



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

January 11, 2013

**MEMORANDUM NO:**  
2013-NY-1801

*Memorandum*

TO: Yolanda Chavez  
Deputy Assistant Secretary - Grant Programs, DG

FROM: *Edgar Moore*  
Edgar Moore  
Regional Inspector General for Audit, New York-New Jersey Region, 2AGA

SUBJECT: Deutsche Bank, New York, Job Creation and Retention Program Grant, Hotline  
Complaint Case Number HL-2012-0199

**INTRODUCTION**

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), performed a review of Deutsche Bank's Job Creation and Retention Program (JCRP) grant in response to a HUD OIG hotline complaint, case number HL-2012-0199. On November 23, 2011, the United States Government Accountability Office referred to HUD OIG a confidential complaint (FraudNet control number 58392) it received alleging that Deutsche Bank officials fraudulently received a \$34.5 million JCRP grant under the guise that they would maintain 5,500 jobs in Lower Manhattan over a 10-year commitment period and that during this period, Deutsche Bank officials did not maintain the employment goals. In addition, the complainant alleged that Deutsche Bank officials could not have maintained the required minimum employment number of 5,500 at 60 Wall Street since the building has a maximum office occupancy capacity of approximately 3,400. As a result, the complainant alleged that Deutsche Bank officials should be required to repay twice the value of the grant, or \$69 million. The objectives of the review were to determine whether the complaint alleging that Deutsche Bank officials fraudulently received \$34.5 million in Federal funding under the terms of the grant disbursement agreement had merit and whether there were indications that Deutsche Bank officials did not maintain the required minimum employment number<sup>1</sup> during the commitment period.

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<sup>1</sup> The minimum employment number is defined as 6,500 full-time permanent employees within New York City, of which at least 5,500 were located south of the Canal Zone.

This memorandum contains four recommendations. In accordance with HUD Handbook 2000.06, REV-4, within 60 days, please provide us, for each recommendation in this memorandum, a status report on (1) corrective action taken, (2) the proposed corrective action and the date to be completed, or (3) why action is considered unnecessary. Additional status reports are required 90 and 120 days after this memorandum is issued for any recommendation without a management decision. Also, please furnish us copies of any correspondence or directives issued because of this review.

Should you or your staff have any questions, please contact Karen A. Campbell, Assistant Regional Inspector General for Audit, at (212) 542-7977.

### **METHODOLOGY AND SCOPE**

To accomplish our objectives, we reviewed prior audit work regarding JCRP and Deutsche Bank, HUD-approved action plans and amendments, program guidelines and amendments, monitoring and fraud detection procedures, applicable Code of Federal Regulations provisions, statutory and regulatory waivers, Deutsche Bank's JCRP application and grant disbursement agreement, the payment requisition and supporting documents, annual employment reports, records documenting Empire State Development (ESD) officials' monitoring of the annual employment reports, and the World Trade Center's employment database. In addition, using the LexisNexis Investigative Portal, we researched the legal names, Federal employer and State unemployment identification numbers, and addresses of nine Deutsche Bank entities represented as having New York City employees. We also interviewed key ESD officials and the confidential complainant.

We traced the employment information maintained in the World Trade Center's employment database to the annual employment reports submitted by Deutsche Bank officials for calendar years 2004 through 2011. While ESD officials did not maintain the employment report for calendar year 2003, for the purposes of this audit memorandum, we determined that the information maintained in the employment database was sufficiently reliable.

We performed our fieldwork from August through October 2012, at ESD's office located at 633 Third Avenue, New York, NY. The review covered the period July 2003 to December 2011 and was expanded as deemed necessary.

### **BACKGROUND**

Founded in Germany in 1870, Deutsche Bank is a leading global investment bank with a presence in more than 70 countries. Its core businesses are retail and private banking, corporate lending, real estate lending, asset management, investment banking, and equity and debt trading. As of the end of 2011, it employed approximately 100,000 people at more than 3,000 branches worldwide, of which more than 11,000 were employed in the United States. In 1979, it opened its first branch in New York and in October 2001, became the first German bank to be listed on the New York Stock Exchange. As of January 1, 2012, Deutsche Bank reported a total of 7,082

New York City employees, of which 6,248 were employed at its North American headquarters located at 60 Wall Street in Lower Manhattan.

