



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**FTA's Limited Oversight of Grantees'
Compliance With Insurance Requirements
Puts Federal Funds and Hurricane Sandy
Insurance Proceeds at Risk**

FTA

Report No. ST2020005

October 30, 2019





FTA's Limited Oversight of Grantees' Compliance With Insurance Requirements Puts Federal Funds and Hurricane Sandy Insurance Proceeds at Risk

Mandated by the Disaster Relief Appropriations Act of 2013

Federal Transit Administration | ST2020005 | October 30, 2019

What We Looked At

After Hurricane Sandy hit in October 2012, the Federal Transit Administration (FTA) awarded approximately \$5.03 billion in grant funding to 14 grantees through 2017 for response, recovery, and rebuilding projects. Our prior audits supporting oversight of this funding found that FTA established formal reporting and tracking procedures for grantees' receipt of insurance proceeds to help prevent the Agency from funding project expenses for which a recipient already received insurance proceeds. However, we could not assess implementation of these oversight procedures at the time, because grantees faced years of ongoing monitoring before reaching settlements with the insurance companies. Now that grantees have begun to receive insurance settlements and develop plans for applying them, we initiated this audit to assess FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements. Specifically, we assessed FTA's oversight of Hurricane Sandy recovery grantees' compliance with requirements for (1) carrying required insurance, (2) reporting on insurance proceeds, and (3) applying insurance proceeds.

What We Found

We found that FTA has not verified that grantees have required flood insurance for Hurricane Sandy damages and its other Federal transit investments. This is in part because FTA relies on grantees to self-certify that they have the requisite insurance coverage, does not require the grantees to produce the necessary data to support their certifications, and lacks procedures to confirm that grantees carry flood insurance when required. As a result, FTA cannot conclusively determine whether its grantees are eligible for the full amount of funding they received for Hurricane Sandy grants or a portion of the billions in Federal transit investments it funds annually. Further, FTA lacks procedures to follow up with grantees that do not submit Insurance Proceeds Reports, which may diminish its ability to eliminate duplication between Federal funds and insurance proceeds, as well as to ensure proceeds are properly allocated. Lastly, FTA has failed to hold Hurricane Sandy grantees accountable for timely or completely applying their over \$1 billion in insurance proceeds, in some cases years after they received them. Consequently, we found over \$982.8 million in insurance proceeds could be put to better use.

Our Recommendations

We made eight recommendations to improve FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements. FTA concurred with three, partially concurred with two, and did not concur with three. In response, we requested that FTA clarify and reconsider its actions.

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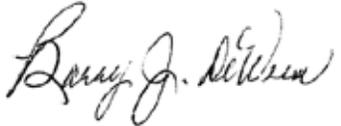
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Memorandum

Date: October 30, 2019

Subject: ACTION: FTA's Limited Oversight of Grantees' Compliance With Insurance Requirements Puts Federal Funds and Hurricane Sandy Insurance Proceeds at Risk | Report No. ST2020005

From: Barry J. DeWeese
Assistant Inspector General for Surface Transportation Audits 

To: Federal Transit Administrator

The Disaster Relief Appropriations Act (DRAA)¹ of 2013 designated almost \$11 billion to fund the Federal Transit Administration's (FTA) new Public Transportation Emergency Relief Program (ERP)² after Hurricane Sandy, which caused widespread damage to transportation infrastructure in the mid-Atlantic and the northeastern United States in October 2012. From 2013 through 2017, FTA awarded approximately \$5.03 billion in ERP grant funding to 14 grantees for Hurricane Sandy response, recovery, and rebuilding (recovery) projects, which are also eligible to be supported by insurance proceeds.

Using DRAA funds, FTA participated in replacement and repair of transit assets damaged or destroyed by the storm prior to a grantee's receipt of insurance proceeds. However, consistent with Federal disaster relief law in place prior to the storm, FTA stated it would not fund project expenses for which a recipient has already received insurance proceeds.³ FTA further specified that when the affected recipient receives insurance proceeds, the funds must be applied to a transit recovery project to offset the Federal share.

¹ Public Law No. 113-2 (2013).

² The ERP was established by the Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141 [2012]) to provide funds for States and public transportation systems to protect, repair, or replace assets damaged in an emergency, such as a natural disaster.

³ The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C § 5155) contains a general prohibition on the duplication of benefits. Specifically, it states that the President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

The DRAA also directed our office to support oversight of FTA's Sandy relief funding under its ERP. Consistent with this Act, we have conducted a series of audits.⁴ In our prior work, we found that FTA established formal reporting and tracking procedures for grantees' receipt of insurance proceeds. In addition, FTA hired an insurance consultant to support its specialized insurance oversight program with tasks including tracking, reviewing, and reporting to FTA on grantee insurance proceeds received.⁵ However, at that time, we could not assess implementation of these procedures because grantees faced years of ongoing monitoring before reaching settlements with the insurance companies. These insurance settlements could impact the final amount of Hurricane Sandy funds that grantees were entitled to receive.

Now that grantees have begun to receive insurance settlements and develop plans for applying them, we initiated this audit to assess FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements. Specifically, we assessed FTA's oversight of Hurricane Sandy recovery grantees' compliance with requirements for (1) carrying required insurance, (2) reporting on insurance proceeds, and (3) applying insurance proceeds.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology. Exhibit B lists the organizations we visited or contacted, and exhibit C lists the acronyms used in this report. Exhibit D summarizes insurance requirements and FTA's associated oversight processes. To determine FTA's oversight of recovery grantees' compliance with the requirements, we analyzed documentation related to a statistical sample of 14 out of 28 Hurricane Sandy recovery grants that were awarded to the following 5 out of 14 grantees—the New York Metropolitan Transportation Authority (MTA), New Jersey Transit (NJT), New York City Department of Transportation (NYC DOT), Port Authority Trans-Hudson Corporation (PATH),⁶ and Port Authority of New York and New Jersey (PANYNJ)⁷

⁴ More information about our Hurricane Sandy work is available at <https://www.oig.dot.gov/related-library-items-tags/hurricane-sandy>.

⁵ *FTA Has Not Fully Implemented Key Internal Controls for Hurricane Sandy Oversight and Future Emergency Relief Efforts* (OIG Report No. ST2015046), June 12, 2015.

⁶ Port Authority Trans-Hudson Corporation (PATH) is a subsidiary of the Port Authority of New York and New Jersey (PANYNJ), but FTA awarded Hurricane Sandy recovery funds to these entities as separate grantees. In this report, we will provide information for them as separate grantees to the extent possible.

⁷ At the time we selected our sample, FTA had awarded about \$5.01 billion of the \$5.03 billion in Hurricane Sandy recovery funds to the five grantees covered by our sample.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Tiffany Mostert, Project Director, at (202) 366-0625.

cc: The Secretary
DOT Audit Liaison, M-1
FTA Audit Liaison, TBP-30

Background

Federal requirements for carrying flood insurance pre-dated Hurricane Sandy and are not unique to FTA grantees. The Flood Disaster Protection Act of 1973 (FDPA)⁸ prohibits Federal agencies from approving financial assistance for acquisition or construction purposes in any Special Flood Hazard Area (SFHA) unless the structure and contents are covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

FTA grantees must have flood insurance, as required by the FDPA, and must agree to comply with the insurance requirements normally imposed by State and local laws. Flood insurance is not required for underground subway stations, track, tunnels, ferry docks, or transit facilities located outside an SFHA. All public transportation assistance applicants are required to certify—under penalty of perjury—that they meet, or will meet, FTA’s requirements for any projects funded in that fiscal year. This self-certification includes whether the applicant carries insurance as required.

After Hurricane Sandy, FTA adopted a policy related to funding for uninsured federally funded property that was damaged by Hurricane Sandy or future disasters. Specifically, the policy stated that Federal financial assistance will be provided for uninsured transit property that has previously received Federal funding only after the maximum available National Flood Insurance Program (NFIP) insurance—\$500,000 per building and \$500,000 for equipment and fixtures—or the amount of the Federal investment in the property prior to the storm, whichever is less, is subtracted from the total cost to repair or rebuild.⁹

Specific to Hurricane Sandy, each recovery project grant included special grant conditions, including requirements for how grantees were to report on and apply their insurance proceeds. For example, the conditions required the grantee to submit monthly Insurance Proceeds Reports (IPR) to FTA, no later than 30 calendar days after the end of each calendar month.¹⁰

Several FTA Emergency Relief Program policy and guidance documents provided further details on applying insurance proceeds. Most recently, in October 2014, FTA issued its *Emergency Relief Program Final Rule* (the policy), which specifies

⁸ Pub. L. No. 93-234 (1973).

⁹ *Emergency Relief Manual: Reference Manual for States and Transit Agencies on Response and Recovery from Declared Disasters and FTA’s Emergency Relief Program*, 49 U.S.C. § 5324.

