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FEDERAL 9/11 ASSISTANCE TO NEW YORK: PART I, II AND III

HEARING

BEFORE THE

SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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Wednesday, July 12, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION, AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 2:05 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, Linder, McCaul, King (ex officio), Meek, Pascrell and Thompson (ex officio).

Also Present: Representative Lowey.

Mr. ROGERS. This meeting of the Management, Integration and Oversight Subcommittee of the Committee on Homeland Security is called to order.

This afternoon we begin a series of hearings to examine the use and misuse of Federal disaster assistance provided to New York after the terrorist attacks of September 11, 2001. Before we begin, I do want to thank our panel guests for being with us today, and we look forward to your statements and answers to questions.

As we approach the fifth anniversary of the September 11th attacks, we remember how the world witnessed an extraordinary effort by New Yorkers to respond to an extraordinary event. To help the city recover, the President and Congress provided approximately $20 billion for New York City.

The graphics on display reflect the breakdown of the $20 billion both by category and the amount disbursed by each Federal agency involved in this effort. But while New Yorkers and the Nation pulled together, there were those who took advantage of this crisis for illegal personal gain.

Late last year the New York Daily News and other newspapers reported on examples and allegations of waste, fraud, and abuse regarding the 9/11 funding. In response, Homeland Security Committee Chairman Peter King requested that this Subcommittee examine the issue. Over the past six months committee staff conducted a bipartisan review, which included numerous interviews in New York and Washington. The committee also examined Federal financial records and grantee databases. The effort was augmented by a special agent from the FBI, an investigative reporter and tech-

nical assistance from the GAO. We also received financial data from 16 Federal agencies.

As part of our examination we are holding three hearings. Today's hearing will examine programs designed for the immediate response to the terrorist attacks of September 11. The second hearing will focus on the programs designed to help businesses and individuals recover from 9/11, and the third and final hearing will look ahead at the fraud controls and programs designed to help rebuild Lower Manhattan.

While fraud did occur, the Subcommittee found that New York City agencies responded by instituting numerous fraud controls. Prosecutors also won prison sentences up to eight years and restitutions totaling millions of dollars.

Our goal is to learn from the New York experience so improvements can be made in future Federal assistance programs to save taxpayer dollars.

[The statement of Mr. Rogers follows:]

OPENING STATEMENT OF THE HONORABLE MIKE ROGERS

JULY 12, 2007

This afternoon, we begin a series of hearings to examine the use and misuses of Federal disaster assistance provided to New York City after the terrorist attacks of September 11, 2001.

Before we begin, I would like to welcome our distinguished witnesses, and thank them for taking time out of their schedules to be with us today.

As we approach the fifth anniversary of September the Eleventh, we remember how the world witnessed an *extraordinary effort* by New Yorkers to respond to an *extraordinary event.*

To help the city recover, the President and Congress provided approximately $20 billion dollars for New York City.

The graphics on display reflect the break-down of the $20 billion—both by category, and the amount disbursed by each Federal agency involved in this effort. But, while New Yorkers and the Nation pulled together, there were those who took advantage of this crisis for illegal personal gain.

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While fraud did occur, the subcommittee found that New York City agencies responded by instituting numerous fraud controls.

Prosecutors also aggressively won prison sentences up to eight years, and restitutions totaling in the millions.

Our goal is to learn from the New York experience, so improvements can be made in future Federal disaster assistance programs to save taxpayers' dollars.

I now turn to the Ranking Member for any statement he may have.

Mr. ROGERS. And now I turn to the Ranking Member for an opening statement. Mr. Meek.

Mr. MEEK. Thank you, Mr. Chairman. I would ask at the appropriate time if you can recognize Mr. Pascrell. I am going to waive my statement for my opening comments, the first round of questioning, but recognize Mr. Pascrell from New Jersey at the appropriate time.

Mr. ROGERS. The gentleman from New Jersey is recognized for and opening statement.

Mr. PASCRELL. Mr. Chairman, thank you for holding these series of hearings over the next couple of days. This is a very important issue for which we are going to explore events that are long overdue, Mr. Chairman.

That there is a lack of congressional oversight has been a deplorable trademark of the House of Representatives in recent years. Virtually all meaningful matters that come before our body garner little more than a cursory review, and, regardless of the important issues at hand, essentially nothing in the way of consequence or ramification is ever instituted. The record is clear on that.

The Homeland Security Committee, however, is becoming an exception to the rule. We need exceptions to the rule. We have engaged in robust and vigorous oversight on a wide array of issues that fall under our purview. Today we continue on that track, and I again applaud the Chair and the Ranking Member for allowing us to finally focus on the topic.

I am heartend by the enormity, by the breadth and scope of the investigation this subcommittee will be undertaking. Billions of taxpayer dollars have been allotted in the extraordinary response to the extraordinary tragedy of 9/11, and it is truly our moral obligation to ensure that these funds have gone to those people and those entities that need it most.

We know the grim realities of September the 11th and the devastating impact on the United States, to say the least. New York City in particular faced an almost inconceivable challenge in its response, in its recovery and in its rebuilding, which goes on.

And the urgent needs of the city prompted an unprecedented reaction by the Federal Government. The President requested and the Congress delivered $20 billion to New York City to help in response to and recovery from the attacks. These funds were disbursed by a variety of agencies and for a multitude of services ranging from identifying casualties, to treating the injured, to removing the 100,000 truckloads of debris, to providing assistance to unemployed workers and damaged businesses, to rebuilding the transportation and communication structure of Lower Manhattan, but to date no comprehensive Federal accounting of these funds has ever been conducted. Nor has the Congress, nor has the executive branch of government assessed the Nation's response to this tragedy. The changes must come from this committee.

Dealing with and confronting tragedy often brings out the very best in people. We know that for some it brings out the very worst. Any time money, and this was a lot of money, is involved, there is the potential for nefarious deeds to occur, embezzlement, fraud, all kinds of abuses or potentialities that are always with us, and the witnesses, I have just glanced over their testimony, talk about these very specific things.

We know this, so it was imperative that the Federal agencies charged with disbursing the money have all appropriate safeguards in place, but it appears this was not necessarily the case. Scattered reports from an assortment of outlets have extraordinary examples of waste, of fraud and abuse. According to the New York Daily News, at least 63—over $63 million in FEMA funds for Ground Zero cleanup work was paid to companies accused of mob ties. This is unacceptable. Likewise, through the individual and family grant program, FEMA provided financial assistance for the replacement of air conditioners, vacuum cleaners, air purifiers that had been ruined by airborne residue from the collapse of the World Trade Center towers. Much of the funding for this program, which provided up to 17 to $150 per individual or household went to people who did not even live in the affected areas.

Some reports state that millions of dollars were awarded to large, flourishing businesses that were not in need of assistance. While heavily damaged businesses were awarded as little as $,10 similarly, as has been alleged, that money that was supposed to go to lower-income residents and Lower Manhattan was funneled to luxury housing. Each and every one of these allegations, and many more if true, is utterly unconscionable, I think this committee would conclude.

As we move forward, I want to know what kinds of information sharing and cooperation took place with all of the Federal agencies involved in the undertaking. We have heard that the SBA disbursed as much as $121 million in duplicative loans. If true, then obviously information sharing was a massive problem. We saw what happened with Katrina. We haven't even looked at what happened after the tragedy of 9/11.

We also need to examine the extent that agencies performed their due diligence to determine whether applicants' claims were accurate. It seems like this was inadequate at best.

We must all work to ensure that any kind of ineffective oversight or procurement by agencies is remedied once and for all. We know that we have a lot of work ahead of us, and I am looking forward to hearing from today's witnesses.

And just two final points, Mr. Chairman, if I may. In the testimony of our good friend Mr. Richard Skinner, on page 4 he talks about the U.S. attorneys, and I get the impression—I hope he addresses this. I get the impression, I hope you will correct me if I am wrong or support me if I am right, that the U.S. attorneys felt that this was not significant enough to look after, to look into, and that they felt that they could not prove their cases many times.

And the second point I want to bring up is on page 9 and 10 when you talk about the air quality. There has been a lot written about what was done after this vicious attack and how FEMA worked with the EPA. We knew that all the records of EPA kept on telling us, Members of the Congress, members of the New York—particularly New York delegation, that everything was just wonderful, and yet we understand now what our first responders are going through.

We cannot accept anything unless we understand and the record is put before us and the record is kept open, and I am telling you, Mr. Chairman, we are here 5 years later, and we still have held

no one accountable. We still have held no one accountable as to what the response was and what happened in terms of that tragedy. I don't know if I would hope we would all be in unison that this is not acceptable, and somebody has got to pay the price. Whoever cleared the air, and I mean cleared the air, and the air wasn't clear, that is pretty simple. And as far as I am concerned, that kind of attack and that kind of response if not true and simply expeditious at that particular time, that person should be tried in a court. That person should be tried in a court. I don't care how many titles they have. We are no better if we are hiding behind our titles as Congress, as a Congressman or Congresswoman in the 109th Congress. We are no better.

Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman.

The Chair now recognizes the Chairman of the Full Committee, Mr. King of New York.

Mr. KING. Thank you, Mr.Chairman. Let me thank you for the thoroughly bipartisan job that you have done on this. This is certainly a first-class investigation that was done. You and your staff and the people who have been assigned to this have really performed a great public service.

As a Member of Congress who lost over 150 friends, neighbors, and constituents on September 11th, this issue was particularly significant to me. I remember being with Congressman Pascrell and Congresswoman Lowey just three days after September 11th on the 14th, being at Ground Zero and seeing the amount of devastation. I worked two blocks from there. It took me about a half hour to get to my borough. The devastation was so significant and was such an enormity that it really was beyond anyone's comprehension. And to think that there were people who were working literally around the clock—you think of people who died that day, but also the rescue workers, those who were putting their lives on the line as far as the recovery effort, because it was tremendously dangerous for the first several weeks, and to think there were those taking advantage of that. Those who were coming in to make illicit and illegal money and to profit as a result of the worst tragedy in American history to me is as despicable as any crime can be.

So these hearings are very appropriate. They are very significant. And I think we should note and acknowledge up front that certainly in those first several weeks there was definite influence of organized crime in those first two or three weeks. We had organized crime companies coming in, being involved, obviously making illicit profits during that time. There were phantom employees. So definitely things went wrong.

On the other hand, I think it is significant to realize the effort that was made and things went right is that after that first two or three weeks of absolute devastation, very significant controls were imposed including dividing the area into quadrants. The fact that the area was a crime scene which had a large number of law enforcement persons there went a large way to cracking down on the crime that was going on, if not eliminating it entirely. That is why there have been so many prosecutions since then, and there has been significant action taken by various prosecutors—by the

City Department of Investigation and numerous other authorities—which have really gone after those who did try to profit.

We have to look carefully to make sure that they—there can be lessons learned from September 11th. Mayor Giuliani had measures in place that had been implemented after those first two or three weeks. Anyone who was there during those first several days afterwards and saw the extent of the devastation and listened to all of the experts say that it would take at least two years for the cleanup to be completed, and it would cost well over a billion dollars for the cleanup to be completed. The fact is it was done in less than nine months—Memorial Day, eight and a half months after September 11th—and the cost was less than $700 million. And the cost had been projected in excess of 1.2 billion. So it is important to keep this in perspective.

The fact is, there were a few who performed horribly. There were a few who committed the most scandalous crimes possible. But the overwhelming number of people involved—including the rescue workers, ordinary citizens, ordinary contractors—did do the job, and it was done extremely well. It really is a tribute, I believe, to the spirit and the heart of the people of New York in particular, but also the people of the United States who rallied behind us.

Having said that, none of that mitigates the harm done by those who tried to profit at the expense of those who suffered so badly on those—on the terrible day of September 11th and the aftermath when they were still looking for survivors, still trying to extract bodies, and there were people down there stealing and robbing for their own selfish purposes.

So, again, I thank Chairman Rogers and Ranking Member Meek for having this hearing. I think it is very significant to learn what happened on September 11th, but it is also if not even more important to the future to get the lessons learned from September 11th; if, God forbid, we ever are again affected or afflicted by a terrorist tragedy or a natural disaster, so that we be in a better position to get the job done and get it done correctly.

Mr. ROGERS. I thank the gentleman.

The Chair recognizes Mr. Thompson.

Mr. THOMPSON. Thank you very much, Mr. Chairman, Ranking Member Meek for holding this hearing. The tragedy that befell this Nation on September 11, 2001, was an attack on our people and on our own soil. It changed the way that each of us has come to view the serious need for safety and security in this country. As I have often heard people say, 9/11 changed everything. No question the attacks changed the way Americans look at the world. However, it should also give—it should also have changed the way our government responds to an unanticipated, multidimensional catastrophe, what I call a megacatastrophe, and I am afraid it is not.

I don't like to be a pessimist, but as we approach the 1-year anniversary of Hurricane Katrina, I am reminded of this government's failed response to that, making a catastrophe. One year later we who live in the affected areas of Mississippi, Louisiana and Alabama are still in the process of removing debris and trying to get trailers set up. There are still thousands of homes that must be demolished before new ones can be built, insurance settlements

that must be received before homes can be demolished, and people that must return before any rebuilding can begin.

Mr. Chairman, I know that there are those who will say that the comparison between Katrina and 9/11 is unfair. They will say that the enormous geographical scope of the devastation caused by Katrina combined with State and local jurisdictional concerns expeditiously increased the difficulty of recovery and rebuilding in these areas, and I will agree in part with these assessments. However, I also know that because of 9/11 we learned some basic processes and procedures that could have been put in place to help speed the pace of recovery for Katrina. But these practices were not used.

In the 9/11 cleanup we learned about the importance of having monitors on the ground to make sure that contractors were doing the work that they were being paid to do. We learned it in 9/11, but we didn't use it for Katrina. In 9/11 recovery we learned that the Federal Government needed to have a system of information sharing that would keep unscrupulous people from claiming multiple benefits while the true and needy are left to wait and wonder. We learned it from 9/11, but we didn't use it for Katrina.

I know that we did not learn those lessons, because the Government Accountability Office found that there may be $1 billion in fraud, waste and abuse associated with payments to individual contractors. These are losses to the taxpayers, Mr. Chairman that could have been avoided, but were not.

Mr. Chairman, I hope that we are able to examine and record the lessons we learned from 9/11, but I must be realistic that a little learning is not an education. A true education comes when you can take what you have learned and put it into practice.

Let us hope that we can put the lessons from 9/11 into practice before we finish the job with Katrina and especially before the next megacatastrophe.

Again, I want to thank you for holding this hearing, and look forward to hearing from the witnesses over the next 2 days.

Mr. ROGERS. I thank the gentleman.

The Chair is asked to ask unanimous consent to have our friend and colleague from New York, Ms. Lowey, join us for this hearing, and without objection, and we would like to hear your opening statement if you would like the share one with us.

Ms. LOWEY. Thank you, Mr. Chairman. I want to thank you and the Ranking Member of the full committee for holding this very important hearing.

As we know, the Nation's response to September 11th, the folks' memories of charity generosity and decency, thousands of New Yorkers and Americans from across the country worked tirelessly to help our city recover, and, Mr. Chairman, Mr. Chairman King, I do remember our walking around that site. In fact, I will never forget it.

The Federal Government contributed $2 billion to the recovery effort. Although this was an unprecedented amount, there was no coordinated effort to comprehensively account for how the funding was used. This opened the door for scattered incidents of inappropriate spending, which is truly a tragedy, truly outrageous, truly unfortunate.

In the aftermath of the hurricanes, it is clear we have made little progress since September 11th to adequately verify claims. Not only will stronger accounting mechanisms enable us to better prevent waste and fraud, we will also gain a better understanding of what assistance methods are the most effective so we will be prepared for the next emergency.

Members of the New York delegation had to fight for many months to regain $125 million for work compensation claims that Congress rescinded. While FEMA was awarding over $63 million to debris removal companies with ties to the mob, many who responded at Ground Zero were suffering from numerous health problems. In fact, just last week I was in Thornwood, New York, talking to a firefighter who is still getting outstanding care as a result of his work at 9/11. He and others had these illnesses and is still recovering resulting from heroic efforts working the pile after September 11th.

No examination of the post-9/11 recovery would be complete without getting to the bottom of how the Federal Government mispent millions while shortchanging important programs such as medical treatment for first responders. I do, Mr. Chairman, look forward to the testimony we will hear today on the initial response. Instances of inappropriate spending are shameful when we consider the magnitude of the tragedy of those who lost their lives.

Mr. Chairman, this hearing is so very important not only on this committee, but I also serve on the Foreign Operations Subcommittee of Appropriations, and it seems that we just can't get our oversight responsibilities together. We still don't do a good job. Two and a half years after the Iraq confrontation began, that finally is, and Inspector General Mr. Bowen is identifying problems and taking action.

I know it is as frustrating to you, Mr. Chairman, as to our Ranking Members on both sides of the aisle that there are examples of this kind of fraud, this kind of abuse when the need is so very great.

So I want to thank you, Mr. Chairman, for holding this hearing. I want to thank all of our witnesses for appearing before us, and, more importantly, I hope that we are going to get to the bottom of this because there are so many people of goodwill that responded to the tragedy of 9/11, and when they read about this abuse, it goes to the core of what is wrong about government. And we have a responsibility to make sure this is set straight and never happens again. So I thank you again, and I look forward to the witnesses.

Mr. ROGERS. The Chair thanks the gentlelady and would like to remind all Members statements may be submitted for the record.

And now we would like to turn to our guests. I do want to make the point that we expect to be called for a series of votes in the next 10 to 15 minutes. So what I would like to do is be able to get through each of your opening statements, and if they are called—if you hear our beepers going off—between now and then we will stay. We will try to get through those opening statements, and we will recess while we go vote, and we will come back and go to the question and answer period. Hopefully things will work out that way, but that is the plan.

But we are going to have two panels of distinguished guests. On this first panel we have before us—we are very privileged to have these gentlemen with us—I would like to start with Mr. Picciano. He is Deputy Director of Region II for the Federal Emergency Management Agency. We welcome you and look forward to your statement. I will remind all of you to keep your statement to five minutes or less, and you can submit your full statement for the record. But with that, welcome.

STATEMENT OF JOE PICCIANO

Mr. PICCIANO. Good afternoon, Chairman Rogers and Chairman King, Ranking Member Meek and Thompson, members of the committee. My name is Joseph Picciano, Deputy District Director of FEMA, about four blocks north of the World Trade Center. Our office was impacted by the event. On behalf of the Department of Homeland Security and FEMA, I am here to discuss FEMA's response and recovery to the New York City area following September 11th. Although key FEMA leadership could address these challenges and have left FEMA, my involvement has been limited over the years. I will make every effort to answer your questions. If I am unable to answer questions, I will get back to you.

This testimony will cover the two types of FEMA programs pertinent to the World Trade Center: public assistance, assistance to government; and individual assistance to individuals or victims.

There are a total of 191 applicants for public assistance. Three applicants received 95 percent of all of the money. That was New York City, the Port Authority and the State of New York. Under public assistance FEMA and New York State and New York City—and it is important to note New York State runs our public assistance program, and we support them—worked together to find ways within the Stafford Act to accomplish the following needs and maintain accountability of funds: Establish a family center for people to find their loved ones, fund the New York City Schools to replace lost instructional times, funded New York implementing cleanup programs for dust and debris, death and disability programs, pay for mutual aid reimbursement, pay for back pay on labor debris removal contracts to clean up continual unprecedented complex site conditions at the World Trade Center, pay for replacement of emergency response vehicles, repair schools, repair ruined roadways.

FEMA took action with New York and New York City to ensure potential applicants understood how to apply for assistance. Assistance was done in a coordinated and effective manner to the State and city. The best technical staff we had were made available. FEMA, New York State and New York City did make a hotline to identify potential applicants. FEMA appointed a Deputy Federal Coordinating Office for long-term recovery, and we created the Federal Task Force to Support New York City and the Infrastructure Recovery Work Group to ensure an efficient and integrated restoration of public and private infrastructure destroyed or damaged during the disaster.

FEMA, New York, New York City ensured quality assurance in public assistance programs by emphasizing quality of applications at the beginning of the process, additional checks and balances in

our system. We developed and provided clear written guidance to the staff assisting applicants through public assistance and through the State. And FEMA's Office of General Counsel and the Office of Inspector General were on site and provided us technical guidance and assistance during the entire process.

Congress was very helpful. The consolidated appropriations resolution that Congress enacted allowed us to address recovery needs that were not clearly eligible under the Stafford Act. The total obligated under that resolution was about $2.4 billion, the 9/11 associated costs, those costs that would have been questionable under the Stafford Act, but this allowed us flexibility to do things which we normally don't do straight time, disability pension; overtime for security; heightened security, which is a key concern in New York City; watershed security; and other associated costs typical of those I just described.

There was another $90 million under that resolution for health monitoring of emergency service and rescue personnel, and there was $1 billion established for insurance coverage for New York and its contractors for claims arising from debris removal at the Trade Center. The passage of the resolution resulted in the city establishing a captive insurance company.

FEMA also had a series of what we call interagency agreements with up to 12 other Federal agencies who managed other programs. The largest one was the Department of Transportation, who was responsible for rebuilding transportation systems and building the hub to the extent that it is going to be rebuilt to better serve New York City and Lower Manhattan.

Let me move quickly to individual assistance. The most significant and costly project in this category associated with human service are the mortgage/rental; temporary housing; individual family grants, as alluded to; disaster unemployment; and crisis counseling. With all of the categories of spending listed above, crisis counseling was the most significant, very similar to the Oklahoma City bombing. This was a very large building administered by the States, and multiple States tied on to this program, and it was relatively successful in activities that were initiated and that continue.

The largest individual assistance program in terms of financial cost or public interest was the Mortgage and Rental Assistance Program and Individual and Family Grant Programs. Both of these programs no longer exist. The law changed in 2000, but it was still in effect at the time of the World Trade Center. Mortgage and Rental Assistance Programs authorized temporary mortgage and rental payments on behalf of individuals and families who experienced a problem, and, given the need to show causality as well as requirements, really delayed us in doing anything with that. It wasn't a program we could aggressively move forward.

As of December 31st, FEMA had mailed out 61,000 applicants, and 28,000 were returned; 223 million of the total 245 million going to individuals came through that program for housing.

Between 2000—April 2000 and August 2002, FEMA faced intense scrutiny and criticism concerning the MR program from both New York City media and elected officials. The stories centered on the low number of applicant rates then existing in the spring and

summer in 2002. As a result, on June 28, 2002, a number of policy changes made by our FEMA headquarters allowed the program to be essentially open to all New Yorkers, expanding the impact area to include the borough of Manhattan.

A letter sent to then-FEMA Joe Albaugh from seven New York congressional delegations applauded FEMA for loosening standards within the MRA program, which allowed for broader eligibility for those individuals impacted with their rent or mortgages.

The Individual and Family Grant Program was the other program. The most challenging program to curtail potential fraud and abuse was this program. Traditionally this program helps individuals and families replace household items, provides special help. There is a category called "Other." That is where your air conditioners fell under.

The most difficult aspect of the IFG program was the air quality issue caused by the destruction of the towers. By the time determinations had been made, and it moved quickly in the first few months, the time determinations were made, our field teams had already given our verification, considering EPA warning regarding air qualities as well as concerns of residents. Rather than reinspect thousands of homes, FEMA and the State of New York accepted self-certifications by residents of the urgency of their need. While FEMA and State entered this program—let me move on to why some of these reasons exist.

There are several contributing factors. EPA Dust Cleanup Program. The news and community actions encouraging New Yorkers to apply for the program. There was a heat wave in New York at the time, we are talking in May, and vendors pushing hard for the sale of air-cleaning purifiers and air conditioners. So we had those four contributing factors.

The policy contributing factors were the introduction of the Cannot Afford Program. Inclusion of all five New York City boroughs was June 4, 2002, and extension of registration, November 3rd of 2002.

I just had one more page of some of the initiatives we took.

FEMA took several initiatives to control fraud and abuse as described above. Our Federal Recovery Officer suspected fraud and initiated the first random sampling of applicants, and between January and March of 2003, over 60 percent of the applicants inspected decided to withdraw their air condition application. Many admitted they hadn't owned an air conditioner prior to the World Trade Center disaster, or it had never been damaged.

In February of 2003, the Federal Recovery Officer proactively talked about a 90 percent potential fraud level. This resulted in an inspector general investigation regarding statements. The findings indicated the abuse was not as high as 90 percent as stated, but acknowledged the validity of FEMA's Home Inspection Sampling Program, which identified a high percentage of 60 percent. Further sampling efforts in coordination with IG allowed us to save 120 million.

It is important to note that due to FEMA's public awareness campaign of fraud and abuse statements, thousands of applicants withdrew from the program. Importantly, Federal and State law enforcement and IG worked hand in hand with us. Although fraud

did exist under the program, FEMA aggressively supported the State managing problems under unusual circumstances.

The following is important to note. This was the first of its kind of environmental disaster. There are presently no air quality standards that I am aware of to guide EPA and other agencies in what is dirty and what is not, leading to continued confusion regarding future environmental and health impact.

Finally, considering the 230,000 people who applied for IFG funding, that only 118,000 applicants were ultimately approved demonstrates our efforts along with the IFG to point out fraud and lower the potential for further abuse.

Thank you.

Mr. ROGERS. Thank you, Mr. Picciano.

[The statement of Mr. Picciano follows:]

WEDNESDAY, JULY 12, 2006

2:00 P.M. IN 311 CANNON HOUSE OFFICE BUILDING

SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT

HEARING

"AN EXAMINATION OF FEDERAL 9/11 ASSISTANCE TO NEW YORK: LESSONS LEARNED IN PREVENTING WASTE, FRAUD, ABUSE, AND MISMANAGEMENT, PART I"

PREPARED STATEMENT OF JOSEPH F. PICCIANO, DEPUTY DIRECTOR, REGION II, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

Good Morning Chairman Rogers, Ranking Member Meek and members of the Committee. My name is Joseph Picciano. I am the Deputy Director for Region II of the Department of Homeland Security's (DHS's) Federal Emergency Management Agency (FEMA) based in New York City and covering New York, New Jersey, Puerto Rico and the Virgin Islands. On behalf of FEMA and the Department of Homeland Security, I appear before you today to discuss FEMA's disaster assistance for response and recovery to the New York City area following the September 11, 2001 terrorist attacks.

FEMA and its staff are proud of the work accomplished following the attack. The tragic event posed unique challenges. It tested our ability to deliver help in a timely and effective manner while maintaining accountability.

FEMA Responds

Immediately following the attack, FEMA activated the Federal Response Plan, which brings together 28 federal agencies and the American Red Cross to assist local and state governments in responding to national emergencies and disasters. FEMA Headquarters also activated the Washington-based Emergency Support Team (EST) on a 24-hour basis, and Region II deployed its Emergency Response Team—Advance Element (ERT–A). In addition, FEMA activated the following federal assets to support response operations:

- Twenty Urban Search & Rescue Teams (FEMA)
- U.S. Army Corps of Engineers (Power and Debris Teams)
- Four Disaster Mortuary Teams (DMORT)
- Four Disaster Medical Assistance Teams (DMAT)
- One Management Support Team (MST)
- One Deployable Portable Morgue Unit (DPMU)
- One Veterinary Medical Team

President Bush appointed the Federal Coordinating Officer (FCO), responsible for coordinating the timely delivery of Federal disaster assistance to New York State, local governments, and disaster victims. On September 15, 2001, FEMA established the Disaster Field Office (DFO) at Pier 90 on the West Side of Manhattan. It initially operated 24 hours per day and served as a base for all FEMA operations. On December 3, 2001, the DFO relocated to 80 Centre Street in Lower Manhattan.

President Bush pledged at least twenty billion dollars to the City and State of New York. In the following 11 months, Congress passed several bills to provide approximately $20 billion in direct funding and tax benefits. This was the first time

that the amount of federal assistance for a disaster was determined early in the response and recovery process. Congress allocated $8.8 billion of this twenty billion to FEMA to reimburse individuals, governments, and not-for-profit organizations for response and recovery work related to the World Trade Center (WTC) disaster. As of May 30, 2006, FEMA has obligated approximately $8.77 billion, leaving approximately $30.3 million remaining for distribution. These remaining funds will be used to bring several ongoing programs to their completion, particularly Human Services programs such as Mortgage Rental Assistance, Individual and Family Grants, and Crisis Counseling assistance for the State of New York, and funding to reimburse applicants for currently non-funded projects authorized by the Consolidated Appropriations Resolution, enacted February 20, 2003, P.L. 108–7 (CAR).

Public Assistance (PA)

Although there were a total of 191 applicants with Project Worksheets (PWs), three applicants received approximately 95 percent of all the Stafford Act funding:

- New York City (50 agencies received assistance);
- The Port Authority of New York and New Jersey; and,
- The State of New York (50+ agencies, including the MTA).

Recognizing that the response to this tragedy was widespread, and that the New York State Emergency Management Office (SEMO) could not conduct a thorough and complete applicant briefing with such an extensive and unknown population, FEMA and SEMO established a Private-Non-Profit (PNP) Hotline on October 17, 2001 to identify potential PNP applicants. FEMA staffed the call center with local hires who worked Monday through Friday, 8 a.m. to 6 p.m., from October 17 to November 17, 2001; however, the call center was discontinued due to extremely low call volume (less than 150 inquiries total).

Based on the magnitude of the disaster and the duration of past recovery efforts (such as the Northridge Earthquake and Hurricane Andrew), the FCO appointed the Deputy FCO for Long-Term Recovery, responsible for identifying the needs of the community, coordinating with other federal, state, and local agencies to address those needs, and developing FEMA's long-term recovery plans.

Since the disaster recovery needs could not be solved within one program or agency, the Deputy FCO relied heavily on the creation of local and federal task forces to better coordinate the recovery effort. The various task forces focused on activities designed to immediately stimulate the development and infrastructure needs of the community. By bringing together all of these resources, the local agencies could immediately gain access to the resources of numerous federal agencies, and the local agency could promptly respond to time-sensitive problems in an effective manner.

The primary task force was the Federal Task Force (FTF) to Support NYC. The FEMA Deputy FCO for Long-Term Recovery chaired this task force. It was comprised of representatives from 11 federal agencies focused on developing a complete understanding of the reconstruction needs of the local and state government, and devising a recovery solution comprehensive enough to address these needs.

Equally important for its immediate impact on local projects was the Infrastructure Recovery Workgroup (IRWG), originally chaired jointly by SEMO and FEMA, and then later chaired by the Commissioner of NYC Department of Transportation. This task force was assembled to ensure an efficient and integrated restoration of public and private infrastructure destroyed or damaged by the disaster. The IRWG consisted of numerous federal, state, local, and private sector participants.

The Public Assistance Team

Immediately following the disaster, Region II assigned a Public Assistance Officer (PAO) and deployed over 30 Disaster Assistance Employees (DAEs) to serve as Public Assistance Coordinators (PACs) and Project Officers (POs). Within two weeks of the disaster, Headquarters, the FCO, and the Regional Director decided to replace the PAO and outsource the remainder of the PA operation (with the exception of National Emergency Management Information System (NEMIS) positions), substituting the DAEs with its Technical Assistance Contractors (TACs). The decision to outsource the PA operation, the first ever for FEMA, was made for several reasons:

- The catastrophic nature of the disaster called for deep technical expertise and professional management;
- The long-term nature of the project required a high-level of consistency among the staff; and,
- A fear that another terrorist attack might occur and require immediate FEMA resources.

To ensure that FEMA had access the broadest available range of technical specialists, the contracting officer asked all three TAC to supply personnel.

Ensuring Quality

It was recognized by FEMA and the applicants that well-written PWs, supported by accurate and well-documented cost analyses, and prepared in accordance with the Stafford Act and FEMA regulations, would reduce appeals and Office of Inspector General (OIG) audits. For that reason, quality was emphasized at the outset and considered extensively when disaster-specific processes were established.

To ensure quality, and validate that agencies were requesting reimbursement for all they were entitled to under the law, New York City, the disaster's largest applicant, required that all PWs, once prepared by the PAC and PO, be reviewed and signed-off by the agency representative, a NYC Office of Emergency Management representative, and an OMB representative, before being entered into NEMIS. Although FEMA was initially concerned the obligation process would be slowed, in the end it assured both the City and FEMA of a higher quality PW.

On the FEMA side, three initiatives were undertaken to ensure quality:

1. A Policy and Program Advisor position was created to provide verbal and written guidance to PACs and POs on eligibility questions. This advisor served as a critical link between PA management (the program decision makers) and field staff (the program implementers). Besides dealing with complex and sensitive issues, this advisor also prepared the PA Program Guidance memos for the PAO's signature.
2. FEMA developed a Quality Assurance Guide in October 2001, and disseminated it to all PACs and POs. This guide provided a series of detailed steps to be completed by FEMA POs during the preparation of PWs.
3. A quality control queue was created within NEMIS. An experienced technical specialist, with extensive program knowledge, a background in accounting, and access to management, worked off-site to review every PW and confirm eligibility decisions against all applicable regulations and disaster-specific guidance; verify cost estimates; correct any errors or omissions; and provide feedback to PACs and POs, when necessary.

In addition, FEMA's Office of General Counsel (OGC) and the OIG were physically present at the DFO, and subsequently the Federal Recovery Office, and provided day-to-day advice to the applicants and PA management. The OGC attorney(s) drafted mission assignments and interagency agreements, addressed eligibility-of-applicant issues and a myriad of other issues surrounding access rights, property ownership, liability, procurement, and insurance.

The OIG staff worked proactively with PA staff and applicants to ensure a consistent level of understanding regarding the documentation and audit requirements. Besides attending the applicant briefings and kickoff meetings, the OIG held a three hour audit briefing for all NYC agencies, and frequently provided feedback to PA managers regarding program, policy, or process issues. The OIG also reviewed all 9/11 Associated Cost PWs.

Consolidated Appropriation Resolution (P.L. 108–7)

In the aftermath of the disaster, it soon became apparent that while the Stafford Act was generally well-suited to most response and recovery needs, there were a number of significant costs which were clearly ineligible.