Before September 11, 2001, Deutsche Bank had more than 10,000 employees in Lower and Midtown Manhattan. However, following the terrorist attacks, it lost the use of its primary Lower Manhattan properties and was forced to temporarily relocate employees to other locations, including those outside of New York City. While Deutsche Bank had already purchased the building at 60 Wall Street in Lower Manhattan in November 2001, the \$34.5 million JCRP grant offer sealed its commitment to relocate its headquarters, along with at least 5,500 employees, to that site by December 31, 2003. Deutsche Bank also agreed to retain a total of at least 6,500 New York City employees over 10 years. ESD officials approved Deutsche Bank's JCRP project on April 23, 2003, and disbursed the full amount of the grant on July 21 2003. Deutsche Bank's commitment period will end July 2013.

In the aftermath of the September 11, 2001, terrorist attacks on the World Trade Center in New York City, Congress appropriated a total of \$3.483 billion in HUD Community Development Block Grant (CDBG) Disaster Recovery Assistance funds to the State of New York for the economic recovery and revitalization of Lower Manhattan. The State of New York designated the New York State Urban Development Corporation, doing business as ESD, to administer the initial \$700 million of the \$3.483 billion<sup>2</sup> appropriation. Funded by the initial appropriation and a supplemental allocation from the Lower Manhattan Development Corporation's \$2 billion CDBG disaster recovery assistance award, the World Trade Center Job Creation and Retention Program was established and is administered by ESD in cooperation with the New York City Economic Development Corporation. ESD is New York State's chief economic development agency, the mission of which is to promote, through the use of loans, grants, tax credits, and other forms of financial assistance, a vigorous and growing economy and encourage the creation of new job and economic opportunities across the State.

As of May 30, 2012, HUD had approved approximately \$318.3 million for the program. The purpose of the program is to provide discretionary grants to eligible companies that commit to creating a minimum of 75 new jobs in Lower Manhattan, as well as to those making commitments to retain at least 200 Lower Manhattan jobs. Jobs must be maintained in Lower Manhattan for a commitment period of at least 10 years. Failure to maintain the job commitments will subject companies to the recapture of the grant funds. Grant funds may be used for wages, payroll taxes, employee benefits, rent, and movable equipment and furniture. Companies must submit annual employment reports to ESD by February 1 of each year for the duration of the grant term. The deadline for eligible businesses to request assistance through the program is December 31, 2013.

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<sup>2</sup> The Lower Manhattan Development Corporation administers the remaining \$2.783 billion. The \$2 billion was awarded for the World Trade Center disaster recovery and rebuilding efforts and the \$783 million for damaged properties and businesses, including the restoration of utility infrastructure, as well as economic revitalization related to the terrorist attacks.

## RESULTS OF REVIEW

Our review determined that ESD officials did not maintain adequate documentation to substantiate the merits of the complaint. While ESD officials complied with established procedures for monitoring the JCRP grant and there was no indication that Deutsche Bank officials did not maintain the required minimum employment number during the commitment period, the monitoring procedures need to be strengthened to ensure that ESD officials obtain and maintain sufficient documentation supporting the accuracy of the self-certified employment reports. The allegation that Deutsche Bank officials could not have maintained the required minimum employment number of 5,500 at 60 Wall Street since the building has a maximum office occupancy capacity of approximately 3,400 has no merit. A certificate of occupancy, dated December 2003<sup>3</sup>, revealed that the building had a maximum office occupancy of at least 11,850 persons.

The specific results of the review are discussed below.

### *Adequate Documentation Was Not Maintained*

Section 15 of the Federal Register Docket No. 4732-N-04, dated May 22, 2002, requires ESD officials to maintain adequate documentation to substantiate the employment reports submitted by Deutsche Bank officials. Although ESD officials obtained employment reports showing that Deutsche Bank officials exceeded the employment goals throughout the commitment period, sufficient documentation was not obtained to substantiate the reported information. Thus, the merits of the complaint alleging that Deutsche Bank officials fraudulently received a \$34.5 million JCRP grant under the terms of the grant agreement and did not maintain the required minimum employment number during the commitment period could not be proven.

