



U.S. Department of Housing and Urban Development  
**Office of Inspector General**  
451 7<sup>th</sup> St., S.W  
Washington, D.C. 20410

**MEMORANDUM NO. 2009-NY-0801**

November 6, 2008

**MEMORANDUM FOR:** Susan D. Pepler, Assistant Secretary for Community Planning and Development, D

**THROUGH:** Kenneth M. Donohue, Inspector General, G

**FROM:** Edgar Moore, Regional Inspector General for Audit, 2AGA

**SUBJECT:** Deconstruction Activity Costs under the World Trade Center Memorial and Cultural Program Are Impacting Other Approved Programs

**INTRODUCTION**

As part of the tenth of our ongoing audits of the Lower Manhattan Development Corporation's (LMDC) administration of the Community Development Block Grant Disaster Recovery Assistance funds,<sup>1</sup> we reviewed the nature of costs incurred under the World Trade Center Memorial and Cultural program related to the deconstruction of the Deutsche Bank building located in New York City. This review raised an issue of concern that we wish to bring to your attention, namely the funding of the deconstruction activity.

Through September 30, 2007, a total of \$202.8 million in Department of Housing and Urban Development (HUD) funds had been disbursed by LMDC to purchase and deconstruct the Deutsche Bank Building. To date, HUD has approved LMDC's funding allocations totaling \$274.6 million for this activity, which is part of LMDC's World Trade Center Memorial and Cultural Program. The initial HUD funding for this activity was approved in July 2004 and amounted to \$164 million. HUD funding increased to \$207.1 million in June 2005. Costs have escalated to the point where, beginning in July 2007, LMDC has had to reallocate an additional total of \$67.5 million of HUD funds from other previously approved activities.

Although LMDC took ownership of the building more than four years ago, 26 of the 40 floors have not been deconstructed. Deconstruction was to have been completed in September 2006.

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<sup>1</sup> OIG has reported semiannually on the administration of the more than \$3 billion provided to the State of New York following the September 11, 2001, terrorist attacks on the World Trade Center. The tenth audit was issued on March 31, 2008, under report number 2008-NY-1004.

Moreover, due to disagreement among the parties to the deconstruction funding and settlement agreement, which established the guidelines for deconstruction cost sharing, LMDC officials maintained that, as of September 30, 2007, it had disbursed \$27.1 million more than its share of applicable costs. In addition, other costs which LMDC had paid may qualify for cost sharing. As a result, other programs previously approved by HUD have been impacted, and more HUD funds than may have been necessary were used to pay for deconstruction activity.

### **SCOPE AND METHODOLOGY**

To gain an understanding of the costs charged to the deconstruction of the Deutsche Bank building component of the World Trade Center Memorial and Cultural program, we reviewed partial action plan No. 7 and subsequent amendments approved by HUD; the demolition cap agreement, dated August 2, 2004; and the deconstruction funding and settlement agreement, executed on July 19, 2005. We also analyzed contract files, disbursement records, and escrow account bank statements for the period August 31, 2004, through September 30, 2007. Additionally, we interviewed LMDC management, financial, and legal staff regarding the administration of the escrow account.

We performed our on-site work from October 2007 through April 2008 at LMDC's office located in lower Manhattan. Our work was not performed in accordance with generally accepted government auditing standards because we did not independently verify the accuracy of the classification of all costs by LMDC as aggregate versus nonaggregate deconstruction, which would determine the extent of the deconstruction costs that LMDC would pay.

### **BACKGROUND**

The Deutsche Bank building, a 40-story office building located at 130 Liberty Street in New York City, was heavily damaged as a result of the terrorist attacks on the World Trade Center. The building was unoccupied, and its status was uncertain due to litigation between the prior owner and its insurers, Allianz Global Risks U.S. Insurance Company and AXA Corporate Solutions Insurance Company. The building site was envisioned to be part of the World Trade Center plan. To facilitate action to release the space to LMDC, the governor of New York at the time directed that a settlement be reached via mediation among the parties. On August 2, 2004, the parties signed the demolition cap agreement, which provided that LMDC purchase the building for \$90 million and pay the first \$45 million of covered demolition costs plus any noncovered demolition costs above that amount. The demolition cap agreement further provided that the insurers would pay the prior owners \$140 million and be responsible for covered demolition costs above the first \$45 million. LMDC used \$90 million in HUD funding for the building purchase and took ownership of the building on August 31, 2004.

