



**Office of Departmental Operations and
Coordination, Washington, DC**

Office of Labor Relations



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TO: Inez Banks-Dubose, Director, Office of Departmental Operations and Coordination, I

//signed//

FROM: Donna M. Hawkins, Acting Director, Inspections and Evaluations, Office of the Inspector General for Audit, Washington, DC, GAH

SUBJECT: HUD's Oversight of the Wage Restitution and Deposit Account Needs Improvement

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), final results of our review of HUD's Office of Labor Relations deposit program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8L, and requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 202-402-8482.



April 16, 2013

HUD's Oversight of the Wage Restitution and Deposit Account Needs Improvement

Highlights

Audit Report 2013-HA-0001

What We Audited and Why

We audited the Office of Labor Relations deposit account based on a request from the Acting Director of the Office Labor Relations. The Acting Director was concerned with internal controls over the deposit account. The objective of our review was to determine whether (1) controls used to administer and distribute restitution payments were adequate and (2) the correct workers received the restitution payments.

What We Recommend

We recommend that the Director of the U.S. Department of Housing and Urban Development's (HUD) Office of Departmental Operations and Coordination (1) properly dispose of the more than \$1.3 million in funds for liquidated damages, unclaimed funds, unfound depositors, and unfound workers; (2) develop a policy for workers that are found to be deceased or incarcerated and complete a monthly reconciliation; (3) remit employees' share of taxes quarterly; and (4) seek recovery of \$11,900 that Labor Relations paid to individuals other than workers.

What We Found

Labor Relations violated the Miscellaneous Receipts Act when it retained liquidated damages, which should have been transferred to the U.S. Treasury. It also indefinitely retained in its deposit account funds categorized as unclaimed funds, unfound depositors, and unfound workers. As a result, more than \$1.3 million in funds was withheld from use by various programs within the Federal Government.

Labor Relations mismanaged project deposit funds; specifically, it did not conduct a recurring reconciliation of the deposit account. It also expended \$20,000 to cover the Civic Lofts project payments, which was more than the actual balance for the project deposit. As a result, its deposit account balance did not reconcile with the balance maintained by the Office of the Chief Financial Officer and the Treasury.

Labor Relations did not (1) pay the Internal Revenue Service (IRS) 2010 taxes withheld from the employee's wage restitution in a timely manner and (2) properly address the employer's share of the taxes. As a result, it delayed paying the IRS more than \$200,000 for the 2010 employee's share of the taxes and could owe the IRS an additional \$40,000 for the employer's share of the taxes.

Labor Relations found workers that were deceased or incarcerated, and it paid wage restitution to individuals other than these workers. As a result, it paid approximately \$11,900 to individuals who were not the workers.

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BACKGROUND AND OBJECTIVE

The Director of the Office of Departmental Operations and Coordination has oversight of the Office of Labor Relations. The Director of Labor Relations oversees the staff, which is located in U.S. Department of Housing and Urban Development (HUD) headquarters and each HUD region. The Labor Relations staff is responsible for oversight, administration, and enforcement of HUD construction projects covered by the Davis-Bacon Act and other labor standards laws. Davis-Bacon requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics working on Federal Government and District of Columbia construction projects¹ that cost more than \$2,000. Labor Relations staff directly administers and enforces Davis-Bacon for Office of Housing multifamily development programs.

When contractors or employers do not meet the prevailing wage rates,² underpayments occur, and the employer is required to pay wage restitution to the affected employees. The employer must submit a list of workers who could not be found and paid. At the end of the project, the employer is required to make a deposit in the amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator³ must continue attempts to locate the unfound workers for 3 years after the completion of the project. After 3 years, HUD and the contractors are no longer required to keep payroll and other basic records for the project.

Civic Lofts project. During our review of the Chief Financial Officer deposit account files, we found documentation on a settlement that occurred between HUD and the contractor associated with the Civic Lofts (LR-06435380-DT-SW10-2) project. On May 14, 2010, the previous Director of Labor Relations wrote a memorandum for the Federal Housing Administration (FHA) comptroller about the Civic Lofts wage restitution. According to the memorandum, Civic Lofts was rehabilitated in 2004-2006 with an FHA-insured loan and was, thus, subject to Davis-Bacon prevailing wage rates. It was determined that the incorrect wage decision was used and most of the workforce was underpaid. Under the terms of the settlement agreement, HUD committed to pay \$774,237 of the wage restitution, and the owner and contractor acknowledged a liability for total back wages of \$5,028. Labor Relations requested that FHA transfer \$500,000 to the deposit account. Also, \$5,028 was deposited for the contractor's share of wage restitution owed. Thus, Labor Relations was given a total deposit of \$505,028 for Civic Lofts wage restitution.

The objective of our review was to determine whether (1) controls used to administer and distribute restitution payments were adequate and (2) the correct workers received the restitution payments.

¹ Construction includes alteration or repair, including painting and decorating, of public buildings or public works.

² Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification.

³ The contract administrator could be a HUD employee or agent for HUD (such as a city, county, or public housing agency).

RESULTS OF AUDIT

Finding 1: Labor Relations Did Not Properly Dispose of Liquidated Damages and Deposited Funds

Labor Relations violated the Miscellaneous Receipts Act when it retained liquidated damages, which should have been transferred to the U.S. Treasury. It also indefinitely retained in its deposit account funds categorized as unclaimed funds, unfound depositors, and unfound workers. This violation occurred because Labor Relations did not have procedures to deposit liquidated damages into the Treasury miscellaneous receipts account. It also did not establish a disposition plan for funds that remained after the search for workers and depositors was complete. As a result, more than \$1.3 million in funds was withheld from use by various programs within the United States Government.

Liquidated Damages

During our review, Labor Relations reported that it had more than \$46,450 in liquidated damages in its deposit account. These liquidated damages were from deposits made as far back as 2005. The Miscellaneous Receipts Act requires that these funds be provided to the Treasury. By not providing these funds to the Treasury, Labor Relations violated the Miscellaneous Receipts Act. In addition, the General Counsel advised Labor Relations to provide the liquidated damages to the Treasury.

The Miscellaneous Receipts Act requires that

An official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.

Liquidated damages are collected pursuant to the Contract Work Hours and Safety Standards Act. The Contract Hours Act sets overtime requirements with respect to most contracts covered by Davis-Bacon and other wage standards. Violations of the Contract Hours Act carry liquidated damages penalties. The liquidated damages are “to be withheld for the use and benefit of the United States Government.” Since liquidated damages are for the use of the United States Government, they should be provided to the Treasury pursuant to the Miscellaneous Receipts Act.