¹⁰ FTA later made this a quarterly requirement.

that emergency relief funds may not duplicate assistance from another source, such as insurance.¹¹ It also states that the transit-related share of insurance proceeds must be used “upon receipt,” to reduce FTA’s Emergency Relief Fund participation in a project. In September 2015, FTA published ERP guidance (the guidance), which provides a more detailed process for implementing the policy.

The guidance includes steps for a grantee that receives an insurance settlement for damage to both transit and non-transit assets, or receives a settlement that does not include amounts attributable to specific assets—such as blanket, lump-sum, or unallocated proceeds. Specifically, when a grantee has both transit and non-transit insured losses, it is to work with FTA to identify the share of the insurance settlement attributable to transit losses, as proceeds must be allocated in at least the same proportion as the insured losses eligible under FTA’s ERP are to the total insured losses.¹² For example, if the insured eligible losses are 70 percent of the total insured losses, then the amount of the insurance settlement allocated to eligible emergency relief projects must be no less than 70 percent.

After determining the transit portion of the proceeds, the guidance indicates that the grantee will work with FTA to allocate the proceeds to projects eligible for FTA emergency relief funds. Grantees have documented their proposed allocations in allocation plans for FTA’s review and approval. To prevent duplicate funding, once the insurance proceeds are applied to a specific transit recovery project, FTA will deduct the amount of the applied insurance proceeds from the net project cost and account for this in the recovery grant. In addition, the guidance notes that FTA and the grantee will document the amount of transit-attributable insurance proceeds and this information must be attached to any emergency relief grant awarded after the insurance proceeds are received. Further, if the insurance proceeds are applied to a recovery project for which FTA has already awarded funds, the grantee must reimburse FTA for the difference in the Federal cost share.

Since December 26, 2014, FTA grant recipients also must comply with the provisions of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which contains insurance-related requirements. For example, it provides criteria for self-insurance¹³ and requires recipients to insure assets purchased with Federal funds to the same level they insure assets purchased with their own funds.¹⁴

¹¹ 49 CFR § 602.7(e).

¹² The total insured losses include those that are ineligible for assistance under the ERP.

¹³ 2 CFR § 200.447(d).

¹⁴ 2 CFR § 200.310.

Results in Brief

FTA has not verified that grantees have required flood insurance for Hurricane Sandy damages and its other Federal transit investments.

Consistent with the FDPA, FTA requires grant recipients to obtain and maintain flood insurance on those buildings and contents in SFHAs for which FTA has provided funds. However, in contradiction to the FDPA—which prohibits Federal agencies from approving financial assistance for acquisition or construction purposes in any SFHA unless the structure and contents are covered by flood insurance—FTA awarded recovery funds to grantees in our sample without verifying they carried sufficient insurance to meet the Federal flood insurance requirement. For example, FTA awarded one grantee—NYC DOT—a total of \$24 million for Hurricane Sandy recovery projects through two grants, even though information provided by NYC DOT and the Federal Emergency Management Agency (FEMA) indicated the grantee did not have insurance. FTA later determined that it had awarded NYC DOT \$2.125 million in recovery funds for ineligible expenses to repair uninsured federally funded buildings in SFHAs. FTA’s policy calls for reducing the total cost to repair or rebuild by the amount that should have been flood insured if the grantee did not carry flood insurance.¹⁵ According to an FTA official, this would be accomplished by reducing the grantee’s total FTA-validated damage assessment by that amount, but the Agency has yet to take this step for NYC DOT. Moreover, while the other four grantees in our sample carried insurance prior to Hurricane Sandy, nearly 7 years after the storm, FTA still does not have the data necessary to affirm those grantees carried the appropriate level of insurance coverage and, therefore, whether they were eligible for the full amount of the over \$5 billion in recovery funds that FTA awarded them. Furthermore, FTA has not ensured that its comprehensive reviews of all grantees—not just Hurricane Sandy grantees—verify their compliance with Federal flood insurance requirements. This is in part because FTA relies on grantees to self-certify that they have the requisite insurance coverage, does not require the grantees to produce the necessary data to support their certifications, and lacks procedures to confirm that grantees carry flood insurance when required. As a result, FTA cannot conclusively determine whether its grantees have the required insurance for a portion of the billions in

¹⁵ In the event federally funded buildings are not insured and are damaged or destroyed by flood, the Federal Government may provide funds for reconstruction and repair of uninsured buildings within an SFHA only after the maximum available NFIP insurance, which is \$500,000 per building and \$500,000 for contents, or the amount of the Federal investment in the property prior to the storm, whichever is less, is subtracted from the total cost to repair or rebuild the property.

Federal transit investments it funds annually, and therefore whether those grantees are eligible for the full amount of funding they receive.

FTA lacks procedures to follow up with grantees that do not submit Insurance Proceeds Reports.

To help FTA implement its policy to prevent duplication of payment for damaged assets by private insurance, FTA required all Hurricane Sandy recovery grantees to regularly submit IPRs. However, of the 14 recovery grantees, we identified 9 grantees that cumulatively received over \$13 million in recovery funds but did not submit IPRs. This occurred because, although FTA established processes for reviewing and tracking grantees' IPRs, FTA did not establish a process for following up with grantees who did not submit IPRs to verify that they did not receive insurance proceeds. After we brought the gaps in reporting to FTA's attention during our review, FTA contacted the grantees, who responded that they did not receive insurance proceeds and therefore did not submit any IPRs. We did not make any recommendations specifically related to improving the IPR process, because in June 2019, an FTA official told us, and FTA confirmed in writing, that FTA was not using IPRs for ERP grants responding to disasters that have occurred since Hurricane Sandy and did not plan to use them again. However, FTA's technical comments on our draft report stated that FTA is using IPRs for Emergency Relief grants for Hurricanes Harvey, Irma, and Maria response and recovery when an insurance claim has or will be submitted for items in the grant. Based on our work, using IPRs in this limited way may diminish FTA's ability to eliminate duplication between Federal funds and insurance proceeds, as well as to ensure proceeds are properly allocated.

FTA has failed to hold grantees accountable for applying insurance proceeds in accordance with its policy and guidance.

Through March 2019, the grantees in our sample reported to FTA that they had received about \$1.4 billion in insurance proceeds as a result of Hurricane Sandy that were not attributed to specific transit assets. Under these circumstances, FTA's guidance requires that the grantee will work with the Agency to (1) determine the share of insurance proceeds that can be attributed to transit losses and (2) develop a plan to allocate those proceeds to projects eligible for FTA recovery funds. The purpose of this guidance is to eliminate duplicative funding and ensure that the appropriate share of any insurance proceeds is applied to the repair, reconstruction, or restoration of transit assets eligible for FTA financial assistance. However, FTA's allocation plan process has not supported the use of these proceeds in a timely or complete manner in compliance with its policy and guidance. Specifically, FTA's policy requires grantees to use the transit share of insurance proceeds upon receipt; yet, to date—nearly 7 years after grantees began receiving proceeds—FTA is still negotiating with three of the four grantees to allocate their proceeds and only

about 7 percent of the proceeds reportedly have been spent on transit projects. The delay in spending proceeds is partially due to FTA's guidance, which lacks specific deadlines for grantees to use their insurance proceeds and focuses on providing grantee flexibility in identifying specific projects to apply the insurance proceeds, instead of timely use of proceeds. An FTA official opined that this flexibility is more important than quickness. Yet, the Agency offered no other reasonable timeframe for when grantees must apply the proceeds. In addition, MTA's plan under-allocates the amount of insurance proceeds attributable to eligible transit projects by about \$61.1 million and did not allocate \$119.6 million to specific transit projects. As a result, up to \$180.7 million in MTA's transit-related insurance proceeds could potentially be put to better use. Furthermore, FTA lacks procedures to ensure that grantees follow the plans. Given these weaknesses, FTA cannot have reasonable assurance that the appropriate share of any insurance proceeds received by a grantee are applied to the repair, reconstruction, or restoration of transit assets eligible for FTA financial assistance under its ERP.

We are making recommendations to improve FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements and potentially put funds to better use.

FTA Has Not Verified That Grantees Have Required Flood Insurance for Hurricane Sandy Damages and Its Other Federal Transit Investments

Prior to Hurricane Sandy, FTA did not have procedures to oversee grantees' compliance with insurance coverage requirements.¹⁶ After Hurricane Sandy, FTA established oversight procedures to determine grantees' compliance with the FDPA requirement for grantees to carry flood insurance for structures in SFHAs that were acquired or constructed with Federal assistance. However, FTA's oversight has not ensured that all of its grantees carry sufficient levels of flood insurance when required to do so or that FTA reduces its Federal participation in projects accordingly. Specifically, FTA awarded over \$5 billion in recovery funds to grantees without verifying they carried sufficient insurance to meet the Federal flood insurance requirement. In addition, in the nearly 7 years since the storm, FTA has not collected the necessary data to affirm that all of the Hurricane Sandy recovery grantees carried sufficient flood insurance. Finally, weaknesses in FTA's

¹⁶ FTA grantees must have flood insurance, as applicable, as required by the FDPA, and agree to comply with the insurance requirements normally imposed by State and local laws.

oversight procedures also hinder its ability to determine if its non-Hurricane Sandy grantees carry proper flood insurance for buildings in SFHAs.

