



**Homes and
Community Renewal**

**Housing
Trust Fund
Corporation**

ANDREW M. CUOMO
Governor

JAMES S. RUBIN
Commissioner/CEO

MEMORANDUM

To: Members of the Corporation

From: Stacey C. Mickle, Treasurer

Date: June 22, 2016

Subject: Annual Report on Prompt Payment and Prompt Payment Policy

Pursuant to Section 2880 of the Public Authorities Law and Section 402 of the Corporation's Prompt Payment Policy, the Corporation must prepare an Annual Report on its Prompt Payment Policy. The report will be submitted to the Governor's Office, the Division of the Budget, the Office of the State Comptroller, the Senate Finance Committee and the Assembly Ways and Means Committee, and also uploaded to the PARIS reporting system maintained by the Authorities Budget Office.

No changes to the Prompt Payment Policy are proposed. A copy of the Annual Prompt Payment Report and Prompt Payment Policy are attached for your review.



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Governor

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PROMPT PAYMENT REPORT

For the Fiscal Year Ending March 31, 2016



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**Housing Trust Fund Corporation
Report on Prompt Payment Policy
for the Fiscal Year Ended March 31, 2016**

- I. Types of Contracts Entered Into During 15-16 Fiscal Year and subject to prompt payment law:
- A. Programmatic - Contracts with not-for-profit companies, municipalities and other eligible applicants for capital construction projects.
 - B. Technical Assistance Contracts - Contracts with consultants and vendors to provide direct and indirect services and materials to eligible applicants for capital construction projects.
 - C. Merchandise Contracts - Orders to vendors for goods and services to provide for the administration of the Corporation.
- II. Number and amount of interest payments for all contracts in I. above:

There were a total of 1,259 payments under the CDBG-DR program which were made late during the 2015-16 fiscal year, incurring a potential unfunded interest liability. This is in addition to unfunded potential interest liability from 2014-15. No prompt payment interest was paid. To date, no vendor has successfully requested interest payment; however, under the law, interest should be paid with any late payments, provided that the payments are based upon proper invoices and/or are not tolled in accordance with the HTFC Prompt Payment Policy.

The number of late payments reported may exceed the actual number of late payments and payments subject to interest under the HTFC Prompt Payment Policy. Section 305 of the HTFC Prompt Payment Policy sets forth the situations justifying an extension of payment time for proper invoices. Section 305 provides, “the Corporation is not responsible for the processing time taken ... *any other external entity that is required by statute or regulation to approve or process Corporation payments.*” The reported late payments are Community Development Block Grant Disaster Recovery Program invoices, which require draw requests to HUD. This process may lengthen the payment cycle, and any resulting delay in

payment is excused from the schedule. Additionally, interest payments are only required from the time the vendor submits a proper invoice, and/or if the invoice was not properly tolled.

There were no regular HTFC payments that were made outside the 30 day prompt payment requirement.

III. Number of interest chargeable days and total number of days taken to process late contract payments:

of interest chargeable days – 35,808 for all CDBG-DR late payments – Average of 28.44 days late.

of days to process payments – An average of 58.44 days to process each CDBG-DR payment

IV. Principal reasons for late payments:

HTFC Finance is unable to make payment on behalf of the CDBG-DR program without first drawing funds from HUD. The Governor's Office of Storm Recovery program staff is responsible for determining which payments will be made and when funds will be drawn from HUD. The processing of draw requests from HUD for the CDBG-DR program may in some circumstances result in late payments. Additionally, these CDBG-DR invoices require necessary backup and documentation to meet the HUD requirements. GOSR has created rigorous standards on proper invoicing and documentation, which often requires technical assistance with vendors to meet CDBG-DR invoicing requirements. These technical assistance and documentation requirements may result in payments beyond the submission of the original invoice. ..



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PROMPT PAYMENT POLICY

For the Fiscal Year Ending March 31, 2016

EXHIBIT 1

THE PROMPT PAYMENT POLICY STATEMENT OF THE
NEW YORK STATE HOUSING TRUST FUND CORPORATION

ARTICLE I

STATEMENT OF PURPOSE

101. This Policy Statement is adopted pursuant to Section 2880 of the Public Authorities Law.

ARTICLE II

DEFINITIONS OF TERMS

201. Definitions. For the purpose of this Policy Statement, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

"Contract" shall mean an enforceable agreement entered into by the Corporation and a contractor, including purchase orders.

"Contractor" shall mean any persons or organizations providing goods, property or services to the Corporation pursuant to a contract.

"Corporation" shall mean the Housing Trust Fund Corporation.

"Designated Payment Department" shall mean the department within the Corporation to which a proper invoice is to be submitted by a contractor.

"Prompt Payment" shall mean payment of a debt due and owing by the Corporation before interest accrues thereon pursuant to the specifications herein.