In accordance with the terms of the grant agreement, executed June 25, 2003, ESD officials disbursed the grant of \$34.5 million in one lump-sum payment on July 21, 2003, after Deutsche Bank officials had submitted a payment requisition and reasonable documentation showing that their entities had at least 6,500 full-time permanent employees.<sup>4</sup> ESD officials deemed an employment report and the most recent New York State (NYS)-45 (Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return) filed with the New York State Department of Labor to be reasonable documentation. Accordingly, Deutsche Bank officials submitted a self-certified employment report, and a NYS-45 to confirm the employment

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<sup>3</sup> Several certificates of occupancy exist for 60 Wall Street; however the certificate of occupancy, dated December 18, 2003, is referenced since Deutsche Bank officials were required to relocate 5,500 full-time permanent employees to 60 Wall Street by no later than December 31, 2003.

<sup>4</sup> Full-time permanent employees are defined as full-time or the equivalent of two part-time, private-sector employees on the payroll of any of the Deutsche Bank entities, who have worked in New York City for a minimum or a combined minimum of 35 hours per week for at least 4 consecutive weeks and who are entitled to receive fringe benefits. Also, contract employees, considered full-time permanent employees, are defined as full-time or the equivalent of two part-time, private-sector employees (or self-employed individuals) that are not on the payroll of any of the Deutsche Bank entities but who have worked in New York City for any of the Deutsche Bank entities for a minimum or a combined minimum of 35 hours per week for at least 4 consecutive weeks, providing services that are similar to services that would otherwise be performed by full-time permanent employees.

information. While the NYS-45 neither differentiated between full- or part-time and permanent or casual (temporary) employees nor was accompanied by a multiple worksite report listing the addresses of Deutsche Bank's entities located in several New York City locations, ESD officials disbursed the grant relying on the fact that the aggregate number of employees reflected on the NYS-45 exceeded the required minimum employment number. Furthermore, since the NYS-45 reflected that the employment goals had been met, ESD officials did not require Deutsche Bank officials to provide documentation supporting the number of contract employees included in the employment number.

Before receiving the JCRP grant, Deutsche Bank officials reported a total of 7,487 New York City employees, of which 1,259 were located south of the Canal Zone. However, the most recently filed NYS-45 for the first quarter of 2003 reflected approximately 8,275 employees, and it did not identify where the employees worked. Moreover, ESD officials did not obtain documentation reconciling the employment numbers as they considered reconciliation unnecessary since the employment report and NYS-45 both showed that Deutsche Bank officials exceeded the employment goals.

ESD officials maintained neither the calendar year 2003 annual employment report nor documentation to support that Deutsche Bank had relocated up to 5,500 full-time permanent employees to 60 Wall Street by the December 31, 2003, deadline. For calendar years 2004 and 2005, ESD officials obtained quarterly employment numbers directly from the Department of Labor to verify Deutsche Bank's employment reports. Yet, in 2007, citing privacy concerns, the Department of Labor refused to provide future employment information. Therefore, for calendar year 2006, ESD officials obtained a copy of the NYS-45 for the fourth quarter of 2006 directly from Deutsche Bank officials. However, ESD officials did not maintain documentation reconciling the quarterly employment numbers obtained during the employment verification process to Deutsche Bank's employment reports, which were based on the average number of full-time permanent employees over the previous 12-month period. Moreover, for the past 5 calendar years (2007 through 2011), ESD officials had not verified Deutsche Bank's employment reports.

With the exception of calendar year 2003,<sup>5</sup> Deutsche Bank officials reported that they had exceeded the employment goals for calendar years 2004 through 2011, as detailed in the table below. However, ESD officials did not obtain and maintain adequate documentation to provide reasonable assurance that the employment numbers that Deutsche Bank officials reported were based on the grant agreement's definition of full-time permanent employees and the formula for determining the number of such employees.