Due to disputes among the insurers and LMDC under the demolition cap agreement, the terms were renegotiated and resulted in execution of the deconstruction funding and settlement agreement on July 19, 2005. This agreement provided that LMDC pay (1) the first \$45 million of aggregate deconstruction costs, (2) an additional \$5 million for pre-September 11, 2001, asbestos and other hazardous material removal, (3) 25 percent of the aggregate deconstruction costs in excess of \$50 million, and (4) all additional costs not considered aggregate

deconstruction costs. The deconstruction funding and settlement agreement further provided that the insurers pay 75 percent of aggregate deconstruction costs in excess of \$50 million.

The deconstruction funding and settlement agreement defined deconstruction as all actions necessary to clean and deconstruct the building in a manner that complies with the contract documents and all legal requirements. The agreement further defined aggregate deconstruction costs as amounts paid to contractors for materials, work, and/or services to perform and complete the deconstruction.

The deconstruction funding and settlement agreement further required the establishment of an escrow account into which the insurers would deposit \$10 million no later than 30 days after the date of the deconstruction funding and settlement agreement and 75 percent of the insurers' anticipated aggregate deconstruction costs less the initial \$10 million previously deposited no later than 30 days after executing a contract related to the deconstruction. The deconstruction funding and settlement agreement also provided that any interest earned<sup>2</sup> on the escrow funds would not be used to meet insurers' liabilities.

The deconstruction plan, approved in September 2005, provided that deconstruction would consist of three phases: the preparatory phase, phase I, and phase II. The preparatory phase consisted of the erection of scaffolding and hoists; construction of interior hoist vestibules; and erection of sidewalk sheds, perimeter fencing, and exterior pressure tent enclosures. Phase I included environmental cleaning and removal of all interior surfaces and nonstructural components within the building. Phase II encompassed the actual floor-by-floor structural deconstruction of the building, as well as the removal of the remaining cleaned building components. The preparatory phase was completed in 2006. Phases I and II commenced in March 2006 and March 2007, respectively, and are not presently completed.

The total deconstruction process was initially scheduled to be completed in September 2006; however, replacement of the initial deconstruction contractor and subcontractors, deconstruction contract renegotiations, and increased environmental testing required by regulatory agencies<sup>3</sup> caused delays. Further, a fire at the site in August 2007, in which two New York City firefighters died, resulted in an ongoing investigation by local, state, and federal authorities, which caused the suspension of deconstruction activity.

As of September 30, 2007, HUD had approved \$237 million through partial action plan no. 7 and its amendments for the Deutsche Bank building deconstruction as an activity within the World Trade Center Memorial and Cultural program. HUD initially approved \$164 million for the purchase and deconstruction of the building via partial action plan no. 7 on July 16, 2004. The approved amount was increased to \$207.1 million via amendment on June 8, 2005. An additional \$30 million was approved via amendment on July 11, 2007, that reallocated \$23 million from a previously approved economic development activity and \$7 million from the Job Creation and Retention program. As of September 30, 2007, LMDC had disbursed \$202.8

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<sup>2</sup> The escrow account had earned \$2.7 million in dividends as of September 30, 2007.

<sup>3</sup> Primarily includes the Federal Environmental Protection Agency, Occupational Safety and Health Administration, NYS Dept of Environmental Conservation, NYS Dept. of Labor, NYC Dept. of Environmental Protection, and the NYC Dept of Buildings.

million in HUD funds for costs relating to this activity. Another \$16.2 million was disbursed from funds provided by the insurers. Subsequent to our fieldwork, the latest amendment to LMDC's action plan for this activity was approved on September 2, 2008 and provided an additional \$37.5 million in HUD funds for the activity. These funds were reallocated from a previously approved activity under the Utility Restoration and Infrastructure Rebuilding Program.

## **RESULTS OF REVIEW**

Although LMDC took ownership of the Deutsche Bank Building more than four years ago, 26 of the 40 floors have not been deconstructed. Deconstruction was to have been completed in September 2006. Moreover, due to disagreement among the parties to the deconstruction funding and settlement agreement, which established the guidelines for deconstruction cost sharing, the insurers had not made deposits to the escrow account since November 2006, and LMDC had stopped drawing funds from the account.<sup>4</sup> LMDC officials maintained that, as of September 30, 2007, it had disbursed \$27.1 million more than its share of applicable costs. In addition, other costs which LMDC had paid may qualify for cost sharing. As a result, LMDC had to reallocate funds from other programs previously approved by HUD, and more HUD funds than may have been necessary were disbursed for deconstruction activity. Further, continued escalating costs could result in the need for additional reallocations.