HUD’s Office of the General Counsel’s legal opinion, Wage Restitution and Liquidated Damage Accounts, dated June 1982, stated that liquidated damages

should be provided to the Treasury pursuant to the Miscellaneous Receipts Act. The legal opinion further stated that the General Counsel had been advised that the liquidated damages were being held in a Treasury receipt account and the funds in that account were withdrawn at the end of each fiscal year by the Treasury. General Counsel concluded that Labor Relations should continue to transfer liquidated damages to the Treasury.

The condition described above occurred because Labor Relations did not have procedures to provide the liquidated damages to the Treasury. Labor Relations Handbook 1344.1, REV-1, addresses only assessing and collecting liquidated damages.

Unclaimed Funds, Unfound Workers, and Unfound Depositors

Deposits received by Labor Relations are generally assigned to a regional Labor Relations office for processing and disposition. The regional offices are responsible for managing the funds in their active inventory until fully disbursed. In some instances, regional offices manage deposited funds until all of their resources to locate the intended recipient(s) have been exhausted. Once the regional offices have exhausted all resources to locate recipients, responsibility for the remaining deposited funds is transferred to Labor Relations headquarters.

Funds can be transferred to Labor Relations headquarters under three categories, which explain why the regional office was unable to disburse all of the deposited funds. The categories are as follows:

- Unclaimed funds - There are no records showing the purpose of the deposit or the identity of the depositor.
- Unfound workers - The workers could not be located and paid.
- Unfound depositor - A refund to the depositor is deemed appropriate, but the refund cannot be made because the depositor cannot be located.

During our review, Labor Relations reported \$1.6 million in headquarters funds under the three categories. We found Labor Relations headquarters funds that dated back as far as 1992. These funds remained in the deposit account indefinitely, although after 3 years, neither Labor Relations nor the contractor is required to retain documentation pertaining to the deposit. The following table shows the categories and the amount of funds Labor Relations reported in each category.

Fund categories	Amount of funds
Unclaimed funds	\$771,175
Unfound depositors	\$87,935
Unfound workers	\$782,021
Total	\$1,641,131

These funds remained in the deposit account because Labor Relations had not established a disposition plan for the funds that remained after the search for workers and depositors was complete. Funds deposited for wage restitution are held for payment to underpaid workers, not for use by the United States Government. However, if Labor Relations no longer has documentation to support the proper disposition of the funds, because they are unclaimed funds or the record retention period has passed, Labor Relations should not hold onto the funds indefinitely, and the funds should be made available for use by the United States Government. Further, the General Counsel’s legal opinion determined that if wage restitution funds were to be used by the United States Government, they would have to be provided to the Treasury pursuant to the Miscellaneous Receipts Act. Of the more than \$1.6 million remaining under the three fund categories, we determined that \$380,244 should not yet be returned to the Treasury since Labor Relations was still within the time allowed to search for workers or return funds to the depositors. Therefore, \$1,260,887 needs to be returned to Treasury under the three fund categories.

Conclusion

Labor Relations violated the Miscellaneous Receipts Act by not providing \$46,450 in liquidated damages to the Treasury. It also did not establish a disposition plan for \$1,260,887 in funds that remained after the search for depositors and workers was complete. As a result, Labor Relations had \$1,307,337 in funds for which the proper disposition could not be determined or the depositor or workers could not be located.

Recommendations

We recommend that the Director of HUD’s Office of Departmental Operations and Coordination

- 1A. In accordance with the Office of the General Counsel’s legal opinion, properly dispose of the \$1,260,887 million in funds categorized as liquidated damages, unclaimed funds, unfound depositors, and unfound workers.

- 1B. Establish policies and procedures to transfer all liquidated damages to the Treasury, at a minimum, annually.
- 1C. Develop and establish a policy for a disposition plan for funds that remain after the timeframe and the process for finding workers has been completed.

Finding 2: Labor Relations Mismanaged Project Deposit Funds

Labor Relations mismanaged project deposit funds; specifically, it did not conduct a recurring reconciliation of the deposit account, and it expended more funds to cover the Civic Lofts payments than the actual balance for the project deposit. Also, Labor Relations' tracking system, LR2000, could not manage the deposit account. This condition occurred because the senior policy advisor had control of most of the deposit account functions with little oversight from management and believed that a recurring reconciliation was being performed. Additionally, the LR2000 system's deposit module did not separately account for taxes and wage restitution. As a result, Labor Relations did not know the project deposit balances that made up the overall deposit account balance. Also, approximately \$20,000 in unidentified project deposit funds was used to pay for Civic Lofts expenses.

Recurring Reconciliation

Labor Relations did not perform an ongoing reconciliation, nor did it have guidance to ensure that its deposit balance reconciled with the Office of the Chief Financial Officer's balance. Labor Relations attempted to perform reconciliation; however, its staff did not have the accounting knowledge to adequately complete a reconciliation.

The advisor controlled most of the deposit account functions, to include the CFO file verification function⁴ in LR2000's deposit module.⁵ The advisor used the CFO verification function weekly to match transactions within the deposit module to transactions reported on the Office of the Chief Financial Officer's Datamart⁶ report.

For the CFO file verification function to be considered a reconciliation, Labor Relations would need to have controls in place to ensure that the records being compared were in agreement. These controls would include comparing balances to ensure that they are equal, ensuring that all of the transactions are matched, and resolving any discrepancies.

The CFO verification function did not have the necessary controls in place. It did not provide a balance for the deposit module; therefore, it could not ensure that its

⁴ According to the LR2000 user manual, this function is used to reconcile LR2000 deposit accounts module records with HUDCAPS (HUD Central Accounting Processing System) records. However, through our analysis, it was evident that the CFO file verification function did not reconcile balances with HUDCAPS or the Office of the Chief Financial Officer. The CFO file verification function is the title of the function as specified by the Office of Labor Relations.

⁵ LR2000 is the Labor Relations system that records, tracks, updates, and generates reports relative to the implementation of the Davis-Bacon Act in HUD and for HUD projects. The deposit accounts module processes and tracks deposits from contractors, refunds (disbursements) to contractors, and vouchers (disbursements) to employees.

⁶ The Datamart report is the deposit account transaction report sent from the Chief Financial Officer to Labor Relations weekly.

balance agreed with the Datamart report. Additionally, it did not have controls in place to ensure that all transactions were matched. An example of such a control would be not allowing a payment to be made from a deposit recorded in the deposit module before the deposit has been verified through the CFO verification function.

The condition described above occurred because the advisor did not have the knowledge to perform a reconciliation and mistakenly believed that by completing the CFO verification function, she was performing a reconciliation. This problem persisted because the advisor was given autonomy over the CFO verification function and did not receive oversight or guidance from management.

Civic Lofts Project

In May 2010, FHA deposited \$500,000 of the almost \$800,000 settlement into the Labor Relations deposit account. An additional \$5,000 was deposited by the contractor from Civic Lofts, bringing the total balance to \$505,000. However, Labor Relations expended \$525,000 to pay Civic Lofts' employees wage restitution and pay the Internal Revenue Service (IRS) withheld taxes. The \$20,000 difference (\$525,000 - \$505,000) came from another unknown project deposit.

