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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# **Compliance With Outcome Reporting Requirements**

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## **Empire State Development**

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Report 2016-S-40

May 2017

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# Executive Summary

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## Purpose

To determine whether Empire State Development (ESD) meets legal and regulatory requirements to report on the outcomes of its programs and initiatives, and whether the resulting reports are complete and timely. The audit covers from April 1, 2012 through September 30, 2016.

## Background

ESD serves as the State's chief economic development agency. ESD seeks to promote a vigorous and growing economy, prevent economic stagnation, encourage the creation of new job opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. ESD administers the allocation of hundreds of millions of dollars in grants, loans, and other incentives to private companies, non-profit organizations, and other entities throughout the State. Various State laws and regulations contain outcome reporting requirements for ESD. Under these laws and regulations, ESD is required to report to various levels of State government and/or the public regarding the outcomes of numerous programs it supervises. Reporting requirements for specific programs vary, often with many of the requirements specified in the legislation that established the program.

## Key Findings

- ESD failed to meet more than half of the statutorily mandated outcome reporting requirements for the programs that it managed during the period April 1, 2012 through September 30, 2016. As a result, the level of transparency and accountability in these publicly funded initiatives is diminished and policy makers have less information upon which to gauge effectiveness or identify needed changes and improvements. In most cases, ESD officials did not provide any explanation about why they had not prepared the required reports.
- The outcome reports that ESD did prepare contained all the required data elements. However, the required general summary reports, which are supposed to account for all of ESD's active economic development programs that provide financial assistance to participants, actually accounted for less than half of them. In addition, 12 programs with appropriations during the period totaling over \$500 million were not reported on at all.
- ESD had annual reports for only 15 of 173 subsidiaries linked with ESD per the State's Public Authority Reporting Information System (otherwise known as PARIS).
- For the reports ESD prepared, we often could not determine whether they were done timely because there was no evidence of when they were published. For 27 reports with such evidence, we found that generally ESD submitted them late, although the majority (17) were submitted within two weeks after their due dates. The most overdue report we identified, the 2015 START-UP NY annual report, was issued 91 days past its due date.

## Key Recommendations

- Develop and adhere to procedures for meeting statutory program and subsidiary reporting requirements in a timely manner.
- Review information contained in summary outcome reports to ensure all active programs are included.

## **Other Related Audits/Reports of Interest**

[Empire State Development: Performance of the Excelsior Jobs Program \(2015-S-15\)](#)

[Empire State Development: Marketing Service Performance Monitoring \(2014-S-10\)](#)

[Empire State Development Corporation: Oversight of Subsidiary Operations \(2005-S-6\)](#)

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**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

May 17, 2017

Mr. Howard Zemsky  
President and CEO  
Empire State Development  
633 3rd Ave.  
37th Floor  
New York, NY 10017

Dear Mr. Zemsky:

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

Following is a report of our audit of Empire State Development entitled *Compliance With Outcome Reporting Requirements*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution as well as Article II, Section 8 of the State Finance Law and Section 2803 of the Public Authorities Law.

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

Respectfully submitted,

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

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**State Government Accountability Contact Information:**

**Audit Director:** John Buyce

**Phone:** (518) 474-3271

**Email:** [StateGovernmentAccountability@osc.state.ny.us](mailto:StateGovernmentAccountability@osc.state.ny.us)

**Address:**

Office of the State Comptroller  
 Division of State Government Accountability  
 110 State Street, 11th Floor  
 Albany, NY 12236

This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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In 1995, the functions of the New York State Department of Economic Development and the Urban Development Corporation (UDC) were consolidated, along with other State economic development entities – the Job Development Authority (JDA) and the Science and Technology Foundation – under the umbrella of Empire State Development (ESD). Both UDC and JDA were authorized by law to create other subsidiary corporations to oversee and perform specific economic development activities.<sup>1</sup> The combined entities now function as the State’s chief economic development agency. ESD seeks to promote a vigorous and growing economy, prevent economic stagnation, encourage the creation of new job opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies.

ESD, with co-headquarters in Albany, Buffalo, and New York City, is supported by a network of ten regional offices throughout the State. To support ESD in carrying out its mission, the State Legislature has provided ESD with various statutory powers, including the ability to issue bonds, offer tax benefits to developers and other businesses, condemn real property, and waive compliance, where appropriate, with certain local zoning codes and laws. In addition, ESD is authorized to create subsidiaries. ESD’s website states its “ability to execute complex financial transactions, coordinate public and private resources and serve as a one-stop development authority thus offers a combination of services that no other private or public service entity in New York State can provide.”

With the stated intent to enhance ESD’s business outreach and emphasize local priorities, the Regional Economic Development Council (REDC) initiative was established in 2011, supported by funding via the Regional Council Capital Fund as part of the State’s budget. For the five years ended March 31, 2016, the Regional Council Capital Fund, which is administered by ESD, has made available over \$730 million of capital grant funding for the State’s REDC initiative. Regional Council Capital Funds are allocated among ten regions, each represented by a Regional Council, through a process that includes each Regional Council’s development and implementation of a five-year strategic plan that sets out a comprehensive vision for economic development and specific strategies to implement that vision. ESD’s role in the State’s REDC initiative is to administer the Regional Council Capital Fund and any other funding, allocated annually, that is awarded through a competitive Consolidated Funding Application review process.

During the period 2012 through 2016, ESD has been charged with the administration of 66 programs intended to spur economic activity, stimulate job creation, and encourage business investment in the State. ESD’s audited financial statements reveal it spent almost \$2 billion on economic development grants during the four fiscal years ended March 31, 2016. Besides economic development grants, ESD administers the allocation of hundreds of millions of dollars in loans, tax credits, and other incentives to private companies, non-profit organizations, and

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<sup>1</sup>UDC is authorized to create subsidiary corporations pursuant to the Business Corporation Law, the Not-for-Profit Corporation Law, and the Private Housing Finance Law. JDA is authorized to encourage the organization of local development corporations pursuant to Section 1411 of the Not-for-Profit Corporation Law. Although there are certain legal distinctions between the types of corporations created by UDC and the types of corporations created by JDA, consistent with our prior audit report entitled *Oversight of Subsidiary Operations* (Report 2005-S-6, issued May 15, 2006), we refer to organizations created by or organized through UDC or JDA as subsidiary corporations for the purposes of this audit report.

other entities throughout New York State. For the year ending December 31, 2015, ESD reported that there were 217 active projects subject to employment stipulations and funded with \$234.8 million from various State investment sources. In addition, ESD reported that the 217 active projects created 18,466 net new jobs in New York since first receiving financial assistance.

Various State laws and regulations contain reporting requirements for ESD. Under these laws and regulations, ESD is obligated to report to various levels of State government and/or the public regarding the outcomes of numerous programs it supervises. Reporting requirements for specific programs vary, with many of the requirements specified in the legislation that established the program. Additional statutory provisions provide for other reporting, including an annual program report to the Governor and legislative fiscal committees.

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## Audit Findings and Recommendations

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The State's economic development programs are intended to retain and attract businesses, create jobs, create opportunities for entrepreneurs and small businesses, assist disadvantaged businesses (such as those owned by women or members of minority groups, or MWBEs), improve the competitiveness of industries important to the State, promote regional economic growth, and encourage overall economic growth. Toward these goals, ESD indicates it manages a wide variety of programs that provide grants, loans, direct services, and tax incentives to businesses, local governments, and other organizations. The complex nature of the State's economy and the complicated mix of State initiatives intended to spur job growth demand a high standard of public accountability to ensure that the State's investments in economic development pay off. ESD's commitment to such reporting is therefore a critical element in promoting confidence and ensuring that its investment of public resources optimizes job creation and produces other beneficial results for all New Yorkers.

As detailed in the following sections of this report, ESD failed to produce many of the statutorily required performance and outcome reports that should have been submitted over the four and a half years from April 2012 through September 2016. As a result, the level of transparency and accountability that should be inherent in these publicly funded programs is diminished because the Legislature, other public policy makers, and the public in general have less information upon which to gauge the performance of these important initiatives and to identify what changes may be needed to improve their overall efficiency or effectiveness.