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<sup>5</sup> For calendar year 2003, Deutsche Bank was not required to maintain an average of 5,500 full-time permanent employees in Lower Manhattan because under the terms of the grant disbursement agreement, it was not required to relocate at least 5,500 full-time permanent employees until December 31, 2003.

Calendar year	Average number of full-time permanent employees south of the Canal Zone	Average number of full-time permanent employees within other New York City locations	Total average number of full-time permanent employees within New York City
2003	4,015	3,364	7,379
2004	5,712	2,498	8,210
2005	5,634	2,247	7,881
2006	6,022	2,290	8,312
2007	6,549	2,172	8,721
2008	6,361	1,837	8,198
2009	5,852	1,523	7,375
2010	6,038	1,244	7,282
2011	5,874	1,023	6,897

*More Effective Monitoring Procedures Should Be Established*

In accordance with 24 CFR 85.40(a), ESD officials did not establish effective monitoring procedures to reasonably ensure the accuracy of Deutsche Bank’s annual employment reports evidencing that it maintained its required minimum employment number.

Before 2007, ESD officials’ monitoring of the annual employment reports consisted of obtaining from the New York State Department of Labor quarterly employment numbers that grant recipients had reported on the NYS-45. In the event that discrepancies of 10 percent or greater were found between the employment numbers the Department of Labor reported and those reported by the grant recipients, ESD officials followed up by requesting an explanation and supporting documentation, including the NYS-45s, payroll registers, or an affidavit from the grant recipients attesting to the accuracy of their employment reports.

In 2007, following the Department of Labor’s refusal to provide future employment information, ESD officials’ monitoring of the annual employment reports consisted of verifying 15 percent of grant recipients (in terms of the grant amount) each year on a rotating basis. For example, in the first year, ESD officials requested that the top 15 percent of grant recipients submit their NYS-45s for the fourth quarter of the previous year. The following year, ESD officials requested that the next 15 percent do the same.

However, ESD officials’ monitoring procedures were ineffective and should be strengthened since the existing procedures did not require ESD officials to (1) obtain documentation demonstrating that the self-certified employment reports were based on the grant’s agreement definition of full-time permanent employees and formula for determining the number of such employees; (2) reconcile the quarterly employment numbers obtained during the verification process to the annual employment reports; (3) obtain information identifying the number of employees at each of Deutsche Bank’s New York City locations and supporting documentation for contract workers included in the employment number; and (4) perform more frequent verifications of the Deutsche Bank’s annual employment reports.

In addition, the existing monitoring procedures did not require that ESD officials perform sufficient tests of Deutsche Bank's annual employment reports to ensure that they accurately reflected that the employment goals were maintained throughout the commitment period. While ESD officials asserted that there was no practical and feasible way to guarantee absolute compliance with the grant's employment requirements, they acknowledged the importance of employment verifications. However, ESD officials asserted that staffing and time constraints prevented them from performing additional procedures that might have been more effective. Nevertheless, the officials maintained that until this recent complaint, which could not be substantiated, no fraud had ever been identified in the JCRP program.

As previously mentioned, before receiving the JCRP grant Deutsche Bank officials reported a total of 7,487 New York City employees. Yet, the most recently filed NYS-45 for the first quarter of 2003 reflected approximately 8,275 employees. Since the difference between the employment numbers was more than 10 percent ( $[8,275 - 7,487] / 7,487 \times 100 = 10.52$  percent) ESD officials should have obtained an explanation and supporting documentation reconciling the numbers. However, ESD officials asserted that, in accordance with their procedures, when employment numbers obtained during the verification process reflected that Deutsche Bank officials maintained more than the required minimum employment number, no further action was required. In addition, although calendar years 2004 through 2006 employment numbers obtained during the verification process did not differentiate between full- and part-time or permanent and casual (temporary) employees, they reflected fewer employees than those reported by Deutsche Bank officials, but more employees than those required to meet the employment goals. ESD officials contended that only discrepancies demonstrating that employment numbers were less than required would trigger further investigation. While ESD officials did obtain an explanation for the discrepancies noted for calendar years 2004 through 2006, supporting documentation was not obtained. ESD officials also clarified that they verified contract employees only in the event that the total number of the grant recipients' employees were insufficient to meet the employment goals.