This mismanagement of project deposit funds was significant because Labor Relations did not realize that it had paid more funds than were available for Civic Lofts or which funds were erroneously disbursed. Because the taxes were not accounted for in the deposit module, the Civic Lofts balance appeared to be higher than the actual balance.

The condition described above occurred because the deposit module could not segregate taxes from wage restitution funds; instead, the funds were comingled. Because funds were not properly segregated, the entire balances appeared to have been available for wage restitution.

LR2000 Enhancements

In October 2011, Labor Relations established a steering committee for the sole purpose of identifying the shortcomings of the LR2000⁷ system. The steering committee recommended 47 enhancements to LR2000. However, 27 of the 47 enhancements⁸ could not be completed within the scope of the contract. Our review disclosed problems in LR2000 with the deposit module and the CFO

⁷ We did not audit the LR2000 system deposit module or the CFO verification function.

⁸ There were 16 enhancements that could not be completed and 11 for which it needed to be determined whether they could be completed. We decided to group them together because no more changes were being made to LR2000 or the deposit module, only maintenance.

verification function. Most significantly, the system was unable to perform basic functions, such as identifying transactions for a specific timeframe or date, providing total balances for all deposits remaining in the deposit account, separately identifying wage restitution owed to workers from taxes that were withheld on the individual projects, and interfacing with other HUD systems. Additionally, the LR2000 deposit module was unable to provide ad hoc reports to Labor Relations staff detailing only the specific information needed for analysis. This type of reporting might prove helpful in that it would allow the staff to customize the information provided on reports specific to project balances, vouchers paid, deposits received, or transactions that occurred within a specific period.

Reportedly, the major inhibitor to implementing the enhancements of LR2000 was funding. Labor Relations had requested funding from the Chief Information Officer to improve the system; however, LR2000 had been overlooked due to other departmental priorities. Most recently, the contract awarded to make LR2000 a Web-based system was not fully funded. The contract was funded only to provide maintenance to the system.

Labor Relations will continue to encounter difficulties when attempting reconciliation of its deposit account unless LR2000 is adequately updated.

Conclusion

Labor Relations' balance did not reconcile with the Office of the Chief Financial Officer's balance, and Labor Relations did not know which project deposits accounted for the total deposit account balance. Also, approximately \$20,000 in unidentified project deposit funds was used to pay for Civic Lofts expenses. This condition occurred because the advisor had too much control of the deposit module and management did not oversee the advisor's actions. Labor Relations attempted a reconciliation from 2006 to 2012; however, the reconciliation was not adequate, nor did it equal the Office of the Chief Financial Officer's balance. In addition, the deposit module was unable to support Labor Relations in basic functions that would allow for timely and ongoing reconciliations of individual project balances as well as an overall recurring reconciliation of the deposit account.

Recommendations

We recommend that the Director of HUD's Office of Departmental Operations and Coordination

- 2A. Complete a reconciliation of the deposit account balance with the assistance of an individual with the required skill set. Future reconciliations should be completed by the same individual.

- 2B. Establish a policy to reconcile LR2000's transactions and balance for the deposit account at least monthly.
- 2C. Work with the Office of the Chief Information Officer to improve the deposit module's reporting capabilities so that Labor Relations staff is able to report and analyze the deposit account transactions and taxes or replace the system.

Finding 3: Labor Relations Did Not Pay Taxes in a Timely Manner

Labor Relations has the authority to make wage restitution payments and prepare and issue IRS Forms W-2 for those payments. Labor Relations did not (1) pay the IRS 2010 taxes withheld from the employee's wage restitution in a timely manner and (2) properly address the employer's share of the taxes. This condition occurred because Labor Relations did not follow Labor Relations Handbook 1344.1. As a result, it delayed paying the IRS more than \$200,000 for the 2010 employee's share of the taxes and could owe the IRS an additional \$40,000 for the employer's share of the taxes.

Taxes Not Paid in a Timely Manner

In 2010, Labor Relations withheld more than \$200,000 in taxes from wage restitution payments. There was no evidence that this practice had been followed in the past. However, Labor Relations Handbook 1344.1, REV-1, chapter 3, paragraph c, states, "... a check payable to the Internal Revenue Service for the total of the amount of the wages withheld from the employees who have received payment shall be prepared." Before 2010, Labor Relations' practice was to pay the workers the gross amount and send workers the IRS Forms 1099 for tax purposes. However, Labor Relations policy states that the net amount of wages found due must be computed and IRS Forms W-2 should be prepared and mailed to the employees.

Labor Relations sent the 2010 IRS Forms W-2 to the IRS; however, it had not paid the taxes withheld. When asked why the taxes were not paid, the Acting Director of Labor Relations reported not knowing how the taxes should be paid, how much was owed, and whether Labor Relations should return to using the IRS Forms 1099 for tax purposes.

In September 2011, representatives from Labor Relations, the Office of the General Counsel, and the Office of the Chief Financial Officer met with the IRS. During this meeting, Labor Relations was told to pay the taxes that were withheld. However, the Labor Relations Acting Director did not pay the taxes until June 2012. The Labor Relations Acting Director paid the employee's share of the taxes, which totaled approximately \$200,000, to the IRS late because Labor Relations was waiting for the General Counsel to request forgiveness from the IRS for the employer's share of the taxes. Although, Labor Relations did not get a response from the General Counsel regarding the employer's share, the Acting Director decided to pay the employee's share of the taxes. Labor Relations was awaiting a response from the General Counsel regarding the employer's share of the taxes.

Employer's Share of Taxes

In May 2010, FHA entered into a settlement with the contractors on the Civic Lofts project to pay back wages to workers. HUD used the wrong wage determination for the workers, and most of the workers were underpaid. As a result of the settlement, HUD acted as the employer and, thus, became responsible for paying back wages due.

Labor Relations did not properly address the employer's share of the taxes. In the settlement, Labor Relations calculated that approximately \$774,000 would be paid to the workers for wage restitution. Although Labor Relations withheld taxes for the employee's share of the taxes, it did not account for sufficient funds to pay the employer's share of the taxes.

Labor Relations Handbook 1344.1, REV-1, chapter 3, paragraph c, provides that IRS Form 941,⁹ Employer's Quarterly Federal Tax Return, should be prepared. In 2010, the IRS Form 941 instructions stated, "Federal law also requires you [employer] to pay any liability for the employer's portion of the social security and Medicare taxes." In the instance in which HUD entered into the settlement for Civic Lofts, it was acting as the employer; thus, HUD is responsible for the employer's share of the taxes. Based on the wage restitution that was paid for the Civic Lofts project workers, approximately \$40,000 should have been paid for the employer's share of the taxes.

