Head Start program were not related to Hurricane Sandy. Here too, for the reasons set forth above (supra, Point III(1)(A)(B)), these funds were not duplicative of any funds received by VNSNY through its base grant and were specifically directed and approved by ACF to be included in the Disaster Relief grant.

C. Demolition And Repair Costs At The Rockaway Beach Location Should Not Be Refunded

OIG further asserts that although VNSNY budgeted \$774,828 in Disaster Relief funds for demolition and repair costs at the Rockaway Beach Location, it only incurred costs totaling \$33,379 because it abandoned its plans to repair this location. OIG maintains that as a technical matter, VNSNY should have revised its budget to reflect this development. It does not appear, however, that OIG is recommending any refund, nor could it, as VNSNY did not submit such funds for reimbursement under the Disaster Relief Act.

3. OIG Should Rescind And Modify its Recommendations

For the reasons set forth above, OIG should rescind its recommendations that ACF (i) seek a refund of \$384,661 from VNSNY for the September 1, 2013 through the February 28, 2014 period and (ii) determine if the remaining \$3,387,011 in Disaster Relief expenditures were allowable. ACF correctly determined the foregoing funds were “directly related” to Hurricane Sandy. In the absence of any other viable location following the storm, VNSNY had to expend funds at the 87th Street Location to make the place habitable for the children and families it was to serve on an expedited basis.

If ACF had originally required VNSNY to draw down the applicable funds from the base grant instead, VNSNY would have done so. Indeed, VNSNY is indifferent as to whether the funds were to come from the base grant or the Disaster Relief grant, so long as its actual, and indisputably necessary, expenditures in the aftermath of Hurricane Sandy were recognized and recovered. If OIG adheres to the view that the funds were not allowable under the Disaster Relief Act, OIG should then direct ACF to reallocate the unallowable Disaster Relief grant funds drawn upon by VNSNY to the Head Start base grant. (The project period under the Base Grant Notice of Award extends until June 30, 2018.) Such action would be consistent with OIG’s acknowledgement that such costs could be covered under VNSNY’s base grant. If for budgetary or other reasons, ACF cannot reallocate the funds at this point, VNSNY should not bear the burden of refunding the monies.

* * *

With the passage of the Disaster Relief Act, Congressman Peter T. King of New York enjoined: “[I]et’s stand together as Americans, and let’s get the aid to the people who need it . . . people are homeless, people are cold, people are without food. This is a serious matter we have to address, that we have to do as quickly as possible.” Consideration of H.R. 152, Disaster Relief Appropriations Act, 2013, 159 Cong. Rec. H99, H101 (daily ed. Jan. 15, 2013). At a time of crisis, VNSNY answered the call by taking extraordinary measures on an expedited timeframe to ensure that the children and families receive necessary services in a safe environment. VNSNY partnered with ACF throughout to meet those objectives, and was transparent at all times about how it would use the Disaster Relief grant funding.

It would be patently improper to punish VNSNY’s herculean efforts with a demand that VNSNY refund monies that it received for performing vital services and improvements—as it was instructed to do by its oversight agency, ACF. Furthermore, from a legal standpoint, a U.S. government agency should not be permitted to demand a refund to the significant financial prejudice of an organization that spent the money in good faith reliance on decisions made by that agency. Indeed, such action would no doubt create dreadful precedent and have a chilling effect on not-for-profit organizations in any future crises. In particular, these organizations would be disincentivized to answer the call in times of need if they could not rely on the required funding that has been authorized to do such work.

We thank you for the opportunity to provide these comments, and look forward to receiving a revised draft report eliminating the findings and recommendations noted above.