FTA Awarded Hurricane Sandy Recovery Grants Without Verifying Grantees Carried Sufficient Insurance

Specific to Hurricane Sandy, FTA awarded recovery funds to grantees in our sample without verifying they carried sufficient insurance to meet the Federal flood insurance requirement. These awards contradicted the FDPA—which prohibits Federal agencies from approving financial assistance for acquisition or construction purposes in any SFHA unless the structure and contents are covered by flood insurance.

To oversee insurance coverage, FTA required Hurricane Sandy recovery grant applicants to submit their insurance policies with their applications and tasked its insurance consultant with reviewing the insurance coverage under these policies. However, an FTA official stated that, due to the urgent nature of the recovery work, FTA began awarding grants before receiving its consultant's assessment of grantee insurance coverage. For example, FTA awarded recovery funds to four grantees in our sample—MTA, NYC DOT, PATH, and PANYNJ—before it received its consultant's 2014 reports assessing grantees' insurance coverage, including flood insurance sublimits. According to an FTA official, FTA assumed this risk knowing the Agency had the ability to review all prior grant obligations and make revisions as necessary. Based on our interviews with FTA officials and FTA's technical comments on our draft report, the Agency primarily relied on the consultant's reports to determine the grantees' flood insurance compliance. Yet, these reports did not conclusively determine that grantees met the Federal flood insurance requirement.

Even with the consultant's reports, FTA could not verify flood insurance coverage compliance for any of the grantees, because neither it nor its grantees had the data necessary to make this assessment. In 2014, FTA's consultant reported that, although it reviewed the insurance documents, it was unable to assess if individual grantees had specific properties (e.g., buildings in SFHAs that previously received Federal assistance and are not substantially underground or over water) that require them to adhere to the flood insurance requirements. As shown in the table below, the grantees in our sample carried a total of \$2.6 billion

in insurance with \$425 million in flood insurance sublimits prior to the storm.¹⁷ Taking into account their \$51 million in deductibles, the net flood insurance coverage was \$374 million (or about 374 buildings and their contents covered to the full NFIP limits).

Table 1. Insurance Coverage, Flood Sublimits, and Deductibles in Millions (M)

Grantee	Insurance coverage	Flood sublimit	Deductible	Flood coverage net deductible
MTA	\$1,075M ^a	\$150M	\$25M	\$125M
NJT	\$400M	\$100M	\$1M	\$99M
NYC DOT	\$0	\$0 ^b	\$0	\$0
PATH ^c	\$375M	\$175M	\$25M	\$150M
PANYNJ	\$750M			
Total	\$2,600M	\$425M	\$51M	\$374M

Source: FTA insurance consultant reports, grantee and FTA correspondence, and grantee testimonial information.

^a Although FTA’s insurance consultant identified contrary information and stated that MTA needs to support its claim, MTA maintains that \$275 million of this \$1,075 million limit did not provide protection against loss from flood, windstorm, or “named storm” events. Therefore, based on MTA’s assertion, the maximum insurance proceeds MTA was eligible to receive as a result of all damages from Hurricane Sandy would have been \$800 million.

^b Although FTA’s consultant reported NYC DOT had \$10 million in flood coverage with a \$100,000 deductible, we did not include that in this table or our totals. The \$10 million policy was owned by the New York City Economic Development Corporation (NYC EDC)—a subrecipient to NYC DOT—while NYC DOT itself did not have flood insurance.

^c PATH is a subsidiary of PANYNJ, but FTA awarded Hurricane Sandy recovery funds to these entities as separate grantees.

The insurance coverage and deductible information that the grantees provided and the consultant reviewed was not sufficient to determine grantees’ eligibility for recovery funding amounts. It was insufficient because it does not tie the flood insurance coverage to information about the specific buildings and their contents that should have been covered under the FDPA. Based on our interviews with FTA

¹⁷ Given that the policies had flood-specific sublimits, the grantees would not be eligible to receive the full insurance amount for flood damage. The International Risk Management Institute defines a sublimit as a limitation in an insurance policy on the amount of coverage available to cover a specific type of loss. For example, under a commercial property policy with a \$2 million limit applicable to loss from all other causes, there may be a \$100,000 sublimit on coverage for loss from flood, a \$500,000 sublimit on loss from earthquake, and a debris removal sublimit of 25 percent of the direct damage loss amount. The sublimit is the most the insured can collect for the type of loss to which the sublimit applies.

officials and the consultant—as well as review of the consultant’s 2014 report—we determined that data needed to make this assessment include a comprehensive list of each grantee’s federally funded buildings located in an SFHA; the development or project cost of those buildings, less estimated land cost; and insurance policies demonstrating the required amount of coverage. The grantees’ insurance policies did not specify which buildings and contents were covered and in what amounts, and the grantees did not collect the supporting information elsewhere. As such, neither they nor FTA could verify the grantees’ compliance with the FDPA or FTA’s related requirement at the time.

Despite lacking the necessary data to determine whether the grantees complied, the consultant reported that it “believed” the grantee insurance policies it reviewed satisfied the Federal flood insurance requirements. According to an FTA official, the Agency accepted the consultant’s conclusion—based on an analysis of the rough order of magnitude of the insurance coverage and FTA’s understanding of the type of damage—and agreed with the consultant that it would not be prudent to invest considerable time and resources to achieve greater certainty on this issue. FTA did not document this analysis and an official stated that in it, they referred to the grantees’ total blanket insurance coverage amounts, not the flood-specific coverage. This suggests FTA’s determination that grantees were in compliance was based on flawed inputs, because the grantees had flood insurance limits below the total blanket policy amount and would not be eligible to receive the full blanket policy amount for flood damage. An FTA official wrote that—absent an itemized inventory of assets in SFHAs—the Agency is reasonably satisfied that blanket, non-itemized policies ensure that grantees have more insurance than if they held an attributed itemized policy. Another FTA official stated that the Agency was comfortable taking the risk that the grantees did not fully comply with the FDPA. However, this decision put FTA at risk of awarding funds for ineligible purposes.

As a result of weaknesses in FTA’s flood insurance coverage oversight processes, FTA awarded \$2.125 million to one grantee—NYC DOT—for ineligible expenses, since NYC DOT did not meet the flood insurance requirements. FTA awarded NYC DOT a total of \$24 million for Hurricane Sandy recovery projects through two grants, even though information provided by NYC DOT and FEMA indicated that it did not carry the required insurance. (See exhibit E for more details on the NYC DOT case study, which illustrates weaknesses in FTA’s processes for awarding and adjusting Hurricane Sandy recovery grants.)

After FTA discovered a portion of the recovery funds it awarded was for ineligible expenses, it provided NYC DOT with two options to address the non-compliance. FTA instructed NYC DOT to either (1) identify additional eligible Sandy expenses that have not been previously funded by FTA to offset the amount due to FTA or (2) return funds to FTA that were drawn down (by location) beyond the insurance-adjusted eligible amounts, up to \$2.125 million, and initiate a grant

amendment to align project expenses with the insurance-adjusted eligible expenses. NYC DOT determined that it would de-obligate \$2.125 million from an existing grant but indicated that it expects FTA to apply those funds to a future recovery grant. However, under FTA's policy, if a recovery grantee did not carry required flood insurance, FTA stated it would reduce the total cost to repair or rebuild by the amount that should have been flood insured. An FTA official specified this would be accomplished by reducing the grantee's total FTA-validated damage assessment by that amount, but the Agency has not taken the step to reduce NYC DOT's damage assessment by \$2.125 million.

FTA Lacks Data To Affirm That All of the Hurricane Sandy Recovery Grantees Carried Sufficient Flood Insurance

Nearly 7 years after Hurricane Sandy struck, FTA still does not have the data necessary to affirm that all Hurricane Sandy recovery grantees carried sufficient flood insurance for specific structures in SFHAs and, therefore, that they were eligible for the full amount of recovery funds FTA obligated. Based on the information we gathered from the grantees in our sample, NYC DOT was the only grantee that has begun to systematically collect and assess the necessary information, initially focusing on ensuring that specific structures in SFHAs that were damaged in Hurricane Sandy are insured as required.

Information collected by grantees in implementing requirements for Federal awards could be helpful in determining compliance with the Federal flood insurance requirement.¹⁸ For example, grant recipients are required to maintain property records with much of the necessary data, including a description of the property; cost of the property; percentage of Federal participation in the project costs; and the location, use, and condition of the property.¹⁹

Furthermore, although FTA officials asserted to us that MTA carried more than the necessary flood insurance coverage, information we analyzed suggests otherwise. First, based on discussion with MTA and documentation it provided, at the time of Hurricane Sandy, MTA only insured properties over \$5 million. This omits structures below that value that are required to be flood insured. In addition, MTA officials informed us that MTA self-insures the initial \$25 million for catastrophic events. Therefore, this initial amount is not flood insured and does not meet the FDPA requirements. Finally, MTA carried less flood insurance

¹⁸ These requirements are currently contained in 2 CFR Part 200.