"Proper Invoice" shall mean a written request for contract payment setting forth the description, price, and quantity of goods, property or services provided by a contractor in such form, and supported by such other substantiating documentation, as the Corporation may reasonably require.

"Receipt of Invoice" shall mean either (a) the date on which a proper invoice is received

by the designated payment department, or (b) the date on which the Corporation receives the purchased goods, property or services covered by the proper invoice, whichever is later.

"Set-off" shall mean the reduction by the Corporation of a payment due to a contractor by amount equal to the amount of any unpaid legally enforceable debt owed by the contractor to the Corporation.

ARTICLE III

RULES AND REGULATIONS

301. Payment Request Procedure. Contractors who are owed money by the Corporation shall send a proper invoice to the attention of the Finance Unit, the designated payment department of the Corporation. The Finance Unit will log the reception date of the invoice, and send the document to the unit within the Corporation that received the purchased goods, property or services from the contractor for review and verification.

302. Schedule for Prompt Payment. The Corporation will adhere to the following schedule for a prompt payment:

a. For receipt of invoices between April 29, 1988, and July 1, 1989, payment will be made within 45 calendar days after receipt of a proper invoice.

b. For receipt of invoice after July 1, 1989, payment will be made within 30 calendar days, excluding legal holidays, after receipt of a proper invoice.

This schedule will not apply in those instances where payment is being delayed for any of the exceptions listed in Section 305 or tolled for any of the reasons listed in Section 306 of this Policy Statement.

303. Interest Computation. If the Corporation fails to meet the prompt payment schedule set out above, the Corporation will pay interest to the affected contractors at the rate equal to that set by the State Tax Commission for corporate taxes.

304. Funds available to pay interest penalties. The Corporation will pay penalties with monies drawn from earnings on investments.

305. Situations which justify extension of payment

time for property invoices. The following facts or conditions constitute exceptions to the prompt payment schedule set forth in Section 302:

- a. Statutory or contract provisions requiring an inspection or an audit prior to payment;
- b. A requirement for state appropriations to authorize payment;
- c. A requirement for federal government examination of a proper invoice prior to payment;
- d. Extraordinary delay between the provision of goods, property or service by a contractor and the receipt of a proper invoice by the contractor; and
- e. Failure by a contractor to submit documents required by agreement prior to payment.

In addition, the Corporation is not responsible for the processing time taken by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other external entity that is required by statute or regulation to approve or process Corporation payments.

306. Reasons which justify the tolling of payment time for invoices. The following facts or conditions toll the prompt payment schedule set forth in Section 302:

- (1) The existence of defects in the goods, property or services delivered.
- (2) The existence of defects in the invoice; and
- (3) Suspected improprieties of any kind.

307. Tolling Regulations. In order to toll the prompt payment schedule without penalty, the Corporation has fifteen days after receipt of an invoice to send a contractor notification of defects or improprieties. Corporation notification shall be in the form of a standardized letter. In the event that the Corporation fails to act within fifteen days, once the defect or impropriety is corrected, the number of days allowed for payment is reduced by the number of days between the fifteenth day and the date of notification. In the event that the Corporation's contentions are

proved unreasonable, the date by which contract payment shall be made is calculated from the date of receipt of invoice.

ARTICLE IV

REPORTS

401. Statement Filing. Within thirty days of the adoption of this statement, and of any amendments hereto, the Corporation shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

402. Annual Report. Within ninety days after the end of each fiscal year following January 1, 1989, the Corporation shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

- a. A listing of the types or categories of contracts which the Corporation entered into during the twelve month period of the report with an indication whether each such contract was subject to the prompt payment requirements, and if not, why not;
- b. The number and amount of interest payments made for contract, arranged according to each such type or category;
- c. The number of interest chargeable days, and the total number of days taken to process each late contract payment; and
- d. A summary of the principal reasons why such late payments had to be made.

Copies of this report shall be filed with State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

ARTICLE V

MISCELLANEOUS PROVISIONS

501. Statement Amendment. The Corporation shall have the power to amend this

Policy Statement by promulgating amended rules and regulations at any time.

502. Contract Incorporation. The Policy Statement in effect at the time of the creation of a contract is hereby incorporated into and made a part of that contract.

503. Public Access. The Corporation shall make copies of this Policy Statement, as well as the annual report, available to the public upon reasonable request at the Corporation's main office. In addition, the Corporation shall provide a copy of this Policy Statement to each contractor.

504. Inapplicability of Statute. The Statute authorizing this statement is not applicable to the Corporation contracts with other government agencies, to interest on judgments rendered by a court against the Corporation pursuant to any other statute, or in situations where the Corporation exercises a legally authorized set-off against all or part of a payment due a contractor.

505. Legal Processes. The Corporation is under no liability to pay interest pursuant to the statute after a contractor has filed a claim or given notice of an intention to file claim or commenced legal action for payment of interest.