The condition described above occurred because Labor Relations did not follow the Handbook 1344.1, REV-1, requirement to prepare the IRS Form 941. Labor Relations should have been paying taxes quarterly, to include the employer's and employee's share of the taxes. Before 2010, Labor Relations did not pay taxes to the IRS.

Conclusion

Labor Relations did not pay the taxes withheld from 2010 in a timely manner, nor did it know whether it should pay the employer's share of taxes. As a result, it paid the IRS more than \$200,000 for the 2010 withheld taxes late. Since Labor Relations did not know whether it should pay the employer's share of the taxes, it could owe an additional \$40,000¹⁰ to the IRS.

Recommendations

We recommend that the Director of HUD's Office of Departmental Operations and Coordination

⁹ IRS Form 941 is the tax return used to pay the employer's and the employee's share of the taxes on gross wages earned.

¹⁰ The calculation for the \$40,000 is explained in the Scope and Methodology section.

- 3A. Remit the employee's share of the taxes quarterly according to the IRS Form 941 instructions.
- 3B. Coordinate with the Office of the General Counsel to determine whether Labor Relations is required to pay the \$40,000 employer's share of the taxes for the Civic Lofts project and if so, determine how and when the employer's share of the taxes will be paid.
- 3C. Determine a process for paying the employer's share of the taxes if, in the future, HUD is found to be responsible for paying back wages to workers.

Finding 4: Wage Restitution Was Paid to Individuals Other Than the Worker

Labor Relations paid wage restitution to individuals other than the workers. This condition occurred because Labor Relations management did not oversee the senior policy advisor who made the decisions to pay the individuals and the Labor Relations Handbook had not been updated to allow payments on behalf of deceased or incarcerated workers. As a result, Labor Relations paid approximately \$11,900 in wage restitution against HUD policy, and these individuals may not have been the legal recipients.

Specifically, we found four workers who were sent IRS Forms W-2, whose relatives claimed that they were entitled to wage restitution. Three of these workers were deceased, and one had no bank account. We found one more worker, who was incarcerated, through a discussion with the advisor. Labor Relations Handbook 1344.1, REV-1, does not address making wage restitution payments to anyone except the workers themselves.

Deceased Workers

We found three deceased workers whose wage restitution payments were given to individuals claiming to be relatives. Two of the individuals claiming to be the wives of the deceased males received a total of \$1,086 in wage restitution. The third individual, who provided a death certificate stating that the worker was married, with the individual's name on the death certificate, was paid \$499. The advisor accepted copies of the death certificates as evidence to provide the wage restitution to these individuals. Labor Relations has no policy that allows individuals other than the worker to be paid.

Incarcerated Worker

Not only did the advisor pay wage restitution to individuals claiming to be the deceased workers' relatives, the advisor also made a payment to an incarcerated worker's sibling for approximately \$8,604 in wage restitution.

The advisor issued a voucher for payment, and the individual was paid based on a written statement signed by the incarcerated worker. The statement consisted of one sentence, which stated, "I, [worker name], authorize H.U.D. to make my restitution check payable to my sister [her name]." There was no additional identification or documentation provided to verify the identity of the sister, nor does the Labor Relations Handbook allow for anyone other than the worker to be paid wage restitution.

No Bank Account

The advisor made a direct deposit payment of approximately \$1,708 to an underpaid worker's mother's bank account based on a telephone conversation between the worker and the advisor. According to the advisor, the worker did not have a bank account and requested that the payment be deposited into the worker's mother's bank account. If the worker did not have a bank account, Labor Relations should have sent the worker a check.

The payments occurred because Labor Relations management did not oversee the advisor's decisions, and these issues were not discovered until we reviewed the payment vouchers and the IRS Forms W-2. Labor Relations did not have a policy for determining what should be done if a worker was found to be deceased or incarcerated. Regarding the worker that did not have a bank account, Labor Relations could have sent the worker a check.

Conclusion

The advisor made wage restitution payments to individuals other than the workers. As a result, Labor Relations paid approximately \$11,900 in wage restitution against Labor Relations Handbook guidance, and the recipients may not have had a legal claim to these funds. Labor Relations should follow the State laws regarding the recipient of the deceased and incarcerated workers' wage restitution.

Recommendations

We recommend that the Director of HUD's Office of Departmental Operations and Coordination

- 4A. Update Handbook 1344.1 to include procedures for identifying and verifying next of kin eligible to receive restitution payments and outlining circumstances (death, incarceration, or hospitalization) in which the next of kin can be paid.
- 4B. Based on the policy developed in recommendation 4A, determine whether the individuals who received the wage restitution were legitimately entitled to that restitution and when applicable, seek recovery of any of the \$10,189 found to be unauthorized funds.
- 4C. Verify whether the worker received the \$1,708 in restitution payments and if not, seek recovery of the payment.

SCOPE AND METHODOLOGY

We performed our audit from October 2011 through October 2012. The audit was suspended from December 2011 through April 2012 due to an Office of Inspector General (OIG), Office of Investigation, review. Our audit generally covered the period October 2006 through September 2011.

To accomplish our objective, we

- Reviewed applicable HUD guidance; specifically, HUD's Federal Labor Standards Compliance Handbook 1344.1, REV-1. We also reviewed Making Davis-Bacon Work - A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects and A Practical Guide for States, Indian Tribes, and Local Agencies; the LR2000 manual; and other applicable guidance.
- Reviewed IRS guidance, such as Publication 15 (Circular E), Publication 559, Instructions for IRS Form 941, and IRS Form 941.
- Conducted interviews with Labor Relations staff members to determine their roles and responsibilities regarding wage determination and the deposit account functions.
- Conducted interviews with Office of the Chief Financial Officer staff members to determine their roles and responsibilities regarding Labor Relations' deposit account.
- Conducted interviews with IRS staff members to determine Labor Relations' tax liabilities, reporting requirements, and payment processes.
- Conducted interviews with the Office of the General Council's staff members to determine HUD's tax liability and proper disposition of liquidated damages and wage restitution funds.
- Reviewed HUD's settlement agreement with Civic Lofts, LLC; Gibbs Construction; and Capmark Bank.
- Reviewed Labor Relations' and the Office of the Chief Financial Officer's voucher documentation for 30 payments.
- Reviewed the Final Report of the Office of Labor Relations' Reconciliation of the Office's Deposit Account and other documentation related to the report.¹¹

To achieve our objective, we relied in part on records maintained by the senior policy advisor for liquidated damages, unclaimed funds, unfound workers, and unfound depositors. We were unable to test the reliability of these records due to a lack of documentation. We also relied on computer data from the LR2000 system; this system was not audited. We used the data to validate payments reported on IRS Forms W-2 and by the Office of the Chief Financial Officer. Although, we were not able to determine the reliability of the data, our objective was to illustrate the issue of having funds from liquidated damages, unclaimed funds, etc., that were not being properly disposed of.