¹⁹ This required information is not substantially different than what was required in the previous version of this regulation (49 CFR 18).

than other large transit systems that also received Hurricane Sandy Recovery funds. Specifically, the Massachusetts Bay Transportation Authority (MBTA) and Southeastern Pennsylvania Transportation Authority (SEPTA) provided information to FTA's insurance consultant indicating that they respectively had \$245 million and \$247.5 million in flood insurance coverage net deductibles prior to Hurricane Sandy. In contrast, MTA carried \$125 million in flood insurance coverage net deductibles prior to Hurricane Sandy.

Without the data to establish whether its Hurricane Sandy recovery grantees had the required level of flood insurance, FTA cannot determine whether it provided the appropriate level of assistance to those grantees to which FTA collectively awarded over \$5 billion, or adjust its assistance accordingly in line with its policy.

Weaknesses in FTA's Oversight Procedures Also Hinder Determining Whether Its Non-Hurricane Sandy Grantees Carry Sufficient Flood Insurance

Weaknesses in FTA's oversight procedures also hinder its ability to determine if its non-Hurricane Sandy grantees carry proper flood insurance for buildings in SFHAs. FTA funds these grantees through its formula and discretionary grants—which total approximately \$11 billion annually. All applicants seeking public transportation assistance must self-certify that they meet FTA's requirements. The self-certification includes whether the applicant carries flood insurance on buildings as required by the FDPA. FTA employs contractors to conduct comprehensive reviews—Triennial Reviews and State Management Reviews—of its grantees every 3 years to verify compliance with these requirements. If a reviewer determines that a grantee is non-compliant with an FTA requirement, the review guidance includes suggested “corrective actions” that grant recipients can take to resolve the deficiency. FTA describes this oversight program as integral to its efforts to ensure that Federal funds are spent efficiently, effectively, and in accordance with applicable laws and regulations.

Yet, prior to Hurricane Sandy, these comprehensive reviews did not check if grantees had the required flood insurance. FTA added a check for this requirement to its reviews for fiscal year 2014—about 40 years after enactment of the FDPA in 1973. However, based on our evaluation of FTA's guidance for these reviews and our interviews with FTA Headquarters Program officials and FTA Regional officials, the check is not designed to conclusively establish that all of FTA's grantees are in compliance with the Federal flood insurance requirement. During the course of our audit, we learned from an FTA Headquarters Program official in the office responsible for the reviews that reviewers only conduct this

check if a grantee self-reports prior to the review that it has buildings requiring flood insurance and FTA Regional staff do not have any contradictory information. However, from our evaluation of the relevant FTA review guidance and our interviews with FTA Headquarters Program and Regional officials, we determined neither the contractor nor the FTA Regional staff have the necessary information to determine the accuracy of the grantee self-reports. For example, the grantees are not required to provide any supporting documentation regarding their federally funded buildings and their locations. Also, although the reviewers are instructed to obtain input from FTA Regional staff about buildings that may be in SFHAs for the grantee under review, FTA Headquarters and Regional officials emphasized that regional staff are not expected to have a list with this information. While one FTA official suggested that FTA could potentially identify this information when awarding grants, it does not currently do so.

As a result, FTA cannot ensure that the reviews cover the full universe of grantees with buildings that require flood insurance or that even those grantees reviewed carry sufficient flood insurance.²⁰ This undermines FTA's ability to verify that its grantees have the required insurance for a portion of billions in Federal transit investments made over the 4 decades since the FDPA was enacted, and therefore whether those grantees are eligible for the full amount of funding they receive.

FTA Lacks Procedures To Follow Up With Grantees That Do Not Submit Insurance Proceeds Reports

To help FTA implement its policy to recover any grant funds duplicated by private insurance,²¹ FTA required all Hurricane Sandy recovery grantees to regularly submit IPRs to report the status of claims made and proceeds received. Based on these reports, FTA could then determine whether the grantee should apply the proceeds to existing grants or other eligible transit projects. However, we found

²⁰ If a Triennial or State Management Review finds a deficiency of insufficient flood insurance, the suggested corrective action is that the grantee must submit to the FTA regional office documentation of adequate flood insurance protection.

²¹ FTA's Emergency Relief Program Final Rule Policy (49 CFR 602.7(e), October 7, 2014) specifies that emergency relief funds may not duplicate compensation from insurance or any other source. Grantees must apply insurance proceeds received to the cost of replacing or repairing the damaged or destroyed project property; return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property; or work with FTA to attribute the appropriate share of insurance proceeds not attributable to specific assets—such as blanket, lump-sum, or unallocated proceeds—to transit assets.

that, although the grantees in our sample regularly submitted IPRs, other Hurricane Sandy Recovery grantees did not.

Based on our review of FTA's insurance consultant reports and grantees' IPRs, none of the recovery grantees in FTA Regions 1 and 3, and only the 5 grantees in our sample in Region 2, submitted reports.²² Of the 14 recovery grantees, we found 9 grantees that cumulatively received over \$13 million in recovery funds but did not submit IPRs. FTA's Hurricane Sandy Oversight Plan assigned FTA grant and project managers responsibility for IPR review and tracking, respectively. Yet, FTA did not assign anyone the responsibility to follow up with grantees that did not submit IPRs to determine whether they submitted insurance claims or received insurance proceeds.

After we began our audit and asked about the insurance consultant's report notifying FTA that Region 1 grantees had not submitted IPRs, Region 1 staff contacted their grantees to determine whether they received insurance proceeds. Based on FTA's correspondence from March and April 2018, the grantees responded that they did not receive proceeds either because they were "not covered for flood at the time" or the "deductible was too great." Because the requirement to submit IPRs is a special grant condition, FTA may suspend, or even terminate, a grant if the grantee does not comply. In addition, for grantees that reported they were not covered for flood at the time of the storm, the lack of IPRs could also indicate non-compliance with the FDPA requirement. However, because FTA's insurance proceeds reporting process did not include steps for FTA staff to verify that grantees that did not submit IPRs did not also submit claims or receive insurance proceeds, or that they complied with the FDPA, the Regional staff did not take any further action.

During our audit, we received conflicting information on FTA's plans for continued use of IPRs. More specifically, in June 2019, an FTA official told us, and FTA confirmed in writing, that the Agency was not using IPRs for ERP grants responding to disasters that have occurred since Hurricane Sandy and did not plan to use them again. Therefore, we did not make any recommendations related to improving the IPR process. However, FTA's technical comments on our draft report stated that the Agency is using IPRs for Emergency Relief grants for Hurricanes Harvey, Irma, and Maria response and recovery when an insurance claim has or will be submitted for items in the grant. Based on our work, using IPRs in this limited way may diminish FTA's ability to eliminate duplication

²² FTA's insurance consultant reported in 2014 that several recovery grantees in FTA's Region 1 and Region 3 did not submit IPRs—Connecticut Department of Transportation, Massachusetts Bay Transportation Authority, Southeastern Pennsylvania Transportation Authority, Rhode Island Public Transit Authority, and Milford (CT) Transit District. We also determined that several other recovery grantees in Regions 1 and 2 also failed to submit IPRs—City of Long Beach, Westchester County Department of Transportation, Nassau Inter County Express, and Greater Bridgeport Transit District.

between Federal funds and insurance proceeds, as well as to ensure proceeds are properly allocated.

FTA Has Failed To Hold Grantees Accountable for Applying Insurance Proceeds in Accordance With Its Policy and Guidance

Through March 2019, the grantees in our sample reported to FTA that they had received about \$1.4 billion in insurance proceeds; however, FTA's allocation plan process does not ensure that the grantees apply the proceeds according to FTA's policy or guidance. Specifically, FTA's allocation plan process does not support its policy's goal of timely use of proceeds or its requirement for the complete use of proceeds. In addition, FTA lacks procedures to ensure grantees follow the plans.

FTA's Allocation Plan Process Does Not Support the Timely or Complete Use of Proceeds

Through March 2019, four of the grantees in our sample—MTA, NJT, PATH, and PANYNJ—reported to FTA that they have received about \$1.4 billion in insurance proceeds since 2012 as a result of Hurricane Sandy, with the last payment of \$0.8 million received in December 2018. According to FTA, none of the proceeds were attributable to specific transit assets. Under these circumstances, FTA's guidance requires that the grantee (1) work with the Agency to determine the share of insurance proceeds that can be attributed to transit losses and (2) specify how they will use these proceeds through an allocation plan, which FTA must review and approve. The purpose of this guidance is to eliminate duplicative funding and ensure that the appropriate share of any insurance proceeds is applied to the repair, reconstruction, or restoration of transit assets eligible for FTA financial assistance. This aligns with Federal emergency management authorities, which emphasize that Federal disaster assistance is

intended to supplement, not supplant, the resources of State, local, and private-sector organizations.²³

However, FTA's allocation plan process has not supported the use of these proceeds in a timely or complete manner in compliance with its policy and guidance. For example, FTA's policy requires grantees to use the transit share of insurance proceeds upon receipt—which FTA officials cautioned us against interpreting literally—to reduce FTA's Emergency Relief Fund participation in a project. Nonetheless, the language does indicate an intention to have an expeditious use of the proceeds that FTA's process has not supported.