### **LMDC Estimated That It Paid More Than Its Required Share of Deconstruction Costs**

The deconstruction funding and settlement agreement, executed in July 2005 between LMDC and the prior insurers of the Deutsche Bank building, directed how deconstruction costs would be allocated between LMDC and the insurers. Payments by the insurers, funded from the escrow account, depend upon, among other issues, the proper classification of costs as aggregate deconstruction costs. However, correspondence, dated in May 2007 between the insurers and LMDC, indicate that LMDC and the insurers differed on the classification of costs as aggregate deconstruction costs and the extent of the insurers' liability. The lack of additional insurer funding of the escrow account caused LMDC to use HUD funds allocated for other activities to continue necessary deconstruction activity.

As shown in table 1, LMDC classified \$107.8 million of the \$218.9 million spent as of September 30, 2007, on the demolition of the Deutsche Bank building as aggregate deconstruction costs. As further shown in table 1, LMDC had paid \$91.6 million of the \$107.8 million, which it classified as aggregate deconstruction cost. However, LMDC maintained that its liability according to the agreement should have been \$64.5 million as follows: (1) the first \$50 million in aggregate deconstruction costs and (2) an additional \$14.5 million [25 percent of the aggregate deconstruction costs in excess of \$50 million, or \$57.8 million (\$107.8 million less \$50 million)]. Consequently, LMDC officials maintained that LMDC paid \$27.1 million more than it should have been responsible for under the deconstruction funding and settlement agreement.

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<sup>4</sup> After our fieldwork, LMDC provided documentation for four additional withdrawals from the escrow account as of July 23, 2008, totaling \$3.5 million.

**Table 1**  
**Difference in classification of aggregate deconstruction cost**  
**as of September 30, 2007**

<b>Nature of cost</b>	<b>Total deconstruction costs disbursed</b>	<b>Portion classified by LMDC as aggregate deconstruction</b>	<b>Aggregate deconstruction costs paid by LMDC</b>	<b>Aggregate deconstruction costs paid by insurers from escrow</b>
Building purchase	\$90,000,000			
Cleanup/deconstruction	76,652,948	\$67,437,948	\$52,561,764	\$14,876,184
Insurance	16,162,491	6,306,505	6,306,505	
Scaffolding erection	12,229,364	12,229,364	12,229,364	
Air monitoring	10,856,402	10,563,113	9,256,429	1,306,684
Deconstruction supplemental agreement		9,215,000	9,215,000	
Construction mgr/owner's representative	7,503,333	2,041,499	2,041,499	
Administrative and other	5,544,940			
Total	\$218,949,478	\$107,793,429	\$91,610,561	\$16,182,868

LMDC analyzed and classified deconstruction costs for which funds were disbursed related to the Deutsche Bank building as aggregate deconstruction costs through July 2007. Between July and September 2007, an additional \$2.2 million was disbursed and included in the \$218.9 million total cost but had not been analyzed and classified by LMDC as either aggregate or nonaggregate at the end of our audit period.

The insurers deposited \$36.4 million into the escrow account through November 2006. LMDC officials maintained that the insurers' share of deconstruction costs incurred based upon executed contracts through September 30, 2008, should require deposits of \$87.6 million into the escrow account. Consequently, LMDC officials maintained that the escrow account was underfunded by \$51.2 million<sup>5</sup> as of September 30, 2007. LMDC officials stated that this condition caused LMDC to disburse \$27.1 million more than that for which it should be responsible and could result in LMDC disbursing an additional \$24.1 million. Further, LMDC officials stated that the insurers believed the \$36.4 million was sufficient to fulfill their obligation under the agreement, and that they were not responsible for what they classified as nonaggregate deconstruction costs and additional costs that resulted from delays in deconstruction. As of September 30, 2007, the escrow agent had released to LMDC \$16.2 million from the account.