Respectfully,

s/ Marki Flannery
Marki Flannery
Executive Vice President and
Chief of Provider Services

APPENDIX F: ADMINISTRATION FOR CHILDREN AND FAMILIES COMMENTS



ADMINISTRATION FOR
CHILDREN & FAMILIES
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Washington, DC 20201 | www.acf.hhs.gov

September 29, 2016

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

Dear Ms. Jarmon:

ACF appreciates the opportunity to respond to the Office of Inspector General (OIG) Report regarding Visiting Nurse Service of New York (VNSNY) Disaster Relief Act (DRA) funds (A-02-14-02012). ACF disagrees with the approach taken by the OIG in its analysis of the allowable uses of DRA funds and the OIG's conclusions.

The OIG concluded that costs totaling \$384,661 were improperly claimed by VNSNY because they were not "directly related" to Hurricane Sandy.

The Hurricane Sandy DRA states that Office of Head Start (OHS) monies are to: *Fund for disaster response and recovery, and other expenses directly related to Hurricane Sandy, including making payments under the Head Start Act.* OHS issued [ACF-PI-HS-13-02](#) on April 15, 2013, to clarify for grantees the allowable uses of DRA funds for recovery, relief, and resiliency efforts to ensure full restoration of facilities, program operations, and targeted support services to Head Start and Early Head Start children, families, and program staff impacted by Hurricane Sandy.

OHS' approach for determining whether an otherwise allowable expense was allocable to the DRA funds was to query whether, on account of Hurricane Sandy, it was necessary for the grantee to incur the expense. If so, the expense was determined to be an allowable charge to the grantee's Hurricane Sandy award. OHS also relied on the requirements of the Head Start Act, applicable fiscal regulations found at 45 CFR Part 75 (the Uniform Guidance), input from subject matter experts, as well as examples and guidance found in 42 USC Chapter 68 – Disaster Relief (the Stafford Act).

In addition, OHS engaged in extensive after the fact improper payment reviews of Hurricane Sandy expenditures, including four onsite visits to VNSNY. During those visits transactions were randomly sampled at a rate of 1:3, 1:2 or 2:3 depending on the transaction amount and type. For every transaction sampled, OHS examined the following:

- Was the expense a necessary use of Hurricane Sandy Funds, as identified in the grantee's application?
- Was the amount of expense reasonable in light of circumstances at the time the expense was paid?
- Was the expense properly allocable to the Hurricane Sandy Funds project or activity described in the grantee's application?
- Was the expense adequately documented?
- Was the expense paid or obligated within its associated period of availability?

Page 2- Ms. Gloria L. Jarmon

Since the report provides only an aggregate total of \$384,661 for expenses that are identified as not "directly related" to Hurricane Sandy it is not possible for OHS to address the allowability of individual expenses included in the total. While OHS believes the noted expenses were properly charged to the grantee's DRA awards, if additional information is provided relative to individual expenditures OHS can further consider the issue of allowability.

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

Recommendation 1:

That ACF adjust its grant accounts by deobligating \$384,661 in inappropriate DRA expenditures and obligating funds available for these expenditures.

Response:

ACF does not concur with the recommendation and believes that the identified expenses were properly charged to VNSNY's Hurricane Sandy awards.

Recommendation 2:

That ACF work with VNSNY to determine whether \$3,387,011 in DRA expenditures were allowable in accordance with Federal requirements and refund any unallowable amounts.

Response:

ACF concurs with the recommendation and will continue to engage in its ongoing and intentional oversight to assure that Hurricane Sandy funds are used only for their intended purpose, which include:

- Onsite project visits to assess actual progress
- In-person meetings with grantee staff to assess any ACF concerns
- Extensive erroneous payment oversight
- Delivery of training and technical assistance
- Weekly major project updates with accompanying photographs

OHS awarded Hurricane Sandy DRA funds to grantees to support full restoration of facilities, program operations, and targeted support services to Head Start and Early Head Start children, families, and program staff impacted by Hurricane Sandy. OHS believes that all funds awarded to VNSNY for Hurricane Sandy DRA purposes were necessary expenditures resulting from Hurricane Sandy and properly paid with DRA funds.

Sincerely,


Mark H. Greenberg
Acting Assistant Secretary
for Children and Families