To address these types of projects, Congress enacted the Consolidated Appropriation Resolution of 2003 (CAR) signed into law by the President as Public Law 108–7 on February 20, 2003, to fund:

(1) 9/11-associated costs not reimbursable under the Stafford Act;

(2) $90 million for long-term health monitoring of emergency services, rescue, and recovery personnel; and,

(3) Up to $1 billion to establish insurance coverage for the City of New York and its contractors for claims arising from debris removal at the World Trade Center site.

This authorization was granted contingent on funds made available under P.L. 107–38, 107–117, and 107–206. In other words, any reimbursement for non-Stafford Act associated costs would come from the existing appropriations of $8.8 billion, after all Stafford Act-related costs had been reimbursed. By the time that the CAR was enacted, more than 17 months after the disaster, New York City and New York State had already paid many of these costs; therefore, reimbursement from FEMA effectively resulted in much needed budget relief for these agencies.

In March 2003, FEMA, the City, and the State verbally agreed to the following:

- The PA program would stop accepting costs for Stafford-eligible projects as of April 30, 2003;
- The applicants would submit all Project Completion and Certification Reports (P.4s) no later than June 16, 2003;

• FEMA would programmatically close all Stafford-eligible projects by June 30, 2003;
• FEMA would use the Project Worksheet to fund all 9/11 Associated Costs; rather than complete a P.4 certifying completion of the project and expenditure of the funds, the City and State would each separately sign a grant management letter certifying to abide by the Federal grant management requirements;
• FEMA would establish a Dedicated Fund (also referred to as a Set-Aside Fund) for both the City and State that would include:
  (1) the estimated cost of all incomplete Stafford-eligible projects deobligated due to the April 30, 2003 deadline, and
  (2) an estimate for all Stafford-eligible projects not funded on a PW as of April 30, 2003;
• The City and State could draw against the 9/11 Associated Costs PWs on a dollar by dollar basis up to the amount set-aside in their Dedicated Fund;
• Once the City and State exhausted their respective Dedicated Funds, all remaining dollars available for 9/11 Associated Costs would be divided on a two-thirds for the City, one-third for the State basis (as mutually agreed to by NYC and NYS); and,
• The applicant and grantee would submit no further appeals or time extension requests.

This was documented in a Joint Letter of Agreement dated June 2003. The letter also specified that the Port Authority would receive $448.75 million in federal funding, and that the date for the Port Authority to submit Stafford-eligible costs would extend beyond April 30, 2003. Since all County and PNP projects were completed and funded by April 30, 2003, the agreement did not affect these applicants.

Expedited Closeout

To close out the PA Program and accelerate funding of the 9/11 Associated Costs, FEMA established an expedited closeout process. Unlike the traditional closeout process where the applicants initiate it and the grantee coordinates it, this expedited process established firm deadlines and was led by FEMA. By closely managing the development of P.4s, streamlining the financial reconciliation of projects, and refining the closeout database initially developed by the Region to closeout DR–1391, by July 2003 FEMA was able to receive and forward to the grantee signed P.4s for all Stafford-eligible projects. The City and State were active participants in this process because it quickly brought to a close the Stafford Act-eligible program, thereby saving the City and State considerable time and money to manage a long-term, traditional closeout, and it allowed them to promptly draw down on any remaining funds using 9/11 Associated Cost projects.

9/11 Associated Costs

Once the closeout was complete, FEMA then worked with NYC and NYS to prepare PWs for 9/11 AssociatedCost projects. 9/11 Associated Cost projects were defined as those related to 9/11 that were not reimbursable under the Stafford Act. Projects such as CUNY's Fiterman Hall and the Battery Park City sidewalk and road repair identified in the City and State's dedicated fund, respectively, were not prepared as 9/11 Associated Cost projects because these were eligible under the Stafford Act.

To determine the allocation of the CAR funding, FEMA subtracted from the $8.8 billion all Stafford Act program expenditures to arrive at the available funding, and immediately deducted from that figure all the projects authorized by the CAR.

Calculating the funds available for projects authorized by the CAR 2003 was complicated, as FEMA wanted to ensure that funds remained to meet its projected Stafford Act obligations, and still be able to expedite funding to the City and State for the Debris Removal Insurance Program (DRIP), expanded health care monitoring, and 9/11 Associated Projects—all large and costly projects. To do so, FEMA's Stafford Act projection of $6.44 billion reflected an amount slightly higher than anticipated in certain areas—primarily for Human Services and other Administrative Costs—to mitigate the risk of FEMA not having enough funds to meet its Stafford Act obligations. This projection was refined in January 2004 when it became clear that additional funds could be made available to the City and State to fund 9/11 Associated Cost PWs, and these PWs were obligated. All or a portion of these available funds may be provided in the future to NYC, NYS, and the Port Authority to cover additional 9/11 Associated Costs.

Port Authority

As a result of the WTC attacks, the Port Authority suffered an estimated loss of $4.6 billion generated primarily by:

- The collapse of seven major office buildings (including the Twin Towers) owned by the Port Authority;
- The deaths of 84 Port Authority employees, including 37 PAPD police officers;
- Damage to its PATH system; and,
- Lost revenue.

Since the estimated $4.6 billion loss far exceeded its insurance coverage of $1.5 billion, FEMA, the Port Authority, and SEMO developed and implemented an Insurance Apportionment Strategy. This strategy provided immediate cash flow to the Port Authority for Stafford-eligible costs, while ensuring that the overall obligation was not duplicated by insurance benefits.

Under the terms of the ECP, and pursuant to the June 2003 Letter of Agreement (LOA) reached between FEMA, NYS, and NYC:

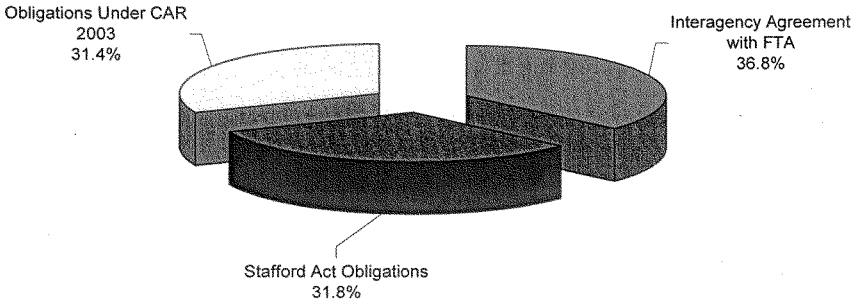
1. FEMA would reimburse the Port Authority for all Stafford-eligible work completed and paid for by May 31, 2003, regardless of whether the entire scope of eligible work had been completed; and,
2. The Port Authority's allocated disaster funding—whether Stafford eligible, Associated Costs, or Subgrantee Allowance—was capped at $448.75 million.

Using the Insurance Apportionment Strategy, FEMA reimbursed the Port Authority for Stafford-eligible costs obligated via project worksheets, and an administrative allowance. These payments accounted for $400 million toward the Port Authority's funding limit capped at $448.750 million. The left $48.750 million available to the Port Authority as reimbursement for 9/11 Associated Costs.

Facts

In two years FEMA obligated $7.48 billion in Public Assistance and infrastructure-related costs, in three categories as shown below in Figure VI–1. (An additional $21 million was obligated in January and February 2004—two years and four months after the attacks—to fund NYC and NYS 9/11 Associated Cost PWs.)

$7.48B Obligated for Public Assistance Related Costs



FEMA Transfers $2.75 Billion to FTA

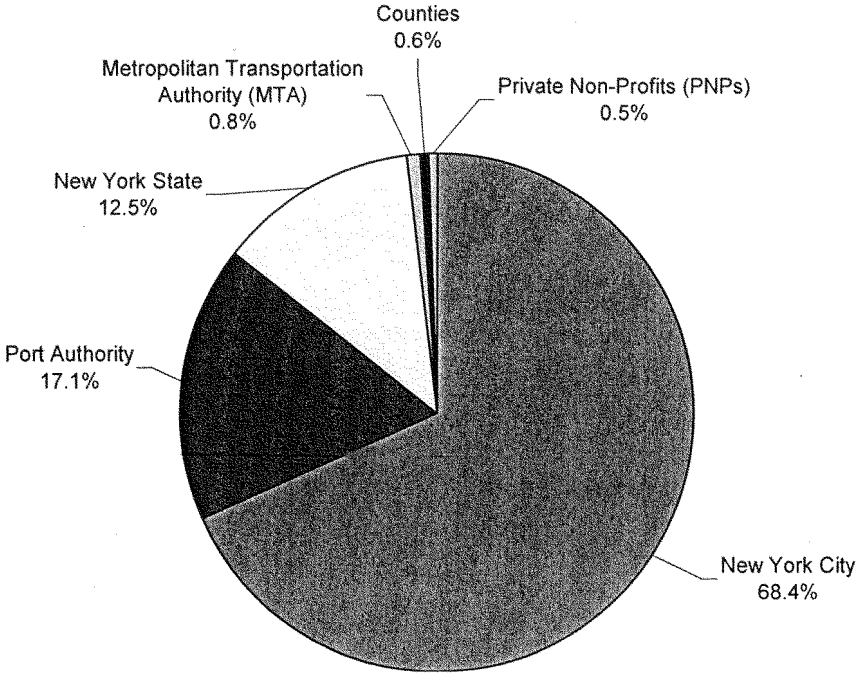
The $2.75 billion transferred to FTA was combined with the US DOT's $1.8 billion allocation, to create a $4.55 billion transportation fund to be administered by FTA and used to reconstruct and enhance Lower Manhattan's transportation infrastructure, including roadways, subway systems, and commuter rails. The process and conditions of this transfer of funds is treated in greater detail later in the "Emergency Transportation—Restoration of the Lower Manhattan Intermodal System" section of this PA Summary. Q04

FEMA Obligates $2.38 Billion Under Stafford Act

The Stafford Act obligations totaled $2.38 billion, including $.06 billion representing grant management and project administration costs. As Figure VI–2 illustrates, of the $2.32 billion obligated to traditional PA Program recipients, approximately two-thirds was awarded to NYC, with the Port Authority and New York State claiming the majority of the remaining third.

Figure VI–2 Stafford Act Project Worksheet Obligations by Recipient

$2.32 Billion Obligated Via Stafford Act Public Assistance PWs by Recipient



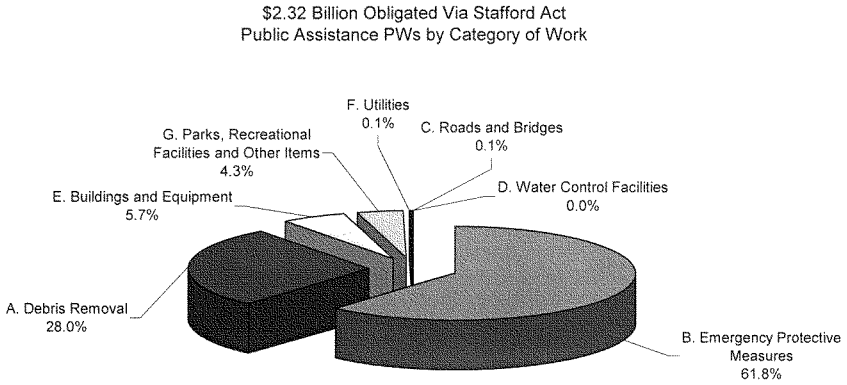
Approximately 90 percent of the reimbursed costs represented Emergency Work, FEMA work categories A and B (refer to Figure VI–3).

Major obligations included:

- Debris Removal to DDC and DSNY
- Incremental Cost Approach (ICA) for OT Labor
- Death and Disability Benefits
- Temporary PATH Station
- Emergency Transportation (excludes Temporary PATH Station)
- OCME for Victim Identification
- Building Cleaning and Air Monitoring

The above statistics comprise roughly 82 percent of all Emergency Work and nearly 75 percent of all funds obligated within FEMA's traditional Stafford Public Assistance Program.

Figure VI-3 below illustrates Stafford Act Project Worksheet Obligations by Category of Work



The 40 largest Stafford Act PWs of the disaster, which represent 75 percent of total PA Stafford-eligible dollars, are shown below in Figure VI-5:

Figure VI-5 Forty Largest Stafford Act Obligated PWs

40 LARGEST ($) STAFFORD OBLIGATED PROJECTS						
Applicant	Agency	Short Description	Cat	PW #	Dollars	% of Total Stafford Obligated
NYC	NYPD (through NYC)	ICA Overtime (INF Reconciled with PW #161)	B	162	$ 201,687,108	8.69%
NYS	SEMO	Pension Actuarial Loss - State Share	B	1492	185,800,000	8.00%
PA	Port Authority	Temp Path Station	B	783	140,017,382	6.03%
NYC	DDC	Debris Removal	A	1086	100,805,965	4.34%
NYC	DDC	Debris Removal	A	552	87,077,926	3.75%
NYC	NYPD	ICA Overtime (with PW #162)	B	161	82,267,410	3.54%
NYC	DDC	Debris Removal	A	870	79,771,321	3.44%
NYC	FDNY	ICA Overtime	B	148	75,398,076	3.25%
PA	Port Authority	Tunnels E & F Rehab	G	781	64,826,186	2.79%
NYC	NYC OMB	Pension Actuarial Loss - City Share	B	1491	64,600,000	2.78%
PA	Port Authority	Temp Office Relocation	B	1148	53,122,290	2.29%
NYC	DDC	Debris Removal (INF Reconciled w/PW #92)	A	106	52,000,000	2.24%
NYC	DDC	Debris Removal (INF Reconciled w/PW #97)	A	101	42,000,000	1.81%
NYC	DDC	Debris Removal (INF Reconciled w/PW #95)	A	102	42,000,000	1.81%
NYC	DDC	Debris Removal (INF Reconciled w/PW #89)	A	104	35,000,000	1.51%
NYC	NYPD	ICA Overtime - Nov. 10-25, 2001	B	631	31,436,417	1.35%
NYC	DOS	Debris Disposal	A	996	29,217,774	1.26%
NYC	NYC OMB	Fringe Benefit Adjustment Citywide	B	1517	27,986,289	1.21%
NYC	FDNY	Death Benefits for Deceased Firefighters	B	404	26,531,614	1.14%
NYC	FDNY	Backfill Overtime Labor	B	753	26,470,304	1.14%
PA	Port Authority	ICA Overtime	B	259	26,109,000	1.12%
NYC	BOE	Lost Instructional Time	G	1462	19,312,265	0.83%
PA	Port Authority	ET - Ferry Services	B	765	19,272,305	0.83%
NYC	DOS	ICA Overtime	A	196	18,985,951	0.82%
NYC	DDC	Debris Removal	A	767	18,500,000	0.80%
NYC	FDNY	Fire Response Vehicle Replacement	E	110	18,060,351	0.78%
PA	Port Authority	General Site Work Contract	E	791	17,829,460	0.77%
NYC	DDC	Debris Removal	A	750	17,025,609	0.73%
NYC	NYPD	Vehicle Usage	B	413	16,972,596	0.73%
NYC	NYPD	Post-ICA Overtime	B	1334	16,382,952	0.71%
NYS	MTA	Repair Tunnel 1/9 & Cortlandt St. Station	G	141	13,710,000	0.59%
NYC	DCAS	Emergency Supplies	B	663	12,926,008	0.56%
PA	Port Authority	Temporary Relocation - Increased Rent	B	913	12,370,561	0.53%
NYC	DOC	ICA Overtime	B	149	10,938,256	0.47%
PA	Port Authority	Info Tech: SL100 Telephone Network	E	1457	10,806,970	0.47%
NYC	DDC	Debris Removal	A	1090	10,191,569	0.44%
NYS	State Police	Overtime Labor	B	325	9,688,314	0.42%
PA	Port Authority	Info Tech: Computer Equip & Services	E	802	9,576,139	0.41%
NYS	DMNA	Overtime Labor	B	4	8,926,131	0.38%
PA	Port Authority	Post-ICA Overtime	B	793	8,871,847	0.38%
				TOTAL	$ 1,744,474,346	75.15%

FEMA Obligates $2.37 Billion under CAR 2003

As previously discussed in Section III, the passing CAR 2003 in February 2003 allowed for greater flexibility in disbursing federal grants to the City and State of New York for costs associated with the events of September11th. After budgeting the $1 billion for debris removal insurance and the $90 million for expanded health care monitoring, FEMA allocated and then obligated funds to NYC and NYS on 9/11 Associated Cost PWs, first disposing of each entity's Dedicated Funds, and then separating the remaining funds two-thirds to the City, and one-third to the State. As of August 3, 2004, the City had received $913 million in 9/11 Associated Costs and the State has received $372 million including $49 million for the Port Authority.

Backfill Labor

Stafford Act-eligible backfill labor costs after the WTC disaster exceeded $50 million, primarily for the FDNY, NYPD, NYC Department of Sanitation, and NYC De-

partment of Transportation. To evaluate the eligibility of backfill costs—costs incurred by the applicant to backfill for an employee performing eligible emergency work—PA staff followed the November 1993 memo issued by the PA Division Chief regarding force account (in-house) labor. This memo outlined instances where FEMA could reimburse for backfill, and how this reimbursement should occur. The methodology also contained a final step to validate that the eligible disaster-related overtime and backfill overtime did not exceed the total overtime paid by the department. This was a critical step since some FDNY backfill overtime PWs were greater than ten million.

Cleaning

The collapse of the WTC created a widespread plume of dust and debris. From the beginning, residents, community leaders, and City and State officials expressed concern that the dust may pose a threat to health and air quality. Due to these concerns, the EPA recommended to FEMA that the dust and debris be removed from residential units and unclean buildings in order to reduce the long-term risk of exposure to chemicals such as asbestos.

Based on EPA's advisement and requests from the City, FEMA provided funding for the exterior and/or interior cleaning of 244 buildings and 4,500 residential units in Lower Manhattan, and two unoccupied privately owned buildings in close proximity to the WTC site. FEMA classified this work as debris removal and based its eligibility determination on the EPA's and NYC Department of Environmental Protection's concern over the potential health threats posed by the debris, and the threat to the economic recovery this debris posed to lower Manhattan, as outlined in a letter from NYC to FEMA.

To ensure authorized right-of-entry, as required by the Stafford Act and 42 USC §1A5173, the City of New York developed a request form that the building owner or resident needed to sign before work could commence. The authorization form included a stipulation that any insurance proceeds received for activities covered by the EPA/DEP's dust cleaning program would be remitted to the federal government. The State Emergency Management Office maintains responsibility for notifying FEMA of any such remittance.

Death and Disability Benefits

In responding to the WTC disaster, 341 FDNY firefighters, 2 FDNY EMTs, 23 NYPD police officers, 3 State Court Officers, and 37 Port Authority police officers died. Their deaths were the first large-scale casualties resulting from an emergency response effort in FEMA's history. For the first time, FEMA received a request that it reimburse applicants—the City and State of New York—for certain contractually obligated death benefits, increased pension contributions, and other associated costs. Specifically, the City and State requested reimbursement for more than $750 million in death and disability benefit costs, including:

- Funeral Costs and Memorial Services;
- Lump Sum Line of Duty Benefit Costs;
- Increased Pension Costs Due to Line of Duty Deaths;
- Increased Pension Costs Due to Increased Disability Retirements; and,
- Leave Payout.

Upon review, FEMA concluded that funeral and memorial costs, lump sum death benefits, and increased pension costs due to line of duty deaths, although unusual, were a direct result of the disaster and a cost of performing the emergency work. Specifically, FEMA management found $291 million to be in accordance with OMB Circular A–87 Attachment B, Item 11, Compensation for Personnel Services, and item 11d(5).

Given the magnitude of the death benefit claims, the FEMA had an actuary review the applicant's actuarial studies to determine the soundness of the applicant's methodology and the reasonableness of the assumptions. Based on the actuary's findings, which supported the applicant's claim, FEMA authorized the reimbursements.

FEMA reimbursed the City and State for additional death and disability benefit costs as 9/11 Associated Costs.

FEMA did not approve death benefit costs for City or State employees killed as a result of the disaster where it could not be reasonably demonstrated that these individuals were performing eligible emergency work. FEMA also did not reimburse for State worker compensation costs as FEMA reimbursed the applicant a fringe rate to perform the emergency work, which included a component for workers compensation.

Debris—Time and Material Contracts

The FEMA PA Debris Management Guide (FEMA 325) states that the Time and Material (T&M) work should be limited to a maximum of 70 hours of actual emergency debris clearance work, and shall be permitted only for work that is necessary immediately after the disaster has occurred when a clear scope of work cannot be developed. After the WTC disaster, the NYC Department of Design and Construction—the overseer of the debris removal effort—entered into time and material contracts with four construction managers (CMs) to accomplish the emergency debris removal, hauling tasks, building demolition, and site stabilization. The CMs operated via a letter of intent, and not a complete written contract. Each of the CMs was capped at $250 million.

On September 15, 2001, FEMA approved a written waiver of policy, which allowed the extended use of T&M contracts based on continuing unpredictable and complex site conditions at the WTC. In addition, FEMA waived in part the requirement for competitive bidding on the basis of continuing public exigency and emergency. Due to these contracting circumstances, it was prudent that the federal government provide oversight to ensure that the scope of work and costs of the debris operation were properly controlled. In order to accomplish this, the City and FEMA established and implemented monitoring systems using resources from FEMA, Office of the Inspector General, the DDC, the NYC Office of Management and Budget, the NYC Department of Investigation, and several private auditing groups.

In November 2001, FEMA tasked the US Army Corps of Engineers (USACE) to provide an independent evaluation of the contract arrangement and recommend whether a T&M contract was still the most feasible and cost effective contract payment basis, or whether another type of contract, such as a lump sum or unit price, would be more suitable. Based on USACE's assessment and recommendation, FEMA extended its T&M waiver to DDC for the duration of the debris operation.

Debris Removal Insurance Program

Generally contractors, such as the four CMs, provide their own general and professional liability insurance coverage and include the costs of insurance as part of their overhead. As such, these costs are generally eligible for reimbursement by FEMA. Because of the extreme conditions related to debris removal at the WTC, and the unique nature of the hazards associated with the debris removal operation, the CMs required a greater amount and scope of insurance coverage than is typically obtained, including coverage for environmental liability.

The City agreed to provide a master insurance program, called the Coordinated Insurance Program, to cover both the debris removal contractors and employees that had worked at the WTC site. However, due to the impact of the disaster on the insurance market, available insurance was severely limited. The City was reimbursed to obtain general liability coverage and marine insurance coverage. These policies did not provide the City with coverage for environmental risks, such as asbestos, or professional liability. Although the City sought coverage for these risks, no commercial insurance was available due to the unknown environmental and health risks associated with the disaster. Because of the unresolved insurance issue, the CMs completed debris removal at the WTC without a written contract.

The major issue for FEMA was the City's insistence that the liability protection apply not only to the contractors, but also to the City for claims brought by City employees that had worked at the WTC site. FEMA had informally advised the City that the contractor-based insurance was eligible under the PA program, but the City-employee based insurance was not and would have to be separated in order for FEMA to provide funding. In addition, FEMA was concerned about the cost effectiveness of the City's proposal.

The passage of the CAR resulted in the City establishing a captive insurance company to process and payout any claims, and FEMA obligating $999.9 million on PW 1554 in September 2003. The draw down of funds will not occur until all final terms and conditions, including the scope of coverage, have been agreed upon.

Emergency Transportation

The WTC disaster caused unprecedented damage and disruption to New York's regional transportation system. The region relies on a complex network of rail, subway, bus, bridges, tunnels, roads, and ferry lines that ties together millions of workers and residents throughout New York City and in surrounding counties in New York, New Jersey and Connecticut. The collapse of the WTC towers caused massive damage to sections of this regional transportation system which serves Lower Manhattan. This network of rail, subway, bus, and ferry lines was disrupted as a result of:

1. The destruction of the Port Authority Trans-Hudson (PATH) WTC station, the terminal station for the PATH lines running under the Hudson River and serving Lower Manhattan.

2. The damage to the Metropolitan Transportation Authority's (MTA) Cortlandt Street Station and the N & R and 1 & 2 subway lines, all located below and adjacent to the WTC towers. (The MTA subway lines run underground along the west side of Manhattan. These subway systems were seriously impacted by the disaster, but unlike the PATH system, did not suffer complete destruction of major system components.)

3. Alteration of surface transit routes made necessary by debris removal operations and infrastructure repairs in the vicinity of Ground Zero.

As a direct result of the disaster, 68,000 commuters who used the WTC PATH station each day had to find an alternative route to work. Approximately 76,000 commuters and residents were forced to find alternatives to their pre-9/11 subway routes.

The direct damage caused by the disaster represented only a portion of the disruption to the region's transportation system, however. The damage caused a ripple effect that disrupted the entire system, affecting every mode of transportation that served Lower Manhattan. For example, the tens of thousands of New Jersey residents who commuted to Lower Manhattan on the PATH each day were suddenly forced onto other modes of transportation. Overnight, the demand for ferry service to Lower Manhattan more than doubled, and Penn Station experienced an influx of new riders as commuters were forced to take New Jersey trains into Penn Station and then take subways downtown. This strained the capacity of existing transportation routes, created dangerous overcrowding, resulted in long waits for service, and caused significant damage to the region's economy.

Restoration of the Lower Manhattan Intermodal System

A traditional interpretation of Section 406 of the Stafford Act would have limited FEMA's funding to the replacement of the WTC PATH station and other physically damaged elements of the system. However, a white paper was developed that provided a broader definition, within the context of the Stafford Act, of what can comprise a "damaged system," which FEMA Headquarters approved. By accepting this definition, FEMA was able to find eligible both directly and indirectly damaged projects that are critical to restoring the functionality of the Lower Manhattan intermodal transportation system. In August 2002, this unique approach resulted in two critical developments:

1. FEMA announced that $2.75 billion appropriated by Congress to FEMA's disaster fund could be used to help restore the transportation infrastructure system in Lower Manhattan. To this amount, the Federal Transit Administration (FTA) added $1.8 billion, both of which were made available for transportation projects, for a total of $4.55 billion.

2. FEMA and the US Department of Transportation (DOT) entered into a Memorandum of Agreement (MOA) in August 2002, which designates the FTA as the responsible agency for administering and monitoring the distribution of the $4.55 billion. This would enable the Federal government to assess needs and distribute funds in a systematic, comprehensive, and efficient manner.

Although the MOA noted that the FTA needed to disperse the $2.75 billion in accordance with the Stafford Act, this was waived due to the passage of the Consolidated Appropriation Resolution of 2003 (CAR 2003).

In March 2002, FEMA agreed with New York City that the emergency transportation needs of the region justified the increased costs involved in increasing the frequency of ferry services. FEMA agreed to reimburse New York City and the Port Authority for the operating costs of some new and expanded services initiated post 9/11. This began a series of ferry projects aimed at providing alternatives to commuters seeking ways, other than driving and subways, to reach Lower Manhattan. Eventually, over $47 million was obligated for ferry service and temporary landing projects that provided ferry service from:

- Hoboken to Lower Manhattan;
- Brooklyn to Lower Manhattan;
- Hunters Point, Queens and East River down to Lower Manhattan; and,
- Lower Manhattan Circulator.

Family Center

As part of its rescue and response effort, the City of New York needed to quickly establish space where families and friends of the victims could gather to provide or could obtain information about those missing or presumed dead, and where families of victims could apply for assistance. To meet this need, NYC established the Family Center at Pier 94 in Manhattan, which provided a safe and convenient location where families to obtain information about the missing as well as various services and programs.

Because the Family Center provided some services similar to those of a Disaster Service Center, which are generally not eligible for PA funding, FEMA had to carefully consider the eligibility of the build-out and operation of the Family Center. Basing its decision on 44 CFR §1A206.225, FEMA determined that the costs incurred by the City to establish and operate the Family Center were eligible since services at the Family Center, such as providing a centralized site to fill out missing person reports, submit DNA samples, and begin processing death certificates, was an essential community service in the aftermath of this disaster. The total cost to build-out and manage the Family Center was approximately $10 million.

Full Replacement Value (Vehicles)

As a result of the collapse of the WTC towers on September 11, over 200 publicly owned vehicles were destroyed beyond repair. Title 44 CFR §1A206.226(g) stipulates that eligible equipment damaged beyond repair may be replaced by "comparable items." In interpreting this federal regulation, FEMA's Public Assistance Guide states:

When equipment, including vehicles, is not repairable, FEMA will approve the cost of replacement with used items that are approximately the same age, capacity, and condition. Replacement of an item with a new item may be approved only if a used item is not available within a reasonable time and distance.

In recognition that the collapse of the WTC towers destroyed hundreds of emergency response vehicles, which significantly and adversely impacted these agencies' ongoing ability to expeditiously deliver emergency services, the Federal Coordinating Officer, in a memo dated December 12, 2001, sought Headquarters' approval for a disaster-specific directive aimed at fully and promptly restoring the services provided by these emergency vehicles, with minimal disruption to the overall recovery process. More specifically, this directive would serve to allow for the reimbursement of new, 2002 model vehicles to replace those lost in the disaster in lieu of analyzing and determining, on a case-by-case basis, whether each destroyed vehicle could be replaced"within a reasonable time and distance."

The FCO's request was granted and documented in PA Program Guidance 8, dated January 16, 2002. According to this guidance, the reimbursement value of a replacement vehicle would be:

- Based on the estimated cost of its purchase through the applicant's normal procurement process; and,
- Calculated net of deductions for actual or anticipated insurance proceeds.

Lost Instructional Time

On September 11, 2001, the collapse of the WTC forced the NYC Board of Education (BoE) to evacuate schools in Lower Manhattan and cancel classes citywide. Whereas most students were able to return to their respective schools on September 13th, students attending schools within close proximity to the disaster site were displaced and unable to return to either their own school or to provisional school facilities until September 18th. In total, NYC estimated that public school students lost more than 15 million hours of instructional time due to school closures, delayed openings, and school relocations. To replace the lost instructional time, the City proposed implementing an after-school program, contingent on FEMA funding.

While FEMA recognized that school hours were lost as a result of 9/11, a program contingent on FEMA funding would not satisfy the emergency work criteria per FEMA regulations. Ultimately, Congress directedFEMA to pay for this activity in House Report 107–593. FEMA obligated a $78 million Category G PW to fund an after-school program intended to replace the instructional time lost as a result of the WTC disaster.

Mutual Aid

Not surprisingly, the response from people, non-profits, and other governmental jurisdictions to help NYC respond and recover was enormous. In part due to this response, the President declared every county in New York eligible for Category B emergency work. In light of every county being declared and the response of so many counties without a pre-disaster mutual aid agreement in place with New York City, FEMA found certain mutual aid arrangements eligible even though they were not formally established in writing prior to September 11, 2001. By doing so, several provisions of Policy Series 9523.6 were waived. These waivers and authorities were permitted only because the impact of this terrorist event was catastrophic and well beyond reasonable planning assumptions of the applicants, and because mutual aid agreements were unlikely to have been formulated with all the entities from whom assistance was needed.

In reimbursing local governments within NYS who responded to the aid of NYC, FEMA limited the eligible costs to overtime, travel expenses, lodging, and other di-

rect costs, and reimbursed the mutual aid provider directly. Only applicants who had pre-9/11 mutual aid contracts in place that allowed payment for straight time were reimbursed for that cost. All mutual aid providers outside of the state had to have a pre-9/11 mutual aid contract in place to be reimbursed, in that case through NYC. The City did not request reimbursement for any in-state or out-of-state mutual aid providers because, according to NYC's Office of Emergency Management(OEM) officials, none billed the City.

Specific to DR–1391, the vast majority of mutual aid assistance requested by NYC was provided by various New York State counties. Although numerous counties were called upon to support the response and recovery effort, Nassau, Suffolk, Westchester, and Rockland counties incurred most of the mutual aid costs. These four alone accounted for approximately $10.5 million in mutual aid assistance, with Nassau County providing the bulk—over $7.2 million in mutual aid assistance.

Obtain and Maintain Insurance

Per Section 311 of the Stafford Act and Title 44 CFR §1A206.253, following any disaster, and as a condition for receiving PA funds, an applicant must obtain and maintain insurance on those insurable facilities (including content, equipment and vehicles) for which PA funding had been found eligible. The insurance must be for the hazard that caused the damage. An applicant is exempt from this requirement only if the state insurance commissioner certifies that such insurance is not, per Section 311(a)(1) of the Stafford Act, "reasonably available, adequate, and necessary." In addition, with regard to requests from public entities that they be allowed to self-insure, Section 311(a)(c) of the Stafford Act notes that only states will be allowed to act as self-insurers.

Prior to 9/11, NYC did not maintain commercial insurance on NYC buildings or property, such as vehicles or building contents. Rather, NYC considered itself to be "self-insured." When damages or losses occurred to a NYC property, the property was either not repaired or replaced, or else it was replaced or repaired using funds appropriated from NYC revenues.

Following 9/11, NYC requested that it be allowed to continue to self-insure and to be exempted from FEMA's Obtain and Maintain Insurance requirement. NYC argued that obtaining and maintaining commercial insurance for the damaged or destroyed property eligible for PA funding would be a deviation from normal business practice, resulting in serious fiscal implications to NYC's budget. On March 26, 2002 the NYS Superintendent of Insurance issued a letter stating that NYC was self-insured, and that the type of insurance required was not reasonably available, adequate, and necessary. FEMA's Acting Regional Director declined to recognize NYC as self-insured, but granted a waiver to the Obtain and Maintain requirement based on the NYS Superintendent of Insurance's opinion.

Port Authority Apportionment

One of the most complex challenges of the disaster was determining an insurance apportionment strategy for the Port Authority of New York and New Jersey. The Port Authority reported estimated losses in excess of $4.6 billion, and had $1.5 billion of insurance coverage for all insured risks on a per occurrence basis. Since the Port's projected losses significantly exceeded its insurance coverage—the only applicant to whom this occurred in DR–1391—FEMA worked with the Port Authority to develop a funding strategy that would provide the Port Authority with cash flow, yet account for the Port Authority's future insurance proceeds.