The escrow agreement, executed in August 2005 among LMDC, the insurers, and the escrow agent, provided that the escrow agent could refuse to comply with claims, demands, or instructions for payment if disputes arose between the insurers and LMDC. The escrow agreement further stipulated that payments would be refused until a final order settled the conflicting claims and instructed the escrow agent on how to proceed or a settlement was reached by a written agreement between the conflicting parties. The insurers and LMDC had

<sup>5</sup> This amount excludes additional deconstruction costs that may have been incurred as a result of the August 2007 fire.

differed over the composition of aggregate deconstruction costs since May 2007, and legal counsel advised LMDC that it should request no more than \$20.7 million from the escrow account, which was the amount the insurers calculated as their liability at that time.

LMDC officials said that they had not notified the escrow agent of the disagreement. However, on May 12, 2008, LMDC lawyers sent to the prior insurers' lawyers a request that an additional \$80.9 million be deposited into the escrow account to cover what LMDC maintained was the insurers' liability as of May 8, 2008. LMDC officials stated that an additional \$24 million was deposited into the account in October 2008.

#### Additional Costs Could Potentially Be Classifiable as Aggregate Deconstruction

Accurate classification of deconstruction costs is important so that the insurers and LMDC may each pay their proper share of aggregate deconstruction costs. As noted previously, the deconstruction funding and settlement agreement provided that aggregate deconstruction costs are amounts paid to contractors for materials, work, and/or services to perform and complete the deconstruction. The agreement further defined deconstruction as all actions necessary to clean and deconstruct the building in a manner that complies with the deconstruction documents and all legal requirements. Although these costs complied with the deconstruction documents and were legally required, LMDC did not classify more than \$1.1 million disbursed for an initial building characterization study and air monitoring services as aggregate deconstruction costs. Consequently, LMDC may have understated the costs that could be shared by the insurers.

#### A Building Characterization Study Was Required

Federal and New York State regulations require the completion of a building characterization study before demolition of a building. Specifically, Environmental Protection Agency regulations at 40 CFR (*Code of Federal Regulations*) 61.145(a) require a thorough inspection of the demolition site for the presence of asbestos before demolition of a building. Further, New York State Labor Law, section 241, part 10, requires that a survey be conducted to determine whether a building to be demolished contains asbestos material before contracting for or commencing work on any demolition work on buildings covered under this section. Accordingly, on January 7, 2005, the New York State Department of Labor advised LMDC that Industrial Code Rule 56 mandates that a comprehensive asbestos demolition survey be completed before the development of a final asbestos project design and deconstruction plan for any building.

LMDC contracted for an initial building characterization study report as the first step in the cleaning and deconstruction process to provide an initial characterization of any hazardous substances present in the building. The study included tests necessary to make determinations regarding (1) appropriate safety precautions for workers and public health and safety; (2) appropriate cleaning and disposal procedures; and (3) compliance with applicable federal, state, and local authorities. The report was issued in September 2004, and the deconstruction contract, dated October 20, 2005, listed the results of the initial building characterization study as one of the understandings, assumptions, and risks that the contractor assumes. Further, the contract's scope of work section provided that the contractor is responsible for the building's

deconstruction plan, which addressed the abatement, cleaning, and removal of contaminants identified in the initial building characterization study report.

Since a building characterization study was required by federal and state regulation and the study's recommendations were incorporated into the deconstruction contract, and as a principle for LMDC's deconstruction plan, the associated costs were necessary to complete the deconstruction of the Deutsche Bank building. Therefore, the \$598,788 paid for the study should be considered an aggregate deconstruction cost and should be shared subject to the terms of the agreement.

#### Air Monitoring Was Required

New York State Department of Labor Industrial Code Rule 56-17.1 provides that air sampling is required before the start of a project and during preabatement. Additionally, New York City Department of Environmental Protection Regulations at section 1-41(b)(1) require that five air samples within the proposed work area be taken before commencement of abatement activities. In addition, the September 2004 Deutsche Bank building initial characterization report and LMDC's environmental consultants recommended that the air monitoring program that had been implemented before the start of deconstruction should continue.

During the period September through December 2004, LMDC retained the prior Deutsche Bank building owners' consultant for air monitoring services. These services included air monitoring at the same locations provided by the Deutsche Bank building owners before its purchase by LMDC. LMDC stated in its request for funding that the air monitoring was part of the interim and preparatory work necessary as part of the cleanup and deconstruction. The documents also stated that it would be critical to continue the air monitoring and sampling already in place and regarded it as imperative that the consultant retained by the former owner perform the phase I services. Doing so was reported to prevent any potential airborne hazardous materials from being released into the surrounding neighborhoods and assures the public, government regulators, and other stakeholders that LMDC would continue to provide air monitoring and sampling at a level no less than that previously provided.