In fact, our audit found significant rates of non-compliance across several different types of reporting requirements applicable to 66 different programs (excluding subsidiaries) operated by ESD, including:

- 27 of 57 general outcome-oriented reports – 47 percent non-compliance;
- 17 of 17 independently prepared program evaluations – 100 percent non-compliance; and
- 93 of 152 program-specific reports – 61 percent non-compliance.

In most cases, ESD officials did not provide any explanation for why they had not prepared the required reports.

In addition, annual reports were available for only 15 of 173 subsidiary organizations. According to ESD officials, annual reports were not required for most of these subsidiaries because their economic development programs were no longer active. However, as of October 2016, New York State's Public Authority Reporting Information System (also known as PARIS) listed the 173 organizations as subsidiaries of ESD.

We recommend that management take immediate action to improve internal controls over communication and legal compliance, particularly in the areas of performance and outcome reporting. Complete and accurate reporting requires a commitment at the highest levels of management, in part because there are several inherent disincentives to expending the time and

resources necessary for full disclosure. For example, at times, reporting requirements may seem cumbersome. While some programs involve millions of dollars, others that require the same reporting may be relatively small. Further, in some cases, the same program information may need to be provided in multiple required reports. Even so, the reports are intended to ensure that the economic development programs ESD oversees are transparent and held accountable. These reports inform the public and State policy makers, who, in turn, can use such information to better assess how well the State's investments in economic development are delivering their intended benefits – both in terms of new jobs and economic activity. When stakeholders know which programs are most successful, they are better positioned to identify those that need to be improved or considered for elimination, thereby ensuring that funding is used in the most cost-effective and efficient manner possible.

## Required Program Reporting

As a result of provisions enacted in the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, ESD is required to report or otherwise make available certain financial, debt, governance, and other information regarding its operations. Additional statutory provisions provide for other reporting, including an annual program report to the Executive and the legislative fiscal committees, along with certain other committees. These requirements also require ESD to reexamine its mission statement and performance measurements on an annual basis, and publish a self-evaluation based on the stated measurements. The measures of performance that ESD has chosen for purposes of fulfilling certain reporting requirements include the number and types of customers served, financing provided and leveraged, jobs projected to be retained and created, and associated capital investment in the State, along with regional and industry breakdowns of such metrics.

While many economic development programs have been continued throughout the years, new programs are often added, while other older programs are retired. Many of the older programs currently under ESD's control pre-date its existence,

## Sample Reporting Requirements

**Annual Program Reports** – Urban Development Corporation Act, Section 30(b):

ESD must prepare an annual report on each of the financial assistance programs administered by ESD, identifying each proposal for assistance through such program for which ESD has received a formal application or otherwise has begun to undertake an analysis. For those requests which are currently being evaluated but which have not yet been approved such description shall include, but not be limited to, the name and location of the applicant, the amount of assistance requested, the date of receipt of such request, and the status of such request. The report shall provide a breakdown, for each of the regions of proposals for assistance through each program. For those requests which have been evaluated and for which no further action has been recommended, ESD must present summary data indicating why no further action was taken.

**Quarterly Status Reports** – Urban Development Corporation Act, Section 30(a):

ESD must report on the status of all economic development programs administered during the current fiscal year; a summary of commitments and disbursements by year of original appropriation; the geographic distribution of approved projects; extent to which approved projects will create or retain jobs; and the impact of approved projects, where available, on distressed urban and rural communities, small and medium sized businesses, and strategic industries.

and many also contain specific statutory reporting requirements that vary depending upon the program. For example, Section 30(c)(2) of the Urban Development Corporation Act (Chapter 174 of the Laws of 1968, as amended) requires ESD to submit an evaluation report every four years prepared by an independent entity to the Director of the Division of the Budget (DOB) and the chairs of the legislative fiscal committees for any program providing financial assistance not tied to specific legislation. Furthermore, the Public Authorities Law requires that on January 1 of each year any subsidiary public benefit corporation, in cooperation with its parent public benefit corporation, report to the Senate and the Assembly on certain aspects of its operations. Specifically, subsidiaries' reports must include their:

- Legal name, address, and contact information;
- Organizational structure, including the names and titles of each member, director, and officer and a current organizational chart;
- Complete bylaws and legal organization papers;
- Purpose, operations, mission, and projects, including a statement of justification about why the subsidiary is necessary to continue its operations for the public benefit.

Some programs created in recent years have no statutory reporting requirements, while others generally have more specific language about required reporting than some of the more long-standing programs. For example, provisions in the enabling statutes for two more recent programs – the Excelsior Jobs Program and the Economic Transformation and Facility Redevelopment Program – each require quarterly, publicly available reporting by ESD. The reporting must contain certain specific data elements such as the number of program applicants, the number of participating companies approved, the names of those participants and total amount of benefits awarded to each, and data on job creation and investment in the State. Similarly, while ESD is often required to publish program outcome reports on its website for more recent programs, this is generally not the case for most other active programs.

The following chart illustrates some of the periodic outcome reporting currently required by statutes impacting ESD programs, which vary significantly in a variety of ways, including who is required to prepare the report, the required elements of the report, and the frequency. For example, some programs require program evaluation studies prepared by an entity independent of ESD either every two or four years. In other cases, ESD is responsible for preparing either annual or quarterly operational reports that detail specific program activities. For still other programs, ESD is required to prepare annual program effectiveness reports.



On June 21, 2016, at the outset of our audit, we asked ESD officials to provide us with a listing of all ESD programs that have statutory reporting requirements, as well as details of any policies and procedures ESD had in place to ensure it met these requirements. Despite several follow-up emails and phone conversations, ESD never responded to our request for information about its reporting procedures, and failed to set up requested meetings with program staff who were actually involved in preparing the required reports.

It was not until six months into our audit – on December 21, 2016 – that ESD first provided us with a chart that listed specific statutory reporting requirements for certain individual ESD programs as well as more general reporting requirements. However, our initial review found this listing incomplete, as it failed to include all program-specific reporting requirements (e.g., for the MWBE program) as well as certain general reporting requirements under the Public Authorities Law (e.g., the Performance Measures report).

Absent information from ESD, our own search of relevant laws, rules, and regulations identified a total of 66 economic development programs that were in effect from April 2012 through September 2016, as shown in Exhibit B. Our research was not necessarily exhaustive, so there may be other programs that we did not identify. Still, for 30 of these programs, ESD was statutorily required to prepare some form of unique periodic report to the Governor, legislative fiscal committees, the Comptroller, and/or the Director of the DOB. In addition, we identified 13 more general statutory reporting requirements ESD must adhere to related to the economic development programs it manages. These are detailed in Exhibit A. In total, we found ESD failed to meet over half of the mandated program outcome reporting requirements during the period April 1, 2012 through September 30, 2016. While the outcome reports that ESD did prepare contained all the required data elements, its summary reports did not account for all of ESD’s active financial assistance

economic development programs as required.

### *General Outcome Reporting Requirements*

During our testing, we requested ESD to provide evidence that it met the 13 general statutory reporting requirements detailed in Exhibit A. Based upon the reports provided by ESD and our own review of ESD's website, we determined ESD prepared the required outcome reports in only 30 of the 57 instances (53 percent) for which requirements were applicable between 2012 through 2016.

Certain of these reports, such as annual program and quarterly reports, require a complete listing of all the active ESD financial assistance economic development programs for which ESD has received a formal application or otherwise begun an analysis. However, while we found ESD prepared these reports for our entire audit period as required, the reports were not complete, missing over half of ESD's active financial assistance programs. Similarly, ESD's annual Performance Measures reports during the period – which were not prepared for any year after 2013 – accounted for less than a quarter of all active ESD programs.

Some of the other general reports that ESD was required to prepare are more financial in nature, including the annual Fiscal Report, Budget and Financial Plan, and Financial Assistance Plans. Other required general reports are more related to strategic planning, such as the annual Strategic Plan and the Statewide Master Plan for Marketing. Still others cover operational accomplishments involving broad program categories (e.g., the annual reports on the State of Small Business, State Marketing Internet Website Annual Study, and Operations and Accomplishments).