For the first year and a half after the disaster, while estimates of the Port's overall loss were still being developed, FEMA, NYS, and the Port Authority agreed to apply a 50 percent insurance reduction to each individual funding obligation. The implementation of this strategy allowed Stafford Act grant funds to be released in advance of final insurance resolution. The 50 percent was based on FEMA's analysis at the time of the Port's Preliminary Loss Assessment.

Through subsequent developments and the Port Authority's refinement of its losses, FEMA later modified its funding strategy and effectively reduced its obligation outlay to 26 percent of eligible projects. FEMA and the

State allowed individual project reimbursements to be released with varying percentages applied for insurance proceeds. Even though the Port Authority's loss claim will continue to mature, the financial model—the Insurance Apportionment Strategy—calculated the net FEMA eligible obligation at $409.88 million, representing 26 percent of the total Stafford-eligible costs.

In the end, the Port Authority was granted $397.97 million as Stafford Act-eligible costs obligated via PWs, and an administrative allowance of $2.03 million. FEMA was able to fully exhaust the available insurance proceeds by documenting the amount of eligible work and making provisions through the apportionment process, thus ensuring no duplication of insurance benefits.

Equipment and Contents Repair and Replacement

Costs contained in this category are relatively low since its focus is the repair and replacement of damaged equipment, computer systems, contents and furnishings. More specifically, this category includes costs associated with the:

(1) Replacement of destroyed vehicles;

(2) Installation and replacement of telecommunication and computer systems, and,

(3) Replacement of destroyed building contents and furnishings.

The repair and replacement of larger, more permanent structures, such as buildings, water mains, and transportation components are included in the Infrastructure category.

Death and Disability Benefits

Costs contained within this category are for certain contractually obligated death benefits, increased pension contributions, and other costs associated with the death or disability of emergency personnel as a direct result of the disaster. Specifically, this category includes costs for:

(1) Funeral and memorial services;

(2) Lump sum line of duty benefits;

(3) Increased pensions due to line of duty deaths and increased disability retirements;

(4) Leave payout to beneficiaries; and,

Cost of living adjustments for the State's pension contribution

Hazard Mitigation

This category contains costs associated with FEMA's 404 Hazard Mitigation Grant Program (HMGP), which for DR–1391–NY provided funds for long-term hazard mitigation measures against terrorism. Funding for HMGP is generally 15 percent of the total estimated Federal disaster assistance to be provided by FEMA under the declaration. That 15 percent is cost-shared on a 75/25 Federal/State and local ratio. For this event, it was capped at 5 percent of that total, limited to the disaster area, and intended for projects that protect infrastructure and systems essential to the City's continued viability. These parameters on the HMGP were implemented due to the immense financial size of the disaster, particularly where the disaster assistance that serves as the basis for the HMGP allocation was provided at 100 percent federal expense, with no State or local cost-share. FEMA considered many projects, including those that:

(1) Protect public infrastructure and utilities;

(2) Protect key governmental and healthcare facilities;

(3) Promote awareness initiatives;

(4) Ensure the continuity of government and business operations;

(5) Promote high-rise building safety; and,

(6) Protect public landmarks.

Administration

This category includes costs associated with administering all of the FEMA Federal grant programs for DR–1391–NY. The most significant and costly items in this category are those associated with:

(1) Grant management costs (including the FTA);

(2) FEMA administrative costs;

(3) Contractor costs; and,

(4)Administrative allowances.Q04

New Jersey

Included within this category are all costs funded through EM–3169–NJ. The most significant and costly projects in this category were those associated with emergency protective measures taken by the State of New Jersey and its associated entities. Specifically, this category contains funds expended by New Jersey resources to:

(1) Provide logistical and operational support to NYC;

(2) Evacuate Lower Manhattan;

(3) Transport and treat the injured;

(4) Establish emergency staging areas for rescue and recovery operations;

(5) Secure bridges and tunnels; and,

(6) Manage traffic to and from New York City.

Not included in this category are New Jersey projects that were sponsored by the New York State Emergency Management Office.

T2Individual and Family Grant

Costs contained within this category are for projects in which individuals, not public entities, were the ultimate beneficiaries of services. The most significant and

costly projects in this category are those associated with the Human Services Program, which includes costs for:

(1) Mortgage and Rental Assistance;
(2) Temporary Housing;
(3) Individual and Family Grants;
(4) Disaster Unemployment;
(5) Crisis Counseling; and,
(6) Disaster Food Stamps.

Also included in this category are funds expended via Interagency Agreements for:

(1) Expanded health care monitoring for rescue workers;
(2) Establishment of a health registry;
(3) Medical screening/health assessments of Federal workers; and,
(4) Residential cleaning and sampling.

Costs associated with operating the Family Center are also included in this category.

While all of the categories of spending listed above are important, the Crisis Counseling program was the most significant FEMA had established since the Murrah Building bombing in Oklahoma City in 1995. As with the Oklahoma City experience, this program was also of a longer duration than most programs associated with disaster-related counseling. The issues and challenges to individuals and families such as Post-Traumatic Stress Syndrome and other mental health challenges caused by such a horrific event are manifested in the size and scope of this program.

The largest program in terms of financial costs was the Mortgage and Rental Assistance (MRA) program. This program was deleted from the Stafford Act with the passage of the Disaster Mitigation Act of 2000. However, that Act and the provisions for the deletion of MRA were not yet in effect in September of 2001. As such, it was still an eligible program and available for this disaster. The MRA program authorized temporary mortgage or rental payments to or on behalf of individuals and families who experienced financial hardship caused by a major disaster. Given the need to show causality, as well as a requirement that the applicants have received a written notice of dispossession or eviction, this had always been a challenging program to administer. Given the population size of the immediate area impacted by this event, this was an especially difficult program to administer in both an urgent and equitable manner. However, despite all of those challenges, a significant number of applicants were assisted through this program.

The most challenging program, among human services programs, was the Individual and Family Grant (IFG) program. Traditionally this program helps individuals and families to replace household items and provides special help for those without adequate insurance to pay for some medical and funeral expenses. The most difficult aspect of the IFG program was the payment for air conditioners based on the contaminated air quality caused by the destruction of the towers.

By the time determinations had been made regarding air quality, most home inspections, FEMA's chief means of verification of damage, had already been performed. The EPA's warnings regarding the air quality were real, as were the concerns of residents. Therefore, rather than re-inspect thousands of homes, FEMA and the State of New York accepted self-certifications by residents as to the urgency of their need and to their contention that they were replacing air conditioners previously owned.

While FEMA and the State entered into this program cognizant of the risk of fraud, as with many emergency- related programs, we err on the side of safety with the assumption that we could assure more accountability as the recovery continues. The aggressive, and at times deceptive, approach by vendors anxious to encourage purchases presented a serious complication. The fact that there was no re-inspection and the vendors' approach contributed to fraud and abuse in the IFG program. Although this program was abused, it also ensured that those most in need of such assistance received help.

Undeniably, the WTC disaster impelled us to move quickly and compassionately. However, it is also our duty to ensure that our programs provide the benefits intended under the law to eligible applicants. The experience with the September 11th IFG program underlines the importance of balancing compassionate service with the need for accountability. To provide a clear understanding of how effectively the program is operating, the States must perform inspections and, barring those, random eligibility samples throughout the process.

Conclusion

Taken together, these project areas represent an overall picture of the damage and the steps taken to repair the damage and to assist the individuals, families, and communities who suffered the most direct pain and loss from this national event.

Even a brief review of the different categories of spending serves as a reminder of the various forms of disruption and chaos caused by the event but it is also a reminder of the heroic work that took place.

I appreciate the opportunity to share with you the details of FEMA's role in response, recovery, and mitigation for the World Trade Center disaster, and I will do my best to answer any questions you may have.

Mr. ROGERS. We are now happy to welcome back Mr. Richard Skinner. He is Inspector General for the U.S. Department of Homeland Security. Welcome.

STATEMENT OF RICHARD SKINNER

Mr. SKINNER. Thank you. I appreciate the opportunity to be back here to testify on this important subject. I will try to be brief.

On September 17th, 2001, only 6 days after 9/11, the OIG deployed a team of 24 individuals, auditors and investigators to New York City. The mission of the investigator was essentially to organize a multiagency task force to collectively address fraud, waste and abuse; review questionable applications; and moderate debris removal operations.

Our investigators received over 1,100 complaints between 9/16 and to date, and that resulted in approximately 250 active investigations. The majority of these complaints were related to fraudulent applications for the Mortgage and Rental Assistance Program. We worked many of these investigations jointly with the State of New York, other Federal agencies and local authorities. To date we have arrested 117 individuals, resulting in 96 convictions. Currently we have eight ongoing investigations.

Our investigations have resulted in approximately $940,000 in recoveries, $6.9 million in restitutions, $2 million in fines and $8 million in cost savings to the Federal Government. Cost savings—we were able to stop funds from being paid to the applicant, therefore we classified those as cost savings.

Our investigative activities closely paralleled a profile we learned from responding to prior catastrophic disasters. We projected that the first investigation would include false claims for individual assistance. During our initial meetings with representatives from both the U.S. Attorney's Office in the Eastern and Southern Districts of New York, it was mutually agreed that the Manhattan District Attorney's Office would prosecute the individual assistance cases, while the U.S. Attorney's Office would pursue public corruption and debris removal cases.

The most problematic cases that we tried to undertake not surprisingly dealt with the applications for air conditioners and air-quality items. On October 18th, 2001, FEMA added air purifiers, air filters and vacuum cleaners to its list of eligible items for reimbursement. On March 22nd, 2002, FEMA and the State decided to add window air conditioners as an eligible item.

Traditionally FEMA inspectors would verify damage before recommending repair or replacement of an electrical item; however, when air conditioners were added as an eligible item, home inspections had already been completed. FEMA then decided that it would not be cost-effective to have inspectors verify damage of a

single property item that is a window air conditioner. Instead the State implemented a self-certification process.

May 1st, 2002, FEMA authorized advance payments to applicants who were financially unable to purchase air-quality items. Rather than requiring receipts for such items prior to grant approval, which was traditionally required, which is still required, or an ability to document financial need, applicants were permitted to certify that they were unable to pay for the items and were asked to provide receipts after purchase.

Because FEMA and State controls over these items were reduced, many applicants received assistance for which they may not have been eligible, which increased opportunities for fraud and abuse.

In response to these concerns and at our urging, FEMA implemented a sampling program to verify eligibility and to identify abusers. FEMA selected two random samples, one for applicants who repaired or replaced air conditioners, and one of applicants who received advances for air-quality items.

The first sample, as Mr. Picciano pointed out, resulted in 62 percent of the applicants that were sampled, we were unable to determine whether they were, in fact, eligible. The second sample of about 5,600 applications for air-quality items identified about 1,600, 1,700 applicants, or 33 percent, who had not purchased the air-quality items.

These findings and conclusions were discussed with prosecutors in Manhattan, the Manhattan District Attorney's Office, who expressed concern proving criminal intent. The assistant U.S. attorneys also expressed similar concerns; specifically the low dollar amount of the transgressions made the cases very unattractive.

Also coupled with that was the confusion that existed at that time with regards to eligibility, the guidelines that were being sent out that were constantly changing also lessened the ability or, at least the prosecutors felt, weakened their ability to prosecute.

We reviewed many allegations and referrals concerning this matter and determined from an historical and reasonable approach that with few exceptions the allegations and referrals did not appear to have a great deal of prosecutorial merit. Nevertheless, we did have success in our opinion mitigating some of the fraud.

As a result of FEMA's efforts to educate the public as to the true intent of the individual assistance program and its home inspection sampling initiative, coupled with our investigative initiative which received considerable media coverage, more than 100,000 of the 229,000 applicants voluntarily chose to withdraw from the program. They either returned or did not accept their grant award. Given that the average award was about $1,200, these actions helped FEMA save more than $120 million.

Regardless—regarding debris removal, we have recognized the nature of debris removal operations makes it an area where unscrupulous individuals could potentially use a disaster for personal gain. Working jointly with Federal, State and local law enforcement officials, we were successful in prosecuting two contractors for false claims. All in all, however, due to the tight monitor controls established by the city of New York, we determined that fraud was not prevalent in the 9/11 debris removal operation.

Regarding our auditor oversight activities, our efforts were far from our traditional role. That is, going in after the fact got you doing financial compliance items. Instead, we went in very early and started working very closely with the FCO, the State officials, local officials, working hand in hand reviewing project applications, reviewing accounting systems, reviewing claims to determine early on whether there were any improprieties with regard to their public assistance programs. Our mission was in essence one of prevention as opposed to one of reaction.

We reviewed requests for funding and the detailed worksheets for all proposed projects and met with public assistance program staff on a regular basis. When I say regular basis, that was on a daily basis. We had auditors there, as many as 12 auditors at the DFO, for as long as 18 months, working hand in hand with the program officials.

At FEMA's request, we reviewed questionable bills and claims submitted by applicants for payment and FEMA's implementation of its policy on heightened security eligibility; overtime costs; applications for enhancements to subway stations. For example, at the Columbus and Ninth Avenue subway station, the city had submitted a proposal to expand that subway station to handle the overflow as a result of 9/11. That was at a cost of $30 million. We reviewed that and determined it was not feasible to make that expansion because new projects were—would be complete within 4 months by the time they completed the Columbus and Ninth Avenue station. The alternative stations would have been saving the government $30 million.

Based on our experience, two things stand out most, however. One is the need to improve FEMA's expedited assistance delivery process, and the need for better interagency coordination and data sharing, particularly with other Federal agencies and voluntary agencies involved in the delivery of disaster assistance. This cannot be overstressed. After 9/11, responsibilities shared among FEMA, EPA, the U.S. Department of Justice and voluntary agencies, just to illustrate, were not defined clearly enough to distinguish roles and establish the sequence of delivery of assistance. Recovery from the 9/11 bombings highlighted the need for data-sharing agreements regarding the shared roles and responsibilities among key agencies. This needs to be done before the disaster as opposed to an ad hoc basis as we did after 9/11 and as we are now doing in Katrina.

Although progress has been made in this area since 9/11, much more needs to be done. This can be accomplished in three principal means: direct law enforcement access to FEMA data, computer matching agreements, and real-time data exchange. Hurricane.

Katrina clearly demonstrated that law enforcement agencies need direct access to disaster victims' personal information not only to reconnect family members and locate missing persons, but also to identify convicted sex offenders and fleeing felons who may have relocated as a result of the disaster. In support of these issues, FEMA published just recently, I believe just last week, a notice in the Federal Register adding a new routine use to its disaster recovery assistance of records that allows for greater information shar-

ing for Federal agencies and State and local governments. This is a very important first step.

Another advantageous means of data sharing involves computer matching. Computer matching agreements among Federal agencies that provide disaster assistance are often necessary to detect fraud, waste and abuse. Without such agreements, the prospect for protecting the taxpayers' dollars and prosecuting fraud is diminished.

Mr. ROGERS. We are going to have to interrupt you. We have two minutes to get to the Capitol to vote. We will be back at approximately 3:15, 3:20, and we will pick back up at that point. We are now in recess.

[Recess.]

Mr. ROGERS. I call this hearing back to order and pick back up with Mr. Skinner. I apologize for the interruption, but there won't be any more since we have finished voting on the floor for the day.

Mr. SKINNER. Thank you and I understand.

When we adjourned briefly, I was talking about interagency coordination and data sharing, essentially by giving law enforcement direct access to FEMA data, interagency matching agreements—and which I have already commented on.

The third point I would like to make, that it is important that Federal agencies with disaster assistance programs—and there are well over 22 to my knowledge—that they have the capability to exchange real-time information among themselves. This exchange of information is necessary to verify identity and eligibility as well as create a holistic approach for effective delivery disaster assistance.

According to FEMA's disaster programs, the Federal Government has over 90 disaster assistance programs. Real-time data sharing agreements can help prevent the duplication of Federal disaster assistance and ensure that disaster victims receive the full complement of disaster assistance due them. For example, data sharing between FEMA and the Social Security Administration and the Postal Service can go a long way to verify the name, Social Security number, and address of an individual applying for disaster assistance. These types of agreements would result, in our opinion, in greater intergovernmental cooperation and collaboration in the delivery of disaster assistance.

I would like to note that we have an ongoing review of FEMA's data sharing processes and procedures, and that is currently ongoing, and once we do in fact complete that review I would be happy to share that with the committee.

In essence, that completes my opening remarks, and I look forward to answering any of your questions.

Mr. ROGERS. Thank you, Mr. Skinner.

[The statement of Mr. Skinner follows:]

PREPARED STATEMENT OF THE HONORABLE RICHARD L. SKINNER

Good afternoon Mr. Chairman and Members of the Subcommittee. I am Richard L. Skinner, Inspector General for the Department of Homeland Security. Thank you for the opportunity to be here today to discuss the work of the Office of Inspector General (OIG) in response to the terrorist attacks of September 11, 2001, in New York City. During the period of the federal response, I served as the Deputy Inspector General for the Federal Emergency Management Agency (FEMA). Subsequently, I became the Deputy Inspector General, and later Inspector General for the Department of Homeland Security.

OIG RESPONSE TO SEPTEMBER 11, 2001

The events of September 11, 2001, resulted in catastrophic loss of life and physical damage as well as loss to the business and residential infrastructure in the lower part of the Borough of Manhattan. FEMA applied the full range of authorized disaster assistance programs to address the post-disaster needs of the City of New York and its citizens, including grants for Public Assistance, Temporary Housing (specifically Mortgage and Rental Assistance), Individual and Family Grants, Disaster Unemployment Assistance, Crisis Counseling Assistance and Training, and Legal Services. However, due to the unique circumstances of this disaster—i.e., managing the consequence of a terrorist event rather than the consequences of a natural disaster—FEMA had to use its authorities and programs more broadly than ever before. As a result, FEMA's authorities were not adequate to meet everyone's expectations in recovering from the unprecedented needs created by this event.

On September 17, 2001, our investigators arrived in New York City and met with the Federal Coordinating Officer, representatives of the U.S. Attorney's Southern and Eastern District Office, the Manhattan District Attorney's Office, the New York Police Department, the Port Authority Police Department, the City of New York Department of Investigations, and many other investigative organizations with jurisdiction over the World Trade Center disaster. The purpose of those meetings was to provide and receive information; explain our mission of aggressively investigating and recommending prosecution of anyone attempting to defraud FEMA; and, to fulfill our objectives of:

- Participating in public service announcements
- Conducting fraud awareness briefings
- Organizing a multi-agency task force to collectively address fraud
- Reviewing applications through computer matching
- Monitoring debris removal
- Participating in press conferences with the U.S. Attorney's Office
- Distributing FEMA fraud Hotline posters and information

During the initial first eight months, a satellite office was established in Manhattan where our investigators worked round-the-clock, in three shifts with six agents per shift. In April 2002, investigators transitioned to two/12-hour shifts, and maintained six agents per shift. By February 2003, investigators were working one/12-hour shift with six agents. The Agent in Charge of the FEMA OIG Eastern District Investigations Branch Office in Atlanta, Georgia provided supervisory oversight of the World Trade Center investigations.

By early October 2001, we also deployed teams of auditors and inspectors from our headquarters and various field offices to the New York City Disaster Field Office (DFO). Our mission was to (1) assist the Federal Coordinating Officer in reviewing and assessing procedures, practices, and controls in place throughout the operation; (2) identify and prevent fraud; and (3) assure FEMA's Director that all possible actions to protect public welfare and to ensure the efficient, effective, and economic expenditure of federal funds were undertaken. One team of auditors and inspectors worked directly with the Federal Coordinating Officer and monitored set-up and operation of the DFO. Another team of auditors worked with FEMA's public assistance staff while a team of inspectors worked with FEMA's individual assistance program staff.

INVESTIGATIVE ACTIVITIES

We received allegations of fraud in a variety of ways. While the FEMA OIG fraud hotline was our primary source of information, FEMA's disaster assistance program staff, the Manhattan District Attorney's Office, and other federal, state, and local agencies provided information.

Our investigators received over 1,100 complaints resulting in approximately 250 investigations, the majority of these complaints were related to fraudulent applications for Mortgage and Rental Assistance, Disaster Unemployment Assistance, and individual assistance. We worked many of those investigations jointly with the Social Security Administration OIG, the New York Department of Investigations, and other law enforcement agencies. We arrested or indicted 117 individuals resulting in 96 convictions, 10 dismissals, 3 warrants, and 8 investigations pending final disposition. Further, the approximate aggregate dollar amount that can be attributed to our investigative activity is $940,000 in recoveries, $6.9 million in restitutions, $2 million in fines, and $8 million in cost savings to the federal government.

Individual Assistance

Our investigative activities in response to the World Trade Center closely paralleled a profile we learned from responding to prior catastrophic disasters. We projected that the first investigations would involve false claims for individual assistance, which included the Mortgage and Rental Assistance, Disaster Unemployment

Assistance, Individual and Family Grants programs, and other associated programs to assist individuals affected by the disaster.

During our initial meeting with representatives of both the U.S. Attorney in the Eastern and Southern Districts, it was mutually agreed that the Manhattan District Attorney's Office would prosecute the smaller individual assistance cases while the U.S. Attorney's offices would pursue debris removal cases.

Examples of the individual assistance cases accepted by the Manhattan District Attorney's Office were:

- Claims for damage to residences owned by others
- Claims for damage to a residence where no damage occurred
- Claims for pre-existing damage
- Claims for mortgage and rental assistance
- Claims in the names of decedents
- Renters filing claims purporting to be landlords

Mortgage and Rental Assistance Program

The Mortgage and Rental Assistance (MRA) program was designed to cover rent or mortgage payments for victims who suffer financial hardship as a result of a major disaster. Victims who were unable to pay their rent or mortgage and received written notice of eviction or foreclosure may have been eligible for MRA grants.

One example of an MRA-related investigation involved a person who was temporarily employed by FEMA at the Applicant Assistance Center in Manhattan. The employee participated in a scheme to defraud FEMA by filing false claims under the MRA program. To further the scheme, he and seven others obtained, or helped to obtain, over $1 million in MRA grants based upon applications that contained fake phone bills and bogus driver's licenses, which were intended to prove residency at a particular location, or identified residential addresses that were actually commercial mail receiving facilities. Additionally, these individuals enlisted accomplices to create false documents, submit false claims, vouch for information provided to FEMA, and to receive grant payments. In April 2006, with the cooperation of the Secret Service and the Postal Inspection Service, six were arrested and charged in the Eastern District of New York, in a 52-count indictment to include false claims, conspiracy, mail fraud, wire fraud, and making false statements. Two of the individuals pleaded guilty, one remains a fugitive, and prosecution is pending on the remaining four defendants.

Other examples of related investigations include two individuals who claimed damage to their personal property items from debris and smoke filled air in their apartment, which was located 35 blocks from the World Trade Center site. Each received $10,000 in grants from FEMA. Another individual claimed her estranged husband was a window washer at the World Trade Center and died in the attack. She received $3,200 in rental assistance before we determined the husband was alive and living on Long Island. All of these individuals were successfully prosecuted.

Individual and Family Grants Program

The Individual and Family Grants (IFG) program was designed to meet the disaster-related necessary expenses or serious needs of disaster victims which could not be met through other provisions of the *Stafford Act;* or, through other means, such as insurance; other federal assistance; or voluntary agency programs. Eligible expenses may include those for real and personal property, medical and dental expenses, funeral expenses, transportation needs, and other expenses specifically requested by the state.

On October 18, 2001, air purifiers, air filters, and vacuum cleaners with high efficiency particulate air filters were added to the list of IFG eligible items. On March 22, 2002, FEMA and the state decided to add window air conditioners as an IFG eligible item. Eligibility was dependent upon applicants having owned a window air conditioner that was damaged during the event. Traditionally, during a home inspection inspectors would verify damage before recommending the repair or replacement of an eligible item.

However, when air conditioners were added as an IFG eligible property item, home inspections had been completed. FEMA then decided that it would not be cost effective to have inspectors verify damage of a single property item. Instead, the state implemented a self-certification process. Further, on May 1, 2002, FEMA and the state authorized advance payments to applicants who were financially unable to purchase air quality items. Rather than requiring receipts for such items prior to grant approval (which was traditionally required) or an ability to document financial need, applicants were permitted to certify that they were unable to pay for the items and were asked to provide receipts after purchase.

On February 20, 2003, the *Associated Press* reported that people who did not suffer from the effects of contaminated air filed 90 percent of the applications for reimbursement of IFG eligible air quality items. The source of that figure was FEMA's World Trade Center disaster recovery manager. The manager's estimate was based on an assumption that, of the 225,000 applicants for air quality items, only the 25,000 applicants that lived in Manhattan and who were eligible to participate in an Environmental Protection Agency home cleaning program, suffered from contaminated air. Consequently, the manager concluded that 90 percent of the applications submitted were from individuals who had not suffered from the effects of contaminated air.

We determined there was no indication that eligible applicants did not receive assistance. However, because FEMA and state management and control over IFG eligible air quality items was reduced, many applicants received assistance for which they may not have been eligible, which increased opportunities for fraud and abuse.

In response to these concerns, and at our urging, FEMA implemented a sampling program to verify applicant eligibility and to identify abusers. FEMA selected two random samples: one of applicants who repaired or replaced air conditioners, and one of applicants who received advances for air quality items. Although the samples were not designed to be statistically valid, the results suggest that a large number of applicants were not suffering from the effects of contaminated air.

In January 2003, FEMA selected a sample of 4,435 people who applied for assistance to buy window air conditioners and visited their homes to verify that they had window air conditioners before the disaster occurred. FEMA representatives inspected damaged air conditioners or, when damaged air conditioners had been disposed of, inspected indentations left in windows by the air conditioners. The home inspections identified 1,704 applicants who had evidence of the prior existence of a window air conditioner, and 2,731 applicants, or 62%, who did not and therefore were probably ineligible for assistance.

The second sample of 5,602 applications was selected in March 2003 to verify the proper use of $5.8 million in advances for air quality items. Applicants who received advances were required to submit receipts to the state within 30 days after receiving the funds, but FEMA said that none of the applicants included in the sample complied with this requirement. As of July 22, 2003, FEMA had completed 5,029 home inspections and determined that 3,347 applicants had purchased the air quality items. FEMA referred the 1,682 applicants, or 33%, who had not purchased the air quality items to the state for collection.

These findings and conclusions were discussed with Manhattan District Attorney's Office prosecutors who expressed concern proving criminal intent. The prosecutors felt it would be their burden to prove that a subject's intended purpose was to defraud FEMA, yet the prosecutors were not certain they could satisfy that element. While prosecutors did state that they would be willing to review such cases, unless our investigators had solid proof of intent, prosecutors would be more likely to decline prosecution. Also, prosecutors expressed concern over the low dollar amount—about $1,200—of each potential case and over the administration of the program, which allowed applicants to receive funds and purchase items with no stated purchase deadline.

The Assistant U.S. Attorneys expressed similar concerns. Specifically, the lack of program criteria allowing applicants to receive funds and purchase items with no stated purchase deadline, and the low dollar amount, made the cases very unattractive. An additional issue for the U.S. Attorney was the appearance of selective prosecution for which a logical defense would be why is the government prosecuting certain individuals when it chose not to prosecute all 200,000 of the potential fraudulent claims.

We reviewed many allegations and referrals concerning this matter and determined, from a historical and reasonable approach, that with few exceptions, the allegations and referrals did not appear to have a great deal of prosecutorial merit. However, both federal and state prosecutors stated that if the case involved false documents, they would be more likely to prosecute those subjects. We conducted 12 investigations, the subjects of which were prosecuted by the Manhattan District Attorney's Office. Two individuals filed claims to obtain filters for their window air conditioners when in fact the high-rise building where they resided had central air conditioning. Another 10 individuals, when confronted by our investigators, confessed to submitting false invoices to support their claims for IFG assistance. Last, we investigated complaints against 16 air quality products companies for using unethical sales tactics and referred them to the New York State Attorney General's office.

Nevertheless, we did have success, in our opinion, mitigating some of the fraud. As a result of FEMA's intensive efforts to educate the public as to the true intent

of the IFG Program and its aggressive home inspection sampling initiative, coupled with our investigative initiatives, which received considerable media coverage, more than 100,00 of the original 229,000 applicants voluntarily chose to withdraw from the program. They either returned or did not accept their grant award. Given that the average IFG award was about $1,200, these actions helped FEMA save more than $120 million.

Public Assistance

Public assistance investigations, the majority of which deal with debris removal and generally involve primary contractors and subcontractors, are more complex and take longer to complete than the individual assistance investigations. Examples of public assistance cases the U.S. Attorneys agreed to prosecute dealt with the removal and disposal of disaster related debris. We have long recognized that the nature of debris removal operations make it an area where unscrupulous individuals and firms could potentially use a disaster for personal gain. With our years of experience, we have seen contractors engaged in:

- Submitting false debris removal invoices
- Artificially increasing tonnage hauled
- Inflating the number of employees
- Falsifying labor and material costs
- Bribery, bid-rigging, and kickbacks

Working jointly with the Internal Revenue Service's Criminal Investigations Division and the Postal Inspections Service, we investigated the president and owner of a disaster recovery and clean-up company. This individual and others were convicted in U.S. District Court of engaging in a fraud scheme to enrich themselves by taking advantage of federal disaster relief funds in New York and two other states. Specifically, the contractor was hired to provide monitoring and maintenance services at the Fresh Kills Landfill on Staten Island. The contractor misrepresented the hourly rates it was paying employees, and submitted false invoices for employee lodging and per diem.

In another investigation, two contractors working for a trucking company were successfully prosecuted. All contractors are required to have a valid New York City permit to do business in the city. We received information that this trucking company submitted an application to remove debris and provided false information as to the owner of the company. Working jointly with the New York Department of Investigations, we participated in the execution of a New York State search warrant at two of its places of business, which produced documentation as to the true owner and manager of the company. One individual was arrested for submitting false documents to the City of New York for a work permit license. A second individual was arrested for making false statements in a deposition as to the ownership of the company. Both were convicted on multiple counts of perjury.

GENERAL MANAGEMENT OVERSIGHT ACTIVITIES

As I briefly mentioned, our auditors and inspectors worked in direct support of the Federal Coordinating Officer responding to specific requests and addressing matters that independently came to our attention. Some of the tasks we performed at the Disaster Field Office related to accounting and auditing, but some were as varied as tracking down missing copy machines. We worked closely with a team of FEMA comptrollers and Office of General Counsel representatives, helping them with a wide assortment of financial matters. Further, we worked with other federal agencies, as well as with state and city organizations and voluntary agencies. Our support included establishing a partnership with program staff to identify and suggest courses of action regarding potential and emerging issues with duplication of benefits, donations management, accountable property, program limitations and administration, DFO training, and safety and security.

Public Assistance

We responded to the World Trade Center attack as a partner with FEMA's response and recovery components. We deployed a team of auditors to monitor public assistance operations and assist in reviewing requests for assistance. The team maintained a presence for more than 18 months after the attack, working with FEMA public assistance staff to ensure that recovery efforts were on track and complied with federal laws and regulations.

Our efforts were far from the traditional role of the OIG as this was an extremely unique situation. We were able to contribute significantly to the effectiveness of FEMA's response by providing proactive oversight rather than reactive hindsight. Early in the process we briefed applicants on how to qualify for FEMA assistance and maintain records, and we reviewed accounting systems of some of the local governments to ensure they were adequate for collecting necessary cost data.

We reviewed requests for funding and the detailed worksheets for proposed projects and met with public assistance program staff on a regular basis to provide them technical assistance on allowable costs. At FEMA's request, we reviewed questionable bills submitted by applicants for payment and FEMA's implementation of its policy on heightened security eligibility.

We did not conduct any traditional compliance audits of public assistance grants, nor did we audit any costs incurred under the *Consolidated Appropriations Resolution Act of 2003,* which provided that costs not eligible for public assistance funding, referred to as associated expenses, would be funded with the remainder of the $8.8 billion of authorized FEMA funding. FEMA estimated that $7.6 billion would be required for *Stafford Act* purposes and $1.2 billion would be used for associated expenses. Associated expenses include such costs as local government employee salaries, heightened security costs, and the "I Love NY" campaign, which encouraged tourism and visitors to the state.

Individual Assistance

In response to congressional inquiries, we reviewed the delivery of individual assistance in New York after September 11, 2001. The review focused on issues that needed to be addressed by both FEMA and Congress as they considered regulatory and legislative changes to improve FEMA's delivery of assistance to victims of future terrorist attacks that result in presidential disaster declarations. The following is a summary of some of the issues raised during our review, *FEMA's Delivery of Individual Assistance Programs: New York—September 11, 2001 (December 2002).*

Eligibility Issues in the Mortgage and Rental Assistance Program

FEMA has not implemented the MRA program on a large scale because previous disasters did not coincide with nor result in widespread unemployment or national economic losses. From the inception of the MRA program until September 11, 2001, only $18.1 million had been awarded in 68 declared disasters, compared to approximately $76 million awarded in response to the New York World Trade Center disaster alone. Because the program was seldom used, Congress eliminated it when the *Disaster Mitigation Act of 2000* (DMA) was enacted, making the program unavailable for disasters declared after October 14, 2002.

FEMA had to face the challenge of implementing this program in a disaster that caused significant economic consequences, including not only the obvious economic impact of the incident itself but also the indirect economic effects felt throughout the nation. The language of the *Stafford Act's* MRA authority established, as a criterion for assistance, a written notice of dispossession or eviction. The law was silent, however, on what constitutes a financial hardship. This omission required FEMA to interpret to what extent a personal financial loss constitutes a financial hardship, and to determine whether that hardship resulted directly from the primary effects of the attack or from the secondary effects on the nation.

The MRA program's limited use, the broad economic impact of this unprecedented event, and FEMA's challenge to differentiate between primary and secondary economic effects contributed to difficulties in delivering timely and effective assistance. The MRA program was unique because it addressed limited, individual economic losses versus physical damage resulting from a disaster. Traditional inspection of damages as a basis for program eligibility determinations, therefore, did not apply to MRA. Individual financial hardships caused by the disaster were evaluated on a case-by-case basis. FEMA attempted to clarify eligibility criteria that required a clear link between physical damage to the business or industry caused by the disaster and an applicant's loss of household income, work, or employment regardless of geographic location.