As a result, since air monitoring provided by the building's prior consultant was necessary to clean and deconstruct the building in compliance with both the deconstruction documents and legal requirements and since continuing this air monitoring was incorporated as a principle into the deconstruction plan, the \$558,545 paid for air monitoring services should be considered an aggregate deconstruction cost that should be shared subject to the terms of the agreement.

#### CONCLUSION

Proper classification of costs as aggregate and nonaggregate deconstruction is important to accurately fund the escrow account and maximize funds available for other programs. However, LMDC and the former Deutsche Bank building insurers differed over the classification of aggregate deconstruction costs based upon executed contracts. As a result, LMDC officials estimated that the escrow account was underfunded by \$51.2 million and that it had disbursed \$27.1 million more than its share of applicable aggregate deconstruction costs as of September

30, 2007. Further, the additional \$2.2 million in costs paid by LMDC between July and September 2007 needs to be analyzed and classified as either aggregate or nonaggregate deconstruction costs. In addition, LMDC's classification of \$598,788 disbursed for an initial building characterization study and \$558,545 disbursed for air monitoring services as nonaggregate deconstruction costs precludes the sharing of these costs in accordance with the deconstruction funding and settlement agreement. However, classification of the costs as aggregate deconstruction would allow them to be shared among LMDC and the insurers. LMDC paid the costs in full, thereby reducing funds available for other activities.

### **RECOMMENDATIONS**

We recommend that Assistant Secretary for Community Planning and Development, before approving any additional funds for the deconstruction of the Deutsche Bank building under the World Trade Center Memorial and Cultural program, direct LMDC to

- 1A. Provide an updated accounting of deconstruction costs, including the \$2.2 million not yet classified, both aggregate and nonaggregate, and an estimate of anticipated additional expenditures in each of these categories so that HUD may assess the extent to which additional funds may need to be reprogrammed for deconstruction activity.
- 1B. Periodically provide HUD a report on the status of efforts to resolve the escrow account underfunding so that HUD may be kept up-to-date on the potential amount of funds that may be recouped and repaid to the World Trade Center Memorial and Cultural program.
- 1C. Provide documentation to support why funds disbursed for the initial building characterization study and air monitoring should not be classified as aggregate deconstruction costs. If these disbursements are determined to be aggregate deconstruction costs, LMDC should seek recovery of the estimated \$868,000 (the insurers' 75 percent share based upon the agreement) from the insurers and reimburse the program, thereby ensuring that these funds are put to better use.

We further recommend that the Assistant Secretary for Community Planning and Development:

- 1D. Closely monitor the remaining disbursement of HUD funds under this activity.

In accordance with HUD Handbook 2000.06, REV-3, for each recommendation in this memorandum, please provide a status report within 60 days on (1) the 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 days 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.



# APPENDIXES

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## Appendix A

### SCHEDULE OF FUNDS TO BE PUT TO BETTER USE

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Recommendation <u>number</u>	Funds to be put <u>to better use</u> <sup>1/</sup>
1C	\$ <u>868,000</u>


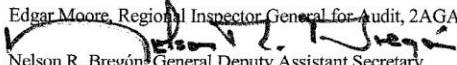

- <sup>1/</sup> Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General recommendation is implemented. This includes reductions in outlays, deobligation of funds, withdrawal of interest subsidy costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings which are specifically identified. In this instance, if our recommendations are implemented, costs that have been charged to and paid from the World Trade Center Memorial and Cultural program will be reclassified as costs recoverable from the insurers, thereby resulting in a reduction in outlays from HUD.