¹¹ We could not conduct a reconciliation due to the lack of documentation needed to verify transactions in the LR2000 system against the Office of the Chief Financial Officer's transactions report or Datamart.

We reviewed 274 IRS Forms W-2 for wage restitution payments made in 2010. As we were reviewing the Office of the Chief Financial Officer's voucher to verify payments, we noticed payments made to individuals; however, there were no IRS Forms W-2 for these individuals. When we inquired why these individuals were paid, we learned that the advisor paid them because the workers themselves were either deceased or had no bank account. The advisor showed us a payment made to an incarcerated worker's sister.

We determined that HUD owed \$40,169 for the employer's share of taxes by calculating the percentage of payments made in 2010 that were for Civic Lofts. In 2010, Labor Relations made \$625,336 in wage restitution payments, and \$525,834 of that amount was for Civic Lofts. Civic Lofts accounted for 84 percent of the wage payments ($\$525,834/\$625,336$).

We determined that the employer's share of taxes for the 2010 wage restitution payments was \$47,820. We calculated the employer's share of the wage restitution payments based on the 2010 tax rate for Social Security tax (6.2 percent) and Medicare tax (1.45 percent) for each employee. Civic Lofts' portion of those taxes was \$40,169 ($\$47,820 * .84$).

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

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Controls over program operations
- Controls over the relevance and reliability of information
- Controls over compliance with laws and regulations

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies:

- Labor Relations did not have adequate controls to transfer the liquidated damages to the Treasury; instead, the funds remained in the HUD deposit account indefinitely (finding 1).
- Labor Relations did not have adequate controls to conduct a recurring reconciliation (finding 2).

- Labor Relations did not have adequate controls to reconcile the LR2000 balance with the Office of the Chief Financial Officer's balance (finding 2).
- Labor Relations did not have adequate controls to pay withheld 2010 taxes until 2012 (finding 3).
- Labor Relations did not have adequate controls and paid individuals who were not the workers who earned the wage restitution (finding 4).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Unsupported 1/	Funds to be put to better use 2/
1A		\$1,307,337
4B	\$10,189	
4C	\$1,708	
TOTAL	\$11,897	\$1,307,337


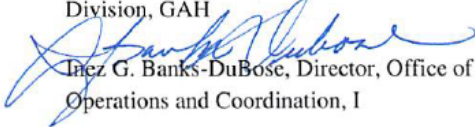
- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an OIG recommendation is implemented. In accordance with the Office of General Counsel's legal opinion, the more than \$1.3 million in funds categorized as liquidated damages, unclaimed funds, unfound depositors, and unfound workers should be returned to the U.S. Treasury to be available for use by the United States Government.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

	U. S. Department of Housing and Urban Development Washington, D.C. 20410-0003
OFFICE OF DEPARTMENTAL OPERATIONS AND COORDINATION	
March 12, 2013	
MEMORANDUM FOR:	Donna M. Hawkins, Acting Director, Inspections and Evaluations Division, GAH
FROM:	 Inez G. Banks-DuBoise, Director, Office of Departmental Operations and Coordination, I
SUBJECT:	Response to the Draft Report of HUD's Oversight of the Wage Restitution and Deposit Account Needs Improvement (2013-HA-XXXX).
<p>Thank you for providing an opportunity for us to review and comment on the draft audit regarding Oversight of the Wage Restitution and Deposit Account. Attached are the responses and supporting documentation from the Office of Departmental Operations and Coordination (ODOC) regarding the above draft report.</p> <p>Response to Finding 1: Labor Relations Did Not Properly Dispose of Liquidated Damages and Deposited</p> <p>1A. In accordance with the Office of the General Counsel's legal opinion, properly dispose of the almost \$1.7 million in funds categorized as liquidated damages, unclaimed funds, unfound depositors, and unfound workers.</p> <p>The Office of Labor Relations has returned \$1,307,336.93 to the US Treasury of the \$1,687,581.00 funds categorized as liquidated damages, unclaimed funds, unfound depositors, and unfound workers. As of February 1, 2013 there was \$380,244.07 remaining in the OLR deposit accounts.</p> <p>Of the \$1,307,336.93 returned \$277,490.83 were 941 payments made for 2010 and 2011 wage restitution disbursements to underpaid workers on projects covered by Davis Bacon and Related Acts. OLR paid the employees' share of the federal taxes, social security taxes and Medicare taxes withheld.</p> <p>We have attached the transmittals from the Office of the Chief Financial Officer (OCFO) documenting the payments.</p>	

Comment 1

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Auditee Comments

The chart below shows the specific amount of funds returned by category.

Transfer of Funds to Miscellaneous Receipts

As of February 1, 2013

Fund Categories	Amount of Funds requested to be transferred to Miscellaneous Receipts	Actual Funds Transferred
Liquidated Damages	\$46,450.00	\$47,900.00 ¹
HQ Unclaimed Funds	\$771,175.00	\$598,321.09 ²
Unfound Depositors	\$87,935.00	\$68,778.82 ³
Unfound Workers	\$782,021.00	\$592,337.02 ⁴
TOTAL	\$1,687,581.00	\$1,307,336.93⁵

Also attached is the back-up documentation that supports the above actions, including copies of documents forwarded to the Office of the Chief Financial Officer (OCFO) Accounting Division to transfer funds to the US Treasury.

Comment 2

1B. Establish policies and procedures to transfer all liquidated damages to the Treasury, at a minimum, annually.

The Office of Labor Relations is in the process of updating Handbook 1344.1 Rev 2 page 5-21 to reflect the requirement to liquidated damages to the Treasury on a semi-annual basis. The new wording for Chapter 5 Section 5-12 C Implementing the final Order sub (3) reads:

¹ OLR research uncovered an additional \$1450.00 that met the time frame for disposition of liquidated damages to the US Treasury.

² Although the OLR Handbook 1344.1 Rev2 indicates that funds should be remitted to the US Treasury in accordance with the Miscellaneous Receipts Act, OLR believes that releasing funds from 2006 back would allow us to accurately ensure that as many as possible all potential claimants for 2007 through 2009 had opportunity to seek restitution. Funds covering these dates will be remitted to the US Treasury at the end of this fiscal year.

³ The amount of \$19,156.18 represents the funding to be held according to the OLR Handbook for the period 2009, 2010, 2011, and 2012.

⁴ The figure represents the estimated amount of restitution due to workers on projects covered for the period 2007 through 2010.

⁵ There was \$380,244.07 remaining in the HUD OLR deposit accounts as of February 1, 2013.

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Auditee Comments

Comment 3

“In accordance with the Miscellaneous Receipts Act, OLR shall transfer semi-annually to the US Treasury liquidated damages assessed to contractors during the previous six-month period.”