State Capability to Implement the Individual and Family Grants Program

Applications for IFG assistance rose sharply in June 2002, as applicants requested assistance for air quality items. FEMA believed the increase in new applications coincided with public announcements being made by the Environmental Protection Agency (EPA) regarding the poor air quality in the city and the need for air-conditioning and related items because of the unusually warm spring and early summer. The state believed the surge in new applications coincided with the closing of assistance from many nonprofit organizations. FEMA received an average of 7,660 applications per month from June 2002 to August 2002 for air quality items. Applications for IFG assistance typically do not spike at this point in the recovery phase of a disaster.

The unanticipated increase in applications received after June 2002 also may have been related to two other decisions regarding assistance for air quality items. First, assistance was made available to all households in the five boroughs of New York City. The broad geographic eligibility was not related to the areas of actual

impact. A better model might have been to limit eligibility to the same areas identified by the EPA and the New York City Department of Health for purposes of the apartment cleaning and testing program. Had the IFG program and the EPA testing and cleaning program worked more closely in terms of geographic eligibility, the IFG program would have had reasonable and justifiable boundaries. Second, as a result of concerns expressed by certain advocacy groups, applicants were allowed to certify that they were unable to pay for the air quality items (costing as much as $1,600). Funding was advanced to those applicants and they were requested to provide receipts after purchase. There were few limitations placed upon who could qualify for this "unable to pay" option. As I have previously noted, this may have increased the likelihood of fraud and abuse.

Interagency Coordination Challenges

I cannot stress enough the need for interagency data sharing and coordination to improve disaster response, recovery, and oversight. After 9/11, responsibilities shared among FEMA, EPA, the U.S. Department of Justice's (DOJ) Office for Victims of Crime, and voluntary agencies, for example, were not defined clearly enough to distinguish roles and establish the sequence of delivery of assistance. Recovery from the event highlighted the need for data sharing agreements regarding shared roles and responsibilities among key agencies likely to respond to future criminal actions.

Information Data Sharing

Although progress has been made in this area since 9/11, much more needs to be done. Accordingly, I would like to again emphasize the need for interagency data sharing and coordination through three principal means: direct access to FEMA data, computer matching agreements, and real-time data exchange.

Hurricane Katrina clearly demonstrated that law enforcement needs direct access to disaster victims' personal information, not only to reconnect family members and locate missing persons, but also to convicted sex offenders who relocated as a result of the disaster. Hurricane Katrina left over 5,000 children missing and more than 2,000 unaccounted for registered sex offenders. The process employed by FEMA to fulfill law enforcement agency requests for FEMA records under the Privacy Act is untimely. The FBI has indicated that these requests sometimes take days to fulfill. A similar protracted process was used for governors to request information from FEMA to obtain data on sex offenders who relocated to their state. The HHS believes, and we agree, that evacuated, registered sex offenders are a potential threat to children until appropriate law enforcement has information to identify and monitor these individuals. Timely access to FEMA data can assist law enforcement in protecting public safety and security, such as in the apprehension of fleeing felons.

In support of these issues, FEMA published a notice in the Federal Register, on July 6, 2006, adding a new routine use to its Disaster Recovery Assistance system of records that allows for greater information sharing with federal agencies, state and local governments, or other authorized entities for the purposes of reunifying families, locating missing children, voting, and with law enforcement entities in the event of circumstances involving an evacuation, sheltering, or mass relocation, for purposes of identifying and addressing public safety and security issues. As FEMA noted, these routine uses are being added to resolve any ambiguities about FEMA's authority to share information under these circumstances and to ensure that necessary information can be disseminated in an efficient and effective manner. This is a step in the right direction.

Another advantageous means of data sharing involves computer matching. Computer matching agreements among federal agencies that provide disaster assistance are often necessary to detect fraud, waste, and abuse. Agencies such as the Social Security Administration and the Small Business Administration, for example, have expressed a high degree of interest in such agreements with FEMA. An agreement between FEMA and the Department of Housing and Urban Development was recently executed to identify individuals who are receiving excess or duplicate housing assistance relating to Hurricanes Katrina and Rita. Yet, to date, only the HUD computer matching agreement has been executed, eleven months after Katrina's landfall. Without such agreements, the prospect for protecting the taxpayer's dollars and prosecuting fraud is diminished.

One more means of data sharing I would like to convey is the real-time exchange of information among federal agencies that provide disaster assistance. This exchange of information is necessary to verify identity and eligibility, as well as to create a holistic approach for the effective delivery of disaster assistance. According to FEMA's *Guide to Recovery Programs,* the federal government has over 90 disaster assistance programs. Real-time data sharing agreements are necessary to prevent the duplication of federal disaster assistance and to ensure that disaster victims re-

ceive the full compliment of disaster assistance needed for a timely and effective recovery. Currently, FEMA has a contract with the commercial data reseller ChoicePoint to authenticate the identity of disaster assistance applicants. Since Hurricane Katrina, approximately $4.3 million has been expended for their authentication services. Furthermore, it is our understanding that FEMA has extended this contract with ChoicePoint through June 2007. However, interagency data sharing agreements between federal agencies that provide disaster assistance would lessen the government's reliance upon commercial data resellers such as ChoicePoint for identity authentication. For example, data sharing agreements between FEMA and the Social Security Administration and the Postal Service can verify the name, social security numbers, and address of an individual applying for disaster assistance. These agreements will result in greater intergovernmental collaboration in the delivery of disaster assistance, which corresponds with the intent of the National Response Plan and FEMA's *Strategic Plan Fiscal Years 2003–2008,* which charges FEMA to serve as the nation's knowledge manager and coordinator of emergency management information.

I would like to note that we have an ongoing review of how FEMA's data sharing processes and procedures can be enhanced to promote effective and efficient disaster response, recovery, and oversight. We look forward to sharing our findings of this review with you when it is complete. The following are examples where interagency data sharing and coordination after the 9/11 terrorist attacks could have been approved.

Response to Residential Air Quality, Testing, and Cleaning Requires More Coordination

EPA was aware, based on its work in the aftermath of the 1993 World Trade Center terrorist bombing, that the World Trade Center complex contained asbestos material. Neither FEMA nor New York City officials, however, initially requested that EPA test or clean inside buildings because neither EPA nor the New York City Department of Environmental Protection could identify any specific health or safety threat. EPA nevertheless advised rescue workers early after the terrorist attack that materials from the collapsed buildings contained irritants, and advised residents and building owners to use professional asbestos abatement contractors to clean significantly affected spaces. Directions on how to clean the exterior of buildings affected by dust and debris were provided to building owners by the New York City Department of Environmental Protection, and directions on how to clean interior spaces were provided by the New York City Department of Health.

Neither FEMA nor EPA traditionally had been involved in testing and cleaning private residences. Neither agency is specifically authorized to provide such services. However, when a potential health and safety threat was identified and New York officials documented that interior testing and cleaning would beneficially impact the City's economic recovery, FEMA used its debris removal authorities under the *Stafford Act* to provide the necessary funding.

However, the program to test and clean residences in lower Manhattan did not commence until months after the disaster. Although FEMA has the responsibility to coordinate recovery from declared disasters, FEMA must depend on the particular expertise of the EPA in circumstances involving possible air contaminants or environmental hazards. EPA must confirm that such hazards constitute a public health and safety threat before FEMA can provide funding for emergency response. We suggested that FEMA be more proactive in requesting EPA to conduct necessary testing and/or studies to determine if a public health or safety threat exists in future, similar disasters so that cleaning efforts could begin much earlier in the recovery phase. FEMA also should address the roles of state and local agencies in such circumstances, as consultation with those agencies would provide useful information in review or evaluation.

Department of Justice Authorities Compliment FEMA Authorities

Because the World Trade Center complex and Pentagon were declared disasters by the President resulting from criminal actions, both FEMA and DOJ's Office for Victims of Crime had authority to provide victim assistance. FEMA's Crisis Counseling Assistance and Training Program (CCP) providers found it necessary to offer support services that went beyond the normal levels of CCP mental health programs. Further, too many entities were involved at the outset to ensure coordination and avoid potential confusion of services provided to victims.

The event uncovered potential DOJ–FEMA overlaps in some programs covering disasters that are also crime scenes. FEMA's CCP program funds crisis counseling and the IFG program reimbursed victims of disasters for medical, dental, and funeral expenses. The *Victims of Crime Act of 1984,* as amended (42 United States Code § 10603), authorizes DOJ's Office for Victims of Crime to provide financial as-

sistance to victims of federal crimes and of terrorism and mass violence in the form of (1) grants to state crime victim compensation programs to supplement state funding for reimbursement of the same out-of-pocket expenses, including mental health counseling; and, (2) grants to state victim assistance agencies in support of direct victim services such as, crisis counseling, criminal justice advocacy, shelter, and other emergency assistance services. Because the event was both a disaster and a criminal act, programs of DOJ's office for Victims of Crime were also applicable. As a result, expenses medical, dental, and funeral expenses were covered by DOJ.

FEMA, the Office for Victims of Crime, and DOJ's Executive Office for United States Attorneys subscribed to a *Letter of Intent* to ensure that victims received needed services and information and to articulate services needed in responding to catastrophic federal crime. The *Letter of Intent* should serve as the foundation for future cooperative activities but more detailed and comprehensive guidance is necessary to ensure that services delivered to disaster victims who are also victims of crime are appropriate, consistent, and not duplicative. Those objectives could be accomplished through a Memorandum of Understanding between FEMA and DOJ's Office for Victims of Crime that formalizes the relationship, the responsibilities and authorities to be applied, programs, time frames, and sequencing when a disaster is also a crime scene.

Coordination with Voluntary Agencies

Voluntary Agencies (VOLAGS) typically provide immediate emergency assistance to victims, while FEMA addresses short and long-term recovery needs. Near the end of the recovery cycle, VOLAGS address victims' unmet needs. After the September 11, 2001 attacks, individuals donated time, resources, and money in record volumes to a large number of VOLAGS. The overwhelming generosity and rapid influx of cash donations likely contributed to the ability of VOLAGS and other groups to provide higher levels of assistance. Since so many VOLAGS, *ad hoc* organizations, and other entities not traditionally in the sequence of delivery were distributing assistance, it was difficult to collect accurate information necessary to understand the scope of assistance being provided. FEMA, attempting to bring order to the chaos created by the multitude of voluntary organizations, developed a matrix of various government and non-government entities. At one point, this matrix included over 100 organizations and was used to identify their contributions to disaster recovery efforts and the types of assistance provided. FEMA validated the information and became familiar with the kinds of assistance being offered so that staff could make informed referrals. In spite of those efforts, FEMA was not able to assure that all voluntary agencies were coordinated appropriately to ensure that benefits were not duplicated among disaster programs, insurance benefits, and any other type of disaster assistance.

Historically, FEMA has not considered the assistance of voluntary agencies to be duplicative of its assistance in most declared disasters. In response to this event, however, VOLAGS far exceeded their traditional role in the provision of assistance. FEMA, to ensure timely assistance to victims, decided to activate its own individual assistance program and to treat VOLAG and other non-governmental assistance as non-duplicative. Had FEMA expended the resources necessary to fully identify and quantify such assistance, the timely provision of urgently needed assistance would have been delayed. FEMA acknowledges, however, that some people may have received assistance for similar losses from more than one source.

Regardless of FEMA's decision not to identify and quantify voluntary agency assistance on a case-by case basis, the potential that duplication occurred did exist although the nature and amount of duplication remains unknown. FEMA needs to be better able to anticipate the proactive role non-governmental organizations will play in disaster recovery operations and attempt to coordinate relationships with those organizations through protocols such as Memorandums of Understanding to alleviate the potential for duplicating benefits.

Improvements have been made since the 9/11 attacks. The Coordinated Assistance Network was established through a memorandum of understanding in 2003 and was first piloted during the 2004 hurricane season in Florida. The following organizations signed this document: American Red Cross, Salvation Army, Alliance of Information and Referral systems, United Way of America, United Services Group, National Voluntary Organizations Active in Disaster, and Safe Horizon. The goal of the Coordinated Assistance Network is to afford more efficient and effective service coordination among voluntary, as well as governmental, agencies during disaster events. It was designed as a communication mechanism for services providers and to identify any gaps or redundancies in services. The network allowed registered organizations to access information on available services and to share information on the levels of services delivered to individuals, families, or households. It also allowed

disaster victims to explain their needs and register only once, as registration afforded disaster victims a registration with all service providers on the network. In response to the 2005 hurricanes in the Gulf Coast region, five organizations were using the network and 81,817 clients records were in the system as of September 30, 2005.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or the Subcommittee may have.

Mr. ROGERS. The Chair now recognizes Mr. Greg Kutz, Director of Financial Management and Assurance, U.S. Government Accountability Office. The floor is yours.

STATEMENT OF GREG KUTZ

Mr. KUTZ. Mr. Chairman, members of the subcommittee, and Chairman King, thank you for the opportunity to discuss fraud prevention in times of disaster. In June I testified on the massive level of fraud related to Hurricanes Katrina and Rita which raised questions about the integrity of disaster assistance programs. Today I will discuss how an effective fraud prevention program can provide Congress and the American taxpayers with confidence that fraud, waste and abuse will be minimized for future disasters.

My testimony has two parts: first, fraud prevention; and second, fraud detection and investigations. My testimony relates to Katrina and Rita, but I do echo many of the comments of Mr. Skinner as it relates to September 11.

First, our work across the government has shown that fraud prevention is the most efficient and effective means to minimize fraud, waste and abuse for any government program. Our testimony before the Investigative Subcommittee in June highlighted the consequences of the lack of an effective fraud prevention program for Katrina and Rita. Specifically, through February of 2006, we estimated $1 billion, or 16 percent, of individual assistance payments were fraudulent or improper.

Fraud prevention processes and controls happen before taxpayer money is disbursed. For individual assistance, examples include validation of eligibility, fraud awareness training, system edit checks and inspections. The key here is fraud prevention. Once money is improperly disbursed, the government can only hope to collect a few pennies on the dollar.

Fraud prevention for disaster assistance programs starts with validation of eligibility. For Katrina and Rita we reported that individual identities and property addresses were not validated up front. This allowed thousands of individuals to register using invalid Social Security numbers and bogus damaged property addresses. For future disasters, it is critical that eligibility data such as names, Social Security numbers, and primary addresses be validated up front.

Prior to implementing any new controls and well in advance of any disaster, new controls must be field tested. Why? To ensure that they are operating as intended and that legitimate victims are not denied benefits. As fraud prevention controls increase, the risk increases that legitimate victims will be rejected. Thus, a safety net must be in place to quickly handle exception cases.

Moving onto my second point. Although costly and less effective than fraud prevention, fraud detection monitoring and investigations are also critical. Key elements of the detection process include

data mining for fraud and the establishment of fraud hotlines. Another key element of fraud prevention is the aggressive investigation and prosecution of individuals who commit fraud. Prosecuting those that commit fraud sends a message that stealing money from the government will not be tolerated for disasters. A well-publicized and effective prosecution strategy should serve as a preventive measure for future disasters.

The Hurricane Katrina Fraud Task Force has investigated and indicted several hundred individuals to date. Schemes identified through fraud detection, investigations and prosecution should be fed back into the fraud prevention program for future disasters.

In conclusion, our work has shown that there is no shortage of morally bankrupt individuals who will steal money from the Federal Government in times of disaster. For Katrina and Rita, it appears that at least tens of thousands of individuals took advantage of the opportunity to commit fraud. The government must learn from these costly lessons and make fraud prevention a high priority for future disasters.

Mr. Chairman, this ends my statement. I look forward to your questions.

Mr. ROGERS. Thank you, Mr. Kutz.

[The statement of Mr. Kutz follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Management, Integration, and Oversight, Committee on Homeland Security, U.S. House of Representatives

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INDIVIDUAL DISASTER ASSISTANCE PROGRAMS

Framework for Fraud Prevention, Detection, and Prosecution

Statement of Gregory D. Kutz, Management Director
Forensic Audits and Special Investigations

GAO-06-954T

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Highlights

Highlights of GAO-06-954T, a testimony before the Subcommittee on Management, Integration, and Oversight, Committee on Homeland Security, U.S. House of Representatives

July 12, 2006

INDIVIDUAL DISASTER ASSISTANCE PROGRAMS

Framework for Fraud Prevention, Detection, and Prosecution

Why GAO Did This Study

Federal agencies spend billions of dollars annually to aid victims of natural and other disasters and acts of terrorism. Managers of federal disaster assistance programs face a dual challenge—delivering aid as quickly as possible while at the same time ensuring that relief payments go only to those who are truly in need. Due to the very nature of the government's need to quickly provide assistance to disaster victims, federal disaster relief programs are vulnerable to significant risk of improper payments and fraudulent activities.

On February 13, 2006, and on June 14, 2006, GAO testified concerning extensive fraud, waste, and abuse in the Individuals and Household Program (IHP), a component of the Federal Emergency Management Agency's (FEMA) disaster assistance programs. GAO identified significant internal control weaknesses that resulted in FEMA making tens of thousands of Expedited Assistance payments that were based on bogus registration data. GAO also found numerous other internal control failures in FEMA's IHP disaster assistance program, resulting in an estimate that FEMA made $600 million to $1.4 billion in improper and potentially fraudulent payments to registrants. The purpose of this testimony is to establish a framework for preventing, detecting, and prosecuting disaster assistance fraud.

www.gao.gov/cgi-bin/getrpt?GAO-06-954T.

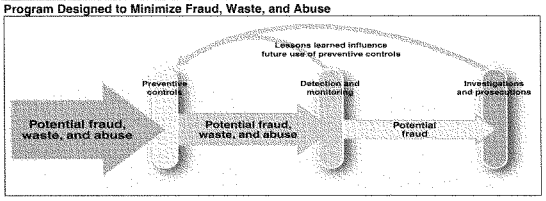
To view the full product, including the scope and methodology, click on the link above. For more information, contact Gregory Kutz at (202) 512-7455 or kutzg@gao.gov.

What GAO Found

Recent GAO audits have illustrated the importance of an effective fraud, waste, and abuse prevention system in federal disaster assistance programs. GAO's Standards for Internal Control in the Federal Government provide a framework for internal control that can be used to minimize fraudulent, wasteful, and abusive activity regardless of whether dealing with the effects of natural disasters like hurricanes Katrina and Rita, or coping with the destruction left by the terrorist attacks of September 11, 2001.

The figure below illustrates that a well-designed fraud prevention system should consist of three crucial elements: (1) upfront preventive controls, (2) detection and monitoring, and (3) investigations and prosecutions. The figure also shows that upfront preventive controls can help screen out the majority of fraud, and are the most effective and efficient means to minimize fraud, waste, and abuse. Detection and monitoring, and aggressive prosecution of individuals committing fraud, while also crucial elements of an effective system, are less effective and generally cost more.

Program Designed to Minimize Fraud, Waste, and Abuse



Source: GAO.

Audit work has long confirmed that upfront preventive controls are most effective when they require validation of data provided by disaster registrants against other government or third-party sources, and physical inspections when possible. Preventive controls should also include procedures designed to identify problem registrants prior to payments. Training personnel on fraud awareness and potential fraud schemes is also an integral component in preventive controls. Collectively, these preventive controls can help improve program integrity and safeguard tax dollars.

An effective fraud deterrence program must also include resources to continually monitor and detect potential fraud, and aggressively investigate and prosecute individuals who received assistance fraudulently. Monitoring and detection include data-mining for suspicious registrations and payment usage, and setting up fraud hotlines. Finally, program integrity is enhanced by investigating and prosecuting individuals who take advantage of program weaknesses. However, the high costs of prosecutions highlight our conclusion that upfront preventive controls are most effective in preventing fraud, and that lessons learned from detection and prosecutions should be used to improve preventive controls.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss fraud prevention and detection related to the federal government's efforts to provide assistance to individuals and households in the aftermath of disasters.[1] Effective fraud prevention in relief programs is an important issue, regardless of whether dealing with the effects of natural disasters like hurricanes Katrina and Rita, or coping with the destruction left by the terrorist attacks of September 11, 2001. Agencies are faced with many challenges in the aftermath of a disaster and must devote resources not only to distributing money and relief quickly to victims, but must also minimize fraud, waste, and abuse to ensure only legitimate victims receive assistance.

On February 13, 2006,[2] and then again on June 14, 2006,[3] we testified concerning extensive fraud, waste, and abuse related to hurricanes Katrina and Rita in the Individuals and Household Program (IHP), a component of the broader disaster assistance program from the Federal Emergency Management Agency (FEMA). The February testimony focused on control weaknesses that resulted in FEMA making tens of thousands of Expedited Assistance (EA) payments that were based on bogus registration data. Our June 14, 2006, testimony discussed breakdowns in internal controls, in particular the lack of controls designed to prevent bogus registrations, which resulted in an estimated $600 million to $1.4 billion in improper and potentially fraudulent payments. Based on these findings we have made recommendations to FEMA to develop effective systems and controls to minimize the opportunity for fraud, waste, and abuse when FEMA decides to provide assistance in the future. Crucial internal controls and control weaknesses we identified during our work on hurricane disaster relief, and

[1] In the aftermath of a disaster, the federal government typically activates numerous programs to help disaster victims. Examples of programs include individual assistance, public assistance, and hazard mitigation. Individual assistance provides financial and other direct assistance to individuals and households. Public assistance provides grants to states, local governments, and non profit organizations to provide services such as debris removal and housing accommodations to disaster victims. Hazard mitigation provides grants for long-term hazard mitigation projects.

[2] GAO, *Expedited Assistance for Victims of Hurricanes Katrina and Rita: FEMA's Control Weaknesses Exposed the Government to Significant Fraud and Abuse*, GAO-06-403T, (Washington, D.C.: Feb. 13, 2006).

[3] GAO, *Hurricanes Katrina and Rita Disaster Relief: Improper and Potentially Fraudulent Individual Assistance Payments Estimated to Be Between $600 Million and $1.4 Billion*, GAO-06-844T, (Washington, D.C.: June. 14, 2006).

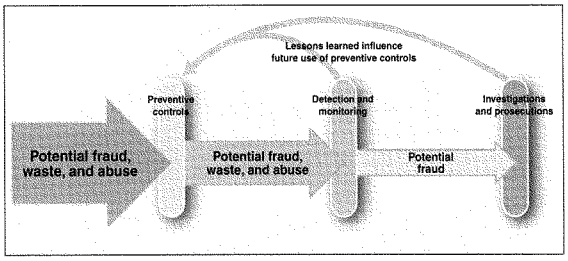
requirements in the Comptroller General's Standards for Internal Control in the Federal Government,[4] are directly relatable to controls over any individual assistance program, regardless of the cause of the disaster. My testimony today will focus on the importance of fraud prevention controls, fraud detection efforts, and the aggressive pursuit and prosecution of individuals who commit fraud against the government in a time of disaster.

Summary

The establishment of effective fraud prevention controls over the registration and payment process, fraud detection and monitoring adherence to those controls throughout the entire program life, and the aggressive pursuit and prosecution of individuals committing fraud are crucial elements of an effective fraud prevention program over any assistance programs with defined eligibility criteria, including disaster assistance programs. The very nature of the government's need to quickly provide assistance to individuals adversely affected by disasters makes assistance payments more vulnerable to applicants attempting to obtain benefits that they are not entitled to receive. However, it is because of these known vulnerabilities that the federal government, and more specifically FEMA, needed to have had effective controls in place to minimize the opportunities for individuals to defraud the government. Figure 1 provides an overview of how prevention controls help to screen out the majority of fraud, waste and abuse, and how detective controls and prosecution can help to further minimize the extent to which a program is vulnerable to fraud.

[4] The Federal Managers' Financial Integrity Act of 1982 (FMFIA) required that GAO issue standards for internal control in government resulting in the issuance of *Internal Control: Standards for Internal Control in the Federal Government*, GAO/AIMD-98-21.3.1, (Washington, D.C.: November, 1999).

Figure 1: Program Designed to Minimize Fraud, Waste and Abuse



Source: GAO.

The results of our work serve to emphasize the fundamental concept that fraud prevention is the most effective and efficient means to minimize fraud, waste, and abuse. Preventive controls should be designed to include, at a minimum, a requirement that data provided by registrants be validated against other government or third-party sources to determine whether registrants provided accurate information on their identity and place of residence. Inspections and physical validation processes should also be conducted whenever possible to confirm registration information prior to payment. System edit checks designed to identify problem registrants and claims (e.g., duplicates) before payments are made are also critical. Finally, providing training on fraud awareness and potential fraud schemes to all key government and contractor personnel is important in stopping fraud before it gets into the program. Prior to implementing any new controls, and well in advance of any disaster, agencies must adequately field test the new controls to ensure that controls are operating as intended and that legitimate victims are not denied benefits. In addition, as fraud prevention controls are increased, agencies must provide safety precautions to assist any disaster victims who are inappropriately denied relief due to preventive controls.

Although more costly and less effective than preventive controls, fraud detection and monitoring after payments have been made is also critical. Key elements of the detection process include data-mining for fraudulent and suspicious registrants, reviews to establish the accountability of funds, and the establishment of hotlines to receive tips of potentials fraud. For example, after the initial registration process, agencies need a control

system that includes continual monitoring, to include data-mining registrations—similar to the data-mining we conducted—to identify potentially fraudulent registrations in their claim system. Also, control weaknesses identified through detection and monitoring should be used to make improvements to preventive controls to reduce the risk for fraud, waste, and abuse in the future.

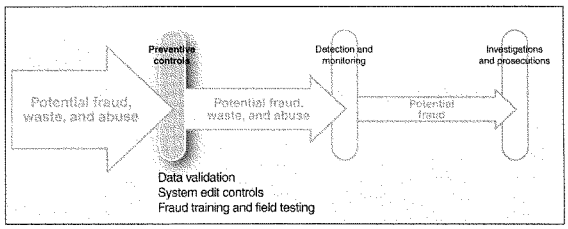
Another element of a fraud prevention program is the aggressive investigation and prosecution of individuals who committed fraud against the federal government. The deterrent value of prosecuting those who commit fraud sends the message that the government will not tolerate individuals stealing assistance money, serving as a preventive measure for future disasters. For hurricanes Katrina and Rita the Justice Department has set up the Katrina Fraud Task Force, which has investigated and convicted numerous individuals who received assistance fraudulently from FEMA. Further, schemes identified through investigations and prosecution can be used to improve the fraud prevention program.

Fraud, Waste, and Abuse Prevention Controls

Prevention is the most effective and efficient way to minimize fraud, waste, and abuse in any federal program, including disaster assistance, and is also a key element described in the Standards for Internal Control in the Federal Government.[5] The most crucial element of fraud prevention is to substantially diminish the opportunity for fraudulent access into the system through front end controls. Figure 2 displays how preventive controls fit within a larger fraud, waste, and abuse prevention program.

[5] GAO/AIMD-98-21.3.1.

Figure 2: Preventive Controls



Source: GAO.

Fraud prevention can be achieved by requiring that registrants provide information in a uniform format, and validating that information against external sources. In the current environment, agencies have at their disposal a large number of data sources that they can use to validate the identity and address of registrants. However, our work related to FEMA's management of the IHP program for hurricanes Katrina and Rita found that their limited use of a third-party validation process left room for substantial fraud. Effective fraud prevention controls require that agencies enter into data-sharing arrangements with organizations to perform validation. System edit checks are also key to identifying and rejecting fraudulent registrations before payments are disbursed. In addition, an effective fraud prevention system is not complete without adequate fraud awareness training of all personnel involved in the distribution of relief. Finally, any new systems or processes need to be field tested to ensure that the system is working properly prior to implementation.

Data Validation

Prior to a disaster registrant gaining access to relief payments, key registrant information must be validated. For this program, data such as names, social security numbers (SSN), primary residences, citizenship status, and any other information which determines eligibility must be validated upfront, prior to agencies accepting the registration, or at least prior to disbursements being made. Obtaining releases from registrants which allow an agency to validate data with other sources such as social security records, tax records, and other information is an important step that can facilitate effective validation of data.

Depending on the turnaround time needed for a payment, agencies can chose to validate records with federal government databases, or validate information with third-party contractors who can confirm key information with publicly available data from credit reports and other sources almost instantaneously. When using these third-party sources it is also important to at least periodically authenticate[6] the data within the program with the source of the information such as Social Security Administration (SSA) or Internal Revenue Service (IRS) records. Regardless of the sources used, all key data concerning a registration has to be validated to minimize the risks to acceptable levels prior to the registrant being accepted in the program. For example, because FEMA lacked basic identity validation controls, they accepted thousands of IHP registrations from registrants who provided social security numbers that had never been issued or belonged to deceased individuals. In addition, because FEMA failed to validate damaged address information, we found thousands of dollars were paid to individuals for bogus damaged addresses.

For data to be properly validated, it should be recorded in a uniform format. Once key data elements relating to disaster relief eligibility are determined, our work has shown that it is important to record the information in a format that will facilitate data validation with external sources. Otherwise, agencies may be faced with thousands or tens of thousands of registrations being rejected or placed in a manual review status because data was not recorded accurately. This is also particularly important when recording names, identity information, and addresses in order to prevent registrants from getting multiple payments by changing the spelling of their address or name. For example, data collected by hotels providing lodging that was paid for by FEMA did not record occupant's SSN or FEMA registration ID numbers. Thus, there were no common data elements that could be used to ensure people already staying at FEMA paid hotels did not also improperly receive rental assistance.

Within the federal government, many organizations such as SSA, United States Postal Service (USPS), and IRS maintain information on disaster assisted registrants. These are all data sources that we have used in prior

[6] For purposes of this testimony, data validation refers to the process of comparing data provided by a registrant with publicly available data (e.g., credit reports) or government databases to ensure accuracy. Data authentication refers to the process of periodically authenticating data that have been validated by third-party contractors with source databases such as SSA or Internal Revenue Service records.

forensic work to identify fraudulent and improper payments. However, proactive actions are necessary on the part of agencies responsible for providing disaster assistance to enter into data-sharing agreements with organizations that own the data. Agreements have to be in place prior to any disaster occurring for agencies to take advantage of data-validation sources. Also for tax information, consent must be requested from the registrant at the time of registration.

Finally, whenever possible, registration data and specific loss claims should be validated by a physical inspection of the disaster damage prior to payment. In some cases, as with the massive destruction caused by Hurricane Katrina, physical inspections in a timely manner are not possible, and therefore acceptance of data must be done through electronic verification. However, within the FEMA IHP program we found significant fraud related to expedited assistance payments that were made prior to any physical inspection being performed. In the cases we found, many fraudulent registrations could have been identified and rejected if inspections were performed because they would have seen that properties did not even exist, as we found when performing our own inspections. For example, FEMA failed to perform physical inspections on our undercover registrations, which used completely bogus property addresses and vacant lots. Had a physical inspection been performed, FEMA could have identified the fraudulent information and denied the expedited and rental assistance payments.

System Edit Controls

Disaster relief programs must also have a network of system pre-payment edit checks in place to ensure that obviously false or duplicate information is not used to receive disaster relief payments. System edit checks can be performed before or after a registration is accepted into the system, but to be an effective preventive control, they must be performed prior to the distribution of a payment. Edit checks should include items such as ensuring that the same SSN was not used on multiple registrations, or that the registrant provides a verifiable physical address for which the disaster damaged is based on. In the case of FEMA's IHP program, we found the lack of effective system edit checks allowed numerous individuals to fraudulently register numerous times and receive multiple payments using the same name, social security number, or address. In one case, the lack of controls allowed an individual to register eight times using the same name and SSN and receive multiple disaster assistance payments. In addition, accepting applications with obviously inaccurate data exposed FEMA to the risk that disbursements would be made based on obviously false data. For example, we found during our work that FEMA paid millions of

dollars in IHP payments to individuals who used a Post Office Box as their damaged physical address in order to receive assistance. In those cases system edits should have identified the Post Office Box as an invalid physical address and forced the applicant to provide a valid street address for the damage property in order to be considered for disaster assistance.

Results of our work also showed that agencies must follow through and accurately implement—and not short-change—existing system edit checks to provide assurance that the program is protected. We found in the course of our work that FEMA had designed controls that may have prevented some fraudulent payments. However, our work also indicated that these controls were circumvented, for example, when FEMA designed scripts to override system edit checks that had identified registrations as potential duplicates, in an effort to disburse funds as quickly as possible. Adhering to existing control procedures is therefore also crucial when maintaining effective fraud prevention.

Fraud Training and Field Testing

Beyond the uniform recording and validation of data, other controls, including a well-trained work force that is aware of the potential for fraud, can help prevent fraud. Personnel involved in a disaster program, including government employees and call center and inspection contractors, should receive training about the potential for fraud within the program and the likely types of fraud they could encounter. Fraud awareness training with frontline personnel is crucial because they are part of the first line of defense and therefore play a key role in fraud prevention. If the personnel accepting registrations and performing physical inspections of properties and documents are aware of fraud indicators and suspicious activities, they will help to identify potentially fraudulent activity as soon as it occurs. Where possible, incentives can be provided to contractors not just to process registrations and claims quickly, but also to prevent fraud.

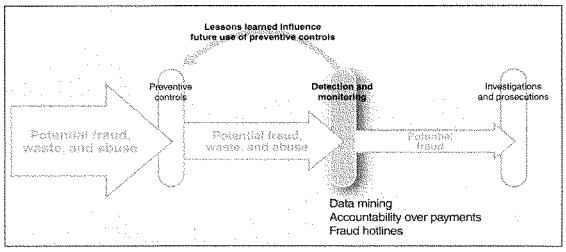
In addition, when implementing any new controls, it is important to field test all systems prior to putting them in place. As stated in a recent testimony on the IHP program, FEMA acknowledged that they had instituted several new processes that had not been tested. Weaknesses in these new processes, including the lack of validation controls over key data elements, resulted in our findings of approximately $1 billion dollars in potential fraud in the IHP program. On top of reducing the risk of untested controls allowing substantial fraud, field-testing also helps to ensure that new controls do not improperly deny benefits to valid registrants. A safety net for those registrants who are wrongly denied

disaster relief due to preventive controls should always be in place to ensure they receive assistance. This process should include staff who are adequately trained to expeditiously handle exceptions.