To date—nearly 7 years after grantees began receiving proceeds—none of those proceeds have been spent on transit projects through FTA grants, and one grantee reportedly spent about \$104 million in insurance proceeds, or about 7 percent of the total all grantees have received, on transit projects outside of FTA grants. Furthermore, FTA is still in the process of negotiating with three of the four grantees to allocate their proceeds. FTA, with input from its insurance consultant, has determined the transit portion of the insurance proceeds for three grantees in our sample—MTA, NJT, and PATH. As of March 2019, FTA had approved allocation plans for two of those grantees totaling \$698.6 million. Specifically, FTA approved (1) MTA's partial allocation of \$465.2 million out of its \$645.9 million in transit-related proceeds and (2) NJT's entire allocation of the \$112.8 million in transit-related proceeds it had received at the time, as well as provisions for additional proceeds it planned to receive, up to \$233.4 million. NJT reported to us that, through July 17, 2019, it had spent about \$104 million of its insurance proceeds on the projects in its allocation plan—all of which are outside of FTA grants. We could not confirm these expenditures, as NJT did not provide the requested documentation and FTA does not have records of it. In addition, FTA is still in the process of approving the allocation plan for PATH, which received its \$375 million settlement in March 2013, and has yet to receive a plan from PANYNJ. An FTA official stated that PANYNJ is awaiting additional proceeds and will allocate these proceeds to transit and non-transit projects based on the final settlement. The table below shows the over \$1.4 billion in proceeds these grantees have received and the status of their allocation.

²³ For example, Executive Order 10427 from 1952 emphasized that Federal disaster assistance was intended to supplement, not supplant, the resources of State, local, and private-sector organizations. This role is still the same today, as the Stafford Act—the centerpiece legislation for providing Federal aid for emergency and disaster relief—is designed to supplement the efforts and available resources of States, tribes, local governments, and disaster relief organizations.

Table 2. Lump Sum Insurance Proceeds and Allocation Status as of March 2019

Grantee	Date(s) Proceeds Received	Date(s) of Insurance Settlement(s)	Proceeds in millions	Proceeds Transit Portion	Amount Should Be Allocated	Amount Grantee Proposed to Allocate	FTA Approved Allocation Amount	Date Allocation Proposed	Date Allocation Approved
MTA	Dec. 2012 – May 2017	Feb. 2017	\$745M ^a	86.7%	\$645.9M	\$584.8M	\$272.0M	Apr. 2016	Mar. 2017
							\$193.2M	Aug. 2017	Mar. 2018
NJT	Nov. 2012 – Dec. 2018	N/A ^b	\$122.5M	100%	\$122.5M	\$233.4M	\$103.4M	Mar. 2016	July 2016
							\$130.0M	Aug. 2017	Mar. 2018
PATH	Mar. 2013	Mar. 2013	\$375M	85%	\$318.8M	\$303M	\$0	Nov. 2018	N/A
PANYNJ	Feb. 2013 – Feb. 2018	N/A	\$201.4M	TBD	TBD	TBD	\$0	N/A	N/A
Total (M)	N/A	N/A	\$1,444M	N/A	\$1,087.2M	\$1,121.2M	\$698.6M	N/A	N/A

Source: Grantee IPRs, FTA insurance consultant reports, and grantee and FTA correspondence.

^a MTA reduced its proceeds amount by about \$70 million prior to calculating the transit portion, reducing it to approximately \$674.7 million. MTA subsequently increased the proceeds amount to \$694.7 million.

^b While NJT remains in litigation with its insurers, and its final proceeds amount has not yet been determined, it submitted allocation plans in excess of the proceeds it has received to date in advance of receiving a final settlement.

Several factors have contributed to the grantees' delayed use of insurance proceeds. According to an FTA official, FTA believes one reason grantees are retaining the insurance funds is due to the sequencing of recovery projects. Another factor we identified is that grantees may have a financial incentive to retain these funds as long as possible prior to allocation. For instance, MTA told us that the proceeds are in an account with an approximately 1 percent interest rate. As such, the \$584.8 million in insurance proceeds has generated millions of dollars in interest in the years that MTA has retained them. Grantees are not required to allocate the interest to transit projects, further incentivizing the retention of funds.

The primary factor we identified for the delay in grantees spending their insurance proceeds is FTA's time-consuming practice of negotiating with the grantee to allocate insurance proceeds to future projects. This is underpinned by FTA's guidance, which lacks specific deadlines for grantees to use their insurance proceeds and focuses on providing grantee flexibility in identifying specific

projects to apply the insurance proceeds, instead of timely use of proceeds.²⁴ Acknowledging this focus, an FTA official stated that FTA believes this flexibility is more important than quickness. Yet, FTA officials offered no other reasonable timeframe for when grantees must apply the proceeds. FTA officials further stated that many of the issues in the allocation process are complex and require closer FTA examination and communication with recipients.

In contrast, applying the proceeds to recovery projects funded through existing grants, to reduce FTA's Emergency Relief Fund participation in those projects, would result in a more timely and efficient use of insurance funds. According to FTA officials, the Agency determined that it would not reduce its participation in existing projects because FTA estimated that the damages for each grantee exceeded the total sum of insurance proceeds and Federal funding and, therefore, FTA was not at risk of providing duplicative funds. As such, FTA has allowed grantees the flexibility to use Federal assistance first. Given the immediate need for recovery and the time it took for the grantees to receive insurance settlements, this approach made sense prior to the grantees receiving their insurance proceeds. However, continuing to allow the grantees to retain the proceeds and spend Federal dollars first increases risks that that grantees will not spend the proceeds as agreed and that the Federal funds may supplant non-Federal resources.

An FTA official also suggested that amending existing grants would divert FTA staff resources; yet, those resources are also tied up in the allocation plan development and documentation process. This approach does not support grantees using insurance proceeds upon receipt, or even in a timely manner. Because only one of the grantees in our sample has spent any of the transit-related insurance proceeds on transit projects, all of the remaining proceeds—over \$982.8 million—are funds that could be put to better use simply by being spent as intended.

In addition to not supporting timely use of proceeds, FTA's allocation plan process has not supported complete use of proceeds. Specifically, FTA has not required MTA to address that its partially approved allocation plan under allocates insurance proceeds to transit projects by approximately \$61.1 million. In the plan, MTA noted it reduced its \$745 million insurance settlement amount by \$70 million. This consisted of a \$25 million deductible, \$25 million of "unsubscribed" reinsurance, and \$20 million due from an insurer. Therefore, MTA proposed to apply \$584.8 million to transit projects. However, based on FTA's guidance, no less than 86.7 percent of MTA's \$745 million insurance settlement,

²⁴ Although not directly applicable, 2 CFR § 200.447(e), related to insurance and indemnification, could provide a reasonable standard for timely application of insurance proceeds. It states that insurance refunds must be credited against insurance costs in the year the refund is received.

or \$645.9 million, should be applied to transit projects—a difference of approximately \$61.1 million. FTA’s insurance consultant also disagreed with MTA’s reduction and advised that instead “the gross amount of insurance should be allocated between transit and non-transit losses.” In its March 2018 approval letter, FTA said that it wished to continue discussions regarding MTA’s proposal of \$70 million in adjustments, and this issue remained unresolved through September 23, 2019. Until FTA requires MTA to change its approach and apply the approximately \$61.1 million to transit projects eligible for FTA financial assistance under its ERP, the partially approved allocation plan will remain in conflict with FTA guidance. In addition, MTA’s proposed plan did not allocate \$119.6 million of the \$584.8 million in insurance proceeds that it deemed transit-related to specific transit projects. In its partial approval of the plan in March 2018, FTA requested that MTA identify eligible projects to apply the \$119.6 million. However, FTA did not provide MTA with a deadline for fulfilling this request, and MTA had not yet done so as of September 23, 2019. Based on these deficiencies, up to \$180.7 million in transit-related insurance proceeds could be put to better use.

FTA Lacks Procedures To Ensure Grantees Implement the Allocation Plans

Despite dedicating significant time to developing the allocation plans, FTA has not established procedures to ensure grantees implement them as written. FTA developed guidance for tracking the grantees use of insurance proceeds when they are applied through a FTA grant. But it did not do so for funds expended on projects funded solely through insurance proceeds.