Of ESD's 66 active programs, 34 financial assistance programs do not have reporting requirements tied to specific laws and regulations and are therefore subject to the Section 30 requirements for an independent program evaluation report at least once every four years (see Exhibit B). Of these 34 programs, 17 were active for the entire four-year scope period and therefore should have had at least one independent evaluation report. However, we found ESD did not meet the Section 30 reporting requirements for any of these 17 programs. These included, for example, the Buffalo Regional Innovation Cluster, Empire State Economic Development Fund, and World Trade Center Job Creation and Retention Program.

Given its many outcome reporting requirements, it is imperative that ESD implement adequate reporting procedures. Ideally, this would include accounting for all reports that must be prepared, whether they be program-specific or summary reports covering all active economic development programs. However, this was not the case. ESD could not provide evidence that it had a handle on all of the outcome reports it is required to prepare. Nor could officials provide evidence that ESD had implemented any formal reporting procedures.

### *Program-Specific Reporting Requirements*

Of the 66 identified ESD programs, 30 had unique statutory reporting requirements. Under various State laws and regulations, ESD was required to prepare a total of 42 different reports for

these programs, as shown in Exhibit C. In its December 2016 response to our initial inquiries, ESD informed us that it had not complied with the reporting requirements for 13 of the 30 programs, totaling 19 required reports during our audit period. Based on our own testing, we identified six other programs where ESD did not meet the unique statutory reporting requirements: the Bonding Guarantee Assistance Program, Downstate Revitalization Fund, Empire State Jobs Retention Program, Upstate Agricultural Economic Development Fund and Healthy Food/Healthy Communities Initiative, Upstate Regional Blueprint Fund, and Urban and Community Development Program.

Overall, we found ESD prepared required reports in only 59 of the 152 instances (39 percent) that occurred during our audit period. In further responding to our information request, ESD officials asserted that several programs with these statutory reporting requirements were dormant during our scope period and therefore did not require program-specific reports. However, we found this was not the case for at least two programs that ESD said were dormant: the Minority- and Women-Owned Business Development and Lending Program and the JOBS Now Program. Our review of ESD grant reports revealed that these two programs received funding of \$4.9 million and \$36.2 million, respectively, during the period 2012 through 2015. As such, our calculations include these as active programs.

During our testing, we identified 12 financial assistance programs with appropriations totaling over \$500 million from 2012 through 2016 that were not reported on at all, as shown in Exhibit D. Specifically, none of these programs appeared in any ESD outcome report from April 1, 2012 through September 30, 2016 – whether in a summary report (e.g., an annual program, quarterly, or Performance Measures report) or in ESD’s own program-specific report. Some major programs were part of these 12, including ESD’s Division of Science, Technology and Innovation (NYSTAR) Technology Center Program. This program provides roughly \$52.6 million annually in funding to over 50 State Technology Centers, including specific State universities and colleges. (This excludes the “Incubator and Innovation Hot Spot” Technology Centers, which ESD did report upon during the audit period.) The Technology Centers assist companies from start-up through maturity in creating technology and manufacturing growth and in job creation. Another major program not reported on during the period was the Downtown Revitalization Initiative (allocated \$100 million) aiming to transform downtown neighborhoods into vibrant communities that can attract workers, support redevelopment, and make growth sustainable.

In most cases, ESD officials did not provide any explanation about why they had not prepared required reports. However, it is clear that management needs to take immediate action to improve internal controls over communication and legal compliance, particularly in the area of performance and outcome reporting.

## **Subsidiary Reporting Requirements**

In addition to assisting businesses, ESD supports major development and redevelopment efforts throughout the State through its many subsidiaries that are involved in significant economic development projects. Since 1968, the entities under the ESD umbrella (i.e., UDC and JDA) have created over 200 subsidiary corporations for various purposes. As of October 2016, New York’s

Public Authority Reporting Information System (PARIS) reported that ESD had 173 subsidiaries (see Exhibit E).

On May 15, 2006, we reported in our audit of *Oversight of Subsidiary Operations* (Report 2005-S-6) that ESD had lost track of the status, and even the existence, of many of its subsidiaries. At that time, we concluded that ESD needed to make significant improvements in its record keeping and oversight of subsidiary operations. Specifically, ESD did not accurately report on the status of its subsidiaries because it did not maintain complete and accurate management information about subsidiary operations. Also, we reported ESD did not periodically attempt to account for all of its subsidiaries and determine whether any can be dissolved. Ten years later, there has been little change in ESD's accountability over its subsidiary operations. To illustrate, at the onset of our current audit, we requested that ESD produce the annual reports for all its 173 subsidiaries and, in response, received annual reports for only 15. The 15 subsidiaries submitted a total of 49 annual reports between 2012 and 2015. We reviewed a sample of 15 of the 49 annual reports (one for each subsidiary) and determined that the reports were complete and contained all the required information, but could not attest to the validity of the outcomes presented.

In responding to our draft report, ESD asserts that no reports are required for these entities for various technical reasons, including many that ESD indicates are inactive and no longer have a financial obligation to the Authority that created them. However, in October 2016, we provided a written preliminary finding to ESD officials regarding the 158 subsidiaries that had not reported on any aspects of their operations, as otherwise required by the Public Authorities Law. ESD officials never responded to the preliminary finding, nor did they raise any issues despite several follow-up conversations with auditors and messages inquiring about the status of ESD's response. In fact, at the February 2017 exit conference, ESD officials again refused to provide even verbal feedback to most of our findings and conclusions, stating instead that all of their feedback would be provided through their formal response to the draft audit report. As such, we are disappointed in that, to the extent ESD's assertion has merit, these issues should have been addressed during the audit's fieldwork, if ESD officials were sufficiently cooperative and responsive.

ESD's response also accurately points out that our May 2006 audit report on subsidiary operations acknowledged that many of these organizations were inactive. In that report, we not only recommended that inactive subsidiaries be dissolved, but also noted that ESD had failed to report on 135 subsidiaries whose operations ESD acknowledged at the time were "fully imbedded in the operations of (ESD)" and "carrying out a project or undertaking at the parent's behest." ESD pledged to take action at the time, and an OSC follow-up report (2007-F-51), issued two years later, concluded that ESD had made some progress, eliminating about one-third of the inactive entities. Yet, a decade later, the number of inactive subsidiaries has grown, with nearly 100 entities now apparently inactive. Had ESD sufficiently fulfilled its commitment to deal with inactive entities, they would not be an issue now. ESD indicates it is now diligently working, both internally and with the Department of State, to correct the issues surrounding its relationship to many of the subsidiaries it has created over the years. It is important that this effort be more sustained and have more lasting impact.

## Report Timeliness

The various program-specific and general reporting requirements established by laws and regulations require the reports to be submitted on or before specific dates. These dates differ depending on the reporting requirement. We received a total of 71 reports from ESD including general reports (e.g., annual program and quarterly program reports), program-specific reports (e.g., START-UP NY, Film Tax Credit), and program evaluations (i.e., Film Tax Credit Independent Evaluation). We identified 24 reports that included a date indicating when the report was issued. We further identified three undated Film Tax Credit quarterly reports that included a date in ESD's filename that we accepted as the report issuance date. The remaining 44 reports showed no evidence of when ESD produced them or delivered them to their intended recipients.

Regarding the 27 dated reports, we found that generally ESD prepared these reports late, although the majority of the reports (17) were submitted within two weeks after their due dates. The most overdue report was the 2015 START-UP NY annual report, which was due on April 1, 2016 but not produced until 91 days later, on July 1, 2016. In news articles published on the 2015 START-UP NY report, ESD officials attributed the delay to the need for more time to collect all the data from the participating companies.

ESD issues some of its program reports through its website – some are required to be posted there (e.g., Jobs Retention, START-UP NY), while others are not (e.g., Film Tax Credit programs). Although not required to do so, ESD has posted its Film Tax Credit quarterly program reports on its website. This appears to be the manner in which ESD issues these reports, since the reports tend to lack cover letters or other indications of direct submission to specific recipients.