Detection and Monitoring

Even with effective preventive controls, there is substantial residual risk that fraudulent registrants are likely to gain access to a disaster relief program and begin to receive payments. Therefore, after a registrant has successfully passed through upfront controls and begun to receive payments, our work at FEMA illustrated that agencies must continue their efforts to monitor the execution of the disaster relief program. Detection and monitoring efforts are addressed in the Standards for Internal Control in the Federal Government[7] and include such activities as data-mining registrations, which have received payments, ensuring accountability over funds and monitoring how the disaster assistance is being spent, and establishing mechanisms to identify the existence of fraud. Figure 3 provides a perspective on how these controls fit into an overall fraud prevention program.

Figure 3: Detection and Monitoring Controls



Source: GAO.

Data-mining of registration data within the program should be done to look for suspicious information after payments have been made. Along with data-mining efforts, proper accountability controls over the distribution of funds and the monitoring of fund usage is key to obtaining

[7] GAO/AIMD-98-21.3.1.

reasonable assurance that relief payments are being used to mitigate the effects of a disaster. Also, setting up hotlines to identify potential frauds is an important activity that should be in place when distributing disaster funds. Finally, any lessons learned from detection and monitoring efforts should be used to improve preventive controls to reduce the risk for fraud, waste, and abuse in the future.

Data-mining

Despite effective preventive controls, there is still risk for fraud, waste, and abuse within disaster programs once payments are made. Therefore, it is important that program managers continuously data mine registrations for suspicious activity. A robust data-mining program can include many different efforts. Examples of fraud indicators include but are not limited to searching for anomalies like those found at FEMA, including multiple payments sent to the same address or bank account. Abnormalities such as numerous residents in a damaged apartment building all relocating to the same location may also suggest fraud. Comparing recipient data against other government assistance programs such as databases containing information on Red Cross or FEMA paid for hotel rooms can help to identify duplication of benefits between programs. However, due to the difficulties of collecting overpayments, system edit checks that occur prior to payments being made are preferable to data-mining after payments have occurred.

The data-mining we performed on FEMA's IHP program showed how important constant monitoring and detection can be. We searched for and found examples where the same individual received several rental assistance checks from FEMA while at the same time residing in a hotel room paid for by FEMA. We also found instances where multiple family members from the same household registered numerous times and received duplicate payments. Using external databases of federal and state prisoners, we found instances where prisoners had fraudulently registered for and received disaster relief payments while incarcerated. As shown by our examples, data-mining efforts should be done in a manner that uses creative solutions to search for potential fraud using all available data sources. To the extent that data-mining identifies systematic fraud, that intelligence should be fed back into the fraud prevention process and system edits so that for future disasters the fraud is detected before money is disbursed.

Accountability and Proper Use of Relief Payments

When part of the disaster assistance comes in the form of cash or a cash equivalent such as a debit card, our work at FEMA shows that it is crucial for agencies to maintain strict accountability over who has received the assistance. This can be achieved by obtaining signatures of release from an agency official and, if appropriate, from the issuing bank official, along with a signature of acceptance from the relief recipient. Agencies should also be able to link each distribution of cash to a specific applicant. In the case of FEMA and their distribution of debit cards, adequate accountability was not maintained, resulting in more than $1 million worth of debit cards being distributed without a record of who received them.

In addition, depending on the type of assistance provided and the means in which the assistance was distributed, it can be important for an agency to monitor the usage of disaster relief funds. Our review of FEMA's IHP program found that almost all money was distributed via check or EFT, which did not allow us to review whether the money was spent on disaster-related needs. A small amount, approximately $80 million, of IHP money was distributed via debit cards, which allowed us to see whether funds were being used appropriately. In this case, the vast majority of debit card money was still withdrawn as cash, but the remaining amount appeared to have been used for disaster-related needs. However, we did find a small number of purchases for nondisaster items such as football tickets, alcohol, massage parlor services, and adult videos. By monitoring these types of uses and contacting and possibly penalizing those who misuse funds, agencies may be able to ensure that disaster funds are used to help mitigate losses and not for inappropriate items.

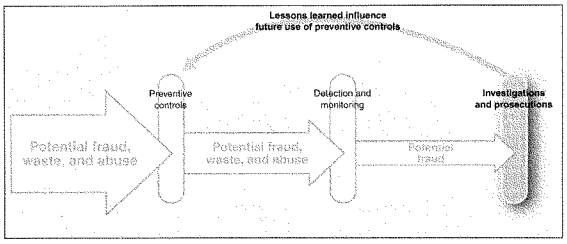
Fraud Hotlines

To detect existing fraud and prevent new cases in the future, agencies should also set up mechanisms to identify and investigate existing cases. The use of hotlines where individuals can anonymously call and report potential fraud can provide valuable investigation leads. The Department of Homeland Security (DHS) Office of Inspector General set up one such hotline specifically dedicated to fraud related to hurricanes Katrina and Rita. Similar hotlines are useful within any disaster relief program to help identify any fraudulent activity not caught by controls. In conjunction with fraud identified through data-mining or hotline tips, agencies should have in place teams ready to investigate leads, not only for future prosecution, but also to provide suggestions for how the fraud can be prevented in the future.

Investigations and Prosecution of Offenders

The final aspect of a program designed to reduce fraud in a disaster assistance program is the investigation and aggressive prosecution of individuals who have fraudulently received disaster assistance. Suspicious cases identified through preventive, detective, and monitoring controls, along with hotline tips, should be referred to investigators for further review. In the course of our work performed on IHP fraud for hurricanes Katrina and Rita, we identified tens of thousands of potentially fraudulent registrations. We have already referred thousands of those cases to FEMA and the Katrina Fraud Task force for further investigation and expect to refer others for additional investigation and possible prosecution. While the criminal investigative process is general a lengthy process, we are aware that several individuals that we referred have already been indicted. This included one individual indicted for fraudulently obtaining over $25,000 from FEMA based on bogus registrations. Figure 4 displays how investigations and prosecutions fit into an overall fraud prevention program.

Figure 4: Investigations and Prosecutions



Source: GAO.

While investigations and prosecution can be the most visible means to deal with fraudsters, they are also the most costly and should not be used in place of other more effective controls. Instead, agencies need to focus on prevention before money is spent. Still, by successfully prosecuting fraudsters, agencies can deter others who are thinking of taking advantage of disaster programs. In the end, investigations and prosecutions are a necessary part of an overall fraud prevention and deterrence program, but should be a last resort when all other controls have failed. In addition, knowledge from these investigations and prosecutions should be fed back

into the fraud prevention process to better handle future disasters and enhance existing fraud prevention and detection programs.

Concluding Comments

Managers of federal disaster assistance programs face a dual challenge—delivering aid as quickly as possible while at the same time ensuring that relief payments go only to those who are truly in need. To meet this dual challenge, managers must recognize that fraud prevention and the rapid distribution of assistance are not conflicting mandates; instead, both can be accomplished if effective controls are in place and operating as intended. Of the controls discussed today, fraud prevention controls are the most useful and cost-effective means of reducing the loss of money due to fraud, because payments, once out the door, have proven extremely difficult to recover. Implementing an effective system of fraud prevention controls including upfront controls, post payment detection and monitoring, and prosecuting those who have exploited control weaknesses are crucial to building the American taxpayer's confidence that federal disaster assistance is given to those in need.

Mr. Chairman and members of the Committee, this concludes my statement. I would be pleased to answer any questions that you or other members of the Committee have at this time.

Contacts and Acknowledgements

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Mr. ROGERS. Before we start our questions, I would like to ask unanimous consent that the statement from the Honorable Michael J. Garcia, United States Attorney for the Southern District of New York, be included for the record. Without objection, it is so ordered.

[The information follows:]

FOR THE RECORD

SUBMITTED BY HON. MIKE ROGERS

PREPARED STATEMENT OF THE HONORABLE MICHAEL J. GARCIA, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK

PRESENTED ON JULY 12, 2006,

I appreciate this opportunity advise the Subcommittee on the work of the United States Attorney's Office for the Southern District of New York in combating fraud in 9/11 relief programs. We have found this review of our response to 9/11 relief fraud to be useful and hope that the Subcommittee finds our information helpful.

Introduction and Summary.

United States Attorneys Office combat fraud in government programs in three principal ways: through criminal prosecution, which may result in fines, sentences of imprisonment, and orders of restitution; through civil actions seeking recovery of funds (up to treble damages under the False Claims Act) and, in some instances, civil penalties; and through a combination of criminal and civil actions. Our response to 9/11 relief fraud included enforcement actions of all three types.

The timing of our initial response to 9/11 fraud was, inevitably, affected by our response to, and the dislocations to our Office occasioned by, the attack itself. Specifically, our Civil Division was physically dislocated by the attack and, after sharing office space with the Eastern District of New York for two months, was related, on an interim basis, in leased space in approximately November 2001. In addition, the Civil Division's files remained in its old quarters, and special procedures, including physical decontamination, were required to access them. Our main office in Manhattan, which houses our executive staff and criminal division, was a few blocks further away from Ground Zero and was closed for approximately one week. Our supporting the criminal investigation of the attacks. Our civil efforts were also directed toward responding to terror events—specifically, numerous issues arising from the presence of anthrax in various Post Offices.

In approximately February 2002 this Office initiated formation of a Trade Center Fraud Working Group. This Group included representatives of pertinent federal, state and local agencies and helped make clear the utility and importance of federal investigation and prosecution of fraud stemming from 9/11 relief programs. At that time, the United States Attorney's Office also made clear that, in addition to its traditional role of investigating and prosecuting the larger and more complex federal crimes, it would accept for prosecution essentially any 9/11 fraud case. (We thereafter declined only cases involving false claims for individual air conditioner/air purifier reimbursement—which, because of their large volume (potentially thousands of defendants) and relatively small amounts at issue (losses in the hundreds of dollars per case, generally), we believed would constitute an inefficient use of both federal enforcement and judicial resources—and cases with insufficient evidence.) This Working Group met on a number of occasions, until its members became familiar with the contacts and resources at the United States Attorney's Office and the different agencies and good working relationship for the investigation and referral of cases developed. As a result of this outreach, agencies began developing cases for federal prosecution. In addition, we advised on forms to be used by agencies that were disbursing grants and loans, and discussed methods for such agencies to share information. It should also be noted that, in addition to federal prosecution, the New York County (Manhattan) District Attorney's Office had also been agressively prosecuting a large number of 9/11 fraud cases that had been brought to its attention. While, as a general matter, we believe federal enforcement is better suited to federal program fraud cases of any size or complexity, state prosecutors have concurrent jurisdiction over most frauds and the Manhattan District Attorney's Office played a very important role in criminal 9/11 fraud enforcement.

Our records reflect that we opened a total of 64 investigations and cases, both civil and criminal, involving 9/11 fraud. Not every investigation has resulted in the filing of a complaint or charges on the public record, and we cannot provide any in-

formation concerning any matter that is not on the public record. As to matters on the public record, criminal charges relating to 9/11 have been brought against a total of approximately 35 defendants in 29 separate cases filed in district court. In addition, civil enforcement proceedings were brought against two individuals, including one who was also charged criminally. Documents from the public record which contain the specifics of those cases have already been provided to the Committee staff.

Of the defendants criminally charged, 25 cases were resolved by guilty plea; 3 resulted in guilty verdicts after trial; and the cases of 7 defendants remain pending. Of those found guilty, 11 received non-custodial sentences of probation or time served; 5 received sentences of two to six months, including one sentence of six months' home confinement; 10 received sentences ranging from eighteen to ninety-seven months; and two have not yet been sentenced. Both civil cases were resolved by stipulations and orders of settlement in favor of the United States, in the respective amounts of $36,000 and $300,000.

AS a general matter, our review of these cases does not reveal any particular "pattern" which might help guide the response to future disaster recovery programs. Instead, to the extent the number of cases our Office handled provides any basis to generalize, we not that in the area of disaster relief programs, as with any federal funding program, we will expect to see a certain number of fraudulent applications for or misuses of funds. It may be pertinent to not that, as our evaluated as unsuited to effective and efficient criminal law enforcement or to civil enforcement by the U.S. Attorney's Office, and may be more efficiently handled through administrative proceedings brought by the affected agency. And certainly the amount of fraud, and ease with which fraud may subsequently be proven, will depend on the amount of information and documentation the claimant is asked to provide at the application stage.

Mr. ROGERS. I would like to start the questions, and I would also point out that the Ranking Member and I have agreed to one round of questions for this panel since we have another panel waiting.

Mr. Kutz, talking about prevention, I think you are right; I think that is the way to try to have a lesson learned that is useful. But when you hear Mr. Skinner's remarks earlier about the analysis made with prosecutors in New York about whether to prosecute some of these illegalities—people ripping off the system for air conditioners, vacuum cleaners, whatever—the prosecutors say it is not worth pursuing. How does that help us send a signal to future potential thieves that you shouldn't do this?

Mr. KUTZ. Well, certainly if you are going to invest money, investing in the prevention is better than the prosecution.

Mr. ROGERS. Isn't letting these people know that they are going to be prosecuted and put in jail a means of prevention?

Mr. KUTZ. And I was going to say that. However, once you are where you are with respect to having fraud out there and you identify individuals, I believe that aggressive prosecution of them does send a message back, especially if it is well publicized. It needs to be well publicized so people hear about it and maybe they will think twice. I think it is the criminals that are on the border. The career criminals might not make much difference, but the criminals on the border, I think it is going to make a difference.

Mr. ROGERS. Mr. Skinner, I know that some people were sent to jail for several years. We had several millions of dollars recovered through fines and penalties. But it is disturbing to hear that prosecutors were unwilling to pursue many of these violations that you referenced in your opening statement. What can we do to remedy that for future situations like New York and like Katrina and Rita?

Mr. SKINNER. For one thing, we can do a better job in administering our programs. Part of the problem, the prosecutors, both the State and local attorneys, dealt with what they considered neb-

ulous guidelines and what they also viewed as somewhat confusing or conflicting instructions that took place over a 9-month period of time.

If we had very clear guidelines, if we were better prepared, and, in this case, what we were talking about essentially was not public corruption, not debris removal, not major schemes; what we were talking about was these individuals in the five boroughs that were buying air quality units and air conditioners. The cost was anywhere from $500 to $1,600. The program was administered months after the incident. I believe it was 9 months after 9/11 when there was an increase in disaster applications. It was late in June, I believe, 2002 that we received over 2,000 to 3,000 applications because of what the prosecutors believed was just somewhat vague—although they may not have been, they certainly had the appearance or could be interpreted to be vague or conflicting guidelines.

If we had better coordination with EPA early on, defined the requirements and made an announcement as to these are the rules which you will play by early on, which means interagency coordination, interagency cooperation early on in the disaster—it should have been before, not during the disaster, that these understandings and these arrangements have been made—we may have had less applications coming in that could have been fraudulent. But when you get—what we are talking about is 200,000 applications that had the potential of being fraudulent, and that is just overwhelming.

Mr. ROGERS. Let me ask Mr. Picciano.

Mr. KING. Picciano.

Mr. ROGERS. I am working on it.

Mr. KING. You have to be from New York.

Mr. ROGERS. You have heard the news. The New York Daily News series it was really upsetting to hear about the things money was used for like these air purifiers, but also vacuum cleaners for anywhere in these five boroughs. We hear about that and the need for guidelines, yet between September 11, 2001, and Katrina last fall, apparently FEMA still didn't develop these kind of guidelines you just heard Mr. Skinner referencing. Why?

Mr. PICCIANO. I think—let me just go back, being involved in this business for 30 years, and I have been on almost every hurricane disaster we have had. In most cases, you know, the 99 percent rule occurs. In these two very significant events, our programs—and I have to be honest, you know, just weren't sized up to handle these sort of events.

Now, you look at the World Trade Center and the environmental issues that initiated the process and then what happened in 9 months. We projected only 5,000 cases in the IFG program during that period. And it stayed level up until those environmental changes, things we have never encountered before, that changed how the State—and I have to reinforce—how the State managed its program and how we were going to deliver services to individuals who felt they needed it, and, as a matter of fact, requests from Congress to move forward and do that.

So I have to absolutely agree with Mr. Skinner. We did change our standards within the Stafford Act regulations, but we did it to address an unusual circumstance. Hot weather, a change in what

was really environmentally at issue, we had concerns not only with that, we had vendors that were acting inappropriately and using newspapers and the ability to advertise to sell this program. We were just confronted with an unusual situation. That program no longer exists.

But in other ways, I mean, the program still is around in a new FEMA effort, and Katrina again pointed out that size and the type of events is going to require us to go back—and we are—to go back and reconstruct these programs to make them work.

Mr. ROGERS. I thank the gentleman. My time has expired. The Chair now recognizes the Ranking Member for any questions he has.

Mr. MEEK. Thank you, Mr. Chairman. I want to thank the witnesses for coming before the committee once again. I purposely wanted to yield to Mr. Pascrell, and I want to thank the Chairman and the entire committee for allowing Mrs. Lowey to come and sit with us and make a statement.

Just like Mr. King, three Members have gone through the 9/11 experience with their constituents being the victims, both directly and indirectly. Chairman Rogers, myself and Ranking Member Thompson, we are—we go through the issue of FEMA recovery, through natural disasters such as hurricanes and other events like tornadoes in our neck of the United States, but we could very well go through a similar thing as 9/11. It is the reason why we are here and the reason why we are having this hearing.

And I want to thank not only the staff on the majority and minority side for all the work they have done, including those individuals that participated with us in looking into this effort. What we are talking about here, gentlemen, is what is going on right now as we speak on the ground in the Katrina-affected area about the wasteful spending.

And you talk, Mr. Kutz, about prevention and I want to come back to that a little bit as it relates to the verification. Case in point: Congressional District 17 with hurricane Wilma, we had a number of individuals that applied for individual assistance for chain saws and for other generators, and found that individuals that really needed the assistance did not apply in the numbers of individuals who had Mercedes-Benzes and, you know, big cars and big houses and had the wherewithal to go out and buy these items.

The States play a role in that because the States, like you mentioned before, authorize what is eligible, what is not eligible, in consultation with FEMA. The reason why we are here and the reason why I am here today, and our staff is paying attention, is that we need the recommendations, Mr. Skinner, that you put forward and other recommendations like it, because they are going to do what we allow them to do, and it is pulverizing to the system and to the people that work in it.

Saying that, Mr. Skinner, you mentioned something about verification. Mr. Kutz said something about the pre-event, before the dollar goes out and we get pennies back on the dollar that we recover. The verification, you mentioned something as it relates to sharing information between Social Security agency, IRS, FEMA, to make sure that individual lives in the affected area and is a

true—is eligible to be able to receive these dollars. How are we doing that now, and how can we improve that communications?

Mr. SKINNER. Right now we are not doing that. I think FEMA—and Joe may be able to answer this better than I, but I believe FEMA right now has a contract with ChoicePoint, and as applications come in, they may refer those applications and the information provided in those applications to ChoicePoint for verification; in other words, it went outside the government to do this. We do not now have arrangements with Social Security or the Postal Service or, for that matter IRS, as HUD has for its programs to validate that Social Security number is correct, that the address is correct, income as stated IS correct. I believe with the technology as it is today, we should be able to at the time—let's put it this way. When an applicant calls in and makes application with FEMA, it takes approximately 20 minutes to accept that application. If we ask them at the beginning of that process for name, Social Security number, address and income, by the time we complete that application, we should have automatic feedback from those other governmental organizations validating that information: Yes, this person lives at that address, has this Social Security number and has filed returns.

Mr. MEEK. Mr. Skinner, FEMA or GAO can chime in at any time. Well, I guess you wouldn't know how much this ChoicePoint service costs, and can we do it in-house, verifying this, because this is information that can be verified. I know we use a lot of contractors in FEMA when it comes down to individual assistance. You can continue to elaborate, but I am trying to get down to how much would something like that cost, and I don't think we need the legislative authorization to do that. That is a decision that was made at the Department, at FEMA; am I correct?

Mr. PICCIANO. I can't answer specifically. I can tell you, though, that in the registration process for us to handle it, we are talking about an event like Katrina, hundreds of thousands of applicants, and we use Reservists and other folks to pick up and assist us in contractual service. But, you know, to answer that question more specifically, we would have to go back and see what it would cost and how we could do it.

Mr. MEEK. So we have no idea right now of what it would take for us to have that information, have people train in IDing, verifying identification, because this is a way the drill works.

Here is a Congressman who has been there a couple of times. You all come down—if FEMA comes down, along with the State, as it relates to the response to the hurricane or whatever the event might have been—if it was 9/11, you mention in your testimony, and I read in your testimony seven Members of Congress commended you all for waiving and relaxing the rules because we have constituents in need, and government, as usual, is not at the point where it should be in response to the needs of many of the American disasters or people.

And that is where the fog comes in because individuals that are there—and they should be punished, Mr. Kutz, I agree with you 110 percent. As far as I am concerned, they should be in jail. I was eligible for a generator and my neighbor said, I am going to get a generator. Even though we were the last neighborhood to get

turned on with electricity, I went to family homes because I didn't want to be a part of the whole generator scenario.

But the real issue here is making sure we are prepared for future events, and that is why I am excited about this hearing and excited about hearing some of the ideas. If we can do it in-house and sharing sensitive information—because, as you know, I am on the Armed Services along with the Chairman, it is a big debate going on with information of veterans getting out, very personal information getting out that can promote fraud. So if it doesn't cost us a lot of money to have it in-house and to have our individuals that you all have to go out to, Reservists, firefighters—I have seen them—I mean these are people that just fall out of the sky. These are people that are trained and cleared by FEMA to go out and do these assistance assessments. Give them the tools they need through automation, they can type into some sort of computer and get this information, versus going out to a ChoicePoint or what have you for several million dollars, which I think it can be done in-house for a lot cheaper and can secure the information so that folks won't start saying that we are selling off information to private vendors.

But if it is something you can look into, you said at the top of your testimony—which I am giving you an out right now—if you don't have the answer, you will get back to us, which I know you will, and hopefully you all can look in-house to see how that can be done; because I think, going to the testimony of your two colleagues there, in government of people of good will, I think that is something that I have seen that could possibly be something that can help us as we move on to future events.

Mr. PICCIANO. Agreed. We will go back and see if we can get you an answer. And I will just add that, you know, time and size of events really makes a big difference. For example, when people do call up—you know, SBA is part of that process and there are other agencies involved in that. And what Mr. Skinner is suggesting is a much broader approach, ensuring that all those players are involved in that process for both preventing fraud—and also I think it is important, as you noted, to provide assistance to victims, because there are two ways to look at this. There is also identifying folks out there who need assistance that often fall through the gaps.

So I can't tell you if it can be done in-house or with a contractor, but we will get back to you.

Mr. MEEK. Well, Mr. Chairman, in closing—and I thank you for the latitude because I want to respect the time—that we want to make sure before we get to the point to where this happens all over again, because as we speak here, it is happening right now. I know we have a lot of things on the ground dealing with Katrina, but it is happening right now.

Case in point, Mr. Chairman: I was just watching CNN the other day in my office, and I noticed how they are starting to remove the cars in New Orleans. I was there about 3 weeks ago—and I used to be a State trooper—and I know when folks move these cars in these flatbed trucks, these big Semis, they stack three or four of them on top of each other; you have nine, ten cars. Mr. Chairman, I saw just in my office on a phone, a vision with a truck pulling

off with three cars stacked on the bottom, and that is a full load, and the folks are waiving them off with the cars. That is taxpayer dollars being wasted right there. And I am just saying and I instructed staff, let's try to get down to the bottom of who is the oversight person over that contract. I know it took forever for them to place this contractor and remove those cars, but it isn't going to be three cars at a time. We are going to go through some of the things that were found in this report amongst the good, bad, and ugly, and we are trying to prevent it from happening.

So if we can, that would be helpful if you can share that information, very seriously, with us, hopefully we can head down the right direction.

I want to apologize to the Chairman and to the committee for taking so much time. Sorry.

Mr. ROGERS. No problem. Gentleman's time has now expired.

I would recognize the Chair of the Full Committee, Mr. King, for any questions he may have.

Mr. KING. Thank you, Mr. Chairman. And let me thank the witnesses for your testimony today. You really made a lot of sense out of a very complex situation. I appreciate all your efforts.

I have two questions. I will ask them at the same time and you can just answer both of them. Primarily Mr. Picciano, but Mr. Skinner, Mr. Kutz, Ed, whatever you feel is necessary. One general question, one specific question.

General question is that sometimes you get what you ask for. And I know here in Washington there were a lot of complaints after 9/11 that not enough money was going to New York quickly enough. As I read the testimony, it appears that for the first time, we actually in effect mandated FEMA to spend $8 billion. Usually we don't lay out the amount, a specific amount in advance. You spend what is needed and just fight afterwards. The general question would be: do you think it made it more likely that sufficient controls would not be in place or that money, or the system, would be abused by actually setting that $8 billion in there, which in effect said you have to find a way to spend the $8 billion? That is the general question.

And the specific question is: if you could address, you know, one issue which is mentioned often in New York, and that is the case of the photographer—I believe Mr. Greg Brown I think his name was, I forget the exact name who was actually hired by FEMA. I believe he was paid about $300,000 to take photographs of Ground Zero in a police helicopter. But there were no restrictions put on the use of those photos, and now he claims that he has the property rights to those photos.

Using that specific example, I know it is always easy after the fact to come in and find the clarity in the example, but if you could just address that and as to whether or not that is a metaphor for other types of abuses and how that type of abuse can be avoided in the future. General question, mandating on spending the money and specific abuses, specifically the one regarding the photographer.

Mr. PICCIANO. Regarding the mandated amount, I personally thought that was a great way to lessen the impact of fraud and asks our folks, both Federal, State, city, to manage that fixed

amount as carefully as possible and to effectively meet the absolute requirements that are out there.

And if you add that with the special resolution that was passed in 2003, that also assisted, because in areas oftentimes—and the IG can elaborate—to make the round peg fit in the square hole, there is a lot of manipulation of guidelines. By allowing and recognizing the need for some flexibility—which was not the case in Katrina—some flexibility with the resolution that was passed for associated cost, that was a really great tool that allowed FEMA to do things that were necessary. The mandated insurance run by Congress, getting $90 million into an organization—a system to manage health care for a number of impacted people. So those two tools were important.

I mean, there is the issue of a match, you know, avoiding having a match or not, but actually capping the event on what is estimated what the costs would be I think would be a good way to begin to allow for stricter control of the expenditure of Federal dollars.

Mr. KING. So there is no human tendency to say we have to spend this $8 billion no matter what. On balance, it was a plus to actually have that—

Mr. PICCIANO. I think it was a reasonable amount of the FEMA share of the $20 billion, $8.8. And with that flexibility, sir, it is interesting to note that the Stafford Act still covered a majority of what was eligible. As it turned out there, it may have been $1 billion that was distributed as a result of the associated costs and it was for things that were important—heightened security, which was a real concern for New York City. So it was manageable, we could monitor it, and it was a way to get something done and with that flexibility, it was helpful. We obligated more money and quicker than any other disaster we have ever had—at least in our region a majority of the money was out of our pocket—into where it should be, State and local pockets.

Mr. KING. Not the photographer.

Mr. PICCIANO. Yeah. Regarding the photographer, I am just catching up on the facts on that because I knew it may come up. We did enter into a contract and, admittedly, we probably should have had in that contract constraints on use of that information. To me that is an oversight. My understanding, it was for $75,000, not $300,000 dollars. And most important, it was done early on in the event and it was done to monitor, at the request of the city, what first responding activity was to be able to move critical resources. So the intent was good. We made a mistake. And again, it was an oversight and we shouldn't have done it.

Mr. KING. Comments from the other two witnesses?

Mr. SKINNER. I would just like to add to what Joe was saying. We could not find any correlation between the $8.8 mandatory ceiling and fraud, waste and abuse. In fact, I don't think there was a correlation between the two. The fraud, waste and abuse that we did experience is the types of fraud, waste and abuse we see after every disaster. And those were the issues dealing with the individual assistance programs. The public assistance programs, we saw very little because of the monitoring controls that the city im-

posed over primarily debris removal operations, so I don't think there was any correlation whatsoever.

Mr. KUTZ. I would just add a couple things. With respect to the $8 billion, I don't think that increases your risk necessarily of fraud, waste and abuse. What we had seen was some supplemental spending—I use Iraq as an example—is the risk of using that money as a get-well program for your base appropriations. So that would be a risk, I would say, that you might have of supplemental appropriations.

Mr. KING. My understanding, it may have been $75,000 with FEMA. I think the balance of that contract with $300,000 came from the City's Department of Design and Construction. Thank you very much.

Mr. ROGERS. Gentleman yields back. The Chair recognizes the gentleman from New Jersey, Mr. Pascrell, for any questions he may have.

Mr. PASCRELL. Mr. Chairman, I know we like to look to the future in how we can make things better. I would prefer to stay in the past today, because I want to know what happened before I make any of those proposals.

Mr. Skinner, for the record, fraud occurs when there is a lack of monitoring or oversight or when there is collusion. Are there any signs in your investigation of collusion in New York City after the tragedy of 9/11? Collusion—and I will define that if you wish. I think you know what I am talking about.

Mr. SKINNER. Could you please define that? I am not quite sure.

Mr. PASCRELL. There are those who work for the Federal Government in the public sector who are in concert with crooks and make deals, either in detecting whether—what the quality of air is or detecting whether or not we can make a deal on the side and if there are kickbacks and things like that. So it is—

Mr. SKINNER. Public corruption. Yes, we found no evidence whatsoever to suggest that—

Mr. PASCRELL. Did you investigate anything?

Mr. SKINNER. We had no allegations to that effect. So to my knowledge, we did not have any ongoing investigation in that regard.

Mr. MEEK. Would the gentleman yield?

Mr. PASCRELL. Sure.

Mr. MEEK. Mr. Skinner, is there a statute of limitations on that complaint or allegations for you to look into such things?

Mr. SKINNER. There is. I believe there is. I don't have those—the exact limitations on those issues. But it would be from the date of the actual event and the time that the crime may have been brought to our attention, the clock would start ticking.

Mr. PASCRELL. Mr. Skinner, you are—just for the record, just to clarify, are you saying that no public officials came forward to place before you accusations that something was going on within the contract letting in New York City after 9/11? You are saying that, for a fact, no public employees came forward to you? Not to you personally?

Mr. SKINNER. Personally, yes. I would have to go back. Like I said, we had over 1,000 complaints, nearly 1,200 complaints that we registered. I would have to go back and review each and every

one of those to see if in fact that was the case. But there is nothing to my knowledge at this point that anyone came to us suggesting there was collusion involving Federal officials with regards to kickbacks or any other type of scheme involving contracts.

Mr. PASCRELL. How closely did you examine what went on in monitoring the air in the vicinity of the Twin Towers, in terms of the Twin Towers? Who monitored it and who decided how much money would be spent, and did you examine the conclusion that the EPA came to that the air was—all was clear?

Mr. SKINNER. Our office did not specifically monitor the conclusions with regards to EPA. However, I do believe that the EPA OIG did in fact take a look at this. What we did look at was when was the EPA brought in, how much did they know, and which—and what was FEMA's relationship and role with regards to the air quality.

Mr. PASCRELL. So you didn't put yourself—you are not in the position of making a judgment concerning the review of EPA concerning the air quality? You did not make that decision? EPA made that decision?

Mr. SKINNER. That is correct.

Mr. PASCRELL. And there was no other oversight in that decision; yes or no?

Mr. SKINNER. Not by our office. But there was—EPA OIG was on site and was somewhat involved. I do believe they did issue a report involving the EPA's decisions and role in 9/11.

Mr. PASCRELL. Mr. Kutz—thank you.

Mr. Kutz, you talked about fraud prevention and the three things that were necessary, which you use as standard: the direction monitoring, the data mining, and then you said something to the effect of investigation; the investigative part of that point number two. Was there an aggressive investigation as far as you are concerned with the subject that we are talking about today?

GAO is providing to the Congress of the United States your oversight into what was done and whether it was done properly or not. Can you say—can you put on the record that in your estimation that the DHS had a thorough investigation, that the inspector general's office had a thorough investigation of all the matters that are before this committee today?

Mr. KUTZ. I don't have any knowledge on September 11. I couldn't speak to that.

Mr. PASCRELL. Who would have?

Mr. KUTZ. I would have to get back to you on that. I don't think we can speak to that, though.

Mr. PASCRELL. Why not?

Mr. KUTZ. Well, we have looked at specific things, but I don't think we have looked at that scope of that type of work for September 11. Again, with Katrina/Rita, I could speak more specifically on that.

Mr. PASCRELL. We have to do our job in order to come to conclusions which this committee will come to. I hope you understand why I am asking the question. Who should I look to? Who should I ask? Who would know?

Mr. KUTZ. Well, I think Mr. Skinner would know. Whether he—

Mr. PASCRELL. Let me ask you this for the record—thank you.

Let me ask, Mr. Skinner, do you think that a thorough investigation took place into the matters that are before this committee today?

Mr. SKINNER. Yes.

Mr. PASCRELL. You do. I have no further right now, Mr. Chairman.

Mr. ROGERS. I thank the gentleman. I would remind the panelists that most of the Members will probably have some questions for you all that they will submit to you, and the record will be left open for the next 10 days for that purpose. If you do receive written inquiries, I would ask you to respond to those, in writing, to the Committee for us.