### **CONCLUSION**

Our review determined that ESD officials did not maintain adequate documentation to substantiate the merits of the complaint. Although ESD officials complied with established procedures for monitoring the JCRP grant and there was no indication that Deutsche Bank officials did not maintain the required minimum employment number, ESD officials' monitoring procedures need to be strengthened to ensure that sufficient documentation supporting the accuracy of the self-certified employment reports is obtained and maintained. The allegation pertaining to the maximum office occupancy capacity at 60 Wall Street has no merit. A certificate of occupancy, dated December 2003, revealed that the building had a maximum office occupancy of at least 11,850 persons.

## **RECOMMENDATIONS**

We recommend that HUD's Deputy Assistant Secretary for Grant Programs instruct ESD officials to

- 1A. Develop additional procedures to ensure that documentation fully supporting the accuracy of the JCRP grant recipients' self-certified employment reports is obtained and maintained in the program files.
- 1B. Strengthen monitoring procedures to reasonably ensure the accuracy of annual employment reports submitted by JCRP grant recipients by requiring them to also submit documentation demonstrating that the reported employment numbers are based on the grant agreement's definition of full-time permanent employees and the formula for determining the number of such employees.
- 1C. Require JCRP grant recipients to provide documentation, such as payroll records, in support of written explanations regarding material differences between the employment numbers reported to ESD officials and those reported on the NYS-45.
- 1D. Modify the current employment verification procedures to ensure that JCRP grant recipients are monitored more frequently during their commitment period.

# Appendix A

## AUDITEE COMMENTS AND OIG'S EVALUATION

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### Ref to OIG Evaluation

### Auditee Comments



December 20, 2012

Mr. Edgar Moore  
Regional Inspector General for Audit, New York-New Jersey Region  
U.S. Department of Housing & Urban Development  
Office of Inspector General  
New York/New Jersey Region 2  
26 Federal Plaza, Room 3430  
New York, NY 10278

Re: Deutsche Bank, New York, Job Creation & Retention Program Grant Case HL-2012-0199

Dear Mr. Moore:

On December 13, the U.S. Department of Housing & Urban Development Office of Inspector General ("HUD OIG") provided New York State Urban Development Corporation d/b/a Empire State Development ("ESD") with a revised draft memorandum 2013-NY-180X dated December XX, 2012 covering your office's review of the above referenced hotline complaint related to the WTC Job Creation and Retention Grant Program ("JCRP"). We appreciate the opportunity you have provided us to comment on the draft memorandum. ESD has comments regarding several aspects of the draft memorandum as briefly summarized below.

- ESD's current monitoring procedures were presented to HUD OIG, without comment or criticism, during previous in-depth reviews of the JCRP program in 2003, 2007 and 2008.
- ESD has fully complied with its current monitoring procedures.
- ESD, in consultation with HUD, is agreeable to enhancing and strengthening its monitoring procedures based on any forthcoming HUD OIG recommendations.
- The complaint's primary allegation related to the maximum capacity of the grantee's building is patently false and we support the HUD OIG recommendation to dismiss this complaint.

In order to more completely express our view on the above issues, we are pleased to provide you with our detailed comments on the attached pages.

Empire State Development Corporation  
633 Third Avenue, New York, New York 10017-6754 Tel 212 803 3100

**Comment 1**

**Comment 2**

**Comment 3**

**Ref to OIG Evaluation**

**Auditee Comments**

Please include this letter and the attached comments together with any publication of your memorandum online or in any other media form.