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

	 <p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-7000</p> <p>OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT</p> <p>SEP 16 2008</p> <p>MEMORANDUM FOR: Edgar Moore, Regional Inspector General for Audit, 2AGA</p> <p>FROM:  Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development, D</p> <p>SUBJECT: Draft Memorandum No. 2008-NY-080X: Deconstruction Activity Costs Paid under the World Trade Center Memorial and Cultural Program Are Impacting Other Approved Programs</p> <p>Thank you for the opportunity to review subject draft memorandum. We have the following comments on the recommendations contained therein.</p> <p><b>Recommendation 1A:</b> Provide an updated accounting of deconstruction costs, both aggregate and non-aggregate, and an estimate of anticipated additional expenditures in each of these categories so that HUD may assess the extent to which additional funds should be reprogrammed for deconstruction activity.</p> <p><b>HUD 1A Comment:</b> HUD reviews the deconstruction project from an accounting and program perspective when it monitors the 9/11 grants. However, as long as it is not requiring the grantee, the Lower Manhattan Development Corporation (LMDC), to develop additional material, HUD would not object to asking LMDC to share reports it already prepares. However, the last portion of the recommendation, "so that HUD may assess the extent to which additional funds should be reprogrammed for deconstruction activity," is not a valid justification for such a request for accounting data. Reprogramming funds for eligible activities is at the discretion of the grantee.</p> <p><b>Recommendation 1B:</b> Periodically provide HUD a report on the status of efforts to resolve the escrow account \$51.2 million under-funding so that HUD may be kept up-to-date on the potential amount of funds that may be recouped and repaid to the World Trade Center Museum and Memorial Program, thus ensuring that the funds are put to better use.</p> <p><b>HUD 1B Comment:</b> Again, providing the status is informational but is unlikely to ensure that the funds are put to better use. LMDC officials are well aware of the trade-offs of spending money on the deconstruction vs. other activities. They have a legal strategy for pursuing reimbursements that could, if successful, provide funds for other intended activities. Unfortunately, things probably just have to play out until the building is down. Another rising cost LMDC will probably not recoup is the cost of producing documents  related to 130 Liberty Street.</p> <p>www.hud.gov      espanol.hud.gov</p>
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Comment 1

Comment 2

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

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### Ref to OIG Evaluation

### Auditee Comments

### Comment 3

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**Recommendation 1C:** Provide documentation to support why funds disbursed for the initial building characterization study and air monitoring should not be classified as Aggregate Deconstruction Costs. If these disbursements are determined to be aggregate deconstruction costs, LMDC should seek recovery of the estimated \$682,311 (the insurers' 75 percent share based upon the Agreement) from the insurers and reimburse the Program, thus ensuring that these funds are put to better use.

**HUD 1C Comment:** The issue you raise about cost classification may become part of the expected litigation. We do not know whether producing documentation in response to this internal memorandum would prejudice legal arguments one way or the other. HUD would agree that LMDC should seek recovery of all costs to which it is entitled.

If you have any questions on this matter, please contact Mr. Jan C. Opper, Associate Deputy Assistant Secretary for Disaster Policy and Management at 202-402-4538.

## OIG Evaluation of Auditee Comments

- Comment 1** HUD does not object to requesting the information recommended, provided that the information is already collected by LMDC. However, HUD does not agree that this information should be requested to enable HUD to assess the extent to which additional funds should be reprogrammed for deconstruction activity. Since LMDC already collects the information recommended, HUD should receive the information so that it can assess the need for funds to be reprogrammed. While LMDC has discretion to reprogram funds, it may do so only within certain parameters, above which HUD must provide approval through the amended partial action plan process. Additionally, given the history of escalating costs for the 130 Liberty Street site, HUD needs as much information as possible so it can anticipate and assess the impact of expected cost increases upon previously approved activities.
- Comment 2** HUD agrees that the periodic reporting recommended would be informational, but it would not ensure that the funds are put to better use. LMDC's advance of Disaster Recovery Assistance funds to pay aggregate deconstruction costs is contrary to the deconstruction funding and settlement agreement. The intent of the periodic reporting to HUD, in addition to being informational, is to provide HUD with a more informed means to assess the effects of the advance of HUD funds on other programs. In addition, periodic reporting allows HUD to more accurately monitor LMDC's efforts to aggressively recover amounts that were advanced in lieu of using other nonfederal funds as provided by the agreement. Although this increased oversight might prevent additional advances or achieve recapture of previously advanced funds, that is not a certainty; therefore, we have deleted reference to funds to be put to better use.
- Comment 3** HUD agrees that LMDC should seek recovery of all costs to which it is entitled. Accordingly, we have updated the costs to \$868,000. Since LMDC is entitled to cost sharing of costs classified as aggregate deconstruction but did not classify the costs in question as aggregate deconstruction, these costs are not being considered for cost sharing with the insurers. Further, providing documentation to HUD should not impact any legal arguments. Therefore, in accordance with HUD's agreement that LMDC should seek recovery of all costs to which it is entitled, HUD should ensure that these costs are not improperly classified, thereby ensuring that the funds are put to better use.