I know I am going to have some additional questions. As you know, we are limited to one round of questions today, specifically because we do have another panel. I want to be respectful of your time as well as the next panel's time, but I must say I am very disturbed about the failure to prosecute many of these people, and I want to do what we can to rectify that in the future. I am going to be looking for information from you all as to specifically what do you think we can do to make sure that after future disasters, whether natural or otherwise, that we have put in place the framework to ensure that everybody who takes advantage of that circumstance criminally is prosecuted. And it seems to me that even if it is a small crime, a relatively small—like, for example, getting a vacuum cleaner that you weren't entitled to get or an air conditioner or whatever, air purification system, that local DAs—even one—local is relative, you know; New York's District Attorney's office is huge, but they aren't worried about resources. If we have to get additional prosecutors to provide them the money to prosecute these crimes, we need to be able to do that. But we need to know that they are going to be successful prosecutions.

So I really do look to you all to give us some guidelines on that. This Committee is going to be releasing a report a little later this year and information like that from you all will be helpful. And with that, this panel is excused, and I thank you.

The Chair now calls up the second panel.

Mr. ROGERS. Again, I want to thank all of our panelists for making the time to be here and we look forward to your statements. I also would remind you all that your entire statement can be submitted for the record. And if you would like to summarize, we would ask you to keep your opening statement to five minutes or less to permit more opportunities for questions.

Mr. ROGERS. The Chair now calls the Honorable Rose Gill Hearn, Commissioner of the New York City Department of Investigation, for your opening statement.

STATEMENT OF ROSE GILL HEARN

Ms. HEARN. Good afternoon Chairman Rogers, Congressman Meek, Chairman King, Congressman Thompson, members of the committee. It is a privilege to address this committee and describe the foresight of and efforts made by the city of New York to prevent fraud and waste in connection with the cleanup of the World Trade Center site immediately following the destruction of the Twin Towers and surrounding buildings.

New York City's experience demonstrates that the proactive measures taken were highly effective in detecting and preventing fraud and waste without compromising the ability of the emergency efforts to proceed with remarkable efficiency.

Appointed by Mayor Michael Bloomberg, I am the Commissioner of the New York City Department of Investigation, known as DOI, which is one of the oldest law enforcement agencies in the country. Created in the wake of the "Boss" Tweed scandals of the 19th century, DOI is an agency of New York City's government charged with routing out, but, perhaps more importantly, preventing corruption within or impacting city government. Thus we do not just try to catch criminals after they have committed crimes, but we also devote a substantial amount of our resources to preventing crimes before they happen and to preventing the needless loss of precious city resources through waste and inefficiency.

DOI offices are located on Maiden Lane just up the block from what was the World Trade Center. On the morning of September 11 DOI personnel and detectives responded to the scene to help with the evacuation of the buildings. When the towers collapsed, the cloud of dust and smoke came rushing down Maiden Lane and debris rained down on our building. For days thereafter, DOI personnel became part of the on-site digging and security operation.

My own experience included seeing the apocalyptical sight at the World Trade Center, people jumping from the fire line 70 stories high in the North Tower, followed by the explosion of the second plane into the South Tower, and the collapse of the towers as if they were sand castles. The city then mobilized in an extraordinary way and DOI was part of that mobilization.

In the aftermath of the 9/11 terrorist attacks on the World Trade Center, the city had to undertake a cleanup operation that was unprecedented in scope and cost. Moreover, it was recognized that the city's cleanup would have to be safe, include a sensitive ongoing search for remains, and allow businesses and residents to return swiftly to the densely populated Wall Street financial district, whose economic viability was crucial not only to the city but to the country as a whole.

To achieve the goals of the World Trade Center cleanup, it was understood that vast amounts of government money would have to be spent and spent quickly. Indeed, some of the members of this committee were instrumental in seeing that New York received the money it needed for the historic cleanup and recovery effort.

However, experience has taught us that the expenditure of large sums of money in an emergency situation increases the likelihood of fraud inefficiency and price gouging. Accordingly, based on the concerns of the possibilities of fraud and corruption in all aspects of the cleanup effort, Mayor Rudolph Giuliani's Office asked DOI to put in place a monitoring program to prevent exploitation of the emergency situation by unscrupulous firms and individuals. That initiative was continued by Mayor Bloomberg who took office on January 1, 2002 and, with it, responsibility for the site and its cleanup which was completed in July 2002. Mayor Bloomberg required DOI and the other agencies to continue to be vigilant and proactive about corruption and waste issues at the site, a priority in the Bloomberg administration.

DOI had already established under nonemergency circumstances such a procedure for monitoring various municipal projects. For example, construction projects within the city where there had been a particular concern about corruption. Thus, DOI drew on that experience in putting a monitoring program together for the World Trade Center site, but of course on a much larger scale.

In order to accomplish and better manage the necessary cleanup, the city divided the 16-acre World Trade Center site, Ground Zero, into four quadrants. A construction manager was retained for each of the four quadrants, and I have supplied a map of Ground Zero as divided into the quadrants. The construction managers were paid based on labor, time and materials they used to carry out the cleanup.

The construction managers in turn had hundreds of subcontractors throughout Ground Zero; for example, truckers, waste disposal and demolition companies, industries with a long history of organized crime involvement. Thus, these contracts were not only enormous, but as time and material contracts they presented specific vulnerabilities to fraud and abuse from unscrupulous contractors, subcontractors and suppliers from which the city needed to protect itself.

In addition, the work of the contractors and oversight of that work was complicated by the multiple activities going on at Ground Zero during the cleanup due to the fact that the 16-acre site was a crime scene with an active recovery effort underway for the remains of the thousands of victims of the disaster. In combination with the fact that the work was to be carried out under the direction of four construction managers rather than one, the potential for fraud was increased. Thus, the purpose of the DOI monitoring program was, to the best of our ability, to ensure that the city knew what work was being performed at the site and that the billing was appropriate and legitimate.

The Ground Zero cleanup was remarkably well coordinated and ultimately well accomplished because one agency, the city's Department of Design and Construction, DDC, was given the responsibility of managing the project. DDC is the city's construction and engineering expert.

As will be described in more detail by my colleague, David Varoli, all four of the Ground Zero construction managers reported to DDC. Thus, given that DOI was tasked with monitoring the four construction managers, we collaborated closely with DDC. DOI created and implemented the World Trade Center integrity compliance monitorship program which was in place by early October 2001. This program required each of the four Ground Zero construction managers to retain an on-site integrity monitor selected by DOI. Through DOI, each integrity monitor had the authority to review and audit all of the books and records of the contractors working at the site and to maintain a physical presence at the site. By virtue of this oversight program, the integrity monitors scrutinized the contractors' activities in real time and functioned as the city's eyes and ears.

DOI also required the monitors to establish a hotline number where anyone could call with concerns or information. A key feature to the effectiveness of the monitors was that they reported di-

rectly to DOI on all contractor activities. Thus, if there were any issues or problems, they were addressed immediately. DDC was included in many of those discussions and received regular reports as well.

DDC also required an auditing firm to assist its engineering audit operation with auditing and payment issues. Together with the monitors, this was an endeavor intended to create strong oversight to detect and prevent fraud and waste. The integrity monitor model requires specialized firms with legal accounting law enforcement and investigative expertise. Because this model had been used in New York City by DOI, we were fortunate to have a number of highly qualified firms ready to pick from, whose work we were already very familiar with. One of the monitors, Neil Getnick, is here with us today and I am grateful to him for being here.

Initially the integrity monitors maintained an on-site presence at Ground Zero on a 24-hour basis, seven days a week. While time does not permit me to list the specific tasks the monitors engaged in day to day, generally their duties fell into the categories of deterrence, detection, and documentation. In order to perform these duties, the integrity monitors reviewed books and records, identified and corrected adequate financial and quality controls, analyzed financial records to ensure accuracy and basic contract compliance, assisted with clarifying agency policies at the site, analyzed laws and contracts, gathered intelligence for the law enforcement community, detected and corrected incompetence, and monitored the day-to-ay work on the site. And they did all of this with a sensitivity to the city's needs for efficiency, speed, and cost control.

While it should be noted that the vast majority of contractors on the site performed their work exceptionally well and with integrity, as a result of all of these types of intensive investigating and auditing efforts and more, the integrity monitors prevented a significant amount of waste, fraud and abuse in the Ground Zero cleanup. To a significant degree, the prevention came as a result of their presence on the site alone, which in and of itself served as a deterrent to misconduct. For example, the sign-n sheets at the site from the earliest days of the cleanup prior to the arrival of the monitors contained the names of individuals who allegedly did work at the site, who were associated with organized crime. Moreover, some of those early sign-n sheets also contain the names of alleged workers on multiple sign-n sheets for work done, impossibly, on the same date and the same time. However, when the four monitors went into place and the CMs and subcontractors all knew the monitors were closely analyzing such items, those probable illegitimate and duplicative labor costs were no longer showing up on the payroll records billed to the city, indeed corroborating the fact that the monitor served as a deterrent.

Early on at the cleanup, DOI was advised by a local prosecutor of an intercepted conversation between two organized crime associates in which they lamented the on-ite presence of the monitors at the World Trade Center and that that was making it impossible for anyone to overbill the city via the usual scams because the site was being so closely scrutinized.

We could not have said it better ourselves. In addition to the deterrence of the type of willful misconduct lamented in that inter-

cepted phone call, it is clear that the integrity monitors' activities further prevented waste and abuse through the establishment of proper recordkeeping systems, their physical presence on the site, and their frequent auditing of the billings.

While as with the general deterrence, it is difficult to precisely quantify the savings resulting from the institution of good recordkeeping procedures, direct observations and the quick detection of problems through the frequent audits, the fact is that significant savings resulted. For example, based on the submission and review of required documentation, the integrity monitors found evidence that purchased equipment initially billed to the city was also listed as equipment leased to the city. Thus, the city was being charged a rental fee on equipment it had already purchased. As a result, these charges would not only be disallowed, a quantifiable savings, but future improper billings on this equipment would not occur, a more-dificult-of-quantify but clear savings nonetheless.

Similarly, a review of required documentation by the integrity monitors revealed that requests for payment for rental equipment at times included fuel costs where such costs were already built into the rental fees. Again, these costs would be disallowed quantifiable, and not billed going forward less quantifiable.

In another instance, the integrity monitors on-site spot checks resulted in a clear but difficult-to-quantify savings. Some debris removal trucks were found to be operating with broken odometers. Had the trucks been allowed to continue to operate with this type of mechanical failure, they could have easily deviated from their approved truck routes, a problem observed with some trucking from the outset of the debris removal activity. The work of the integrity monitors resulted in the early detection and systemic correction of this problem and thereby reduced the ability of unscrupulous truckers to misdirect the debris or misuse the free dump tickets they were given in conjunction with their Ground Zero work.

The integrity monitors' background checks on contractors also resulted in the indictment of two principals of a carting firm working at Ground Zero by the Manhattan District Attorney's office for lying about their ties to organized crime and documents filed with the city. Not surprisingly, invoices submitted by that same carting firm were identified by the integrity monitors as containing numerous instances of overbilling by that contractor.

Significant quantifiable savings through the identification and correction of sloppy and sometimes willfully abusive practices were also achieved by the integrity monitors. For example, in one instance, bills submitted to the city for payment by one subcontractor were so fraught with errors and improper markups of heavy equipment and services and lack of documentation authorizing the performance of services and labor charges that they were reduced by two-thirds; from $2.6 million originally billed, reduced to $795,000.

In another instance after a long discussion concerning various billing issues between a monitor and a subcontractor, based on the monitor's review of the records, the subcontractor agreed to revise prior billing submissions, estimating it to an adjustment—downward adjustment of $1 million.

These are just a few examples to highlight the kinds of activities engaged in by the integrity monitors in connection with the World Trade Center cleanup and the savings to the government that resulted from those activities.

It is clear that as a result of the World Trade Center integrity compliance monitorship program, the government saved a significant amount of money by preventing and curtailing fraudulent activity, waste and abuse of public funds. In total, we have estimated that based on their extensive work and forensic analysis, the integrity monitors recommended in excess of $47 million in cost savings and that their very presence on the Ground Zero site and their frequent audits produced additional significant savings that cannot be quantified. All of these efforts not only protected public tax money but helped to preserve the faith of the taxpayers and the quality and integrity of government services.

In conclusion, DOI makes the following recommendations to the Federal Government:

Have a list of preexisting known, experienced, and vetted monitors in various fields of expertise and disciplines by locality.

Put an integrity monitor in place at the outset of any situation that will call for a large costly government response operation so that proper recordkeeping and work procedures can be instituted to create a culture of legal compliance within the operation and ensure accurate accountability to the government.

Three, have the integrity monitors report to a government oversight agency with a broad governmental mandate encompassing fiscal integrity and law enforcement. For example, in New York, it was DOI.

And then, four, closely working with the integrity monitors and the other government entities concerned with addressing the emergency at issue throughout the duration of the project.

Thank you for this opportunity to speak to you today, and I would be happy to answer your questions.

Mr. ROGERS. Thank you, Ms. Hearn.

[The statement of Ms. Hearn follows:]

PREPARED STATEMENT OF ROSE GILL HEARN

Good afternoon Chairman Rogers, Congressman Meek, Members of the Committee. It is a privilege to address this Committee and describe the foresight of and efforts made by the City of New York to prevent fraud and waste in connection with the clean up of the World Trade Center site immediately following the destruction of the Twin Towers and surrounding buildings. New York City's experience demonstrates that the proactive measures taken were highly effective in detecting and preventing fraud and waste, without compromising the ability of the emergency efforts to proceed with remarkable efficiency.

Appointed by Mayor Michael R. Bloomberg, I am the Commissioner of the New York City Department of Investigation, known as DOI, which is one of the oldest law-enforcement agencies in the country. Created in the wake of the Boss Tweed scandals of the 19th century, DOI is an agency of New York City's government charged with rooting out, but perhaps more importantly, preventing corruption within or impacting City government. That mission is a challenging one as New York City is one of the largest employers with one of the largest budgets in the country. DOI often works with the federal and state prosecutors who have jurisdiction over the City of New York. We work jointly with other law enforcement agencies such as the New York City Police Department, the FBI and the federal Postal Inspectors. DOI is also empowered by law to investigate and report on potential corruption hazards and to advise the Mayor and the other branches of City government on measures they should take to prevent corruption and the waste of City funds.

Thus, we do not just try to catch criminals after they have committed crimes, but we also devote a substantial amount of our resources to preventing crimes before they happen and to preventing the needless loss of precious City resources through waste and inefficiency.

DOI offices are located on Maiden Lane just up the block from what was the World Trade Center. On the morning of September 11th, DOI personnel and detectives responded to the scene to help with the evacuation of the buildings. When the Towers collapsed, the cloud of dust and smoke came rushing down Maiden Lane, and debris rained down on our building. For days thereafter, DOI personnel became part of the on-site digging and security operation. My own experience included seeing the apocalyptical sight at the World Trade Center: people jumping from the fireline seventy stories high in the North Tower; followed by the explosion of the second plane into the South Tower; and the collapse of the Towers as if they were sandcastles. The City then mobilized in an extraordinary way, and DOI was part of that.

In the aftermath of the 9/11 terrorist attack on the World Trade Center, the City had to undertake a clean-up operation that was unprecedented in scope and cost. Moreover, it was recognized that the City's clean-up would have to be safe, include a sensitive on-going search for remains, and allow businesses and residents to return swiftly to the densely populated Wall Street financial district, whose economic viability was crucial, not only to the City, but to the Country as a whole.

To achieve the goals of the World Trade Center clean-up, it was understood that vast amounts of government money would have to be spent and spent quickly. Indeed, some of the members of this Committee were instrumental in seeing that New York received the money it needed for the historic clean-up and recovery effort. However, experience has taught us that the expenditure of large sums of government money in an emergency situation increases the likelihood of fraud, inefficiency and price gouging. Accordingly, based on the concerns of the possibilities of fraud and corruption in all aspects of the clean-up effort, Mayor Rudolph Giuliani's office asked DOI to put in place a monitoring program to prevent exploitation of the emergency situation by unscrupulous firms and individuals. That initiative was continued by Mayor Bloomberg, who took office on January 1, 2002, and with it responsibility for the site and its clean-up, which was completed in July 2002. Mayor Bloomberg required DOI and the other agencies to continue to be vigilant and proactive about corruption and waste issues at the site, a priority in the Bloomberg Administration.

DOI had already established under non-emergency circumstances such a procedure for monitoring various municipal projects, for example, construction projects within the City, where there had been a particular concern about corruption. Thus, DOI drew on that experience in putting a monitoring program together for the World Trade Center site but, of course, on a much larger scale.

In order to accomplish and better manage the necessary clean-up, the City divided the 16-acre World Trade Center site, Ground Zero, into four quadrants. A construction manager, or CM, was retained for each of the four quadrants. (*A map of Ground Zero as divided into the quadrants is attached to my written materials.*) The Cbs were paid based on the labor, time and materials they used to carry out the clean-up. The CMs, in turn, had hundreds of subcontractors throughout Ground Zero, for example, truckers, waste disposal, and demolition companies—industries with a long history of organized crime involvement.

Thus, these contracts were not only enormous, but as "time and materials" contracts, they presented specific vulnerabilities to fraud and abuse from unscrupulous contractors, subcontractors and suppliers from which the City needed to protect itself. In addition, the work of the contractors and oversight of that work, was complicated by the multiple activities going on at Ground Zero during the clean-up due to the fact that the 16-acre site was a crime scene with an active recovery effort underway for the remains of the thousands of victims of the disaster. In combination with the fact that the work was to be carried out under the direction of four CMs, rather than one, the potential for fraud was increased. Thus, the purpose of the DOI monitoring program was, to the best of our ability, ensure that the City knew what work was being performed at the site and that the billing was appropriate and legitimate.

The Ground Zero clean-up was remarkably well-coordinated and ultimately well-accomplished because one agency, the City's Department of Design and Construction (DDC), was given the responsibility of managing the project. DDC is the City's construction and engineering expert. All four of the Ground Zero CMs reported to DDC. Thus, given that DOI was tasked with monitoring the four CMs, we collaborated closely with DDC.

DOI created and implemented the World Trade Center Integrity Compliance Monitorship Program, which was in place by early October 2001. This program required each of the four Ground Zero CMs to retain an onsite "Integrity Monitor" selected by DOI. Through DOI, each Integrity Monitor had the authority to review and audit all of the books and records of the contractors working at the site, and to maintain a physical presence on the site, including around the perimeter of Ground Zero. By virtue of this oversight program, the Integrity Monitors scrutinized the contractors' activities in real time and functioned as the City's eyes and ears. DOI also required the Monitors to establish a hotline number where anyone could call with concerns or information. A key feature to the effectiveness of the Monitors was that they reported directly to DOI on the contractors activities. Thus, if there were any issues or problems, they were addressed immediately. Reports of their findings were made on a frequent basis to DOI, which set up a trailer right at Ground Zero where meetings could readily and frequently take place. DDC was included in many of those discussions and received regular reports as well. DDC also hired an auditing firm to assist its Engineering Audit operation with auditing and payment issues. Together with the Monitors, this created strong oversight to detect and prevent fraud and waste.

The Integrity Monitors were themselves closely monitored by DOI in order to ensure that they were performing the kind of work that was really needed by the City, and in order to enable DOI to act on their findings quickly when necessary. The Monitors had to be tethered to a pivotal government oversight agency like DOI would make them a much less effective and useful tool.

DOI's Integrity Monitor program was a good government step because it was preventive in nature. By embedding the Monitors with the individual contractors, the monitoring program prevented fraud and waste by any contractors that were unscrupulous or sloppy, both: (1) instituting proper record keeping and work procedures to create a culture of legal compliance within each contractor's operations; and (2) ensuring accurate accountability to the City.

The Integrity Monitor model requires specialized firms with legal, accounting, law enforcement and investigative expertise. Because this model had been used in New York City by DOI, we were fortunate to have a number of highly qualified firms ready from which to pick, with whose work we were already very familiar. . The Monitors selected by DOI, who did an outstanding job under very difficult circumstances, were four of the New York areas leading monitoring firms: Getnick & Getnick for the Turner Construction quadrant; Stier, Anderson and Malone, LLC for the AMEC Construction quadrant; Decision Strategies for the Tully Construction quadrant; and Thacher Associates, LLC for the Bovis Lend Lease quadrant.

Thus, DDC was responsible for overseeing the operations of the four CMs, subcontractors and suppliers performing work at Ground Zero, and under the direction of DOI, the four Monitors maintained oversight of those activities.

DOI oversaw the work of the Monitors by reviewing the results of their investigations and audits and by helping to direct and focus their activities. DOI held joint meetings with all of the Monitors together every week in order to facilitate the dissemination of information among the Monitors and to ensure the coordination of joint efforts. This was particularly important because the coordination helped to ensure that the decentralization of the clean-up effort did not in itself breed fraudulent schemes, such as having individual workers reported on the payrolls of different companies for work performed at the same time or subcontractors double bill for work through multiple CMs. DOI was also in constant communication with DDC and other government agencies, to make sure that information obtained by the Integrity Monitors was communicated quickly to the entities that most needed it. Finally, DOI communicated with the other area law enforcement and prosecutorial agencies on matters disclosed by the Integrity Monitors and ensured an appropriate flow of information between these agencies and the Monitors.

Initially, the Integrity Monitors maintained an on-site presence at Ground Zero on a 24-hour basis, seven days a week. Their duties fell into general categories of: deterrence, detection and documentation. In order to perform these duties, the Integrity Monitors engaged in legal, investigative, forensic accounting and engineering analysis. To perform their jobs, they reviewed books and records; identified and corrected inadequate financial and quality controls; analyzed financial records to ensure accuracy and basic contract compliance; assisted with clarifying agency policies at the site; analyzed laws and contracts; gathered intelligence for the law enforcement community; detected and corrected incompetence; and monitored the day to day work on the site. And they did all of this with a sensitivity to the City's needs for efficiency, speed and cost control.

Specific investigative, auditing and monitoring activities engaged in by the Integrity Monitors included:

- Background checks on companies and individuals working at Ground Zero;
- Establishment of a hotline to enable anonymous tips and to field complaints from workers on the site;
- Observation of employees sign-in/sign-out procedures and reviewing sign-in and sign-out sheets;
- Interviews of employees on-site;
- Reviewing payrolls to ensure that there were no fictitious employees on the payroll, through comparisons of payroll records with payroll checks issued and payroll records with the daily sign-in/sign-out sheets;
- Reviewing payrolls for prevailing wage violations and other labor law violations;
- Monitor swipe card system at the site for employees;
- Monitor equipment on site to verify its presence and use; ensure billings conformed accordingly;
- Auditing inventories of equipment on site and verifying whether it was rented or owned by the company, and verifying that the City was properly billed accordingly;
- Monitor GPS tracking system for trucks removing debris;
- Conducting spot checks and surveillances of supplies, equipment, activities at the site;
- Monitoring of material deliveries;
- Reviewing truck manifests;
- Verifying that materials that were ordered were in fact delivered;
- Verifying that the materials that were ordered and delivered were in fact job related;
- Verifying that the costs of materials were not inflated through forensic audits;
- Reviewing invoices and verifying that appropriate mark-ups were made, that there were no computational errors, and that there was no over billing and/or double billing;

While it should be noted that the vast majority of contractors on the site performed their work exceptionally well and with integrity, as a result of all of these types of intensive investigating and auditing efforts and more, the Integrity Monitors prevented a significant amount of waste, fraud and abuse in the Ground Zero clean-up. To a significant degree, the prevention came as a result of their presence on the site alone, which in and of itself, served as a deterrent to misconduct. For example, the sign-in sheets at the site from the earliest days of the clean-up prior to the arrival of the monitors, contained the names of individuals who allegedly did work at the site who were associated with organized crime. Moreover, some of those early sign-in sheets also contained the names of alleged workers on multiple sign-in sheets for work done (impossibly) at the same dates and times. However, when the four Monitors went into place and the CMs and the subcontractors all knew the Monitors were closely analyzing such items, these probable illegitimate and duplicative labor costs were no longer showing up on the payroll records billed to the City.

Indeed, corroborating the fact that the Monitors served as a deterrent, early on during the clean-up, DOI was advised by a local prosecutor of an intercepted conversation between two organized crime associates in which they lamented that the on-site presence of the Monitors at the World Trade Center site was making it impossible for anyone to overbill the City via the usual scams, because the site was being so closely scrutinized. We couldn't have said it better ourselves.

In addition to the deterrence of the type of willful misconduct lamented in that intercepted phone call, it is clear that the Integrity Monitors' activities further prevented waste and abuse through the establishment of proper record keeping systems, their physical presence on the site and their frequent audits of the billings. While, as with the general deterrence, it is difficult to precisely quantify the savings resulted from the institution of good record keeping procedures, direct observations and the quick detection of problems through frequent audits, the fact that significant savings that resulted from these activities is clear. For example, based on the submission and review of required documentation, the Integrity Monitors found evidence that purchased equipment initially billed to the City was also listed as equipment leased to the City. Thus, the City was being charged a rental fee on equipment it had already purchased and for which it had already been paid. As a result, these charges would not only then be disallowed (a quantifiable savings) but future improper billings on this equipment would not occur (a more difficult to quantify but clear savings nonetheless). Similarly, a review of required documentation by the Integrity Monitors revealed that requests for payments for rental equipment at times included fuel costs where such costs were built into the rental fees. Again, these costs would be disallowed (easily quantifiable savings) and not billed going forward (more difficult to quantify).

In another instance, the Integrity Monitors on-site spot checks resulted in a clear, but difficult to quantify, savings. Some debris-removal trucks were found to be operating with broken odometers. Had the trucks been allowed to continue to operate with this type of mechanical failure, they could have easily deviated from their approved travel routes, a problem observed with some trucking from the outset of the debris removal activity. The work of the Integrity Monitors resulted in the early detection and systemic correction of this problem and thereby reduced the ability of unscrupulous truckers to misdirect the debris or misuse the free dump tickets they were given in connection with their work at Ground Zero.

The Integrity Monitors background checks on contractors also resulted in the indictment of two principals of a Yonkers carting firm working at Ground Zero by the Manhattan District Attorney's office for lying about their ties to organized crime in documents filed with the City. Not surprisingly, invoices submitted by this same carting firm were identified by the Integrity Monitors as containing numerous instances of over-billing by that contractor.

Significant quantifiable savings through the identification and correction of sloppy, and sometimes willfully abusive, practices were also achieved by the Integrity Monitors. For example, in one instance, bills submitted to the City for payment by one subcontractor were so fraught with errors and improper mark-ups of heavy equipment and services, and lack of documentation authorizing the performance of services and labor charges, that they were reduced by two thirds—from $2.6 million originally billed to $795,000. In another instance, after long discussions concerning various billing issues between a Monitor and a subcontractor based on the Monitor's review of the records, the subcontractor agreed to revise prior billing submissions—translating to an estimated downward adjustment of $1 million.

In yet another example, one Integrity Monitor examining subcontractor invoices submitted to the City totaling more than $7.3 million, identified over-billing in the amount of $3 million, or almost 42% of the total invoice. In another type of over-billing uncovered and stopped by the Integrity Monitors, certain subcontractors were found to have impermissibly marked-up their bills beyond the 10% allowed for overhead and the 10% allowed for profit. .

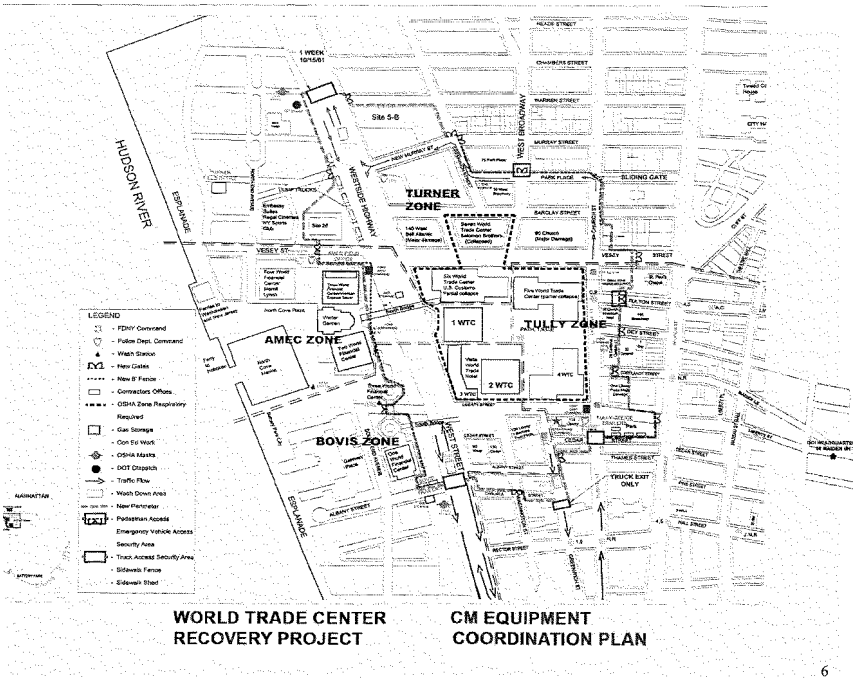
Double billing for workers, time and materials were caught through the Integrity Monitors' frequent audits and on-site observations. So, for instance, the Monitors caught a subcontractor submitting invoices for debris removal at two different locations at exactly the same time, using the exact same vehicles and drivers. This matter, among others, was referred to the local prosecutor's office.

These are just a few examples to highlight the kinds of activities engaged in by the Integrity Monitors in connection with the World Trade Center clean-up and the savings to the government that resulted from those activities. They clearly demonstrate the effectiveness of the Integrity Monitor model, where the Monitors are embedded in a project from the beginning, and where they report directly to a government agency that ensures the appropriate focus of their work and the quick and effective dissemination of their findings.

It is clear that, as a result of the World Trade Center Integrity Compliance Monitorship Program, the government saved a significant amount of money by preventing and curtailing fraudulent activity, waste and abuse of public funds. In total, we have estimated that, based on their extensive work and forensic analysis, the Integrity Monitors recommended in excess of $47 million in cost savings and that their very presence on the Ground Zero site and their frequent audits produced additional significant savings that cannot be quantified. All of these efforts not only protected public tax money, but helped to preserve the faith of the taxpayers in the quality and integrity of government services.

In conclusion, DOI makes the following recommendations to the Federal Government: (1) have a list of pre-existing list of known, experienced and vetted monitors in various fields of expertise and disciplines; (2) put an integrity monitor in place at the outset of any situation that will call for a large, costly government response operation, so that proper record keeping and work procedures can be instituted to create a culture of legal compliance within the operation, and ensure accurate accountability to the government; (3) have the integrity monitor(s) report to a government oversight agency with a broad governmental mandate encompassing fiscal integrity and law enforcement (*e.g.,* in New York it was DOI); and then (4) closely work with the integrity monitors and the other government entities concerned with addressing the emergency at issue throughout the duration of the project.

Thank you for this opportunity to speak to you today. At this time, I would be pleased to answer any questions that the Committee members or other representatives may have.



Mr. ROGERS. The Chair now recognizes Mr. David Varoli, General Counsel of the New York City Department of Design and Construction, for your statement. And I would remind all witnesses, we have full written copies of your opening statements. If you could just summarize them briefly, it would give more time for questions and answers. With that, Mr. Varoli. Did I pronounce that correctly, I hope?

STATEMENT OF DAVID J. VAROLI

Mr. VAROLI. You did.

Thank you, Chairman Rogers, Congressman Meek, Congressman King and Congressman Pascrell. Members of the committee, good afternoon and thank you for inviting me to testify before you. It is both an honor and a privilege to be here today. I want to thank you, Chairman Rogers and Ranking Member Meek, for calling this hearing and I also want to thank Congressman King for his opening remarks in which you recognize the work of DDC. Also Congressman Pascrell, as you mention in one of your questions you are here to study the past.

I believe that is probably why I have been invited, since I have no law enforcement background, and I am here to talk about the past. Interestingly on my way here today, I passed the National Archive Building and there are two very good quotes in front of that building. The first says, "The past is our prologue, "and the other quote is, "Study the past."

I am here today to discuss the recovering cleanup efforts in the city following the terrorist attacks of September 11, which was the

largest unplanned demolition project in American history. Every day the city, specifically DDC in this regards, encountered, head on, unpredictable and complex site situations and responded with both innovation and comprehensiveness to these issues. Yet from the outset, the city's objective was for the work to be done in conformity with FEMA standards in order to minimize the cost and financial exposure to the taxpayers of both the city and the country.

I would like to take a few moments to first lay out for you a brief description of who and what DDC is and what the city looked like on September 10 and 11, and then I would like to describe in detail how the city cleaned up the site, all in the 5-minute parameters.

DDC is actually celebrating its tenth anniversary this month. We were created back in 1996 by the former mayor to specifically oversee the work of the building of New York City and its infrastructure. We design and construct the city's sewers, water mains, roadways. Pretty much you name it, in any kind of city, like Washington, D.C. or any of the districts you gentlemen come from, we build that kind of infrastructure. We have expertise in the fields of engineering, architecture and construction services. We work with some of the best and the biggest private sector firms, and we also work with some of the new ones and some of the smaller firms. Our business is to know the construction business and to deliver the quality and cost-efficient services to our clients and ultimate users, the people of the city of New York.

As you heard from my colleague, Commissioner Rose Gill Hearn, DOI is also similar in that regards to DDC. They have the expertise and they know their business very well, which is finding and routing out fraud, waste and corruption. As will be described in greater detail, I will talk about the four construction managers and specifically the work of KPMG which was hired by DDC as one of our auditors. Before I go into any description of what happened on September 11 and for those next 9 months, I would just like to put into perspective what the city looked like on September 10 and September 11.

As everyone knows what the weather conditions were on those two days, they happen to be some of the more beautiful days in September. The sun was shining, the skies were blue, and everything was good in both the city and the country. And then everything changed the morning of September 11. At that point in time, the city did not have expertise in demolition or in debris removal. But we did have what we would call a strong executive branch, and with that executive branch we had very strong expertise in the different agencies, DDC, DOI, and some of the other agencies.

And this is a very important point worth stressing, because this expertise, when called upon, was there and was ready to take on the challenges of September 11.