This change, along with four others, was transmitted to the HUD Office of Administration to be put in Departmental Clearance and Record Approval for review by all program areas.

See attachment regarding changes to the Handbook 1341. Rev. 2.

1C. Develop and establish a policy for a disposition plan for funds that remain after the timeframe and the process for finding workers has been completed.

The Office of Departmental Operations and Coordination (ODOC) and Office of Labor Relations (OLR) are collaborating with the Office of the Chief Financial Officer (OCFO) to improve the procedures for the transfer of liquidated damages and other funds to the US Treasury. We will follow the Handbook and ensure that all funds in all categories are returned to the US Treasury three (3) years after the completion of the project. Even if all workers owed wage restitution are not found, OLR will remit to the Treasury as outlined in the Handbook.

See Handbook changes for 9-16 entitled “Disposing of deposit accounts” on page 9-11 we added (subpart F) that reads:

Reconciliation of Deposit Accounts. The primary objective in disposing of deposit accounts is to complete all follow-up actions necessary to achieve resolution of any outstanding issues. Therefore HQLR must reconcile monthly following procedures established by OCFO, all deposit accounts.

Response to Finding 2: Labor Relations Mismanaged Project Deposit Funds

Comment 4

2A. Complete a reconciliation of the deposit account balance with the assistance of an individual with the requisite skill set.

ODOC/OLR is working with the Accounting Division to develop a service level agreement (SLA) whereby OCFO will perform the reconciliation on a monthly basis as OLR does not have staff with the requisite accounting skill set and does not currently have the hiring authority or funds available to hire staff with the requisite skill set.

We expect to complete this process by March 31, 2013.

Comment 5

2B. Establish a policy to reconcile LR2000’s transactions and a balance for the deposit account at least monthly.

In addition to the SLA implementation, ODOC/OLR wishes to require the integration of LR2000, with HUDCAPS and the generation of an exception report to assist in the reconciliation. Unfortunately we are unable to implement this requirement until the

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Auditee Comments

Comment 6

redevelopment and redesign of the LR2000 system. As it is currently configured it is unable to be integrated with HUDCAPS. Therefore we must await the new proposed HUD HEMS system.

2C. Work with the Office of the Chief Information Officer to improve the deposit module's reporting capabilities so that Labor Relations staff is able to report and analyze the deposit account transactions and taxes or replace the system.

The Office of the Chief Information Officer (OCIO) has not provided development funds to the LR2000 system in seven (7) years. For the remainder of FY 2013, the current contract has in fact been de-scoped for maintenance only.

However, ODOC has agreed to become part of a new Department-wide Enforcement system that will cover the work for OLR, the Office of Healthy Homes and Lead Hazard Control (OHHLHC), the Office of Fair Housing and Equal Opportunity (FHEO), and the Office of General Counsel. The new system is to be called HEMS and is expected to be operational by July 2013.

See below for some background on the status of the system as provided by OGC, which is the segment sponsor:

1. **IMPACT STATEMENTS based on "FY2014 Passback level":**

The projects falling under this investment support the investigation of complaints filed with or referred to FHEO, the Department of Enforcement Center (DEC), OHHLHC, and ODOC. By FY 2015, the Offices plan to consolidate the various systems that track, monitor and support Departmental investigations to find efficiencies and cost-savings. There are not enough dollars requested in FY2014 to continue operations and maintenance support for ECIS, DECMS, ECPCIS, LETS, ODOC/OLR or HEMS.

There is uncertainty that all applications that support the HITS contract will be transitioned to HUD Net in FY2014. In the past, the program office along with their contractors conducted application testing to ensure all applications are operational. After transitioning to HITS, we spent several months because the LDP module of ECPCIS was unavailable and needed to be rebooted daily. After several months working with the infrastructure team this problem was resolved, but caused unavailability problems for our end-users. Moving applications is a high risk and require all hands-on-deck to resolve these technical issues.

The Regulatory, Legislative, and Enforcement (RLE) Segment will use the \$834,997 of requested DME to complete the consolidation of six HUD enforcement systems that will be started in FY13. Once completed, this will result in the retirement of LR2000, LETS, TEAPOTS, DECMS, ECIS, and ECPCIS.

The RLE Segment will use the \$4,487,037 of requested O&M to maintain the E-Discovery Management System, OGC Enterprise Tracking System and provide end-of-life maintenance for the above listed six systems through their retirement. End-of-life maintenance efforts should conclude in FY14.

In light of the continued effort to consolidate programs and reduce redundant data storage, several additional HUD programs have shown interest, or are expected to show, interest in migrating to the new consolidated enforcement system. Reducing support for further development and maintenance of this consolidated program will result in continuing redundancy and less collaboration, which may result in contacts from various programs to the same individual or entity, which imposes a greater burden on responding to those contacts.

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Auditee Comments

Other possible risks associated with operations and maintenance reductions are as follows:

- OGC Enforcement Center Information System (ECIS) – ECIS is a key collaboration, electronic work product creation, record retention, and search tool, utilized by the Department of Enforcement Center (DEC) to efficiently and expeditiously process enforcement cases. The proposed funding reductions may result in the DEC will not be able to process enforcement cases and this could result in loss of financial recoveries possibly exceeding \$21 million annually for the Department. Enforcement cases and check payments of penalties and program remedies would be processed manually. The DEC would issue significantly less notices and letters to owners. As a result of the inefficiencies, the DEC would process fewer multifamily housing projects for financial and physical non-compliances. Supervisory oversight of DEC work done in evaluating PIH and CPD grant recipients' compliance with HUD funding would also be impacted adversely. As the DEC's FTE funding has decreased, the DEC has relied on this system for workflow efficiencies to address the loss of staff hours.
- OGC Departmental Enforcement Center Management System (DECMS) - The proposed funding reductions will result in the FHA insurance funds and PIH funding would be placed at an unacceptable level of risk. As FTE funding for the DEC has significantly decreased, the importance of being able to nimble adjust the workflow has become more critical. Reducing operations and maintenance for DECMS would mean that the DEC would lose its current capacity to report on its activities, create documents in electronic format for subsequent shared access, and monitor staff effectiveness. The DEC would not be able to produce reports to management on recoveries repaid to projects to ensure greater financial stability and physical quality of HUD insured and assisted rental housing, as part of Strategic Goal 2 initiatives. As a result of the inefficiencies, the DEC would process fewer multifamily housing projects for financial and physical non-compliance reviews and would not be able to track any work done in evaluating PIH and CPD grant recipients' compliance with HUD funding.
- Enforcement Center Program Compliance Integrated System (ECPCIS) - ECPCIS is a Web-based application to facilitate the issuance, tracking, monitoring and oversight of program exclusion cases. The proposed funding reductions put the DEC at risk of processing fewer enforcement cases referred by the Inspector General (IG) and not having a vehicle to publicize the participants excluded from HUD programs. The Department would not be able to adequately track and report on the suspension, debarment and LDP activities taking place and would thereby weaken the DEC's ability to support HUD's strategic goals. This could potentially leave the Department vulnerable to the participation of individuals and entities that present an unreasonable business risk.
- OHHLHC Lead Enforcement Tracking System (LETS) – The Office of Healthy Homes and Lead Hazard Control (OHHLHC), Lead Programs Enforcement Division (LPED) is responsible for oversight and enforcement activities to eliminate lead-based paint hazards in America's privately-owned and low-income housing and to provide leadership for the nation in addressing other housing-related health hazards that threaten vulnerable residents. The proposed funding reductions put the Department at risk of a decline of the number of investigations, less-adequate documentation for prosecution of cases, and ineffective monitoring of consent decrees because staff will spend more time maintaining the system.
- ODOC/OLR – – The Office of Departmental Operations and Coordination is responsible for monitoring and enforcement Davis Bacon wage rates for all HUD assisted projects (multifamily, PHA development, hospitals, nursing homes, CPD funded housing and other construction) that contain \$2000 or more in HUD funding. If funding is not provided, the Office of Labor Relations (OLR) would not be able to quickly produce reports to management and generate vouchers for deposits from prime contractors and payments to underpaid workers and 941 payments to the IRS; generate W-2s to workers who receive restitution

