



**U. S. Department of Housing and Urban Development**  
Office of Inspector General  
New York/New Jersey Office  
Jacob K. Javits Federal Building  
26 Federal Plaza – Room 3430  
New York, NY 10278-0068

**MEMORANDUM NO. 2008-NY-0801**

October 23, 2007

**MEMORANDUM FOR:** Nelson Bregon, General Deputy Assistant Secretary for Community Planning and Development, D

*Edgar Moore*

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

**SUBJECT:** Community Development Block Grant Disaster Recovery Assistance Funds  
Lower Manhattan Development Corporation, New York, New York

**INTRODUCTION**

Pursuant to a congressional mandate,<sup>1</sup> we recently issued the ninth audit report<sup>2</sup> in our series of ongoing audits of the Lower Manhattan Development Corporation's (LMDC) administration of the Community Development Block Grant Disaster Recovery Assistance funds provided to the State of New York following the September 11, 2001, terrorist attacks on the World Trade Center in New York City.<sup>3</sup> During this audit, we noted that the final action plan, approved by the U.S. Department of Housing and Urban Development (HUD) on December 6, 2006, did not always specify projects to which funds were to be allocated, nor identify alternative funding sources for some of the activities. The lack of specifics in the final action plan as approved will lessen HUD's ability to evaluate the extent to which future disbursements are in accordance with the approved final action plan.

In accordance with HUD Handbook 2000.06, REV-3, within 60 days, please provide us for each recommendation in this memorandum, a status report 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

---

<sup>1</sup> Conference Report to Accompany H.R. 3338 (Report Number 107-350, page 456).

<sup>2</sup> Lower Manhattan Development Corporation Community Development Block Grant Disaster Recovery Assistance Funds, New York, New York, 2007-NY-1013, September 28, 2007

<sup>3</sup> A total of \$2.783 billion was awarded in two grants, a \$2 billion grant for the World Trade Center disaster recovery and rebuilding efforts and a \$783 million grant for damaged properties and businesses, including the restoration of utility infrastructure, as well as economic revitalization related to the terrorist attacks.

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 John Harrison, assistant regional inspector general for audit, at (212) 264-4174.

### **SCOPE AND METHODOLOGY**

To document LMDC's plans for the allocation of approximately \$185 million of unallocated funds from the \$2 billion grant, we reviewed the final action plan submitted to HUD by LMDC on November 3, 2006, and approved by HUD on December 6, 2006. We reviewed the one proposed amendment to the final action plan, which was submitted for public comment on March 26, 2007 and approved by HUD on July 11, 2007. We discussed the final action plan and the amendment with LMDC and HUD officials. In addition, we reviewed the content of the previously approved partial action plans to determine whether specific projects were to be identified at a future date. We also discussed this memorandum report with HUD Community Planning and Development (CPD) staff on September 21, 2007, and based upon CPD officials e-mail comment that 24 CFR 91.220(c) is not applicable to LMDC's final action plan, we removed reference to that regulation.

We performed our on-site work from April through September 2007 at LMDC's office located in lower Manhattan, New York and at the auditee's parent company, the Empire State Development Corporation, in midtown Manhattan, New York.

### **BACKGROUND**

CDBG Disaster Recovery Assistance is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Funding is authorized to state or local government grantees, and upon appropriation HUD notifies the grantee, which must develop and submit an action plan for disaster recovery before any grant funds can be received. The action plan must describe the needs, strategies, and projected uses of the disaster recovery funds.

LMDC has implemented this process with a series of 13 partial action plans and amended partial action plans through which it has allocated the entire \$2 billion grant as of May 1, 2007. The \$783 million was allocated through two separate partial action plans and their amendments. In each partial action plan, LMDC identified the program and activity for the proposed expenditure of funds. The plans were open to public comment for a minimum of 15 calendar days, after which LMDC submitted the public comments and any revisions to the plan based upon the comments to HUD for approval. Once HUD approved the plan, it made funds available for the approved activities.

The final action plan for lower Manhattan disaster recovery and rebuilding efforts was prepared and made available for public comment by LMDC from September 29 through October 30, 2006. The funding sources for the proposed allocations were unallocated funds and funds reallocated through amended partial action plans 1, 2, 4, 6, 8, 9, and 11. No public comments

were received, and LMDC submitted the final action plan to HUD for approval on November 3, 2006. HUD approved the final action plan on December 6, 2006.