Including the required reports and the Film Tax Credit reports, we identified 23 reports posted to ESD's website. These reports are among the 44 reports that did not include a report date. To determine whether or not these reports were posted on or before their respective due dates, we used the [Internet Archive tool](#) to review prior snapshots of [ESD's Reports website](#). The Internet Archive captured 29 snapshots between June 17, 2012 and December 2, 2016. For each of the 23 reports, we determined two dates: the latest date the report was not posted to the web and the earliest date the report was posted to the web. To the extent possible, we used this data to determine whether or not the reports were posted to the website on time. Of the 23 reports, we determined 16 reports were posted late; for the remaining 7, we could not make a determination due to the gaps in snapshot days.

## Recommendations

1. Develop and adhere to procedures for meeting statutory outcome and other reporting requirements.
2. Review information contained in summary outcome reports to ensure all active programs are included.

3. Ensure that all existing subsidiary corporations meet Public Authorities Law reporting requirements.
4. Ensure required reports are issued in a timely manner to provide policy makers with relevant information to evaluate the various economic development programs.

## Audit Scope and Methodology

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Our audit determined whether Empire State Development meets legal and regulatory requirements to report on the outcomes of its initiatives and whether the resulting reports are complete and timely. The audit covers from April 2012 through September 2016.

To accomplish our audit objectives, and determine whether associated internal controls over ESD's outcome reporting process were adequate, we reviewed ESD regulations and relevant State laws, including the Economic Development Law, Urban Development Corporation Act, and Job Development Authority Act. We also reviewed ESD grant data, ESD's website, and PARIS data to identify all ESD programs that were active during 2012 to 2016 and to identify subsidiary corporations that were apparently active. We also requested ESD officials to provide a listing of economic development programs that require periodic reporting, along with copies of required subsidiary reports. In addition, we asked them to provide all the unique program and summary program reports that ESD had prepared during the period April 2012 through September 2016. We reviewed the reports provided against the relevant reporting statutes to determine if they were complete (i.e., included all information required by law) and prepared timely. We also determined whether programs not tied to other unique reporting statutes met the reporting provisions under Section 30 of the Urban Development Corporation Act. Finally, we assessed whether required summary annual and quarterly reports clearly differentiated among individual programs.

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

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

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## Authority

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Our audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution as well as Article II, Section 8 of the State Finance Law and Section 2803 of the Public Authorities Law.

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## Reporting Requirements

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We provided preliminary reports detailing the issues discussed in this report to ESD throughout the course of the audit, but officials declined to provide any response or feedback, whether written or oral. We also provided ESD officials with a formal draft copy of this report for their review and written comments. We considered ESD's comments in preparing this final report and attached them in their entirety to it, along with our State Comptroller's Comments that address certain inaccuracies and other issues in ESD's response. In their response, ESD officials generally disagreed with our findings and conclusions. However, officials indicated that they were implementing new internal controls to ensure compliance with all reporting requirements. In addition, officials indicated that they are working, internally and with the Department of State, to address matters pertaining to ESD's subsidiary organizations.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the President and CEO of Empire State Development shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

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## Contributors to This Report

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**John F. Buyce**, CPA, CIA, CFE, CGFM, Audit Director

**Walter Irving**, Audit Manager

**Mark Ren**, CISA, Audit Supervisor

**Scott Heid**, CGAP, Examiner-in-Charge

**Charles Lansburg**, Senior Examiner

**Molly Kramm**, Staff Examiner

**Jessica Strizzi**, Staff Examiner

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## Division of State Government Accountability

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Andrew A. SanFilippo, Executive Deputy Comptroller

518-474-4593, [asanfilippo@osc.state.ny.us](mailto:asanfilippo@osc.state.ny.us)

Tina Kim, Deputy Comptroller

518-473-3596, [tkim@osc.state.ny.us](mailto:tkim@osc.state.ny.us)

Brian Mason, Assistant Comptroller

518-473-0334, [bmason@osc.state.ny.us](mailto:bmason@osc.state.ny.us)

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

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

# Exhibit A

## ESD Compliance With General Reporting Requirements

N	Report Name	Report Frequency	Statute	Compliance With Reporting Requirements**				
				2012	2013	2014	2015	2016
1	Operations and Accomplishments*	Annual	PAL §2800(1)(a)	Y	Y	N	Y	N
2	Performance Measures Report*	Annual	PAL §2824-a	Y	Y	N	N	N
3	Fiscal Report*	Annual	UDC §30(a)	Y	Y	Y	Y	N/A
4	Program Report*	Annual	UDC §30(b)	Y	Y	Y	Y	N/A
5	Program Evaluations	Quadrennial	UDC §30(c)(2)	N/A	N	N/A	N/A	N/A
6	Quarterly Reports	Quarterly	UDC §30-a(g)	Y	Y	Y	Y	Y
7	Strategic Plan	Annual	EDL §100(19)(a)	Y	Y	Y	Y	Y
8	Financial Assistance Plans	Within 90 Days of Program Start	EDL §100(19)(b)	N	N	N	N	N
9	Statewide Marketing Plan	Annual	EDL §151(1)-(4)	N	N	N	N	N
10	Business Contacts	Annual	EDL §100(37-a)	N	N	N	N	N
11	Budget/Financial Plan*	Annual	2 NYCRR 203.8(b)	Y	Y	Y	Y	Y
12	State Marketing Internet Website Annual Study	Annual	EDL §154(4)	N	N	N	N	N
13	State of Small Business	Annual	EDL §134(12)	N/A	N/A	Y	N	Y
ESD Issued Reports				7	7	6	6	4
ESD Non-Issued Reports				4	5	6	6	6
Total Required Reports				11	12	12	12	10
ESD Compliance Rate				64%	58%	50%	50%	40%
<b>Total Reports Issued by ESD</b>								<b>30</b>
<b>Total Reports Required to Be Issued</b>								<b>57</b>
<b>Overall ESD Compliance Rate</b>								<b>53%</b>

Note: PAL = Public Authorities Law; UDC = Urban Development Corporation Act; EDL = Economic Development Law; NYCRR = New York Codes, Rules and Regulations.

\*Reporting based on fiscal year (April to March). To determine compliance, we used report end date to determine which year reporting occurred (i.e., FY 2011-12 would equate to 2012 year).

\*\*N/A status indicates that the respective reports were not required during that year.

## Exhibit B

### ESD Active Programs Without Specific Reporting Requirements (36 Programs)

N	Program	Program Active Start	Program Active End	Financial Assistance Program
1	Buffalo Regional Innovation Cluster	2012	Current	Y
2	Capital Access Program (SSCBI)	2012	Current	Y
3	Commercial District Revolving Loan Trust Fund	2012	Current	Y
4	Economic Development Purposes Fund (EDPF)	2012	Current	Y
5	Empire State Economic Development Fund (EDF)	2012	Current	Y
6	Job Development Authority Direct Loan Program	2012	Current	Y
7	Matching Grants Leverage Program	2012	Current	Y
8	Metropolitan Economic Revitalization Fund	2012	Current	Y
9	Minority and Women Revolving Loan Trust Fund Program	2012	Current	Y
10	New York State Land Bank Program	2012	Current	N
11	New York State Surety Bond Assistance Program	2012	Current	Y
12	Regional Council Capital Fund	2012	Current	Y
13	Restore New York Communities Initiative	2012	Current	Y
14	Small Business Revolving Loan Fund	2012	Current	Y
15	SUNY 2020 Challenge Grant	2012	Current	Y
16	World Trade Center Job Creation & Retention Program	2012	Current	Y
17	World Trade Center Rent Reduction Program	2012	Current	Y
18	JOBS Now Program	2012	Current	Y
19	New York State Business Incubator and Innovation Hot Spot Program	2013	Current	Y
20	Bridge to Success Loan Program	2014	Current	Y
21	Business Mentor NY	2014	Current	N
22	Downtown Revitalization Initiative	2014	Current	Y
23	Global NY Fund	2014	Current	Y
24	Manufacturing Assistance Program	2014	Current	Y
25	Market New York Program	2014	Current	Y
26	Transformative Investment Program	2014	Current	Y
27	Better Buffalo Fund	2015	Current	Y
28	Empire State Development Strategic Planning and Feasibility Studies Program (SPFS)	2015	Current	Y
29	Employee Training Incentive Program	2015	Current	Y
30	Minority- and-Women-Owned Business Investment Fund	2015	Current	Y