An FTA official informed us that FTA is not tracking grantees’ expenditures solely funded with insurance proceeds, since the projects are not in FTA’s Transit Award Management System (TrAMS)—its platform to award and manage Federal grants. As a result, grantees could deviate entirely from the allocation plan without FTA’s knowledge. This creates a risk that proceeds will not be applied to eligible transit projects in accordance with FTA’s policy and guidance. For example, FTA approved an NJT allocation plan that proposed to apply up to \$130 million of NJT’s insurance proceeds—more than NJT has yet received—to replace NJT electricity substations damaged in the storm. Under its proposal, NJT planned to contribute \$132 million for the construction costs, up to \$130 million of which could be derived from insurance proceeds, while transferring reconstruction responsibilities to the state’s public utilities board and ownership of the substations to the local public utility provider. According to an FTA official, in order to be eligible for FTA financial assistance under its ERP—which is the standard for an eligible transit project to which a grantee can apply insurance proceeds—NJT would have to modify the project structure to meet Federal

requirements for satisfactory continuing control of this asset.²⁵ In its allocation plan approval, FTA noted that NJT would satisfy continuing control of the project via agreements with the utilities board and the local utility that must ensure that the new substation component of the project will remain a capital transit asset that NJT will be responsible for maintaining and operating. However, without procedures to validate that NJT followed this plan, FTA lacks assurance that the agreements were executed in accordance with FTA's instructions and, therefore, that this project remains an eligible use of insurance proceeds.

We also identified a risk in FTA's ability to implement its guidance for tracking the use of insurance proceeds if grantees do apply them through FTA grants in TrAMS. That guidance requires FTA to deduct the amount of the applied insurance proceeds from the net project costs; account for this in recovery grants; and document the application of transit-related insurance proceeds to recovery projects, as an attachment to any emergency relief grants containing applied insurance proceeds. However, FTA's ERP grant award procedures do not account for these requirements, creating a risk that FTA will not follow them. Specifically, FTA's checklist for implementing the ERP does not include a step requiring its Regional staff to adhere to the allocation plans when reviewing and awarding Hurricane Sandy grants. Further, even with a checklist item, locating the allocation plans for evaluation could be difficult given that the information is stored in a combination of electronic and paper formats. Because none of the grantees in our sample have applied proceeds through FTA grants, we could not assess whether these risks impacted FTA's adherence to its guidance.

By not ensuring that grantees implement the allocation plans to apply insurance proceeds as agreed, the significant time and effort that FTA and its grantees expend in developing these plans could have been put to better use. Furthermore, FTA has not ensured the allocation plan process meets the goals for which it was designed. As a result, these goals—to eliminate duplicative funding and ensure that the appropriate share of any insurance proceeds a grantee receives are applied to the repair, reconstruction, or restoration of transit assets eligible for FTA financial assistance under its ERP—may not be met.

Conclusion

FTA awarded approximately \$5.03 billion in ERP grants to grantees for Hurricane Sandy response, recovery, and rebuilding projects. While FTA has established policies and guidance and taken steps to oversee these funds, the Agency can do

²⁵ Satisfactory Continuing Control is the legal assurance that project property will remain available for use as its originally authorized purpose throughout its useful life or until disposition.

more to ensure that grantees carry flood insurance when required and that they correctly apply the over \$1 billion in transit-related insurance proceeds received to date. In particular, FTA has opportunities to improve how it collects and reviews data on grantees' insurance coverage and how it reviews, analyzes, and approves grantees allocation plans. Unless FTA takes timely action to resolve these deficiencies, the amount of funding potentially at risk of being misused will continue to grow.

Recommendations

To improve FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements, we recommend that the Federal Transit Administrator:

1. Reduce permanently NYC DOT's Hurricane Sandy total damage assessment by \$2.125 million to remove the ineligible expenses.
2. Assess the necessary data to affirm that Hurricane Sandy recovery grantees carried flood insurance that complied with the Flood Disaster Protection Act (FDPA). For any Hurricane Sandy recovery grantee that FTA determines had uninsured buildings, contents, or both that should have been insured in compliance with the FDPA, permanently reduce the grantee's total Hurricane Sandy damage assessment by the aggregate amount of the maximum available National Flood Insurance Program (NFIP) insurance or the amount of the Federal investment in the property prior to the storm (whichever is less).
3. Develop and implement procedures within FTA's Triennial and State Management Reviews to assess the necessary data to affirm that each grantee undergoing a comprehensive review carries flood insurance that complies with the FDPA. FTA's suggested corrective actions for any grantee deficiency in this area should include, at a minimum, requiring the grantee to submit to FTA documentation showing proof of flood insurance in the aggregate amount of the maximum available NFIP insurance or the amount of the Federal investment (whichever is less) for all structures required to have it.
4. Revise FTA's Emergency Relief Program (ERP) guidance to include a timeframe within which grantees must apply insurance proceeds to support the policy described in its ERP Final Rule.
5. Require the Hurricane Sandy Recovery grantees to apply their insurance proceeds in accordance with the timeframe established in the revised ERP guidance and in support of the policy described in its ERP Final Rule. Implementation of this recommendation could put over \$982.8 million in

funds to better use. This is the amount of transit-related insurance proceeds that grantees have received but have not yet spent on eligible transit recovery projects.

6. Require MTA to apply the full amount of its transit-related insurance proceeds to eligible transit projects. Implementation of this recommendation could put up to \$180.7 million in funds to better use.
7. Develop procedures to track grantee allocation plan implementation for expenditures solely funded with insurance proceeds.
8. Revise the ERP Toolkit checklist to include a step for FTA Regional staff to crosscheck against the approved insurance allocation plan when reviewing Hurricane Sandy grant applications and awarding Hurricane Sandy grants.

Agency Comments and OIG Response

We provided FTA with our draft report on August 16, 2019, and received its response, dated September 20, 2019, which is included as an appendix to this report. FTA concurred with recommendations 1, 7, and 8 and agreed to complete actions to implement these recommendations by August 30, 2020. Accordingly, we consider these recommendations resolved but open pending completion of planned actions.

FTA partially concurred with recommendation 3, stating that it would further revise its Triennial Review questions related to compliance with the FDPA. We agree with FTA enhancing the comprehensive review questions. However, FTA did not indicate that its proposed action will include, at a minimum, requiring the grantee to submit to FTA documentation showing proof that they meet the Federal flood insurance requirement for all structures required to have it. Therefore, we consider the recommendation open and unresolved and request that the Agency clarify in its response how the planned action will affirm that each grantee undergoing a comprehensive review carries flood insurance that complies with the FPDA.

FTA also partially concurred with recommendation 6 and stated that it already required MTA to apply the full amount of its transit-related insurance proceeds to eligible transit projects. We disagree. While FTA did approve allocation of \$465.2 million of MTA's transit-related insurance proceeds as of March 2018, FTA has not yet ensured allocation of the remaining MTA proceeds. Specifically, in March 2018, FTA only requested that MTA identify eligible projects to apply the \$119.6 million that remained unallocated from the \$584.8 million in insurance proceeds that MTA deemed transit-related. However, FTA did not provide MTA

with a deadline for fulfilling this request, and MTA has yet to do so. In addition, FTA did not require MTA to allocate an additional \$61.1 million in insurance proceeds that MTA should have deemed transit-related. Therefore, \$180.7 million of MTA's transit-related insurance proceeds remain unallocated and are not being used for the purpose intended. In our view, these are funds that could be put to better use. As a result, we consider recommendation 6 open and unresolved and request that FTA clarify how it will take action to ensure more complete use of the proceeds for eligible transit recovery projects.

FTA did not concur with recommendation 2, stating that it had already determined that all but one of the grantees in our sample were in compliance with the FDPA prior to Hurricane Sandy. However, as we reported, FTA lacks the necessary data to verify grantees' FDPA compliance and relied on the consultant's report—which did not conclusively determine that the grantees met the Federal flood insurance requirement. Given the importance of verifying that Hurricane Sandy grantees were eligible for recovery funding amounts they received and the lack of available data to do so, we consider this recommendation open and unresolved and request that the Agency provide additional information—beyond the consultant's report—demonstrating that the grantees were in compliance with the FPDA prior to Hurricane Sandy.

FTA also did not concur with recommendation 4 but agreed that grantees should expend insurance proceeds in a timely manner and proposed an alternative approach. Specifically, FTA would identify timeframes in the allocation of funding notices for each disaster that would take into account the circumstances of the disaster and FTA's knowledge of recipients' insurance policies. While FTA's commitment to ensuring insurance proceeds for future disasters are expended in a timelier manner is encouraging, FTA's approach excludes insurance proceeds grantees received for Hurricane Sandy. We consider this recommendation open and unresolved and request that the Agency provide (1) a timeframe for grantees to expend insurance proceeds they obtained for Hurricane Sandy and (2) documented guidance provided to staff for developing these timeframes and implementing them through future allocation of funding notices.