The final action plan allocated \$184.95 million to the following six programs:

<b>Final action plan activities</b>	<b>Allocation</b>
I. World Trade Center Memorial/Museum Reserve Fund	\$ 45,000,000
II. Affordable housing	\$ 12,000,000
III. Community and cultural enhancements	\$ 60,950,849
IV. Economic development	\$ 30,000,000
V. Education	\$ 6,000,000
VI. Transportation improvements	\$ 31,000,000
<b>Total</b>	<b>\$184,950,849</b>

Due to cost increases associated with the World Trade Center Memorial and Cultural Program, specifically, the 130 Liberty Street deconstruction project, on March 26, 2007, LMDC submitted for public comment the amended final action plan and amended partial action plans 2 and 7. The amendments proposed to allocate an additional \$30 million to the World Trade Center Memorial and Cultural Program approved in partial action plan 7. The source of these funds was amended partial action plan 2, which proposed reducing the allocation for the Job Creation and Retention Program by \$7 million, and the final action plan, which proposed reducing the allocation for Economic Development by \$23 million. The period for public comment closed on April 25, 2007, and no comments were received. HUD approved these amendments on July 11, 2007.

### **RESULTS OF REVIEW**

The approved final action plan did not identify specific programs, outcomes, and the amount and sources of other anticipated funds for major activities, which were to be funded with \$76 million of the almost \$185 million allocated. Previously approved partial action plans identified specific programs and projects and did not refer to future dates for which specific projects were expected to be named. As a result, we question why the final action plan did not follow the established precedent.

The administration of the disaster assistance funds is subject to among other guidance, the provisions published in Federal Register: dated May 22, 2002 (Volume 67, Number 99) Docket Number FR-4732-N-04. These provisions established alternative requirements whereby the State submits an action plan for recovery that includes a description of the activities assisted with grant funds, an estimate of the number and type of beneficiaries of the proposed activities, proposed accomplishments, and a target date for completion of each activity. Further, it provides that an action plan should include information specified at 24 CFR (*Code of Federal Regulations*) 91.220(b)(2), which requires that an action plan identify the nonfederal resources that are reasonably expected to be available and explain how federal funds will leverage those additional resources.

However, measuring accomplishments and assuring the adequacy of nonfederal sources of funds needed for the successful completion of projects is made difficult by the lack of specifics in the final action plan. Consequently, HUD will need to exercise increased oversight of these activities to ensure the successful completion of the activities and that funding is secured from other private and nonfederal public sources as planned.

### Specific Programs Not Identified

The approved final action plan allocated \$76 million to affordable housing, economic development, education, and transportation improvement activities without specifying the scope of the activities to be funded. Rather, the plan provided information on the general needs that the funds would address and noted that specific activities would be identified at a later date. In addition, agencies other than LMDC were to identify the projects to be funded and the amount of funding. Consequently, we are concerned that the plan as approved does not provide enough specifics on project selection and outcomes to permit meaningful monitoring of disbursements. The following activities are those that need to be better defined:

#### Affordable Housing

LMDC identified the need for the creation of affordable housing as a key component of a strong and vibrant lower Manhattan community. As a result, partial action plan 6 approved by HUD on November 8, 2005, allocated \$50 million for affordable housing programs and specifically named five projects for which the funds would be spent. In the final action plan, LMDC allocated \$12 million for affordable housing, reallocating \$8 million from one of the projects identified in partial action plan 6 and adding an additional \$4 million. The final action plan provided that the New York City Department of Housing Preservation and Development would administer and allocate the \$12 million to projects that provide affordable housing for low, moderate, and middle-income residents. This would be done through the preservation of Mitchell Lama or other affordable housing complexes, acquisition of new land or properties for affordable housing, or the creation of incentives for the private sector to develop affordable housing located in lower Manhattan at a maximum cost of \$100,000 per housing unit preserved or created. However, specific projects were not named; rather, the plan stated that projects to be funded are expected to be identified by December 31, 2007, and completed by December 31, 2009.

#### Economic Development

The plan allocated \$30 million for economic development initiatives in lower Manhattan; however, no specific projects were identified. Rather, this activity was to be administered by the New York City Economic Development Corporation, which would allocate funds to projects it identifies and determines will increase economic activity in lower Manhattan by stimulating and encouraging commercial and residential development, attracting businesses and residents to locate in lower Manhattan, and/or providing short- and/or long-term jobs in lower Manhattan. Projects to be funded were expected to be identified by December 2007 and completed by December 2009. As previously noted, the current amendment to the final action plan reduced this initiative by \$23 million.