N	Program	Program Active Start	Program Active End	Financial Assistance Program
31	New York State Innovation Venture Capital (NYSIVC Fund)	2015	Current	Y
32	Small Business Technology Investment Fund	2015	Current	Y
33	Nano Utica	2016	2016	Y
34	NYPA Craft Beverage Program	2016	2016	Y
35	Yahoo Community Fund for Niagara County	2016	2016	Y
36	Downstate Regional Program	2012	2012	Y

#### ESD Active Programs With Legally Established Reporting Requirements (30 Programs)

1	Bonding Guarantee Assistance Program	2012	Current	Y
2	Business Marketing Matching Funds Program	2012	Current	Y
3	Centers for Excellence Program (NYSTAR)	2012	Current	Y
4	Community Development Financial Institution (CDFI)	2012	Current	Y
5	Downstate Revitalization Fund (DRF)	2012	Current	Y
6	Economic Transformation Program	2012	Current	Y
7	Empire State Commercial Production Tax Credit	2012	Current	Y
8	Empire State Film Production Tax Credit Program	2012	Current	Y
9	Empire State Post Production Film Credit	2012	Current	Y
10	Entrepreneurial Assistance Program (EAP)	2012	Current	Y
11	Export Diagnostic and Market Development Program	2012	Current	N
12	Export Finance Service	2012	Current	Y
13	Export Trade Development Projects	2012	Current	Y
14	I Love NY	2012	Current	Y
15	Industrial Effectiveness Program	2012	Current	Y
16	Innovate New York Fund	2012	Current	Y
17	Linked Deposit Program	2012	Current	Y
18	Minority - and Women-Owned Business Development and Lending Program	2012	Current	Y
19	MWBE Program	2012	Current	N
20	NYS Tourist Promotion Act	2012	Current	Y
21	Regional Revolving Loan Trust Fund	2012	Current	Y
22	Tourism Advertising Campaigns Matching Funds Program	2012	Current	Y
23	Upstate Agricultural Economic Development Fund and Healthy Food/Healthy Communities Initiative	2012	Current	Y
24	Upstate Regional Blueprint Fund	2012	Current	Y
25	Urban and Community Development Program	2012	Current	Y
26	Empire State Jobs Retention Program	2013	Current	Y

<b>N</b>	<b>Program</b>	<b>Program Active Start</b>	<b>Program Active End</b>	<b>Financial Assistance Program</b>
27	Excelsior Jobs Program	2013	Current	Y
28	Beginning Farmers NY Fund	2014	Current	Y
29	START-UP NY	2014	Current	Y
30	Empire State Musical and Theatrical Production Tax Credit	2015	Current	Y

## Exhibit C

### ESD Compliance With Program-Specific Reporting Requirements (30 Programs)

N	Program	Law	Report Type	ESD Non-Compliant per ESD Chart (X)	OSC Assessed Compliance per Year**				
					2012	2013	2014	2015	2016***
1	Beginning Farmers NY Fund	UDC Act § 16-W(7)	Annual		N/A	N/A	N/A	N	N/A
2	Business Marketing Matching Funds Program	EDL § 239(2)	Annual	X	N	N	N	N	N
3	Bonding Guarantee Assistance Program	21 NYCRR 4253.7(f)	Annual		N	N	N	N	N
4	Centers for Excellence Program (NYSTAR)	EDL § 410(4)(a)	Annual	X	N	N	N	N	N
5	Community Development Financial Institution (CDFI)	UDC Act § 16-O(9)	Annual		Y	Y	Y	Y	N/A
6	Downstate Revitalization Fund (DRF)	UDC Act § 16-R(7)	Annual		Y	Y	Y	Y	Y
		UDC Act § 16-R(8)	Independent Evaluation*		N	N	N	N	N/A
7	Economic Transformation and Facility Redevelopment Program	5 NYCRR 202.1	Quarterly		Y	Y	Y	Y	N
8	Empire State Commercial Production Tax Credit	Tax Law § 28(c)	Annual	X	N	N	N	N	N/A
9	Empire State Film Production Tax Credit Program	5 NYCRR 170.11	Quarterly		Y	Y	Y	Y	Y
		5 NYCRR 170.12	Biennial		N/A	N/A	Y	N/A	N/A
10	Empire State Jobs Retention Program	EDL § 428(2)	Quarterly		N/A	N	N	N	Y

N	Program	Law	Report Type	ESD Non-Compliant per ESD Chart (X)	OSC Assessed Compliance per Year**				
					2012	2013	2014	2015	2016***
11	Empire State Musical and Theatrical Production Tax Credit	5 NYCRR 240.10	Annual		N/A	N/A	N/A	Y	Y
12	Empire State Post Production Film Credit	5 YCRR 230(11)	Quarterly		Y	Y	Y	Y	Y
		5 NYCRR 230(12)	Independent Evaluation		N/A	N/A	Y	N/A	N/A
13	Entrepreneurial Assistance Programs	EDL § 213(2)	Evaluation		Y	Y	Y	Y	Y
		EDL § 213(3)(a)	Independent Evaluation	X	N/A	N	N/A	N/A	N/A
14	Excelsior Jobs Program	EDL § 358(2)	Quarterly		Y	Y	Y	Y	Y
15	Export Diagnostic and Market Development Program	EDL § 224(9)	Annual	X	N	N	N	N	N/A
		EDL § 224(10)	Independent Evaluation	X	N/A	N	N/A	N	N/A
16	Export Finance Service	EDL § 225(4)	Annual	X	N	N	N	N	N/A
		EDL § 225(5)	Independent Evaluation	X	N	N/A	N	N/A	N
17	Export Trade Development Projects	EDL § 223(2)	Evaluation	X	N	N	N	N	N/A
		EDL § 223(3)	Independent Evaluation	X	N/A	N	N/A	N/A	N/A
18	I Love NY	EDL § 152(2)	Evaluation	X	N/A	N/A	N/A	N/A	N
		EDL §152(5)	Annual	X	N	N	N	N	N
19	Industrial Effectiveness Program	EDL §195	Annual	X	N	N	N	N	N/A
		EDL §196	Evaluation	X	N/A	N	N/A	N/A	N/A
20	Innovate New York Fund	UDC Act § 16-U(8)	Annual		Y	Y	Y	Y	N/A
21	Linked Deposit Program	NY State Fin § 222(2)	Annual		Y	Y	Y	Y	Y
22	Minority- and Women-Owned Business Development and Lending Program	UDC Act § 16-C(16)	Independent Evaluation		N/A	N	N/A	N	N/A

N	Program	Law	Report Type	ESD Non-Compliant per ESD Chart (X)	OSC Assessed Compliance per Year **				
					2012	2013	2014	2015	2016***
23	MWBE Program	Executive Law § 311(3)(e)	Annual		Y	Y	Y	Y	Y
24	NYS Tourist Promotion Act	EDL § 166(b)	Annual	X	N	N	N	N	N
		EDL § 168(e)(5)	Annual	X	N	N	N	N	N
25	Regional Revolving Loan Trust Fund	UDC Act § 16-A	Annual	X	N	N	N	N	N/A
26	START-UP NY	EDL § 438 (2)	Annual		N/A	N/A	Y	Y	N/A
27	Tourism Advertising Campaigns Matching Grants Program	EDL § 100 (36)(b)	Independent Evaluation	X	N	N	N	N	N/A
28	Upstate Agricultural Economic Development Fund and Healthy Food/Healthy Communities Initiative	UDC Act § 16-S(6)	Annual		N	N	N	N	N
		UDC Act § 16-S(7)	Independent Evaluation	X	N	N	N	N	N/A
29	Upstate Regional Blueprint Fund	UDC Act § 16-Q(7)	Annual		Y	Y	Y	Y	Y
		UDC Act § 16-Q(8)	Independent Evaluation		N	N	N	N	N/A
30	Urban and Community Development Program	UDC Act § 16-d(14)(b)	Independent Evaluation		N/A	N	N/A	N	N/A
ESD Issued Reports					11	11	14	13	10
ESD Non-Issued Reports					18	24	19	22	10
Total Required Reports					29	35	33	35	20
Compliance %					38%	31%	42%	37%	50%
					<b>Total Reports Issued by ESD</b>				<b>59</b>
					<b>Total Reports Required to be Issued</b>				<b>152</b>
					<b>Overall ESD Compliance Rate</b>				<b>39%</b>

Note: UDC = Urban Development Corporation Act; EDL = Economic Development Law; NYCRR = New York Codes, Rules and Regulations.