Finally, FTA did not concur with recommendation 5, stating that it is working to finalize the insurance allocations for Hurricane Sandy grantees by September 30, 2020, and disagrees that the funds from approved insurance proceeds allocations could be put to better use. We are encouraged that FTA is working to finalize allocations for the up to \$700.9 million in insurance proceeds the Hurricane Sandy grantees have received and not yet allocated. However, FTA's response does not address our concern with timely use of the transit-related insurance proceeds. At least \$982.8 million of those proceeds have yet to be spent on eligible transit recovery projects and FTA has not established a timeframe for grantees to do so. Based on FTA's response, none of these insurance proceeds would have a timeframe for expenditure, and the grantees

could retain both the proceeds and the interest earned on them in perpetuity. Therefore, in our view, these are funds that could be put to better use. We consider this recommendation open and unresolved and request that the Agency reconsider its position.

Actions Required

We consider recommendations 1, 7, and 8 resolved but open pending completion of planned actions. We request that FTA clarify its actions in response to recommendations 2, 3, 4, and 6, reconsider its position for recommendation 5, and provide its written response within 30 days of the date of this report in accordance with DOT Order 8000.1C.

Exhibit A. Scope and Methodology

We conducted this performance audit between November 2017 and August 2019 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. 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.

Our objective was to assess FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements. Specifically, we assessed FTA's oversight of Hurricane Sandy recovery grantees' compliance with requirements for (1) carrying required insurance, (2) reporting on insurance proceeds, and (3) applying insurance proceeds.

To guide our work, we identified criteria to assess FTA's oversight of its Hurricane Sandy grantees' compliance with insurance requirements. See Exhibit D for a summary of the insurance requirements and FTA's associated oversight processes. We categorized this information into three areas—carrying required insurance, reporting on insurance proceeds, and applying insurance proceeds.

FTA provided information on all Hurricane Sandy grants it awarded between 2013 and 2017. We consulted with FTA and determined that our universe was 28 grants for a total of \$5.03 billion—awarded to 14 grantees. These grants comprised our universe, because they included recovery funds, which are the only FTA Hurricane Sandy funds eligible to be supported by insurance proceeds. We divided this universe into 2 strata and selected a stratified sample of 14 grants as follows: Stratum 1 was a census of all 5 grants with award amounts greater than \$500 million, and stratum 2 was a sample of 9 out of 23 grants with award amounts less than or equal to \$500 million selected with probability proportional to the award amount. Our sample had a total award amount of \$5.01 billion, or 99.7 percent, of the \$5.03 billion in our universe and included the following 5 grantees: New York Metropolitan Transportation Authority (MTA), New Jersey Transit (NJT), New York City Department of Transportation (NYC DOT), Port Authority Trans-Hudson Corporation (PATH), and Port Authority of New York and New Jersey (PANYNJ). To validate the accuracy and completeness of the grant information in both strata, we cross-checked the data against the grant documents; no exceptions were found. As insurance proceeds are reported by grantee, and FTA reported to us that it has not amended any of its awarded grants to apply insurance proceeds, we focused on the grantees rather than individual grants.

To assess FTA's oversight related to grantees' compliance with Federal requirements to carry flood insurance, we analyzed documentation—including grantee Annual Certifications and Assurances, insurance policies, Triennial Review reports, and FTA and NYC DOT correspondence—against the criteria we identified. We also conducted interviews with the grantees in our sample, FTA, and its insurance consultant to determine the extent to which FTA conducted oversight related to the five grantees' compliance with Federal requirements to carry flood insurance.

To assess FTA's oversight related to grantees' compliance with FTA flood insurance proceeds reporting requirements, we analyzed documentation—such as grantee Insurance Proceeds Reports (IPR) from FTA's Transit Award Management System (TrAMS) and FTA's insurance consultant's Quarterly Tracking Documents and Specialized Insurance Oversight Program Reports—against the criteria we identified. In addition, we conducted interviews with FTA Regional staff and the insurance consultant regarding grantees that did not meet FTA's IPR requirements to determine the basis for their exclusion from these requirements.

Finally, to assess FTA's oversight related to grantee's compliance with applying insurance proceeds, we reviewed documentation—including the approved allocation plans, allocation-related correspondence between FTA and the grantees, and the insurance consultant's reports and allocation plan evaluations—against the criteria we identified. We also conducted interviews with FTA, the insurance consultant, and grantees in our sample with approved Allocation Plans to determine how the grantees were applying transit-related insurance proceeds and how the allocation plans aligned with FTA's policy and guidance.

Exhibit B. Organizations Visited or Contacted

Department of Transportation

Office of Audit Relations and Program Improvement, Washington, DC

Office of the Under Secretary for Policy, Washington, DC

Federal Transit Administration

Office of Budget and Policy, Washington, DC

Office of Chief Counsel, Washington, DC

Office of Program Management, Washington, DC

Office of Program Oversight, Washington, DC

Region 1, Cambridge, MA

Region 2, New York, NY

Region 3, Philadelphia, PA

Other Organizations

New York Metropolitan Transportation Authority, New York, NY

New Jersey Transit, Newark, NJ

New York City Department of Transportation, New York, NY

New York City Economic Development Corporation, New York, NY

New York City Mayor's Office of Management and Budget, New York, NY

Port Authority Trans-Hudson Corporation, Jersey City, NJ

Port Authority of New York and New Jersey, New York, NY

Albert Risk Management Consultants, Needham, MA

David Evans and Associates, Portland, OR

Exhibit C. List of Acronyms

DOT	Department of Transportation
DRAA	Disaster Relief Appropriations Act
ERP	Emergency Relief Program
FDPA	Flood Disaster Protection Act
FEMA	Federal Emergency Management Agency
FTA	Federal Transit Administration
IPR	Insurance Proceeds Report
M	Millions
MBTA	Massachusetts Bay Transportation Authority
MTA	New York Metropolitan Transportation Authority
NFIP	National Flood Insurance Program
NJT	New Jersey Transit
NYC DOT	New York City Department of Transportation
NYC EDC	New York City Economic Development Corporation
NYC OMB	New York City Mayor's Office of Management and Budget
OIG	Office of Inspector General
PANYNJ	Port Authority of New York and New Jersey
PATH	Port Authority Trans-Hudson Corporation
SEPTA	Southeastern Pennsylvania Transportation Authority
SFHA	Special Flood Hazard Area
TrAMS	Transit Award Management System

Exhibit D. Insurance Requirements for FTA Grantees and FTA’s Planned Oversight Actions

	FTA Grantee Insurance Requirement	FTA Planned Oversight Action
Carrying Insurance	Carry required flood insurance for buildings located in special flood hazard areas (100-year flood zones).	Grantees self-certify to FTA both flood insurance coverage and compliance with other insurance requirements in their Annual Certifications and Assurances. In 2014, FTA added a check of grantee flood insurance coverage in its Triennial and State Management Reviews.
	Comply with State and local insurance requirements.	
	Include insurance policies in application materials.	FTA tasked its insurance consultant with reviewing Hurricane Sandy grantees’ insurance coverage under these policies.
Reporting Insurance Proceeds	Include expected insurance proceeds in application project description.	FTA developed a Grant Application Checklist to guide FTA Regional staff review that asks whether project details are adequate/ complete and whether the extended budget description identifies received and/or anticipated insurance proceeds.
	Submit Insurance Proceeds Reports (IPR) within 30 days of reporting period that include: insurance policies, claims, and status of claims for Sandy-related capital and operating cost damage through reporting date, and—if proceeds were received—allocation and grant amendment information.	FTA’s Hurricane Sandy Disaster Relief Oversight Plan provides the grant manager responsibility for reviewing the IPR, including checks that appropriate modification(s) and amendment(s) were made, and the FTA project manager responsibility for tracking IPRs to monitor that returned funds are properly recorded.
		FTA tasked its Insurance consultant with reviewing the IPRs, including the grantee insurance allocation methodology and FTA reimbursements.
Applying Proceeds	Use public transportation equipment or facility replacement or repair insurance proceeds upon receipt to reduce FTA’s emergency relief fund participation in the project.	FTA and its insurance consultant were to track through IPRs and the IPR oversight processes.
	For insurance proceeds not directly attributable to specific assets, the grantee must work with FTA to determine the transit asset portion; these proceeds must be allocated to eligible project activities. If the proceeds were applied to a relief project for which FTA has already awarded funds, the grantee must reimburse FTA for the resulting difference in the Federal cost share.	FTA described that it would consult with the recipient to determine transit asset proceeds portion and damage share attributable to transit losses and evaluate proposed allocation and application of insurance proceeds, in consultation with its insurance consultant. Once approved, FTA described that it would document the transit loss proceeds amount and attach documentation to grant. FTA planned to monitor grantees to ensure insurance policy memo procedures are followed.

Exhibit E. NYC DOT Case Study Illustrating Weaknesses in FTA’s Flood Insurance Coverage Oversight Procedures

NYC DOT is an example that further illustrates weaknesses in FTA’s flood insurance coverage oversight procedures. FTA awarded NYC DOT a total of \$24 million for Hurricane Sandy recovery projects through two grants, even though information provided by NYC DOT and the Federal Emergency Management Agency (FEMA) indicated that it did not carry the required insurance. FTA subsequently determined that NYC DOT did not meet the flood insurance requirements for projects funded in those recovery grants and began working with the grantee to recover \$2.125 million (about 8.7 percent) of its total recovery funds.