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Auditee Comments

payments; generate a semi-annual report to the US Department of Labor (DOL); interface with electronic payroll review application; interface with CFO systems, contain monitoring and review modules to capture outcomes-generate monitoring letters and reports, and manage corrective action and store data by FHA, CPD, and PIH project number. In fact, under law, no HUD funded project can go to closing without OLR sign off.

E-Discovery Management System -- E-Discovery funding is necessary to protect the Department's interest in effective and successful litigation. Without E-Discovery funding, HUD cannot comply with its court mandated discovery requirements in both defensive and affirmative litigation cases throughout the Department. A lack of E-Discovery funding would severely impact HUD's litigation efforts across all program offices Department-wide, including the Office of Housing, Community Planning and Development, and Ginnie Mae. The Department may incur costly sanctions for failing to preserve and/or produce electronically stored information (ESI), paper records, and other evidence as required by the Federal Rules of Civil Procedure.

If the Department fails to comply with its E-Discovery obligations, a court may issue a multitude of sanctions against the Secretary and the Department that are monetary in nature or impact the outcome of an entire case, including: dismissal of all claims or defenses in a case; adverse jury instructions (jury is instructed that the missing data would have benefited the opposing party); monetary sanctions; evidence preclusion (certain pieces of evidence are excluded from trial); witness preclusion (certain witnesses are not allowed to testify); reducing the burden of proof in a case (instead of requiring clear and convincing evidence only a preponderance of evidence would be required by the opposing side); removal of jury challenges (jury challenges are used by attorneys to prevent certain jury pool members from being on the jury); and additional access to computer systems (opposing side would have the opportunity to search additional systems originally not requested). Court ordered sanctions are increasingly being ordered and have ranged up to multi-millions of dollars. For example, see, *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372 (6th Cir. 2008)(court dismissed action and ordered monetary sanctions for bad faith involving failure to preserve and produce ESI; \$3,430,983.69 plus attorney's fees and costs awarded to plaintiff Grange and \$5,400,000.00 awarded to plaintiff Allstate in connection with default judgment); *In re Fannie Mae Securities Litigation*, 2009 WL 21528 (D.C. Cir. January 6, 2009)(sanctions upheld against the Office of Federal Housing Enterprise Oversight (OFHEO) for failing to comply with defendant's discovery deadline for ESI and other records).

If the automated E-Discovery tool is not available, funding for E-Discovery requirements will still need to be available and the Department will be forced to return to the costly process of paying for individual data retrievals and keyword searches.

Office of General Counsel – Enterprise Tracking System (OGC-ETS) - Elimination of ETS would severely impact OGC's ability to meet statutory and regulatory reporting requirements. The Regulations Information System (RIS), which is part of ETS, facilitates the report generation required for transmission of semiannual data to OMB for review and publication in the Federal Register. The submission to OMB is required by the Regulatory Flexibility Act (5 U.S.C. §§ 601-612). The Act requires each agency to publish semiannually a regulatory agenda of rules expected to be proposed or promulgated. Executive Order 12866 (Regulatory Planning and Review) also requires the issuance of a semiannual agenda of regulations. In addition, OGC will not be able to comply with 31 U.S.C. § 3515, which requires the Secretary to annually prepare and submit to Congress and the Director of the Office of Management and Budget an audited financial statement, in part, of the financial claims against the Department. Not funding ETS-LAWS will impact OGC's ability to meet reporting requirements. It is imperative that OGC have a workload tracking system.

2. **KEY ISSUES:** Please provide bulleted comments for the items you would like the Secretary to consider for appeal and provide a brief justification.

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- There are not enough dollars in FY2014 IT Passback to complete the planned consolidation HUD Enforcement Systems (HEMS).
- If the planned consolidation does not occur in FY13, there are not enough dollars in FY2014 IT Passback to continue operations and maintenance support for five critical HUD Enforcement systems - ECIS, DECMS, ECPCIS, LETS, ODOC/OLR. This could result in loss of financial recoveries possibly exceeding \$21 million annually for the Department.
- The HEMS will consolidate at least six existing programs, and ultimately as many as 9 or even more into a single software system.
- The HEMS will enable better coordination and collaboration among the different programs, while significantly reducing redundancy of data storage from 6 times to once.
- The HEMS project will enhance reporting and tracking capability as a result of having multiple databases residing within a single system, which will also enhance HUDSTAT.
- Not funding OGC-ETS will impact OGC's ability to meet reporting requirements. It is imperative that OGC have a workload tracking system.
- If the automated E-Discovery Management System is not available, funding for E-Discovery requirements will still need to be available and the Department will be forced to return to the costly process of paying for individual data retrievals and keyword searches.

Response to Finding 3: Labor Relations did not Pay Taxes in a Timely Manner

Comment 7

3A. Remit the employee's share of the taxes quarterly according to the IRS Form 941 instructions.

ODOC/OLR paid to the IRS \$277,490.83 in 941 payments for the employees' share of taxes withheld during 2010 and 2011. The payment was remitted on June 21, 2012. The transmittal documents are attached.

In addition, OLR will follow the IRS' rules that require the submission of 941 payments on a quarterly basis. Such payments will be made again on June 30, 2013 as we had no payments for the first quarter of calendar year 2013. OLR management will ensure that taxes are paid quarterly.

Comment 8

3B. Coordinate with the Office of General Counsel to determine whether Labor Relations is required to pay the \$40,000 employer's share of taxes for the Civic Lofts project and if so, determine how and when the employer's share of the taxes will be paid.