\* Independent Evaluations are required to be prepared by an entity independent of ESD and are required every 2 or 4 years depending on program.

\*\* N/A status indicates either the program was inactive during the year or the report was not due that year (e.g., independent evaluations).

\*\*\* Compliance with reporting requirements with reports due as of 9/30/2016.

## Exhibit D

### Financial Assistance Programs That ESD Did Not Report On

N	Program	Program Monies Appropriated
1	NYSTAR Technology Centers	\$210,500,000
2	World Trade Center Rent Reduction	\$115,000,000
3	Downtown Revitalization Initiative	\$100,000,000
4	I Love NY	\$60,000,000
5	Employee Training Incentive Program	\$20,000,000
6	SUNY 2020 Challenge Grant	\$20,000,000
7	Upstate Agricultural Economic Development Fund and Healthy Food/Healthy Communities Initiative	\$10,000,000
8	Empire State Musical and Theatrical Production Tax Credit*	\$8,000,000
9	Empire State Development Strategic Planning and Feasibility Studies (SPFS)	\$4,000,000
10	Minority- and Women-Owned Business Investment Fund	\$2,000,000
11	Manufacturing Assistance	\$1,000,000
12	Beginning Farmers NY Fund	\$614,000
<b>Total Appropriations</b>		<b>\$551,114,000</b>

\*Maximum value of tax credits available through the program. ESD had indicated that no credits were issued for this program as of January 3, 2017.

## Exhibit E

### Listing of ESD Subsidiaries

N	Subsidiary Corporation	Status (per PARIS)	Reported (X)
1	106th Street Houses Incorporated	ACTIVE	
2	125th Street Mart Incorporated	ACTIVE	
3	260-262 West 125th Street Corporation	ACTIVE	
4	42nd St. Development Project, Inc.	ACTIVE	
5	900 Woolworth Redevelopment Corporation	ACTIVE	
6	Apollo Theatre Redevelopment Corporation	ACTIVE	
7	Apple Walk (Grote Street) Houses Incorporated	ACTIVE	
8	Archive Preservation Corporation	ACTIVE	
9	Arverne Houses Incorporated	ACTIVE	
10	Ashland Place Houses Incorporated	ACTIVE	
11	Atlantic Yards Community Development Corporation	ACTIVE	X
12	Averill Court Houses Incorporated	ACTIVE	
13	Beaver Road Houses Incorporated	ACTIVE	
14	Borinquen Plaza Housing Company Incorporated	ACTIVE	
15	BPC Development Corporation	ACTIVE	
16	Briarcliff Manor Houses Incorporated	ACTIVE	
17	Broadway East Townhouses Incorporated	ACTIVE	
18	Brooklyn Arena Local Development Corporation	ACTIVE	
19	Brooklyn Bridge Park Development Corporation	ACTIVE	X
20	Buena Vista Houses	ACTIVE	
21	Buffalo Waterfront Homes Site 2 Incorporated	ACTIVE	
22	Buffalo Waterfront Phase Houses	ACTIVE	
23	Buffalo Waterfront Phase III Houses	ACTIVE	
24	Canisteo Homes Incorporated	ACTIVE	
25	Carlken Manor Houses Incorporated	ACTIVE	
26	Carousel Park Houses Incorporated	ACTIVE	
27	Cathedral Parkway Houses Incorporated	ACTIVE	
28	Cedarwood Towers Houses Incorporated	ACTIVE	
29	Centerville Court Houses Incorporated	ACTIVE	
30	Charlotte Lake River Houses Incorporated	ACTIVE	
31	Cherry Hill (Syracuse Hill III) Corporation	ACTIVE	
32	City-State Development Corporation	ACTIVE	
33	Claremont Gardens Houses Incorporated	ACTIVE	

<b>N</b>	<b>Subsidiary Corporation</b>	<b>Status (per PARIS)</b>	<b>Reported (X)</b>
34	Clifton Springs Houses	ACTIVE	
35	Clinton Avenue Paul Place Houses Incorporated	ACTIVE	
36	College Hill Houses Incorporated	ACTIVE	
37	Comfort Street South Houses Incorporated	ACTIVE	
38	Coney Island Site 17 Houses Incorporated	ACTIVE	
39	Coney Island Site 1824 Houses Incorporated	ACTIVE	
40	Coney Island Site 1A Houses Incorporated	ACTIVE	
41	Coney Island Site 4A-1 Houses Incorporated	ACTIVE	
42	Coney Island Site 4A-2 Houses Incorporated	ACTIVE	
43	Coney Island Site Nine Houses Incorporated	ACTIVE	
44	Cosgrove Avenue Houses Incorporated	ACTIVE	
45	Creek Bend Heights Houses Incorporated	ACTIVE	
46	Dutcher House Incorporated	ACTIVE	
47	Edgerton Estates Incorporated	ACTIVE	
48	Ellicott Houses Incorporated	ACTIVE	
49	Elmwood-Utica Houses Incorporated	ACTIVE	
50	Ely Park Houses Site I Incorporated	ACTIVE	
51	Ely Park Site II Houses Incorporated	ACTIVE	
52	Empire State Allsub Corporation	ACTIVE	
53	Empire State Community Development Corporation	ACTIVE	
54	Empire State New Market Corporation	ACTIVE	<b>X</b>
55	English Road Houses Incorporated	ACTIVE	
56	Erie Canal Harbor Development Corporation	ACTIVE	<b>X</b>
57	Erie County Stadium Corporation	ACTIVE	<b>X</b>
58	Excelsior Capital Corporation	ACTIVE	
59	FDA Headquarters Incorporated	ACTIVE	
60	Fordham Commercial Redevelopment Corporation	ACTIVE	
61	Frawley Plaza Houses Incorporated	ACTIVE	
62	Friendly Homes Houses	ACTIVE	
63	Fulton Park 4 Sites Incorporated	ACTIVE	
64	Fulton Park Site 2 Houses Incorporated	ACTIVE	
65	Genesee Gateway Houses Incorporated	ACTIVE	
66	Gleason Estates Houses Incorporated	ACTIVE	
67	Governors Island Redevelopment Corporation	ACTIVE	
68	Grasslands Houses Incorporated	ACTIVE	

<b>N</b>	<b>Subsidiary Corporation</b>	<b>Status (per PARIS)</b>	<b>Reported (X)</b>
69	Hampton Houses Incorporated	ACTIVE	
70	Harborview Houses Incorporated	ACTIVE	
71	Harlem Canaan House Incorporated	ACTIVE	
72	Harlem Community Development Corporation	ACTIVE	<b>X</b>
73	Harlem River Park Houses Incorporated	ACTIVE	
74	Harriet Homes Incorporated	ACTIVE	
75	Harriman Research and Technology Development Corporation	ACTIVE	<b>X</b>
76	Harrison House Incorporated	ACTIVE	
77	Highland Canalview Houses Incorporated	ACTIVE	
78	Hillside Homes (Wellsville Houses) Incorporated	ACTIVE	
79	Ithaca Elm-Maple Houses Incorporated	ACTIVE	
80	Jespersin-Rochester Houses	ACTIVE	
81	JUMA Development Corporation	ACTIVE	
82	Kennedy Square (Syracuse Hill I) Houses Incorporated	ACTIVE	
83	LaMarqueta Redevelopment Corporation	ACTIVE	
84	Liberty Senior Citizens Houses Incorporated	ACTIVE	
85	Lindsay-Bushwick Houses Incorporated	ACTIVE	
86	Lower Manhattan Development Corporation	ACTIVE	<b>X</b>
87	Malone Town Houses Incorporated	ACTIVE	
88	Marcus Garvey Brownstone Houses Incorporated	ACTIVE	
89	Marinus Houses Incorporated	ACTIVE	
90	Melrose Site D-1 Houses Incorporated	ACTIVE	
91	Metro North Riverview Houses Incorporated	ACTIVE	
92	Metrocenter Development Corporation	ACTIVE	
93	Moynihan (Pennsylvania) Station Development Corporation	ACTIVE	<b>X</b>
94	New York Convention Center Development Corporation	ACTIVE	<b>X</b>
95	New York Empowerment Zone Corporation	ACTIVE	<b>X</b>
96	New York State Mortgage Loan Enforcement Corporation	ACTIVE	
97	Newburgh Houses on the Lake Incorporated	ACTIVE	
98	Nodine Terrace Houses Incorporated	ACTIVE	
99	North Town Phase II Houses Incorporated	ACTIVE	
100	North Town Phase III Houses Incorporated	ACTIVE	