Specifically, NYC DOT stated in its application for its first Hurricane Sandy recovery grant, which FTA awarded in June 2013, that “NYC DOT does not have insurance for any of the items in this grant for which NYC DOT is seeking FTA funds.” NYC DOT further clarified that the New York City Economic Development Corporation (NYC EDC)—a subrecipient to NYC DOT—had insurance for some of the items for which NYC EDC was seeking funding, but NYC DOT itself did not have insurance. When we asked FTA about this, an FTA official said that we misunderstood the application language and asserted that NYC DOT did not intend to communicate that it lacked insurance. Instead, the official said NYC DOT’s statement was meant to affirm that insurance proceeds were not being applied to any grant items. However, our interview with New York City officials did not support this interpretation. In that meeting, a NYC DOT official stated that they had conversations with FTA “from the very beginning” explaining that NYC DOT did not have flood insurance, and a NYC Mayor’s Office of Management and Budget (NYC OMB) official emphasized that NYC DOT did not have flood insurance at that time. No other NYC DOT or NYC OMB officials in the meeting contradicted these statements.

Prior to awarding the second grant in February 2015, an FTA official said FTA coordinated with FEMA to determine if assets in NYC DOT’s application for recovery funding—some of which were partially funded in the first grant—were located in SFHAs and, therefore, may require flood insurance coverage. FEMA responded that multiple assets in question were located in SFHAs. Despite FEMA confirming this potential need for NYC DOT to have flood insurance and NYC DOT notifying FTA that it was not insured in its first application, FTA still awarded the funds.

After the funds were awarded, FTA formally notified NYC DOT in October 2016 that six of its projects were located in an SFHA and did not have the required insurance prior to Hurricane Sandy. As a result of the non-compliance, FTA informed NYC DOT that the Federal participation in each project must be reduced by either the minimum required insurance under NFIP or the amount of the Federal investment in the property prior to the storm, whichever is less. At that time, FTA estimated that NYC DOT owed up to \$4.125 million. However, after NYC DOT provided additional information, FTA agreed to reduce the amount owed to \$2.125 million in November 2018.

In its November 2018 letter, FTA provided NYC DOT with two options to address the non-compliance. FTA instructed NYC DOT to either (1) identify additional eligible Sandy expenses that have not been previously funded by FTA to offset the amount due to FTA or (2) return funds to FTA that were drawn down (by location) beyond the insurance-adjusted eligible amounts, up to \$2.125 million, and initiate a grant amendment to align project expenses with the insurance-adjusted eligible expenses. To repay the funds, NYC DOT determined that it would de-obligate \$2.125 million from an existing grant but indicated that it expects FTA to apply those funds to a future recovery grant. However, doing so would not comply with FTA's policy, which states that Federal financial assistance can be provided for uninsured transit property that should have been insured under the FDPA only after the maximum available NFIP insurance, or the amount of the Federal investment in the property prior to the storm, whichever is less, is subtracted from the total cost to repair or rebuild. According to an FTA official, this would be accomplished by reducing the total damage assessment by that amount.

Exhibit F. Major Contributors to This Report

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Appendix. Agency Comments



U.S. Department
of Transportation
**Federal Transit
Administration**

Memorandum

Subject: INFORMATION: Management Comments – Office of
Inspector General (OIG) Draft Report – Hurricane Sandy
Insurance Proceeds

Date: **SEP 20 2019**

From: K. Jane Williams
Acting Administrator
Federal Transit Administration

Reply to
Attn. of: Chris Paul
(202) 366-6076

To: Barry DeWeese
Assistant Inspector General for Surface Transportation Audits

The Federal Transit Administration (FTA) is committed to safeguarding funds from the Disaster Relief Appropriations Act of 2013 (DRAA), which includes overseeing the insurance proceeds received by FTA's recipients. FTA's most recent damage assessment completed in August 2015 identified \$7.5 billion in eligible transit recovery expenses. FTA has allocated \$5.5 billion in DRAA funds towards these eligible expenses. DRAA grant recipients must cover the \$2 billion difference with local share and insurance proceeds.

In February 2014, FTA issued a policy statement on lump sum insurance proceeds giving recipients discretion to choose the best approach to allocate insurance proceeds to damaged transit assets. To date, FTA has approved \$578 million of insurance allocations for important projects across the region, and additional allocation requests are currently under review.

The FTA has reviewed the OIG's draft report, disagrees with several of the OIG's findings, and notes the following:

- FTA determined that the Metropolitan Transportation Authority (MTA), New Jersey Transit (NJ Transit), and the Port Authority of New York and New Jersey (PANYNJ) did have sufficient flood insurance in compliance with the Flood Disaster Prevention Act (FDPA) prior to Hurricane Sandy. As a result, no further action by FTA is necessary.
- FTA has approved insurance allocations for important projects – such as \$465 million by the MTA for the East River Tunnels, the Canarsie Tube, Clifton Shop/Yard and the Clark Street Tube; and \$130 million by NJ Transit for the Mason/Building 9 Substations – and disagrees that reversing the approval of these allocations would put Federal funding to better use.

- Where permitted by regulation and policy, FTA believes that local officials, rather than Federal officials, should choose which eligible transit recovery projects are funded with insurance proceeds and which eligible projects are funded with Federal funds.

Based on our review of the draft report, FTA concurs with recommendations 1, 7, and 8 as written. FTA plans to complete actions to implement these recommendations by August 30, 2020.

FTA partially concurs with recommendation 3 to “develop and implement procedures within FTA’s Triennial and State Management Reviews to assess the necessary data to affirm that each grantee undergoing a comprehensive review carries flood insurance that complies with the Flood Disaster Protection Act (FDPA)...[to] include, at a minimum, requiring the grantee to submit to FTA documentation showing proof of flood insurance in the aggregate amount of the maximum available National Flood Insurance Program (NFIP) insurance or the amount of the Federal investment (whichever is less) for all structures required to have it.” FTA plans to further revise the triennial review questions related to compliance with the FDPA. However, as recipients may use a variety of methods to comply with the requirements, FTA will not prescribe the specific methodology proposed by the OIG. FTA plans to complete this action by August 30, 2020.

FTA also partially concurs with recommendation 6. FTA already requires MTA to apply the full amount of its transit-related insurance proceeds to eligible transit projects. To date, FTA has approved an MTA allocation plan for \$465 million in eligible transit projects. Further, FTA denied approval of approximately \$119.6 million in allocation requests that were not for specific transit projects, and FTA has required MTA to identify eligible projects to which these proceeds should be applied. To the extent FTA determines that MTA’s transit-related insurance proceeds exceeded \$584.8 million, FTA will require those proceeds be applied to eligible transit projects as well. Additionally, FTA does not agree that implementing this recommendation would put \$180.7 million of insurance proceeds to better use. FTA submitted documentation of these actions to the OIG on June 12, 2019 and requests closure of this recommendation within 30 days of OIG’s issuance of its final report.

FTA non-concurs with recommendations 2, 4, and 5 as follows:

- FTA non-concurs with recommendation 2 to “assess the necessary data to affirm that Hurricane Sandy recovery grantees carried flood insurance that complied with the FDPA.” FTA has already determined that all but one of these recipients were in compliance with the FDPA. In the case of the one recipient not in compliance, FTA will permanently reduce the recipient’s total Hurricane Sandy damage assessment. As described in the response to recommendation 3 above, FTA proposes to revise its triennial review questions regarding compliance with the FDPA and plans to complete this action by August 30, 2020.
- FTA non-concurs with recommendation 4 to “revise FTA’s Emergency Relief Program (ERP) guidance to include a timeframe within which grantees must apply insurance proceeds to support the policy described in its ERP Final Rule.” FTA agrees with the OIG that grantees should expend insurance proceeds in a timely manner and proposes an alternative approach to identify timeframes in the allocation of funding notices for each disaster that would take into account the circumstances of each disaster and FTA’s knowledge of recipients’ insurance policies. FTA requests OIG close this recommendation within 30 days after issuing its final report.
- FTA non-concurs with recommendation 5 to “require the Hurricane Sandy Recovery grantees to apply their insurance proceeds in accordance with the timeframe established in the revised ERP guidance and in support of the policy described in its ERP Final Rule.” FTA is working to finalize the insurance

allocations for Sandy grantees and expects to complete the insurance allocations by September 30, 2020. FTA disagrees that the funds from insurance proceeds allocations that have been approved to date could be “put to better use.”

We appreciate this opportunity to comment on the draft report. Please contact Chris Paul, FTA’s Acting Audit Liaison, at (202) 366-6076 with any questions.

U.S. DOT IG Fraud & Safety Hotline

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