Sincerely,



Steven Gold  
Vice President, Industry Development

cc: Jonathan Beyer  
Robert Kwon  
Edwin Lee  
Carlos Otero

Ref to OIG Evaluation

Auditee Comments

**Empire State Development Comments  
in Response to HUD OIG Memorandum 2013-NY-180X**

**CAPACITY OF 60 WALL STREET**

The primary contention of the hotline complainant is clearly false. In its November 19, 2012 draft memorandum, HUD OIG first informed ESD of the main aspect of the hotline complaint: Deutsche Bank supposedly could not have maintained the Job Creation & Retention grant's 5,500 Lower Manhattan employment requirement because 60 Wall Street's maximum occupancy is allegedly 3,400. At the November 27, 2012 Exit Conference ESD provided HUD OIG with the New York City Department of Buildings' Certificate of Occupancy for the 1.66 million square foot 60 Wall Street building which clearly indicates that the building's office use capacity is in excess of 11,000 persons (not including areas devoted to mechanical, conference and dining functions).

The complainant's suggestion that Deutsche Bank should be required to pay back twice the grant amount (due to the false allegation noted above) is also incorrect. A JCRP grantee may only be subject to a "double recapture" of grant funds if the reason for not maintaining the minimum employment is due to relocating employees out of New York City. However, the complainant does not contend that the bank moved employees out of the city. the complainant wrongfully alleged that 5,500 employees could not fit into 60 Wall Street. As noted above this allegation is not only irrelevant to double recapture but is patently false and rightfully dismissed.

**ESD IMPLEMENTED, WITH HUD OIG CONCURRENCE, A REASONABLE METHOD TO MONITOR JCRP JOB REQUIREMENTS**

ESD implemented reasonable and practical verification procedures, which HUD had reviewed fully, and ESD administered these procedures faithfully. Further, HUD has recently spent several months attempting to find ways to improve the verification process in terms of accuracy but could not, other than to recommend an increase in the number and frequency of verification audits. While the job requirement provisions in the Grant Disbursement Agreement, which mandate that each grantee maintain a specified number of jobs at the Project Location, are simple enough, it is almost impossible to verify a grantee's employment numbers with complete certainty. The real issue with the verification process is the enormity of the undertaking. This is best explained point by point.

The Sheer Volume of Jobs is Massive— For example, in calendar year 2006, there were 78 grantees with total of 64,329 reported jobs. That is an average of 806 jobs per grantee. Any enhanced procedures must be applied almost 65,000 times or over 800 times per grantee.

Comment 4

Comment 3

Comments 1  
and 2

Comment 5

Comment 6

Ref to OIG Evaluation

Auditee Comments

Comment 6

Grantees Report Monthly Job Numbers – The job count is based on the average of the twelve monthly job numbers reported for the calendar year. The only way to ensure complete accuracy is to verify reporting for each month, for each grantee, each year. This multiplies the jobs count efforts by twelve-fold, or 771,948 individual job verifications in our 2006 year example.

Comment 7

Many Grantees Have Multiple Locations Throughout the State – The New York State 45 forms (“NYS-45”) are used by companies to report its job numbers to the New York State Department of Labor (“DOL”). ESD utilizes the NYS-45 in an effort to verify the accuracy of the jobs reported to ESD by comparing those numbers to the number the company reports to DOL. This form, however, does not segregate each of the company’s employees by the various different locations but rather lists the total number of jobs throughout the State. ESD can, and has in the past, requested and received, where feasible, lists of employees by location, but this information is provided directly by the grantees and therefore does not independently verify the information previously presented by the grantee.

Comment 8

Grantees May Have Numerous Subsidiaries – A number of grantees have various subsidiaries, large and small, with hosts of different names and Employer Identification Numbers. They may also have separate human resources departments which complicates matters for verification purposes.