Mr. VAROLI. My perspective is both a personal and professional one, and I won't elaborate too much because it is in my written testimony, but I was there that day, and it was a very interesting day both for myself and my family. And so it is interesting to hear some of the stories of what FEMA was telling, some of the issues what they encountered, because I did, too, myself.

There were many success stores following the attacks. Two of those stories are how the city cleaned up the debris in such a short time and how the city worked to detect and prevent fraud.

We believe that the recovery, demolition and clean-up was a success for the following reasons: First, all branches of the government, Federal, State and local, gave one entity, DDC, responsibility for managing the administrative, financial, legislative aspects of the project; and second, the event of the tragedy forged a strong partnership between the three levels of government and further forged a strong partnership between DDC, the construction managers and the over 200 subcontractors that worked on that project.

With the responsibility of managing the project, DDC then looked to the experts both in house in our own agencies and in the city in general.

As I see my time is running out, I would like to just jump ahead to talk about the work that KPMG did with DDC. By hiring KPMG, DDC set up an engineering audit monitoring system which worked hand in hand with the monitors that Commissioner Hearn had just described, and I believe having the KPMG on board with their own in-house expertise of engineering auditors enabled us from the beginning to focus on the issues of what we were considering, which were the payment requisitions, how these documents were going to come into our agencies, how they were going to be reviewed and passed on both to FEMA's projects staff and then ultimately the auditors for FEMA.

And the roles and the work that KPMG did, which I will just take a couple of seconds to describe, is very important to understand for, I believe, the committee and for maybe future rules that this committee may recommend.

Specifically what KPMG did was to—and I apologize for turning on the pages—was to provide their audit expertise in the areas of prevailing wage verification of actual number of persons working based on shift logs on the 24 hours per day, 7 days a week. We only took 1 day off, and the irony of that situation is the day we took off was the day Flight 587, the Rockaway Queens flight crashed, and so it was not a day off in the end. But every other day we worked for the entire 9 months.

KPMG also did a determination on the usage on a given shift by established categories, operational-in-use, standby-staffed by an operator to be employed when directed, and idle, being serviced or repaired; verification of costs of material, rental and cost of equipment based on costs and rental rates in effect on September 10th, 2001; certification of cost of personnel; and certification of marine transport.

I will jump quickly now to my conclusions. Everything, again, I am saying is in the written testimony.

I guess I would like to again thank the committee for the opportunity for, one, for convening these hearings and inviting me. I would also like to highlight some of the issues we encountered during the 9 months it took us to complete the recovery; first and foremost, the issue of how this country will respond, God forbid, to another act of war on its shores.

I believe the destruction that follows an act of war should be treated differently than a natural disaster. The work that was done

at the World Trade Center was performed under a criminal investigation the entire time. There were times when the construction crews had to stop its work to allow the FBI, ATF, Secret Service, FDNY and the NYPD to search for some items. We had to respond to a lot of Federal rules and regulations as administered by FEMA that had been created over time by flood and hurricane damage. These policies did not fit the mold here. In the end, after seven meetings and the act of writing letters, we would receive an exception to a set policy or regulation, but there has to be a better way.

In closing, like a lot of other people, I have read the stories of how this Nation responded to the world wars that scarred our country in the prior century. What I take from those stories was the ideal that a democratic and diverse Nation such as ours can and will rise up to meet any challenge. After my personal experiences on September 11th, it is funny to say that, but I consider myself both lucky and proud to be in New York, to live in New York, and to work there. I witnessed firsthand the best in people following the day's attacks. Similar to how the Federal Government and private industry responded to the call by President Roosevelt at the start of World War II, the government of the city, the people of the city and the private industry of the city answered a call on behalf of itself and the country.

Thank you.

Mr. ROGERS. Thank you, Mr. Varoli.

[The statement of Mr. Varoli follows:]

PREPARED STATEMENT OF DAVID J. VAROLI

Chairman Rogers; Congressman Meek; members of the committee: Good afternoon. Thank you for inviting me to testify before you, it is both an honor and privilege to be here today on behalf of the City of New York, Mayor Michael R. Bloomberg, Commissioner David J. Burney, AIA, and the City's Department of Design and Construction.

I want to thank you, Chairman Rogers, for calling this hearing.

Today's hearing is entitled "9/11 Federal Assistance to New York: Lessons Learned in Fraud Detection, Prevention, and Control." As the Counsel to the City's Department of Design and Construction ("DDC"), I am here today to discuss the recovery and clean-up efforts of the City following the terrorist attacks of September 11, 2001, which was the largest unplanned demolition project in American history. Every day the City encountered head on an unpredictable and complex site and responded with innovation and comprehensiveness to all issues. Yet, from the outset, the City's objective was for the work to be done in conformity to FEMA standards in order to minimize the costs and financial exposure to the taxpayers of the City and the country.

This July, DDC is celebrating its 10th anniversary. DDC was created to oversee the work of building and repairing the City's municipal infrastructure. DDC designs and constructs the City's sewers, water mains, roadways, police and fire stations, daycare centers, jails, municipal offices, and a variety of other structures in support of the City's infrastructure. We have expertise in the fields of engineering, architecture, and construction services. We work with some of the best and biggest private sector firms in the world. In addition, DDC works with a lot of small and new firms. Our business is to know the construction business and to deliver quality and cost efficient services to our clients and the ultimate users—the people of New York City.

As you have heard from my colleague, Commissioner Rose Gill Hearn, DOI is similar to DDC in that it also has an expertise and it knows its business very well, which is finding and rooting out fraud, waste, and corruption. DOI has created a system of inspector generals that are placed in each agency and has established a sophisticated infrastructure to monitor and combat government corruption both on the inside and in the vendor community.

As will be described in greater detail, DDC immediately hired four construction management firms—Bovis Lend Lease, Tully Construction, AMEC, and Turner Construction (who I'll refer to as the "Construction Managers"). The Construction Man-

agers were engaged to manage the debris removal and coordinate the work of the many trades working at the site. Moreover, DDC immediately issued a task order against a requirements contract for the auditing services of KPMG to assist in the engineering audit functions traditionally handled by DDC. DOI and its private inspector generals (who I'll refer to as the "Monitors") monitored the Construction Managers' compliance with the City's laws, regulations, and policies from an integrity perspective. This included background checks of all major principals; investigations of potentially fraudulent matters; surveillance and review of day-to-day operations; verification of payroll reports to comply with DDC policies and prevailing wage laws; operating an integrity hotline to receive 24/7 allegations of misconduct or violations; making recommendations to the Construction Managers and DDC; and, verifying payments to subcontractors and vendors. The Monitors functioned independently of DDC and reported their findings directly to DOI, which then forwarded pertinent information to DDC.

Before I describe the system put into place by DDC, DOI, and the rest of the City, I want to first set the stage by going back in time to the day before September 11th. It was a Monday, September 10th. The weather in the City was outstanding. The skies were clear blue and the sun shone brightly. Similar to the weather on September 11th, it was a beautiful summer day even though it was already the third day of public school. On September 10th the City did not have a plan to deal with an act of war against the City. However, the City did have in place a form of government that encouraged expertise in certain fields. The City, with a strong executive branch, was separated into a series of agencies with, for the most part, single missions and goals. This is an important point worth stressing. City agencies like DDC and DOI are experts at what they do and, over time, have created systems and contracts to provide their services in an efficient manner. For example, the City has experts in the following municipal services—sanitation, emergencies, health, construction, law, environment, police, fire and the prevention of corruption at the government level, to name just a few.

On the morning of September 11th, the day was starting as good as it ended the night before. A suit jacket was all that was needed and kids were still wearing shorts to school. The Hudson River was sparkling as the sun rose above the skyscrapers from the East. By 8:40, public school children were in school and most people were at work or commuting to work. Then, as we all know, in a matter of minutes, the world changed for New York City, Pennsylvania, Washington, D.C., and the United States of America. We had all been attacked and violated. A war had been brought to our doorsteps and into our backyards. After the first Tower fell that morning, the clear blue skies were immediately replaced with a thick dark haze of dust. We lost more than our clear blue skies and Sun that morning.

My perspective is both a personal and professional one. You see, I was there the day our country's world changed. I was in Tower 1 and Building 5, after the two planes hit, searching for my two-year old and his daycare classmates. Later that morning, my children and I saw the brave men and women jump from the towers, and at 9:59 in the morning I fell on top of my children in an attempt to protect them from the falling debris as the South Tower fell. My perspective also comes from having lived across the street from the World Trade Center and having my children's daycare set up in Building 5. During the clean-up, DDC and the other governmental agencies operated out of my children's elementary school at Public School 89. In fact, my office was my daughter's classroom. It is a day my family, my city, and my country will never forget.

There are many success stories that followed the City's and the country's response following the attacks. Two of the success stories are how the City cleaned up the debris in such a short time and how the City worked to detect and prevent fraud. We believe that the recovery, demolition, and clean-up was a success for the following reasons: first, all branches of government—Federal, State, and local—gave one entity—DDC—responsibility for managing the administrative, financial, and legal aspects of the project; and second, the events of the tragedy forged a strong partnership between the three levels of government and further forged a strong partnership between DDC, the Construction Managers, and the over 200 subcontractors. With the responsibility for managing the project, DDC then looked to the respective experts in-house and in City government in each of the fields of administrative, financial, technical, and legal and brought them on the team—the City's Department of Investigation, to name one of the most important agencies, worked closely with DDC. Moreover, in the middle of all the chaos following the attacks, the City put into place one of the best proactive fraud prevention programs, whereby the City utilized the best men and women, and technology available to monitor every aspect of the project. The institution of the Monitors by DOI and the retention of KPMG by DDC earlier on established a certain tone for the project of

respect and an expectation of law-abiding behavior. These two steps created a system of verification and reconciliation of all payment requisitions, and extensive field monitoring work.

DDC worked with a team of public and private entities in the attempted recovery of survivors once the Towers fell, and DDC lead a team of public and private entities in the deconstruction of the war-damaged buildings and in the removal of the ensuing construction debris. DDC's mission was clear—assist the City in restoring order to the City by cleaning up the debris in a timely and cost effective manner.

The recovery aspect of the City's job did not meet any of our dreams, expectations, or prayers. Once the Towers fell, we did not find any survivors. We did not find alive any of the people who did not evacuate in time or any of our Police or Fire that had not gotten out in time. Words cannot express how we all felt as the days turned into a month and we had found no survivors.

As for the demolition and debris removal work, the cleanup of the World Trade Center site far exceeded anyone's expectations. In the aftermath of the tragic loss of life, safety was the City's number one priority as we proceeded to demolish the remaining buildings and cart off the debris. Another key priority was to prevent fraud and theft. Thanks to extraordinary efforts by the City and all of its agencies, its contractors and consultants, and cooperating state and federal agencies, the City had an excellent safety and fraud prevention record.

Early projections had the City cleaning up the site for two or more years. In fact, the City finished cleaning up the site in nine months. The City worked for twenty-four hours a day, seven days a week, for nine full months. The only day off was on November 12, 2001. The irony of that day was that the Commissioner, First Deputy Commissioner, myself, and a skeletal crew of DDC employees who reported for work to catch up on paperwork, immediately dropped everything and went out to the Rockaways, Queens, following the crash of Flight 587 to aid in the recovery. As for the World Trade Center project, in a matter of days DDC had created a crude management structure, which then materialized into a clear management structure with an organization chart. In nine months, DDC demolished the wrecks of the remaining structures—Buildings 3, 4, 5, 6, and 7, and the skeletal walls of Towers 1 and 2, and DDC removed 1,642,116 or slightly over one and a half million tons of heavy steel and debris.

Together, DDC and DOI, with the assistance of the Monitors and KPMG, instituted a program to monitor any attempts at fraud or waste, while at the same time never stopping the debris removal process. Furthermore, DDC and DOI put into action our respective expertise, with the assistance of many other City agencies, State agencies and Federal agencies. To name just a few of the other City agencies that played an important role there was the City's Office of Emergency Management, Police Department, Fire Department, Buildings Department, Environmental Protection Department, Transportation Department, as well as the Port Authority of New York and New Jersey.

It is important to understand that in a normal "planned" demolition and debris clean-up project, architects and engineers study the as-builts and other related blueprints of the building to be taken down. Experts in how to bring down a building in a neat fashion are retained and consulted. Prior to any demolition work, the contents of a building are emptied, the area around the building is restricted, and only a limited work crew is allowed nearby the site both during and after the demolition. The end result is usually a controlled and self-contained destruction, with no loss of life and limited external property damage.

None of this happened before September 11th. We have all seen the pictures and film footage. War brings chaos and in the City on September 11, we were surrounded by tons of chaos.

In addition to having people still in the buildings as they came down, the buildings were loaded with all of their contents. The City did not have the time to study the buildings before they came down. There was nothing controlled about how the buildings came down. In fact, it was the complete opposite. Chaos was the order of the day. As I mentioned earlier, I lived nearby the World Trade Center. In my apartment, every surface was covered in the dust and debris from the collapse of the Towers. And, as I also stated earlier, the City was faced with the largest unplanned demolition project—7 direct buildings destroyed, including two of the largest office towers in the world, plus damage to numerous nearby buildings, and, most sadly, the unprecedented loss of life and destruction of families—parents faced with burying their children, spouses faced with burying their spouses, and children faced with the reality that their parents are gone forever, as well as their childhood innocence.

As we now know, DDC was placed in charge of coordinating the deconstruction of the remaining structures and to remove all debris. DDC's approach was to hire

the four Construction Managers and to break down the 16-acre site into 4 quadrants or areas. This enabled the agency to track and coordinate the flow of labor and equipment onto and off the site, and to monitor daily and nightly the amount of progress made. DDC contacted four of the largest construction firms in the City who had either prior experience in the area, New York City, or the World Trade Center complex. Every morning and evening the City's best construction people—private and public—would meet in a kindergarten classroom and discuss what work was to be done that day and to review what had taken place during the prior twelve hours. Having these meetings in a kindergarten classroom sitting in chairs appropriate for a six year old was good for comic relief at such a sad time.

When all this started, no one knew what we were looking at in the sense of time to complete and cost. DDC recognized very early on that it would need help in dealing with all of the auditing and payment issues. The City had in place a contract with KPMG, a large accounting firm for consultanting purposes. The firm also has a construction and forensics auditing division. DDC utilized KPMG to work with DDC's engineering audit officer to institute an audit engineering team for the entire project. I have not mentioned this earlier, but please keep in mind that during the nine months DDC worked on the project, DDC also continued to service all of its other clients and kept on building the City's infrastructure in the rest of the City (DDC manages a current portfolio of design and construction projects in the billions of dollars). In addition, DOI continued its mission with regards to all other City agencies.

What does a nine-month demolition and recovery clean-up project mean in terms of sheer numbers and dollars? The City paid the four Construction Managers cumulatively almost a half billion dollars or to be precise $476,907,125.54. As I stated earlier, the City removed 1,642,116 or slightly over one and a half million tons of steel and heavy debris. The daily average of men and women working at the site ranged from 1,096 people in the early months to 346 people in the last month. In total, 2,400,000 man-hours were expended during the project. Hundreds of pieces of equipment from the largest crane in New York City history to small hand tools were used throughout the project. In addition to the four Construction Managers that reported directly to DDC, there were approximately 200 different subcontractors and consultants working on the project.

Included in the $476,907,125.54 paid to the Construction managers, was $24,661,101.93 paid to DOI's Monitors. DDC also paid KPMG $15,315,507.29 for all of its services. In the fall of 2001, DDC installed a Global Positioning System in all trucks—private and public—that came onto and left the site. In addition, in the winter of 2002, DDC instituted an electronic check-in system to gain access to the site. This system instituted on January 31, 2002 reported 5174 people accessing the site in the remaining months of DDC's demolition and debris removal operation.

DDC and DOI instituted a lot of innovative procedures to ensure compliance and accuracy. The use of KPMG is one example of an innovative procedure. For example, KPMG provided audit expertise in prevailing wage compliance and documentation; verification of actual numbers of personnel working based on shift logs 24/7; determination of equipment usage on a given shift by established categories—operational-in-use, standby-staffed by an operator to be deployed when directed, and idle-being serviced or repaired; verification of costs of material, rental and owned equipment based on costs and rental rates in effect on September 10, 2001; verification of costs of professional personnel on established salary and benefit schedules; and certification of marine transport of debris loads by examination of vessel logs.

With regards to reviewing the payment requisitions submitted by the four Construction Managers, DDC and KPMG in consultation with DOI and its Monitors, FEMA, and the four Construction Managers, put into place a payment requisition review process as follows:

An innovative detailed system of checks and balances was instituted by DDC and DOI to ensure that the taxpayers' money was spent in accordance with FEMA's and DDC's policies and regulations. DDC's engineering audit officer and KPMG, would audit a sample from each payment requisition for each subcontractor cost category to assure proper documentation exists and there is agreement; check for proper equipment rates, labor rates, material prices and markups in compliance with industry standards, and prevailing wage prices; take withholdings of payment on a percentage basis per issue identified; enter all findings into a central electronic database; and submit a report to DDC and the Construction Manager for review and comment. DOI and its Monitors would review the payment requisitions submitted by the Construction Manager as they relate to fraud, waste, and abuse. DDC would send field monitors, who were not auditors, out to cross reference the payment requisition with their daily field logs for agreement; DDC's project managers, who also

were not auditors, reviewed the payment requisition packages for reasonableness of expenses, agreement with costs with field reports, and supporting documentation; and, the DDC project managers would also recommend withholdings to DDC's engineering audit officer. FEMA would review the payment requisitions for accuracy, agreement with proper source documents, and eligibility of cost items for reimbursement and scope of work; and would also use their own field monitors to verify the daily reports.

With regards to tracking the time and material tickets submitted by the approximately 200 subcontractors, DDC and KPMG created a very detailed methodology. Each group in the process had a unique focus and role. The system or methodology worked as follows: KPMG's role was to assess and enhance processes and controls over field operations, including time and materials data capture and processing; and to monitor and sample debris removal cost data on a daily basis. DOI's Monitors' also had a role. The Monitors focus was to review supporting documentation for all subcontractor payment requisitions for fraud, waste, or abuse. DDC's project managers' role was to monitor all documentation so that the work was completed in a timely and cost-effective manner, and to ensure that payment requisitions contain supporting documentation. And, finally, FEMA's role was to monitor documentation to ensure that work being performed and billed for was eligible for payment by the Federal government, and was reasonable and cost-effective.

To follow through on each of these important roles, a detailed procedure was instituted by DDC. For example, KPMG fulfilled its role by breaking out its review into three distinct parts—labor, equipment, and materials. For labor, it would take random, 10% samples of names from shift sign-in sheets and physically verified that the workers were present. For equipment, it checked that all large equipment from the Construction Manager's equipment logs were present and entered their findings with the following notation—working, standby, or idle. As for material, it would collect daily a copy of receiving slips and make notes in their daily observation logs, and report findings to DDC's engineering audit officer. DOI's Monitors, as already highlighted by Commissioner Rose Gill Hearn, also had a comprehensive system to review all labor, equipment, and materials.

As I conclude my testimony today, again I would to take this opportunity to thank the Committee for convening these Hearings. I would also like to highlight some of the issues we encountered during the nine months it took us to complete the recovery, demolition, and debris clean-up.

First, and foremost, the issue of how this country will respond, God forbid, to another act of war on its shores. I believe the destruction that follows an act of war should be treated differently than a natural disaster. As Commissioner Gill Hearn mentioned, the work done at World Trade Center was performed under a criminal investigation the entire time. There were times when a construction crew had to stop work to allow the FBI, ATF, Secret Service, FDNY, and/or NYPD search for some item.

Moreover, we had to respond to a lot of different federal rules and regulations as administered by FEMA that had been created over time in response to flood and hurricane damage. These policies and regulations did not fit the mold here. In the end, after several meetings and the act of writing letters, we would receive an exemption to a set policy or regulation. But there has to be a better way.

In closing, like a lot of other people, I have read the stories of how this nation responded to the World Wars that scarred the prior century. What I took from those stories was the ideal that a democratic and diverse nation such as ours can and will rise up to meet any challenge. After my personal experiences on September 11th, it is funny to say this, but I consider myself lucky to be in New York and to work for the City of New York. I witnessed first hand the best in people following that day's attacks. Similar to how the federal government and private industry responded to the call by President Roosevelt at the start of World War II, the government of the City and the private industry located in New York City also answered a call on behalf of itself and the country.

Mr. ROGERS. The Chair now recognizes Mr. Neil Getnick, President of the International Association of Independent Private Sector Inspectors General.

STATEMENT OF NEIL GETNICK

Mr. GETNICK. Thank you. Good afternoon, Mr. Chairman, Chairman King, and members of the subcommittee. My name is Neil Getnick. I am an attorney, the managing partner of the law firm

of Getnick & Getnick, which is located in New York, and I am really—it is a privilege to be here and an honor to appear before you to speak about my firm's participation as an integrity monitor in the clean-up and recovery effort which took place at the site of the World Trade Center after terrorist attacks upon our Nation on September 11th.

I am speaking today in my capacity as my law firm. I am also the president of the International Association of Independent Private Sector Inspectors General. IPSIG is another term for integrity monitors, and among other things, it is IPSIG that established a code of ethics which its members follow when acting as integrity monitors which proved crucial during the World Trade Center site disaster clean-up.

An effective integrity monitor does not duplicate or supplant the functions of a construction manager, contractors or governmental agencies working at a disaster relief site. Rather, we use a multidisciplinary approach bringing to a project unique knowledge and expertise in the following areas: legal, investigative, auditing, loss prevention and other project-specific requirements such as engineering and environmental. We utilize these specific skill sets to review and monitor policies, procedures, practices in the areas of record keeping and billing as well as for the actual field work, and then the integrity monitor evaluates these procedures, and work progress to assess efficiency and accuracy and compliance with all applicable laws, rules and regulations.

It reports its findings to an assigned governmental agency as was the case in the World Trade Center. The integrity monitors reported to the Department of Investigation. Much of that information which was so reported was subsequently shared with the monitored companies themselves and other governmental agencies in the project, and integrity monitor in many cases—this was certainly true at the World Trade Center—works with the monitored parties to develop programs and procedures which prevent corrupt practices, ensure compliance with all pertinent laws and regulations, and promote the efficient and cost-effective completion of the project.

So let me give you an example. When a building issue was discovered which did not fall into the category of potential criminal behavior, the integrity monitor brought this issue to the attention of the construction manager and to the Department of Design and Construction discussing ways to avoid that problem in the future, and the billing was then adjusted to reflect the proper amount. So this was an example of how it facilitated corrections and improvements so that the city was not overbilled.

On the other hand, in cases where corrupt and fraudulent behavior was suspected, whether that was in a billing or construction-related matter, the integrity monitor reported on that to the Department of Investigation and then worked with it and the appropriate law enforcement agencies to assist in the investigation and, in some instances, the ultimate prosecution of the responsible parties. And I do want to point out that there were such prosecutions, although it may not be that every office with prosecutorial power pursued every case, but rather there was a division of labor.

Because of the unique role and skill set of the integrity monitors, we were able to add assistance to governmental agencies as well as to serve as a deterrent to those seeking to take advantage of the disaster situation for their own selfish gain. The members of the teams had expertise in legal, investigative, forensic accounting work, and were former government lawyers, police officers and accountants with much experience working in law enforcement and on criminal investigations. We were in the field on a daily basis.

I am going to stop and say if there is one thing that is going to be taken away from this testimony today, I hope it is going to be the words "real-time basis." It is the only way to get the job done. You can't come back 6 months later, you can't come back a year later, and do an effective audit. You are not going to find ghost employees a year later. You are not going to find which equipment is not being used although it is being billed for a year later during a static audit. But we were in the field on a daily basis observing the work in progress, speaking with the workers on the site, monitoring a complaint hotline 24 hours a day, gathering significant intelligence.

We reviewed billing submissions. We checked back-up documentation. We visited the home office of subcontractors where appropriate, compared the billings submission with our own observations in the field, and then using this approach, we worked together with the Department of Investigation and the other governmental and private agencies on the project to then expose and prevent the waste, fraud and abuse.

I have highlighted in my written testimony specific types of improper and often criminal behavior which can take place during the clean-up and recovery phase of a disaster site. If you wish, we can go into more detail during the question-and-answer period. But suffice it to say that behavior includes improper billing for payroll and labor, equipment and materials; safety and environmental issues; problems involving subcontractors; and issues involving site security and management of the project. And to the extent that these issues were encountered at the World Trade Center site clean-up, they were successfully addressed by the integrity monitors working together with the government.

And to pick up on both Commissioner Hearn and General Counsel Varoli, my personal experience, and I have worked with government for many, many years as a former prosecutor, I have never had an experience like this. Never. The Department of Investigation, the Department of Design and Construction, FEMA, the local prosecutors' offices, the Federal prosecutor's office, they were truly working together, truly working together.

Take the monitors. We were all competitors with each other, and KPMG as well. It was a collaborative experience of the private sector and the public sector meeting regularly and getting the job done. And here is the main point, and if we want to go into it during question and answers, let us do it, because I can say that with respect to the disaster clean-up, it is clear that the money that was spent on 9/11 disaster relief at the World Trade Center site was, in fact, spent for its intended purpose. We started out with a goal: Get it done. We had below budget, ahead of time and to spec, and those goals were met.

I understand the Homeland Security Committee is considering legislation which will address fraud prevention and disaster relief programs. I simply refer you to my written testimony with some suggestions and recommendations that I think would be very helpful in applying the lessons learned on a going-forward basis.

Again, as we have seen with the World Trade Center recovery and clean-up after 9/11, integrity monitors there were able to detect and report improper behavior on a real-time basis, which is what led to significant public savings. The use of integrity monitors and IPSIG in future disaster relief sites will have the same impacts and will ensure the money designated for disaster recovery will be used for its intended purpose.

I thank you for the opportunity to address you on this important topic, and I am happy to answer any questions you may have.

Mr. ROGERS. Thank you, Mr. Getnick, for your testimony.

[The statement of Mr. Getnick follows:]

PREPARED STATETMENT OF NEIL V. GETNICK

Good afternoon Chairman King, Chairman Rogers, and members of the Subcommittee. My name is Neil Getnick, and I am an attorney and the Managing Partner of the law firm, Getnick & Getnick, which is located in New York City. It is a privilege and an honor for me to appear before you today to speak about my firm's participation as an Integrity Monitor in the clean-up and recovery effort which took place at the site of the WorId Trade Center after the terrorist attacks upon our Nation on September 11th. I am especially honored to appear this afternoon with New York City's Commissioner of the Department of Investigation, Rose Gill Hearn. The Department of Investigation has long utilized Integrity Monitors to assist New York City in fighting fraud, waste and abuse in City projects and departments, and was responsible for the appointment of Integrity Monitors to participate in the clean-up and recovery effort at Ground Zero.

New York City has shown that government can join together with private individuals, serving as Integrity Monitors, to effectively and economically combat and prevent fraud, not only in the area of disaster relief, but also in the regular day-to-day business of government. Historically, the use of Integrity Monitors was an essential component of the City's campaign to combat mob infiltration and corrupt influence in key industries and markets, such as wholesale food markets, commercial carting, and school construction. The Integrity Monitors proved highly effective and the City expanded their use. Examples of this are found not only in the disaster relief effort at Ground Zero, which I will address in more detail shortly, but also in situations where the City enters into contracts with private business and has a concern that there is the potential for misuse of taxpayer funds, and therefore appoints an Integrity Monitor to oversee a particular contractor or project. New York City's innovative use of private individuals and firms as Integrity Monitors is an example of government and the private sector working together for the public good in a cost-effective manner.

Although I am speaking today in my capacity as the Managing Partner of Getnick & Getnick, I am also the President of the International Association of Independent Private Sector Inspectors General ("IAIPSIG"). IAIPSIG is a nonprofit professional association whose mission is to preserve and promote integrity, honesty, impartiality and professionalism in the work of IPSIGs, monitors and independent investigators. An IPSIG is an independent, private sector firm (as opposed to a governmental agency) that possesses legal, auditing, investigative, and loss prevention skills, that is employed by an organization (i) to ensure that organization's compliance with relevant laws and regulations, and (ii) to deter, prevent, uncover, and report unethical and illegal conduct committed by the organization itself, occurring within the organization, or committed against the organization. Notably, an IPSIG may be hired voluntarily by an organization or it may be imposed upon an organization by compulsory process such as a licensing order or contract issued by a governmental agency, by court order, or pursuant to the terms of a deferred prosecution agreement. The IPSIG may also, in appropriate cases, participate with management in enhancing the economy, efficiency and effectiveness of the organization. Members of the IAIPSIG adhere to a comprehensive Code of Ethics and have been appointed

as Integrity Monitors by local, state and federal agencies, as well as voluntarily retained by private industry.

When I speak about Integrity Monitors today, I am speaking about an IPSIG which has been imposed upon an organization, and in the case of disaster assistance we are referring to construction management firms and general contractors, as a condition set forth in the contract to provide disaster relief services. This was the situation that existed at Ground Zero.

After the attack on the World Trade Center on 9/11, Mayor Giuliani and top New York City officials realized that, as with any construction-type project, the potential for fraudulent and abusive behavior was present at Ground Zero. The City was determined not to allow that type of behavior to occur. Within a few weeks after the disaster the New York City Department of Investigation reached-out to private firms with extensive past experience as Integrity Monitors on City projects and in short order put into place an Integrity Monitor program to oversee the recovery and clean-up process. There were four construction management companies assigned to oversee the disaster clean-up, and the site was divided into four quadrants with each construction manager assigned to a particular quadrant. Our firm, Getnick & Getnick, was assigned as the Integrity Monitor to oversee the work performed on the quadrant assigned to the joint venture between Turner Construction Company and Plaza Construction Corporation. The other three Integrity Monitors were Thacher Associates, LLC, assigned to monitor Bovis Lend Lease; Stier, Anderson and Malone, LLC assigned to monitor AMEC Construction Management, and DSFX (Decision Strategies) assigned to monitor Tully Construction. Each of the four monitors were well known to the Department of Investigation, having been pre-qualified to serve as Integrity Monitors in the past and having successfully handled other monitorship assignments for the City.

It is important to note what the appropriate role of an Integrity Monitor is, and is not, at a disaster relief site. There are many participants from the private and public sectors who take part in a disaster relief project. There is a construction manager whose job is to: manage the day-to-day operations on the work site; hire and supervise all subcontractors; interact with the relevant governmental agencies overseeing the project; prepare daily information logs; prepare billing requisitions; in addition to other responsibilities. Typically, a government agency with in-house engineering capability oversees the performance of work by the construction managers and the subcontractors working under them. At the World Trade Center, the New York City Department of Design and Construction performed this task. Numerous governmental agencies inspected the work for compliance with applicable laws, rules and regulations, such as OSHA requirements and safety and environmental regulations. At the World Trade Center site, in addition to the New York City Police and Fire Departments, various federal agencies were present on a daily basis, including representatives from the Federal Emergency Management Agency, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Federal Bureau of Investigation, among others.

An effective Integrity Monitor does not duplicate or supplant the functions of these other participants in the project. Rather, an Integrity Monitor uses a multidisciplinary approach, bringing to a project its unique knowledge and expertise in the following areas: (i) legal, (ii) investigative, (iii) auditing, (iv) loss prevention, and (v) other project-specific requirements such as engineering, environmental, etc. The Integrity Monitor utilizes these specific skill sets to review and monitor policies, procedures, and practices in the area of record-keeping and billing, as well as for the actual field work. The Integrity Monitor evaluates these procedures and work progress to assess efficiency, accuracy and compliance with all applicable law, rules and regulations. It reports its findings to the assigned governmental agency, as in the case of the World Trade Center the Integrity Monitors reported to the Department of Investigation. Much of the information reported to the Department of Investigation was subsequently shared with the monitored companies and the other governmental agencies involved in the project. An Integrity Monitor in many cases, and this was certainly true at the World Trade Center, works with the monitored parties to develop programs and procedures which prevent corrupt practices, ensure compliance with all pertinent laws and regulations, and promote the efficient and cost-effective completion of the project. For example, when a billing issue was discovered which did not fall into the category of potential criminal behavior, the Integrity Monitor brought the issue to the attention of the construction manager and the Department of Design and Construction, discussed ways to avoid that problem in the future, and the billing was adjusted to reflect the proper amount. This is an example of how the Integrity Monitor facilitated corrections and improvements so that the City was not overbilled. In cases where corrupt and fraudulent behavior was suspected, whether in the area of billing or construction-related matters, the Integ-

rity Monitors reported the matter to the Department of Investigation and then worked with it and the appropriate law enforcement agencies to assist in the investigation and in some instances, ultimate prosecution, of the responsible parties.

Because of the unique role and skill set of the four Integrity Monitors assigned to the recovery and clean-up at Ground Zero, we were able to provide coordinated assistance to the companies and governmental agencies working at the site, as well as to serve as a deterrent to those seeking to take advantage of the disaster situation for their own selfish gain. Members of the Integrity Monitor teams had expertise in legal, investigative and forensic accounting work and were former government lawyers, police officers and accountants with many years of experience working in law enforcement and on criminal investigations. We were in the field on a daily basis, observing the work in progress, speaking with the workers on the site, monitoring a complaint hotline 24 hours a day, and gathering significant intelligence. We reviewed billing submissions, checked back-up documentation, visited home offices of subcontractors when appropriate, and compared the billing submissions with our own observations in the field. Using this approach, we worked together with the Department of Investigation and the other governmental and private agencies on the project, to expose and prevent waste, fraud and abuse.

My firm has been appointed or retained as an IPSIG and Integrity Monitor on numerous federal, state and local projects across a wide variety of industries. Based on that experience generally, and at the World Trade Center disaster site specifically, I would like to highlight for you the types of improper and often criminal behavior which can take place during the clean-up and recovery phase of a disaster site, which, because of its emergency nature, is typically billed on a time and materials basis, as opposed to a fixed price basis following a competitive bidding process.