In addition, after the close of our audit period, LMDC submitted for public comment a proposed \$5 million grant program, the Lower Manhattan Small Firm Assistance Program, to provide grants of up to \$25,000 for businesses adversely affected by street closures related to publicly funded construction. While this grant program will not be subject to formal HUD review because it has already been approved in the final action plan, in the past, grant programs targeted at individuals or businesses, such as the Residential Grant Program, Small Firm Attraction and Retention Grant Program, Job Creation and Retention Program, and Disproportionate Loss of Workforce Program, were all subject to HUD review and approval.

### Education

LMDC identified providing adequate educational resources as a key component for retaining families in lower Manhattan. Accordingly, the final action plan allocated \$6 million for education projects, of which \$3 million was earmarked for the construction of the East Side K-8 School. The remaining \$3 million would be allocated by the New York City Department of Education and/or the School Construction Authority to projects that are consistent with the Department of Education's goals. These projects were not specified but are intended for education purposes that would upgrade and/or create additional public school facilities including classrooms, labs, theaters, and recreation space. Specific projects were scheduled to be identified by December 31, 2007, and completed by December 31, 2009.

### Transportation Improvement

Ensuring sufficient transportation is considered key to ensuring the continuing success of lower Manhattan, and, therefore, the final action plan allocated up to \$31 million for various transportation initiatives that would benefit commuters, businesses, residents, and pedestrians in lower Manhattan. Specific projects were not identified, but the plan provided that the City of New York would allocate funds to projects that address one or more of the following initiatives: enhance mobility; enhance connectivity between lower Manhattan, the rest of New York City, and the surrounding area; promote the livability of lower Manhattan and/or support business development; improve conditions for pedestrians and bicyclists; encourage the use of public transportation; provide access to the streets for vehicles in need; reduce congestion on the streets; promote traffic management and emergency response; and lessen the impact of construction on residents, businesses, and tourists. The plan also provided that before funds were allocated to specific projects, the City would seek public participation in the review of the project's ability to support one or more of these transportation initiatives. Transportation projects were expected to be identified by December 31, 2007, and completed by December 31, 2009.

### Amount and Source of Nonfederal Funds Not Specified

The final action plan also did not specify the source and amount of funds that may be used to supplement the disaster assistance funds. For instance, the plan allocated \$45 million to provide a reserve fund for the World Trade Center Memorial/Museum that would be used for unexpected events or unavoidable costs related to the construction of the Memorial/Museum, including potentially excessive infrastructure costs. LMDC had already allocated approximately \$263

million toward the estimated \$510 million cost of the Memorial/Museum project. While the plan noted that additional funds are anticipated from private contributions and other government entities, including the New York and New Jersey Port Authority, it did not detail the source and commitments for the projected \$202.1 million in additional funds needed. Consequently, the plan provides no assurance that these additional funds will materialize and does not indicate what affect this would have upon the already committed HUD funds.

### **CONCLUSION**

While the action plan process can be an evolving one, the specific projects to which funds are to be allocated in the final action plan were not always identified, and specific funding decisions were assigned to other entities. We recognize that the final action plan was prepared and approved at a time when the operation of LMDC as a going concern was in question, and this may have resulted in the lack of specifics on certain projects. However, this question appears to have been resolved for the immediate future. Consequently, the lack of specifics in the final action plan as approved will lessen HUD's ability to evaluate the extent to which future disbursements are in accordance with the approved final action plan. In addition, the lack of information on the nonfederal sources of funding for the World Trade Center Memorial/Museum project lessens HUD's assurance that the funds will be available and that the project will be successfully completed as envisioned.

### **RECOMMENDATIONS**

We recommend that HUD's general deputy assistant secretary for community planning and development instruct LMDC to

- 1A. Provide specifics for HUD review for the activities and outcomes expected as a result of the funding approved in the final action plan for the affordable housing, economic development, education, and transportation projects.
- 1B. Identify the amount of private and nonfederal public resources available to date that are reasonably expected to be available for the completion of the Memorial/Museum to ensure that the allocated federal funds will sufficiently leverage those additional resources.