Comment 9

Difficulties in Independently Verifying Full-time/Part-time (“FT/PT”) Employees – As HUD officials now know there is no way to independently verify whether an employee at a large company is FT/PT. A Full-time Permanent Employee (“FTPE”) is defined as a full-time, private-sector employee on the payroll of any of the grantee’s entities, or a partner, member or shareholder of any of the grantee entities, that is not an Ineligible Employee, who has worked, within the City of New York, for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits, if any, extended by any grantee entity to other employees, partners, members or shareholders with comparable rank and duties. A PT employee is considered an employee who works less than the thirty-five hours a week, but two PT employees who combined has worked over thirty-five hours in one week is considered a FTPE. The problem here is that there is no independent source which can accurately identify which employee is FT/PT. ESD examines the individual salary information within the NYS-45 to determine which employees may be FT/PT and exclude the employees which can be assumed to be PT with any certainty (i.e., an employee who has earned \$1 in one quarter could not be a FTPE), but there are no guarantees (i.e., an employee who made \$1MM in one quarter could be an overpaid PT banker). Distinguishing whether one employee at one company is a FTPE may be a relatively simple matter, but in large numbers across multiple subsidiaries it becomes virtually impossible to accurately determine how many employees are actually FTPE’s. To complicate this matter further, partners, members or shareholders who may qualify as a FTPE do not appear in NYS-45s. So, as with the issue of multiple locations, ESD has asked some grantees to separately identify the classification of

Ref to OIG Evaluation

Auditee Comments

Comment 9

FT/PT employees and provide a list of other qualified employees, including partners, but this critical information cannot be independently verified.

Comment 6

Employment Verification is a Time Consuming Endeavor – ESD has been verifying jobs reporting for nearly twenty years with ESD’s own grant/loan programs (verifying hundreds of companies over the years) and have been applying that practice and knowledge to the JCRP employment verifications. In ESD’s experience, it generally takes about two to three months to complete a verification and report on just seven to ten companies because: (1) it takes several calls to connect with an authorized representative who is familiar with the verification process (high turnover rate) and the documents requested; (2) it may take several weeks to prepare the documents and get the necessary approvals to release such documents; and (3) it takes days and sometimes weeks to literally count the thousands of jobs listed – and ESD has been verifying only the 4<sup>th</sup> quarters. Monthly or even quarterly verification would take much longer.

Comment 10

No Fraud Detected – As previously stated, ESD has been conducting employment verifications for almost twenty years and has seen no material evidence of fraud by companies. ESD believes that fraud is a serious, criminal behavior and that individuals who report job numbers for these multinational corporations, such as JCRP companies with 200+ employees, have little or no incentive to lie on behalf of their employer and risk criminal prosecution and fines. Where ESD expects to see fraud is with much smaller companies with very few jobs, where the owner/partner does the reporting and has a personal incentive to avoid penalties for non compliance. Even there ESD has not seen evidence of fraud.

Comment 11

Public Jobs Reports Are Inherently Inaccurate – It is worth noting that even the most widely used job numbers report, the monthly nonfarm payroll employment figures which are released by the United States Department of Labor (“USDOL”), are not verified at all and are constantly revised, upward or downward, in the following months. Further, USDOL takes a small sampling of jobs figures from just 141,000 businesses across the country to show the strength and weakness of the US economy. Despite this lack of meaningful verification, the USDOL jobs report is heavily relied upon by global markets and essentially taken as gospel.

Comment 12

EMPLOYMENT VERIFICATION ENHANCEMENT PROPOSAL

As demonstrated above, there are numerous challenges to a more perfect employment verification process and the combined scope of those issues makes complete verification infeasible. For those reasons we believe proposed enhancements are not likely to make the process more accurate but only increase the number and frequency of the verifications at increased cost. However, ESD, with consent of HUD, will endeavor to make certain enhancements to ESD’s process to address the HUD OIG comments regarding our existing procedures, to continue to foster good working relationships and in the expectation that even if perfection is not often attainable, improvements always are possible. ESD proposes to hire an employee, using the program’s administrative funds, whose sole purpose will be to verify each

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 12**

of the remaining 46 JCRP grantees each year (rather than the top fifteen percent on a rotating basis) and conduct more FT/PT samplings.

Thank you again for your professionalism and courtesies and hope this exchange of comments has been productive and will further the goals of the JCRP Program.

## OIG Evaluation of Auditee Comments

**Comment 1** While ESD's JCRP monitoring procedures were reviewed during previous audits, the audit results were not without comment or criticism as ESD officials contend. In 2004<sup>6</sup>, we reported that ESD officials neither established written monitoring procedures nor maintained adequate written or computerized documents to support their monitoring efforts.