<b>N</b>	<b>Subsidiary Corporation</b>	<b>Status (per PARIS)</b>	<b>Reported (X)</b>
101	Oak Tree Development Corporation	ACTIVE	
102	Ogdensburg Crescent Mall Development Corporation	ACTIVE	
103	Painted Post Village Square Apartments Incorporated	ACTIVE	
104	Park Drive Manor Houses Incorporated	ACTIVE	
105	Parkedge House Incorporated	ACTIVE	
106	Parkside Houses Incorporated	ACTIVE	
107	Peekskill Plaza Houses Incorporated	ACTIVE	
108	Penview Houses Incorporated	ACTIVE	
109	Perinton-Fairport Houses Incorporated	ACTIVE	
110	Phillips Village Houses Incorporated	ACTIVE	
111	Pilgrim Woods Houses Incorporated	ACTIVE	
112	Presidential Plaza Apartments Incorporated	ACTIVE	
113	Queens West Development Corporation	ACTIVE	<b>X</b>
114	Rebraf Redevelopment Corporation	ACTIVE	
115	Rochester-Downtown Center Incorporated	ACTIVE	
116	Rockland Manor Houses Incorporated	ACTIVE	
117	Roosevelt Island Development Corporation	ACTIVE	
118	Rutland Road Houses Incorporated	ACTIVE	
119	Schemerhorn Houses Incorporated	ACTIVE	
120	SE Loop Area Three B Houses Incorporated	ACTIVE	
121	Seaport Redevelopment Corporation	ACTIVE	
122	Seven Pines Houses Incorporated	ACTIVE	
123	South Fallsburgh Houses Incorporated	ACTIVE	
124	Southeast Loop Phase IIA Houses Incorporated	ACTIVE	
125	Spring Valley Homes Incorporated	ACTIVE	
126	St. Paul's Upper Falls Housing Company Incorporated	ACTIVE	
127	Stanwix Houses Incorporated	ACTIVE	
128	State Street Houses Incorporated	ACTIVE	
129	Statewide (Downhill) Local Development Corporation	ACTIVE	<b>X</b>
130	Syracuse Intown Houses Incorporated	ACTIVE	
131	Ten Broeck Manor Houses Incorporated	ACTIVE	
132	Times Square Hotel Incorporated	ACTIVE	
133	Tompkins Terrace Incorporated	ACTIVE	
134	Twin Parks NE Site 2 Houses Incorporated	ACTIVE	

N	Subsidiary Corporation	Status (per PARIS)	Reported (X)
135	Twin Parks Northeast Houses Incorporated	ACTIVE	
136	Twin Parks Northwest Incorporated	ACTIVE	
137	Twin Parks SE Modular Houses Incorporated	ACTIVE	
138	Twin Parks Southeast Houses Incorporated	ACTIVE	
139	Twin Parks SW Houses Incorporated	ACTIVE	
140	Ulster Senior Citizens Houses Incorporated	ACTIVE	
141	Unity Park Houses Incorporated	ACTIVE	
142	Unity Park II (Niagara Park) Corporation	ACTIVE	
143	Upaca Terrace Houses Incorporated	ACTIVE	
144	Upstate Empire State Development Corporation	ACTIVE	X
145	Urban Development Corporation 323 St. Nicholas Realty Corporation	ACTIVE	
146	Urban Development Corporation Nonprofit Houses Incorporated	ACTIVE	
147	Urban Development Corporation Special Development Corporation	ACTIVE	
148	Urban Development Corporation Utica Redevelopment Corporation	ACTIVE	
149	Urban Development Corporation/Albee Square Redevelopment Corporation	ACTIVE	
150	Urban Development Corporation/Commercial Center Incorporated	ACTIVE	
151	Urban Development Corporation/Commodore Redevelopment Corporation	ACTIVE	
152	Urban Development Corporation/Love Canal Incorporated	ACTIVE	
153	Urban Development Corporation/St. George Incorporated	ACTIVE	
154	Urban Development Corporation/Ten Eyck Development Corporation I	ACTIVE	
155	Urban Development Corporation/Ten Eyck Development Corporation II	ACTIVE	
156	Urban Development Corporation/Ten Eyck Development Corporation III	ACTIVE	
157	USA Niagara Development Corporation	ACTIVE	X
158	Valley Vista Houses Incorporated	ACTIVE	
159	Van Rensselaer Village Houses	ACTIVE	
160	Vark Street Houses Incorporated	ACTIVE	
161	Vernon Avenue Houses Incorporated	ACTIVE	
162	Village Manor Houses Incorporated	ACTIVE	
163	Warburton Houses Incorporated	ACTIVE	

<b>N</b>	<b>Subsidiary Corporation</b>	<b>Status (per PARIS)</b>	<b>Reported (X)</b>
164	Woodbrook Houses Incorporated	ACTIVE	
165	Woodrow Wilson Houses, Incorporated	ACTIVE	
166	World Trade Center Memorial Foundation, Incorporated	ACTIVE	
167	Wright Park Houses, Incorporated	ACTIVE	
168	Wright Park Phase II , Incorporated	ACTIVE	
169	Young Manor, Incorporated	ACTIVE	
170	Canal Side Local Development Corporation	ACTIVE	
171	Empire State Local Development Corporation	ACTIVE	
172	New York Liberty Development Corporation	ACTIVE	
173	New York Transportation Development Corporation	ACTIVE	
<b>Total Subsidiaries Reported</b>			<b>15</b>
<b>Total Active Subsidiaries</b>			<b>173</b>
<b>Compliance</b>			<b>9%</b>

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# Agency Comments and State Comptroller's Comments

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March 27, 2017

Mr. John Buyce  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

RE: Response to OSC's Final Draft Audit Report 2016-S-40 Regarding ESD's Compliance With Outcome Reporting Requirements

Dear Mr. Buyce:

We have received your February 23, 2017 e-mail and Final Draft Audit Report entitled *Compliance With Outcome Reporting Requirements* ("Final Draft Report"). Empire State Development ("ESD") disagrees with OSC's findings in two key respects: first, ESD believes that the findings regarding ESD's subsidiary reporting are contrary to previous OSC findings; and second, ESD disputes OSC's suggestion that it was not fully transparent during the audit process. ESD complied with OSC's requests for information regarding numerous ESD programs and did not refuse an interview with ESD staff.

**State Comptroller's Comment:** As stated on page 10 of the report, at the outset of our audit, we requested information from ESD about its outcome reporting procedures. However, ESD officials never responded to our request and failed to set up the meetings we requested with ESD program staff who were actually involved in preparing the required reports.

This letter summarizes this audit's history and provides responses to each of the Final Draft Report's four recommendations.

## I. Background

In June 2016, OSC commenced an audit of ESD to determine whether we comply with our statutory and regulatory reporting requirements. Based on its auditors' fieldwork, OSC issued its Final Draft Report which recommends that ESD: 1) develop and adhere to procedures

for meeting statutory outcome and other reporting requirements; 2) review information contained in summary outcome reports to ensure all active programs are included; 3) ensure that all existing subsidiary corporations meet Public Authorities Law reporting requirements; and 4) ensure required reports are issued in a timely manner to provide decision makers with relevant information to evaluate the various economic development programs.