OLR has requested a ruling from OGC regarding our duty to pay the employer's share of the taxes. To date, we have not received a decision or comment. We are currently working with the

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Auditee Comments

Comment 9

IRS to complete the appropriate 941 and 941-X forms to remit payment for this indebtedness by March 31, 2013. If OGC finally rules that we should not pay the taxes, we will request repayment from the IRS.

3C. Determine a process for paying the employer's share of the taxes, if in the future, HUD is found to be responsible for paying back wages to workers.

ODOC/OLR will work with OCFO and OGC to develop the process for paying the employer's share of the taxes, if in the future, HUD is found to be responsible for paying back wages to workers. Estimated date of completion is May 30, 2013.

Comment 10

Response to Finding 4: Wage Restitution Was Paid to Individuals Other than the Worker

4A. Update Handbook 1344.1 to include procedures for identifying and verifying next of kin eligible to receive restitution payments, and outlining circumstances (death, incarceration, or hospitalization) in which the next of kin can be paid.

ODOC/OLR agrees with the finding and the recommendation. OLR will add the following paragraph to the OLR Handbook 1344.1 REV 2 Section 9-22 Payee Verification:

“The LRS shall validate the legitimacy of persons claiming entitlement to wage restitution payments for deceased or incarcerated workers or for making wage restitution payments to anyone other than the worker. Any claim for payment to be made to someone other than the worker must be accompanied by documentation to substantiate the individual's rights to the worker's restitution payment, e.g., certified death certificates, certified marriage licenses or such records issued by the state, records of incarceration or any other legal document necessary to document the occurrence of the event claimed, or to prove familial relationship. Other records such as the will of the decedent and or other documentation demonstrating entitlement to payment are acceptable. In the event a will is not available, payment shall be disbursed in accordance with the estate laws of the state in which the worker lived. Whenever sufficiency of the supporting documentation is uncertain, the LRS shall seek the guidance of the Chief Counsel or the Regional Counsel Office.

Estimated date of completion is June 30, 2013.

Comment 11

4B. Based on the policy developed in 4A, determine whether the individuals that received the wage restitution were legitimately entitled to that restitution and when applicable, seek recovery of any of the \$10,192 found to be unauthorized funds.

ODOC/OLR has conducted a preliminary review and expects to complete this effort by June 30, 2013.

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Auditee Comments

Comment 12

4C. Verify that the worker received the \$1,708 in restitution payments, if not seek recovery of the payment.

ODOC/OLR has initiated a review of this payment and expects to complete this effort by June 30, 2013.

If you have questions or require additional information, please contact me at (202) 402-5462 or Jackie Roundtree at (202) 402-6297.

Attachments

OIG Evaluation of Auditee Comments

- Comment 1** We agree with the return of the \$1,307,336.93 to the U.S. Treasury. However, this amount includes \$277,490.83 of the employees' share of payroll taxes associated with the Civic Lofts project. Labor Relations used unclaimed funds to make the \$277,490.83 payment of the taxes instead of using funds specific to Civic Lofts and other projects. OIG has advised Labor Relations to seek recovery of Civic Lofts' portion of the taxes from FHA to restore and recategorize the funds to unclaimed funds. Labor Relations should also recategorize the taxes that were withheld for other projects as unclaimed funds. The funds to be put to better use in Recommendation 1A have been reduced from \$1,687,581 to \$1,307,337, leaving a remaining amount of \$380,244. Labor Relations did not return the remaining \$380,244.07 to the U. S. Treasury because the time needed to find the workers, or return the funds to the depositors had not yet expired.
- Comment 2** We agree with Labor Relations' planned action.
- Comment 3** We agree with Labor Relations' planned action.
- Comment 4** We agree with the planned action. Labor Relations must provide evidence of the service level agreement with the Office of the Chief Financial Officer for the management decision to be closed.
- Comment 5** We agree with Labor Relations' proposed handbook changes for section 9-16, subpart F, as detailed in its comment 3. However, Labor Relations did not fully address how LR2000 or HEMS will support the monthly reconciliation.
- Comment 6** OIG is concerned that the implementation of the planned departmentwide enforcement system may not fulfill the needs of the Office of Labor Relations as a replacement for LR2000. The five other systems that are being consolidated are all systems that track, monitor, and support departmental investigations to find efficiencies and cost savings. While LR2000 allows Labor Relations to track the deposits made, the system also requires the functionality to generate vouchers for payments to underpaid workers and 941 payments to the IRS, generate IRS Forms W-2 for the workers that receive restitution payments, and interface with electronic payroll review systems as well as Office of the Chief Financial Officer systems. The system should also be configured to allow for reconciliation of the overall deposit account balance as well as reconciliations of individual project balances. LR2000 is a markedly different system from the other departmental enforcement systems, and as of now, we are not sure that consolidating LR2000 into HEMS will provide Labor Relations with the necessary capabilities for its activities.
- Comment 7** We agree with Labor Relations' plans to ensure that the employee's share of taxes is paid quarterly. Labor Relations used unclaimed funds to make the \$277,490.83

payment of the taxes instead of using funds specific to Civic Lofts and other projects. OIG has advised Labor Relations to seek recovery of Civic Lofts' portion of the taxes from FHA to restore the funds to unclaimed funds.

- Comment 8** We agree with Labor Relations' request for a ruling from the Office of the General Counsel regarding its duty to pay the employer's share of the taxes. OIG understands that the \$40,000 employer's share of taxes was included in the \$277,490.83 transfer to the U.S. Treasury. Labor Relations used unclaimed funds to make the \$277,490.83 payment of the taxes instead of using funds specific to Civic Lofts and other projects. OIG has advised Labor Relations to seek recovery of Civic Lofts' portion of the taxes from FHA to restore the funds to unclaimed funds.
- Comment 9** Labor Relations' stated plan to work with the Office of the Chief Financial Officer and the Office of General Counsel to develop a process for paying the employer's share of the taxes, if in the future, HUD is found to be responsible for paying back wages to workers, appears to be an appropriate start to satisfy Recommendation 3C. The department will need to input the process developed into the system for audit resolution.
- Comment 10** Labor Relations' plan to update the Handbook 1344.1 as stated, appears adequate to resolve Recommendation 4A. The department will need to submit the updated Handbook revision to support the closure of this recommendation during audit resolution.
- Comment 11** Labor Relations' preliminary review of whether the individuals that received the \$10,189 in wage restitution on behalf of the workers were legitimately entitled appears to be an adequate start in satisfying Recommendation 4B. The department will need to input the proposed management decision along with any supporting documentation in the system for audit resolution.
- Comment 12** Labor Relations' initiated review of the \$1,708 in restitution payment is an adequate start to satisfy Recommendation 4C. The department will need to input the proposed management decision along with the results of the review into the system for audit resolution.