While conducting our audit review in 2005, we learned that ESD officials had been independently verifying all employment numbers reported by the grant recipients through their New York State Department of Labor contact. Thus, at that time, we concluded that the monitoring procedures were adequate and did not take exception to them. The scope of our 2007 audit did not include a review of ESD's current monitoring procedures, but rather a review of program disbursements conducted during the survey. Lastly, during our 2008 audit, we verbally expressed concern to an ESD official over the loss of the Department of Labor as an independent source of corroborating employment information. Yet, to date, ESD officials had not developed additional procedures to independently verify the employment reports.

**Comment 2** Although ESD officials complied with the current monitoring procedures, they remain open to any forthcoming recommendations to enhance and strengthen their existing procedures. During the November 27, 2012, exit conference we advised ESD officials to work with HUD program management officials to devise a feasible corrective action plan in response to our recommendations.

**Comments 3** ESD officials agreed with our recommendation to dismiss the complainant's allegation regarding the maximum office occupancy capacity of the 60 Wall Street building.

**Comments 4** The complainant did contend that Deutsche Bank officials routinely moved jobs out of New York City. Therefore, the complainant's suggestion that Deutsche Bank officials should be required to repay twice the value of the grant would have been relevant had we determined that the required 5,500 Lower Manhattan jobs were not maintained due to job relocations.

**Comments 5** We recently spent several months reviewing documents ESD officials provided while attempting to evaluate the merits of the complainant's allegations, not attempting to find ways to improve the accuracy of the ESD's existing verification process. Nevertheless, in addition to recommending increases in the number and frequency of the verification audits, during the November 27, 2012, exit conference, we recommended that ESD officials consider using sampling when verifying the reported employment numbers.

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<sup>6</sup> Audit report number 2004-NY-1001, issued March 25, 2004, covered the period April 1 through September 30, 2003, and the audit field work was performed from August 2003 through March 2004.

- Comments 6** While ESD officials contend that it may be almost impossible to verify grant recipients' employment numbers with complete certainty since detailed reviews of 100 percent of the reported employment numbers would be costly, time consuming, and impractical, by using sampling during the verification process, ESD officials will be able to test the accuracy of the employment reports.
- Comments 7** ESD officials should require all grant recipients to provide a list of employees by location and select a sample of those employees to independently verify their locations through site visits, telephone contact, or other methods.
- Comments 8** ESD officials should require all grant recipients to provide information regarding the names of their various subsidiaries, employer identification numbers, and the human resources departments to facilitate the verification of a selected sample of employees.
- Comments 9** ESD officials should require all grant recipients to submit documents identifying the classification of full- and part-time employees, as well as other qualified employees, including partners, demonstrating that the reported employment numbers are based on the grant agreement's definition of full-time permanent employees. In addition, ESD officials should independently verify a selected sample of the employees identified within each classification by reviewing the Automatic Data Processing payroll records, contacting the employees face-to-face or by telephone, or other methods.
- Comment 10** Although ESD officials have been conducting employment verifications for almost twenty years and have found no material evidence of fraud, officials acknowledge that it is almost impossible to verify the employment numbers grant recipients report with complete certainty. Therefore, it is possible that occurrences of fraud may have gone undetected. Furthermore, the potential for fraud greatly increases when grant recipients recognize that ESD officials do not monitor reported employment numbers by obtaining independent, corroborating evidence from other sources.
- Comment 11** While the United States monthly job reports may be inherently inaccurate as they are estimates of the nation's employment situation, the reported information is based on a representative sample of households and businesses, which have been contacted both face-to-face and by telephone to participate in employment surveys. ESD officials should follow this model by using sampling and a similar contact method to obtain information during the employment verification process.
- Comment 12** ESD officials' proposed actions are responsive to our recommendations. However, we encourage the officials to work with HUD program management officials to develop a cost effective action plan to strengthen and enhance the current monitoring procedures. In addition, ESD officials should consider incorporating sampling into their employment verification process.