## **II. ESD Has Taken Steps to Develop and Adhere to Reporting Requirements**

OSC's Final Draft Report recommends that ESD develop and adhere to procedures for meeting statutory outcome and other reporting requirements.<sup>1</sup> Reporting on our economic development activities is a significant focus of ESD's operations. Each year, ESD provides dozens of reports covering more than a hundred programs dedicated to the provision of loans, grants, tax credits and other forms of economic assistance. In total, these reports result in hundreds of pages of public reporting on top of the thousands of pages of information that ESD shares each year on various projects from the meetings of our board of directors. These and other reporting efforts represent a significant investment of time and resources that ESD devotes toward providing transparency in project funding awards, spending, and economic impacts.

In addition to our statutorily required reporting, ESD also voluntarily provides a significant amount of information to elected officials and the public. Examples include:

- providing monthly board materials to certain elected officials to keep them informed of the progress of ESD projects. These materials include details about bidding processes, annual budgets, property acquisitions and dispositions, general project plans, benefit-cost evaluations of projects, project funding, expected, retained and created project jobs, and project timeliness;
- answering questions from the public at monthly board meetings;

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<sup>1</sup> The Regional Revolving Loan Trust Fund is an inactive program that was unfunded during the relevant audit period. Consequently, contrary to the Final Draft Report, ESD did not have to submit annual reports for this program.

- maintaining a Regional Economic Development Council website to inform elected officials and the public about project statuses, project funding, created and retained jobs, and the economic conditions of New York State regions.
- issuing an Annual Jobs Report on ESD's Loans and Grant Programs. This report provides details regarding initial jobs, job growth and retention goals, jobs gained or lost from the previous year, funding sources, and total investment at projects.

ESD is also implementing new internal controls to ensure continued compliance with all reporting requirements. Specifically, ESD is working to:

- Centralize our report submission process to allow a team of ESD staff members to monitor and manage all statutory and regulatory mandated reports;
- Provide all ESD senior officials with monthly updates about upcoming reporting due dates and recently submitted reports; and
- Keep all of ESD's submitted statutory and regulatory mandated reports in a centrally located file for quick reference rather than in program specific areas.

### **III. ESD Will Ensure that All Active Programs Are Included in Its Summary Outcome Reports**

In the Final Draft Report, OSC recommends that ESD review information contained in summary outcome reports to ensure all active programs are included. In response, ESD notes that the internal control enhancements explained in section II, herein, will continue to ensure compliance with these requirements.

### **IV. ESD Ensures that Active Subsidiary Reports Meet Public Authorities Law Reporting Requirements**

OSC recommends that ESD ensure that all existing subsidiary corporations meet Public Authorities Law reporting requirements. Specifically, OSC alleged that ESD failed to report on 158 out of 173 active subsidiaries. As explained below, however, these 158 entities do not require ESD-generated reports. Rather, they fall into distinct non-reporting categories: (i) 5

entities that are local development corporations, not ESD subsidiaries; (ii) 44 housing corporations that were transferred to another State agency and are no longer with ESD; (iii) 98 housing corporations that do not have a continuing financial obligation to ESD and in which ESD no longer has an interest; and (iv) 11 housing corporations that have a continuing financial obligation to ESD but which ESD does not manage or control.

**State Comptroller's Comment:** As noted previously in the report, as of October 2016, New York State's Public Authority Reporting Information System (PARIS) listed these entities as subsidiaries of ESD. In addition, as detailed on page 13 of the report, to the extent that ESD's assertion has merit, these issues should have been addressed during the audit fieldwork, if ESD officials were sufficiently cooperative and responsive to auditors' inquiries. Furthermore, had ESD fulfilled its commitment (made almost a decade ago) to address the purportedly inactive subsidiaries, the issue of delinquent reporting by any such entities would be moot. Although ESD contends that many of these organizations are not its subsidiaries or have historically been transferred to other entities outside of ESD, as of April 3, 2017 its PARIS reporting information continues to list all 173 entities as its subsidiaries, the same as in October 2016 when we first reported the issue to ESD officials.

**A. JDA's Alleged Subsidiaries are, in fact, Local Development Corporations**

OSC alleged that ESD failed to include five New York Job Development Authority ("JDA") subsidiaries as part of ESD's annual subsidiary reporting. This is incorrect. First, JDA itself is a closely related but legally separate public benefit corporation from ESD. It is not a subsidiary of ESD and does not possess the statutory authority to create subsidiaries. Second, the five alleged subsidiaries of JDA are not, in fact, subsidiaries. Instead, they are local development corporations, which are not-for-profit corporations created pursuant to the JDA Act and New York State not-for-profit corporation law. ESD, therefore, has no statutory or regulatory obligation to report on these five entities in its annual subsidiary reporting.

**State Comptroller's Comment:** Nowhere in the report do we state or imply that JDA is a subsidiary of ESD. Rather, we clearly indicate that JDA is a separate public benefit authority, as is UDC, and that ESD is the umbrella organization under which these entities operate. In fact, according to ESD's website, "Empire State Development is the umbrella organization for New York's two principal economic development financing entities: the New York State Urban Development Corporation and the New York Job Development Authority." As such, we concluded that JDA-related programs and development activities should have been part of ESD's annual reporting. Also, refer to the footnote in the Background (page 5) of the report.

Regarding ESD's comment about the five "alleged subsidiaries," we question whether ESD is now asserting that it has no programmatic reporting responsibility for these organizations, although it has functionally assumed such responsibility over the past years.

**B. ESD Transferred Many of the Subsidiaries to HFA**

OSC alleged that ESD failed to report on an additional 44 subsidiaries. In 2013, however, those entities were transferred to the New York State Housing Finance Agency ("HFA") pursuant to an executed transfer agreement and after ESD board approval. ESD no longer owns, manages or controls the 44 housing projects that were contained in the 44 subsidiaries. ESD is communicating with HFA to amend the articles of incorporation for each entity to reflect this new relationship.

**C. ESD Has Numerous Inactive Subsidiaries**

OSC identified another 98 subsidiaries for which ESD allegedly failed to report. However, these entities are subsidiary housing companies that were created in the 1970s to hold title to individual Mitchell-Lama housing projects. These subsidiaries facilitated the disbursement of mortgage funds to the housing company during the development phase of these projects. Upon completion of these projects, a final mortgage determination was executed, at which time ESD resigned from its officer position in the housing company; the

equitable owner of these projects, the private developer, then designated ESD's replacement. This action effectively eliminated ESD's role in the housing company and these entities no longer have any financial obligations to ESD. Further, from that point, ESD had no direct involvement in these housing companies. The history of ESD's housing development projects is discussed in OSC's 2006 audit report entitled *Empire State Development Corporation: Oversight of Subsidiary Operations (2005-S-6)*, which OSC cites in the Final Draft Report. Many of the subsidiaries that OSC found active in its Final Draft Report were found to be "clearly inactive" and "appear to be inactive" in Exhibits A and B of OSC's 2006 audit report. Although these entities are no longer ESD subsidiaries, ESD is currently working with the New York State Department of State to have these entities' public records reflect that ESD no longer has an interest.

**State Comptroller's Comment:** Although ESD contends that many of these organizations are not its subsidiaries or have historically been transferred to other entities outside of ESD, as of April 3, 2017 its PARIS reporting information continues to list all 173 entities as its subsidiaries, the same as in October 2016 when we first reported the issue to ESD officials.

**D. Some Entities Have Financial Obligations But Are Not Active Subsidiaries**

Finally, 11 of the 158 subsidiaries that ESD allegedly failed to report are entities that have continuing financial obligations to ESD but which ESD does not manage or control. These subsidiaries, however, are otherwise inactive. ESD merely acts as a mortgagee for these entities.

**V. Conclusion**

This Response provides clarifications to OSC's Final Draft Report findings. ESD will continue our efforts to ensure that information regarding ESD programs is provided in a timely manner. If you have questions, please do not hesitate to contact me.

Sincerely,



Benson V. Martin

Director of Compliance