• *Improper Payroll and Labor Billing:* (1) ghost employees on the payroll; (2) employees who sign-in and out of the work site but who go to off-site work locations during the day, often to work on private jobs in nearby areas; (3) employees who "loan" their identity to others who work in their place and receive a portion of the wages, with the balance being pocketed by the employee named on the books; (4) excess labor present on site resulting in inefficient use of work force, i.e., workers on site who are not being utilized; (5) contractors paying employees substandard wages and billing the government at a higher rate; (6) bribes to union officials to permit non-payment of pension and welfare benefits to union employees; (7) inflating the amount of union benefit payments in labor bills submitted to the government; (8) work slow-down to incur overtime pay.

• *Improper Equipment Billing:* (1) billing for equipment not present at the site; (2) billing for equipment present at the site which is either unnecessary or is not functioning and in need of repair; (3) billing for repairs which were not performed or which were occasioned by off-site use; (4) billing for inflated rates higher than those permitted by contract; (5) billing for inflated rates higher than those charged on private work; (6) double-billing of equipment; (7) excessive and inaccurate billing for fuel needed to operate equipment on site.

• *Improper Materials Billing:* (1) billing for substandard materials required for proper job performance; (2) inflating the price of materials purchased for the site; (3) inadequate inventory control resulting in billing for materials which are removed from the job site and used at a different location; (4) double-billing for materials; (5) kick-back schemes and bribes resulting in inflated prices for materials used on the work site.

• *Safety and Environmental Issues:* (1) failure to properly train employees in safety procedures and use of equipment, and to enforce those procedures on the job site; (2) failure to properly dispose of hazardous waste material; (3) billing for substandard and ineffective environmental monitoring and testing; (4) performance of unnecessary and duplicative environmental monitoring and testing; (5) billing for safety equipment not utilized at the disaster site; (6) utilization of machinery and equipment on site which does not comply with current safety and environmental standards; (7) failure to maintain adequate site records and logs to determine whether required site safety and environmental standards are met.

• *Subcontractors:* (1) selection of subcontractors based on improper criteria which does not include ability and pricing, such as payment of bribes, personal relationships, etc.; (2) improper mark-up of subcontractor billings; (3) retention of subcontractors unqualified and incapable of providing required services; (4) improper vetting of subcontractors' qualifications and background.

• *Security:* (1) insufficient site security and spotty enforcement of security regulations, such as failing to check identification and to inspect deliveries, allowing for unauthorized personnel and goods on work-site; (2) theft of property from site due to inadequate security, inventory control and theft prevention procedures; (3) inad-

equate coordination between various organizations and individuals responsible for site security.

• *Management of proiect:* (1) relationships between construction managers and subcontractors which prevent objective evaluation of job performance; (2) corruption of supervisory personnel by bribes, threats, etc., (3) inadequate supervision and implementation of appropriate procedures to prevent fraud, waste, abuse, and violations of rules and regulations; (4) inability to perform necessary tasks and assignments.

Many of these kinds of activities were identified as issues or potential problems by the Integrity Monitors at the World Trade Center clean-up and recovery project, and have been encountered during other monitorships we have worked on in the past. Due to the multidisciplinary approach and extensive experience in combating fraudulent and criminal activity on construction and other government projects which the Integrity Monitors brought to bear on this challenging task, and our partnership with City Government, we were able to identify and address these problems, and, when appropriate, work with law enforcement agencies to gather evidence for criminal prosecution. As a result, the money spent on 9/11 disaster relief at the World Trade Center site was spent for its intended purpose.

I understand that the Committee on Homeland Security is considering legislation which will address fraud prevention in disaster relief programs. Based on our extensive experience in working as an Integrity Monitor and IPSIG on various governmental assignments, we offer the following suggestions with respect to that proposed legislation:

• A list of pre-qualified organizations which can act as Integrity Monitors should be established so that qualified individuals can quickly mobilize to monitor disaster relief programs. These organizations should have among its members individuals with legal, investigative, forensic auditing and loss preventions skills, and have extensive experience in acting as Integrity Monitors on other government projects.

• The obligations and duties of an Integrity Monitor at a disaster recovery site should be clearly delineated, and should include adherence to a Code of Ethics such as the one followed by members of the IAIPSIG (copy attached to this testimony).

• The construction manager or contractor overseeing the disaster relief project should be required as a condition of its contract with the government to cooperate with the Integrity Monitor, including providing access to all books and records and access to all personnel, and require all of its subcontractors to do the same. The four construction managers working at the World Trade Center disaster site entered into such agreements with each of their respective Integrity Monitors as a condition of the CMs providing construction services at the site.

• The hallmark of an IPSIG and an Integrity Monitor is its independence. Integrity Monitors should have no prior business or personal relationships with the monitored entity which would create a conflict of interest, or even the appearance of one.

• Indemnification should be provided to the Integrity Monitor, similar to the type of indemnification provided to public officials acting during the course of their official duties.

• Payment to the Integrity Monitor for services provided should be guaranteed on a regular basis to ensure that the Integrity Monitor is not thwarted in carrying out its obligations by companies that might withhold or delay payment in an attempt to deter the Integrity Monitor from performing its duties.

Any construction project, even one which is anticipated and planned in advance, is susceptible to fraud, waste and abuse. By its very nature, a disaster recovery project is more vulnerable to this type of conduct. As we have seen with the World Trade Center recovery and clean-up after 9/11, however, the appointment of Integrity Monitors allowed the City of New York to detect improper behavior on a real-time basis, and not just after the fact. This enabled the City to remedy problems and bad practices quickly, and thus save significant sums of money. Even more noteworthy, however, is the preventive effect the Integrity Monitors had at Ground Zero in stopping fraudulent and wasteful conduct before it occurred by their presence and involvement at the site. This deterrent effect is invaluable. The use of Integrity Monitors at future disaster relief sites will have the same impact and will ensure that the money designated for disaster recovery is used for its intended purpose.

Thank you for the opportunity to address you this afternoon on this very important topic. I am happy to answer any questions you may have for me at this time.

Mr. ROGERS. The Chair recognizes Ms. Carie Lemack, cofounder of Families of September 11th. Welcome.

STATEMENT OF CARIE LEMACK

Ms. LEMACK. Thank you, Chairman Rogers. Thank you, Chairman King. Thank you, Congressman Pascrell. I am glad you are all here today.

Obviously I recognize I come at this from a different perspective not because I am wearing pink and everyone else is wearing black, but because I am one of a victim's family members from 9/11, and I actually brought my mom with me today. This is my Judy Larocque. She was on American Airlines Flight 11. This picture was taken 3 weeks before she was killed. She was almost 51. She would have been 51 on October 27th. And after my mom's murder, I decided that I wanted to make sure that the victims' needs were met, and also that we could harvest our power together to make sure that what happened on 9/11 never happened again. And as such, I, alongside of the family members, including my sister, founded Families of September 11th. We are a national organization. We have 2,300 members from I believe now 49 States, and we also have members from 9 different countries. So I am cofounder of Families of September 11th.

But I am going to talk to you about a personal experience that I had and some of my suggestions so you can make sure what happened after 9/11 with the funds doesn't happen again.

I am sure you might remember that after September 11th, you passed the Airline Stabilization Act, and among other things, it created the Victim Compensation Fund, and this fund, we call it the VCF, gave the family members two choices. They could either retain their rights to sue anyone that they thought would be—was negligent in the acts that happened on September 11th, or they could give up those rights for an undisclosed sum of money, tax-free money, but undisclosed. Some have. My sister and I had to think very hard about it, but it was quite clear what we were going to do. We were taught by my mom to be accountable when we messed up. We had to fix it and admit it to and make sure it didn't happen again, and we did not feel that the airlines and others were doing that, so we decided that the only way we were going to find transparency and find accountability was to go through a discovery process, which means you have to go to court. So we decided we were not going to partake in the Victim Compensation Fund.

Unfortunately, unbeknownst to us, my ex-stepfather, my mom's ex-husband Wayne Larocque, did not find this kind of accountability was necessary, and he was more interested in money. We were lucky enough that the Department of Justice had a very transparent system where you could monitor who was applying for the Victim Compensation Fund in your loved one's name, and I vividly remember sitting in my mom's study one day talking on the phone with my sister and with an attorney and thinking, wow, I was president of Families of September 11th. At the time I was sending out notices at the time saying, you should be diligent, keep track of anyone if they fraudulently applied, and I decided to do the same thing. And there was my ex-stepfather's name. I was furious, as you can imagine, because he was jeopardizing our opportunity to seek litigation because the airlines are trying to throw anyone out of the suit even if they had been fraudulently applying for the victim compensation funds.

We were lucky that Justice had this transparent system. We contacted the appropriate authorities. They looked into his file and recognized that he had not even admitted that my mom had two daughters, and obviously they denied his application. So this was a success story.

But what it highlights is the fact that other aid agencies don't have any kind of transfer. With all due respect to my colleague, the American Red Cross, they did not have this. The United Way did not have this, and to this day I have no idea what he applied for and received in my mom's name. He was due nothing legally.

So what can you do about it? Well, you all oversee the Department of Homeland Security, and I was shocked when I found out that DHS does not have a victim's assistance unit, which means while DHS was created to look out for the risks that face this country, no one is thinking about the fact that risks don't only affect bridges and buildings and planes, they affect real people, and we need somebody at DHS thinking about those people afterwards. We can protect a bridge as much as we want, but what happens when some bad person goes after it and those people who are affected by that tragedy? There is no one at DHS thinking about those things.

If we had an Office of Victims Assistance, which I believe is going to be in your authorization bill next Wednesday, so I hope that you look at this and consider it very strongly, this Office of Victims Assistance could have a database, a system that could collect information much like the Department of Justice did with the Victim Compensation Fund. They could allow family members to apply, to fill out their financial information once instead of multiple times like we had to do. We spent hours and hours at the Family Assistance Center. We spent hours on the phone oftentimes with volunteers with aid organizations who had no idea how to help us because they had bitten off.

This system could make sure that that doesn't happen. It is a single application, and then you would find out what are you eligible for. It is much like the Fast Web college scholarship system where students can enter their financial information, and all of the different scholarships that they are eligible for can pop up, and they can pick those.

And this is an opt-in system. We don't want to see a system where family members here have to be opted out. They would have to be educated on the system. They would have to be educated on the pros and cons and make a decision. To have them—to make them learn about a whole new system and have to master and make a decision about themselves is something we don't want to see happen.

So I hope you will consider creating this database, single implementation opt-in database, that can be used in the future because it will prevent fraud. It will permit families who are in the best position to know that fraud is being committed to see the fraud depicted. It lets people know and makes sure we can prevent it.

And my last point, and again with all due respect, fraud works in both ways. And I hope that you will be able to help the family members if there is another disaster, because after 9/11 the American Red Cross had billboards, they had advertisements, they had little pop-up ads on the computer, said they were going to collect

money and help the victims of 9/11. What they weren't telling everyone, they were only going to help a subset. They had chosen not to help the victims of the families on the planes, which included my family, which went away when my mom's friends gave money to that fund. They thought it was going to help us pay the mortgage, but it wasn't. We weren't in a position to explain that to them.

We ended up fighting the Red Cross on that. Bill O'Reilly got involved, and they changed their minds, which was great, but it shouldn't be incumbent on victims to help the aid agencies to tell them what to do.

So I hope you will look at what not only the data is, but what the aid agencies are going to do, what they say they are going to do. We are talking about fraud today, which is important, but also the unmet needs. There are people in New York who are sick who are not getting help. There are mental health benefits who are not going out to family members, and I can't even get mine paid for. So at some point I hope we look at those issues as well.

Thank you very much.

[The statement of Ms. Lemack follows:]

PREPARED STATEMENT OF CARIE LEMACK

It is an honor to be given the opportunity to testify in front of the House Committee on Homeland Security's Subcommittee on Management, Integration and Oversight. I would especially like to thank Chairman Rogers and his impressive staff for inviting me here today. The work you do in overseeing the Department of Homeland Security is vital to ensuring that our nation's protectors remain focused and prepared for the threats our country faces.

Today we are not here to talk about these threats, though they remain constant and require our continued vigilance. Today we are here to talk about our response when these threats strike, and how to more effectively deploy aid to those in need.

A quick note; while I am a co-founder of Families of September 11, today I speak as a daughter of a 9/11 victim. My views are my own and have not been voted on or endorsed by the Families of September 11 board of directors, of which I am a member.

There are three things that I believe responders need to keep in mind when trying to eliminate fraud and inappropriate use of funds for terrorism victims. First, we have to recognize that in the United States today, "family" is not just the traditional husband, wife and 2.5 kids. There are couples who never married, but have made lifelong commitments to each other; re-married fathers, with children from both a current and previous marriage. There are young workers who support their elderly parents and disabled siblings. When administering aid, an organization or government agency has to be able to take non-traditional familial structures into account.

Accordingly, if an aid organization advertises that it is collecting and distributing donations for disaster victims, it must abide by its promotions. The agency cannot choose which subset of victims to support after the fact. If they advertise to help all victims, they must help all victims.

Another issue that must be addressed is how a recipient can monitor and report fraud. Those who are collecting aid and managing the flow of funds for their family are in the best position to identify when something is amiss, but oftentimes, at least in the majority of cases after 9/11, there was no way for the head of household to know who else was applying for, and receiving aid in the name of the victim. Information should be available to the victims and their family representative, not held in secret by the agencies that are unequipped to handle the tremendous influx of requests and inquiries.

Lastly, any type of aid distribution should go through an opt-in database system, not one that is opt-out. That is, let the families decide who sees their personal financial information and which groups they would like to apply to for aid, instead of automatically giving their private information to all aid organizations that then decide which programs they are eligible for. This process will also help families detect and prevent fraud in their loved one's name. The opt-in system should be used in concert with a single application, instead of the system used after 9/11, when each

aid agency had its own application that required hours of duplicating efforts from the families the aid was supposed to help.

These three issues became clear to me after my personal experiences with post-9/11 aid. My mother, Judy Larocque, was the CEO of Market Perspectives, a small market research firm employing approximately 20 people in Framingham, MA, my hometown seventeen miles west of Boston. Mom was 50 in September 2001, about to turn 51 on October 27th. She had two daughters; my older sister, Danielle, who at the time lived in Chicago, and me.

Mom's dream was to get both her daughters back home after we left Massachusetts for college in California. In the fall of 2001, it looked like her dream was going to come true. On Labor Day weekend, Danielle and her boyfriend, now husband Ross, came to Boston to visit. I took Mom to a Red Sox-Yankees game, we ate lobster and steamers, and we enjoyed a peaceful weekend spending time together. When Danielle and Ross left to return to Chicago, Ross told Danielle he thought he could definitely live in Boston. Mom and I were ecstatic.

On September 10th, Mom was as proud as ever. Danielle taught her first class as an adjunct professor at Northwestern Law School that day, and Mom beamed. When I called her late that night, I woke her up. Even in her sleepy state, the first question she asked me was "Did you call and congratulate your sister?" Of course the answer was yes. We were as close as any mother and daughters can be. Mom made sure of that. Whenever Danielle and I fought, she made us hug, and told us "you are always going to be sisters, that will never change".

That bond became even stronger after 9/11. There are not words to describe the pain and grief of losing Mom, my best friend, my confidant, my comforter, my rock. We all know of the horrors of that day, September 11, 2001, so I will not go into that any further. Instead, I will focus on the troubles we encountered after 9/11.

Immediately, we began to understand that the methods in place to deal with victims' families are not made for today's familial structure. Mom was recently divorced, and since Danielle and I were not considered dependents, Mom was treated as a single woman with no children. I cannot even begin to imagine how furious that designation would make her.

American Airlines was the first organization we came in contact with that treated us differently. They kept me on hold for hours, never confirming Mom was on Flight 11. At one point, I remember thinking that she could not have been on that flight, because an airline would not treat victims? family members this poorly. Unfortunately, I was wrong on multiple counts.

When Danielle asked for help in getting home to Boston from Chicago, the American Airlines representative gave her the number for Amtrak, and told her that the trains were all booked. We then learned that Mom's name was released to the media sometime in the afternoon of 9/11, even though we had expressly asked American Airlines not to give out her name.

Only later did we find out that there was a lot of information we were not told about. There was a meeting at Logan Airport on the morning of the 12th that we were not invited to. The only explanation for the omission was that we were not considered immediate family, though we can never really know if that is why information was kept from us.

Perhaps all of this would have been different had Mom had a husband. Instead, she had two daughters in their twenties, trying their best to handle her affairs, but not considered her children by aid agencies and the like.

As we struggled with that hurdle, we also learned that the specifics of her murder were being taken into account, without our prior knowledge, to determine if her family was eligible for aid. To prevent improper practices, organizations need to make clearer their criteria and procedures ahead of time to ensure all families receive appropriate treatment.

This lesson became apparent in the American Red Cross' decision not to give aid to the families of those who loved ones perished on the four planes. They claimed that the airlines? legal obligations would be substantial enough to help those families. They did this without alerting the public, all the while collecting donations in the name of the "9/11 victims and their families".

The ramifications of this decision may not be immediately apparent, but they were severe. Suddenly, many of Mom's friends who donated to the American Red Cross asked us about the aid we were getting to help pay Mom's mortgage on our childhood home. When I had to tell them we were not eligible for the aid, they became angry, frustrated, and wanted me to provide the explanation.

It seemed that everywhere we went, we saw solicitations for the American Red Cross. It was incredibly painful to feel like a second-class victim's family member, as if we were not good enough for the generosity that the American public put forth. When we went to Framingham's Town Hall to get copies of our birth certificates

to apply for Mom's death certificate, we were faced with another reminder of our low status. There on the counter was an appeal to help the victims in New York and Washington by giving to the Red Cross. When we asked if the woman at the counter knew there were victims right here at home, her eyes welled with tears.

Families need to be accepted as what they are. When an ad is placed saying an organization is raising money to help victims? families, it must either specify which type of families, or be open to all affected families. To this day, all the scholarship money that was raised for the "children" of 9/11 victims only goes to dependent children of a certain age. I was a 27-year-old daughter of a 9/11 victim, but was deemed ineligible for any 9/11-related scholarships or aid when I began graduate school in 2002. I may not be what most considered when they donated money for 9/11 children, but there is no doubt in my mind, nor would there be in my mother's, that I lost a parent on 9/11.

As a co-founder of Families of September 11, a national organization of 9/11 victims' family members, survivors and concerned members of the public, I heard the stories of many non-traditional family members who fell through the cracks of aid organizations in the months following 9/11. There were the engaged, some of whom were supposed to be married only four days after the attacks, who were not eligible for most types of aid. I remember vividly speaking with a woman whose ex-husband had remarried before he was killed on 9/11, so that the new wife received all of the aid. The problem occurred because the man had fathered children with both women, and the first wife was unable to collect money to help her young son. The story of a couple who chose not to marry, but lived together for seventeen years comes to mind, with the victims' parents getting aid, but not the partner who was left with bills and a mortgage. This scenario was played out over and over again with many of the gay and lesbian victims whose partners were left with no legal and varying social status to receive aid.

Aid organizations must recognize the differing aspects of American families as we know them today. They must be flexible and accommodating. To its credit, the American Red Cross and United Way did finally come around and begin to help non-traditional families. But this change came only after tremendous pressure. It should not be the responsibility of the victims to have to actively lobby those who are purporting to help them. Instead, the aid organizations should welcome their input and act on it, not resist it until Bill O'Reilly or his counterparts repeatedly attack their practices on national television.

The Department of Homeland Security (DHS) could play a crucial role in solving this problem. Currently, there is no Office of Victim Assistance in DHS, which means that while there are lots of people thinking about how to deal with preventing and immediately responding to a disaster, there is no one trained to deal with the people a disaster might affect. If DHS has trained professionals on hand who specialize in assisting disaster victims, perhaps the good people at American Airlines and other corporations can leave victim support to those better suited.

The designation of who is eligible for aid, and who is not often walks a thin line. We are all aware of the reports of limousine drivers and mistresses who racked in large sums of money from aid organizations because they were able to prove, however tenuously that they suffered losses after 9/11. But there are some programs, and some individuals for whom this designation is crystal clear. What is less precise, however, is how to identify and respond to them.

After Congress created the Victim Compensation Fund (VCF), families were faced with a difficult decision: should they give up their right to pursue litigation against those liable in their loved one's death in order to receive an unknown amount of money from the government? This was made even more difficult by the fact that when the regulations for the VCF were finalized, there was strong resistance in Washington against any type of in depth investigation into the 9/11 attacks. How could a family decide whether or not to pursue litigation, when we had no way of knowing what really went wrong?

For Danielle and me, however, this decision was simple. We knew that we had to pursue litigation in order to get to the truth, and therefore do our part to ensure that what happened to Mom and nearly three thousand others would never happen again. If the airlines, security companies and others had been forthcoming, we might have chosen differently, but based on their secretive behavior, we felt it was our obligation to shed light on the truth in our call for accountability.

There was someone who did not share our sentiments. He wanted to collect money, and was not interested in seeking the truth. His name is Wayne Larocque, and he is Mom's ex-husband.

One day while on the phone with an attorney and my sister, I decided to look at the list the Department of Justice had created of those who had applied for the fund. At the time I was President of Families of September 11, and I felt an obliga-

tion to do what I had advised our members to do; stay informed, be diligent, and make sure no one was fraudulently applying to the VCF in your loved one's name.

When I saw Wayne's name on the list, applying on behalf of Mom, I was shocked. That disbelief soon turned to action, and Danielle and I quickly contacted VCF officials. As I understood it, Wayne applied, and in his application, he failed to mention that Mom had two daughters who were her legal next of kin.

We were not allowed to see Wayne's application, although we did contact the proper authorities to ensure that Mom's rights, and our own were not violated and that no fraud was ultimately committed. His application could have jeopardized our participation in a lawsuit; the airlines have tried to have any family that even minimally applied to the VCF thrown out of the pending litigation.

Even today, I have no way of knowing what other money Wayne applied for and received. Perhaps there is none. But if he was willing to go the trouble of filling out the VCF form (which was much more involved that most aid applications), I can only imagine how easy it might have been for him to collect other money. Without having access to information regarding who applied for and received money in Mom's name, I can have no way of knowing if any fraud was committed, and therefore cannot report and deter it.

There are systems that are very exact when determining how to compensate victims' families. Worker's compensation for example, does a terrific job of knowing exactly how much each family gets, and to whom it goes. I know this, since we were not eligible for worker's compensation aid, but Mom's mother, my grandmother, was. Based on my experiences with it, I feel very confident that little to no fraud got through the their system, nor the system the Social Security program uses. I do not believe it is too much to ask aid agencies to have some sort of system that could allow a victims? family to know who is asking for and receiving aid in a victim's name, in an effort to curb fraud. In the case of the VCF, this type of transparency clearly worked.

This database should be part of an opt-in system that could be used to streamline aid distribution. After 9/11, Americans, and for that matter, people from across the globe, showed their patriotism, unity and compassion in a generous outpouring of support and donations. Speaking for myself and my family, we were overwhelmed with the selfless giving of time, money and love from our neighbors, friends, communities and fellow Americans.

The job of collecting and distributing the aid was not an easy one. Those agencies that stepped up to the plate and volunteered to house and give out the money might not have been fully aware of the difficult task that lay before them.

On the Tuesday before Thanksgiving 2001, I drove from Boston to New York City for a meeting with other 9/11 family members and New York Attorney General Elliot Spitzer to discuss how to streamline the aid distribution process. He suggested creating a database of 9/11 families? financial information, so that the aid organizations could review our status and decide how best to divvy up the aid.

I agreed that idea of a database was useful, but thought it should work in the opposite direction. The families needed one list of aid agencies with a common application, that told them the criteria and amount of aid each agency was offering. This way, families could fill out one form, and could then decide to which organizations they wanted their application sent. For many families, the idea of deciding which agency was able to see their information was extremely important.

Unfortunately, we were unsuccessful in creating this database. As I understood it, the aid agencies did not want to collaborate in drafting and approving a single application and did not like the opt-in idea.

The result was that families had to spend hours on the phone, or in queue at the Family Assistance Center, repeating the same information over and over again to different aid agencies. Not only was it frustrating to the families, it also led to an environment that could foster fraud. There was no way to keep track of which agency was paying which bill for a family, possibly resulting in multiple payments, whether intentional or not.

For future events requiring aid distribution, I highly recommend the opt-in, single application approach. Families have every right to know who sees their financial information, which an opt-in system provides. Using an opt-out approach assumes that every family completely understands the complicated system—after suffering a traumatic loss, this is just one more unnecessary burden to place on a grieving, overwhelmed family.

A single application is a seemingly simple, yet hard to implement process. Each aid agency uses its own, slightly modified approach, and there is no overseeing authority to make them all collaborate for the benefit of the recipients. If Congress can get them to work together now, before another event, perhaps the victims of

the next catastrophe will receive an improved, more streamlined and easier to use response process.

This is an area that DHS could address. If an office of victim assistance is created, it could house a ready-to-be-deployed database that will immediately serve disaster victims. With one data collection point, families are spared the unenviable task of repeating their personal data, and are capable of monitoring aid activity for their family. This office could also develop rules and strategies for dealing with any fraud that is detected and increase family-approved information sharing among agencies and aid organizations.

The generosity demonstrated by the public towards 9/11 victims? families and survivors was tremendous and deserves to be lauded. However, the treatment of the aid after it was collected was less then perfect. We need to learn from the mistakes committed in the past to improve the process for the future.

Mom always taught Danielle and me to be accountable for our actions. If we erred in some way, we did our best to admit it, correct it, and make sure it didn't happen again. I can think of no better way to honor my mom than to apply this same standard to post-9/11 aid and response. This is why I fought so hard for the creation of the 9/11 Commission, and again for the implementation of its recommendations, and that is why I am here today to work with you to create the best aid response we can for the future.

Thank you very much for this opportunity to speak before you. I am happy to take any questions.

Mr. PASCRELL. Mr. Chairman, I just want to make a point on what we just said. We read about these things and the families of the victims. It would seem to me that this committee needs to go on record as soon as possible, our Chair and our Ranking Member, that we will do anything that we can practically to respond to what Ms. Lemack has just stated. I mean, I can't fathom. I can believe it, but I can't fathom this thing. The families are not being responded to this late. As you well know, first responders have been given the runaround over and over again. I alluded to that before, but I don't want this to be about first responders because we are talking about the families of the victims.

I would beg you to make sure that you do everything in your power. I know your heart is in the right place. I know it will be done.

Mr. ROGERS. We are going to do our part. I thank the gentleman. Also, again, I want the thank Ms. Lemack, and now turn to the only panelist that we have today who doesn't believe I have an accent. She is also a fellow Alabamian, from north Alabama, however, but Huntsville, Alabama, and a graduate of the University of Alabama.

We welcome you, Ms. Leigh Bradley. Leigh is the Senior Vice President of Enterprise Risk for the American Red Cross.

Welcome. We look forward to your statement.

STATEMENT OF LEIGH BRADLEY

Ms. BRADLEY. Thank you so much Mr. Chairman, Member Meek and Congressman Pascrell. I want to thank you all for providing me the opportunity to appear before you today to discuss the American Red Cross's response to the attacks on America on September 11, 2001.

In my current job as the senior vice president for enterprise risk of the American Red Cross, I am charged with managing the Red Cross's internal audit department and overseeing the Red Cross's compliance investigations, ethics, and corporate safety policies and programs. Seated behind me today are two senior Red Cross investigators: Teila Brewer, who is vice president for investigations,

compliance and ethics; and Frank Fravilla, director of the hurricane investigative unit and also 9/11 fraud investigator. I want to acknowledge the work that these two individuals do every day to ensure that we protect Red Cross assets.

I also want to acknowledge my colleague Alan Goodman, who is the executive director of the American Red Cross September 11 recovery program, which we refer to as SRP. For the past 4 years, Alan has been at the helm of this program, which has provided longer-term recovery to nearly 60,000 individuals and families, including—and I would like to underscore this for the record—families of the deceased, including those who were on the planes that were crashed into buildings on 9/11. We assist the physically injured rescue and recovery workers and their families and people who are living or working in the areas of the attacks. And what I am going to do is ask my good friend to my right to meet with Alan Goodman after our testimony today just to make sure that we have met her needs and the needs of her family.

It is important to note that each day the American Red Cross responds to disasters and communities across the Nation. In fact, we respond to more than 70,000 disasters each year. The vast majority of disasters we respond to are single-family house fires. We also respond to large-scale disasters such as hurricanes, floods, tornadoes and manmade events. There is one constant in all response operations, and that is to ensure the immediate emergency needs of our clients are met.

Almost immediately after the first plane struck the World Trade Center, Red Cross volunteers and personnel were on the scene.

The response by the American public to 9/11 is nothing short of extraordinary. Tens of thousands volunteered with the Red Cross, and tens of thousands mailed financial contributions. In total, the Red Cross received more than $1 billion in contributions. The intent of our donors was to ensure that this money was earmarked for the victims of 9/11, and to that end we created a segregated cause known as the Liberty Disaster Relief Fund.

The American Red Cross had two phases of response to the tragic events of 9/11. The first phase was known as the relief operation phase and ran through October 1st of 2002. The second phase encompassed the long-term recovery effort dating from October the 2nd, 2002, to the present, and that is referred to as our September 11th Recovery Program, or, as I mentioned, SRP. As a result of these efforts, the Red Cross has provided support to nearly 60,000 individuals and families directly affected by the September 11th terrorist attacks.

Now I would like to speak just briefly but more specifically about fraud detection, prevention and controls.

Waste, fraud and abuse are very serious issues to the American Red Cross, and why is that? Because as an independent nonprofit agency, we rely on the donations of the American public to provide services free of charge to victims of disaster. We therefore work extremely hard to prevent and detect fraud in order to be good stewards of donated dollars and in-kind benefits.

Despite our prevention and detection efforts, however, we did experience fraud during our response to 9/11. Some of the schemes that we found included individuals fraudulently claiming that a

loved one had died; sometimes creating a new identity as their own, using their real identity as the deceased individual. In one instance we had a father claim that one of his children had died, using the childhood picture of himself as a young man to prove the existence of his fabricated son. And another instance, several of these, we had individuals claim that they had been injured in the affected area, most notably the World Trade Center, only to find out later that they had never been near Ground Zero.

Now, that is some interesting anecdotal information. Some statistics may be helpful to give a more comprehensive overview of our 9/11 fraud experience.

To date we have received 1,473 allegations of wrongdoing, mostly fraud. Thus far we have obtained 140 criminal convictions. Currently we have 20 pending legal cases, meaning they are at the grand jury about to be tried. We have 213 remaining cases that are still being investigated, some of those investigated by the Red Cross, some of them by a variety of law enforcement agencies.

The American Red Cross to date has collected $380,000 in court-ordered restitution, with a potential of future restitution in excess of several million dollars. Fraud as a percentage of the money we collected, which is just shy of $1.1 billion, is less than 1 percent.

It is fair to say that despite our strong efforts to prevent and detect fraud, 9/11 demonstrated for the American Red Cross the need for tighter internal controls and required our organization to strengthen its fraud prevention and detection mechanisms. In my written testimony I provide a number of detailed descriptions of improvements made by the Red Cross after our response to 9/11. However, I would like to briefly highlight four of the most significant changes that were implemented to help prevent fraud from occurring in the future.

There are four of them: Donor 7, that was a new initiative; second, a new Client Assistance System, we call it CAS; third, a Coordinated Assistance Network, we call that CAN; and a concerned connection line, which is basically our nationwide whistleblower hotline.

As a direct result of the enormous public generosity in the wake of 9/11, we created a national initiative to ensure conformity with donor intent; in other words, a standardized system to ensure that donated moneys were applied in such a way as to honor the intention of the donation. Donor DIRECT, which stands for Donor Intent Recognition, Confirmation and Trust, provides affirmative confirmation and acknowledgment to ensure that donations are directed as intended.

Second, and I believe this one is the most important, we created the Client Assistance System, or CAS, which is a single IT system to track in real time client assistance provided to disaster victims. During 2003, as a result of a major lesson learned from 9/11, we built a system that could handle up to 300,000 cases of individual financial assistance. That was five times the amount of assistance provided during 9/11. During the 2005 response to Hurricanes Katrina, Rita and Wilma, we saw more than 1.4 million cases of financial assistance. Our system was basically swamped, and as a result we have enhanced CAS software so that we now have a sin-

gle system of records to support financial assistance to upwards of 2 million cases.

This is so important because unless you have a real-time ability to determine whether someone has come to you and already received financial assistance—and people can make a career of applying for duplicate, triplicate payments, as we saw to some extent during our response to Katrina, Rita and Wilma.

Third, one of the great successes to come out of the entire nongovernmental organizations community's response to 9/11 was the development of the Coordinated Assistance Network, meaning CAN. Working with other voluntary agencies, and at the urging of the GAO, the Coordinated Assistance Network provides a framework and tools to make casework management easier and more efficient through advanced collaboration. Specifically CAN allows us to share client information among a group of agencies that conduct casework using a single secure Website, provided, of course, that we have the client's permission to share that information, and can also add additional safeguards to prevent fraud.

Finally, we have implemented a whistleblower hotline that we call the Concerned Connection Hotline. It is for use by volunteers, employees and clients who can confidentially report through a 24-hour toll-free number any suspected fraud, waste, abuse or related wrongdoing.

Mr. Chairman, members of the committee, we continue to strive as an organization to ensure that we have the best methods in place to detect and prevent fraud from occurring. As an independent nonprofit agency, this is critical to our future. Obviously during times of disasters, we must consistently and responsibly steer the money that we are given by the American people, and we must be able to demonstrate to our donors that we vigilantly protect our assets against fraud.

I thank the committee for holding this hearing today and providing me the opportunity to share with you some of the ongoing efforts of the American Red Cross since 9/11 to ensure that we continue to meet the expectations of the American public during times of disaster, and I am happy to answer any questions that you may have.

Mr. ROGERS. Thank you, Ms. Bradley.

[The statement of Ms. Bradley follows:]

PREPARED STATEMENT OF LEIGH A. BRADLEY

Chairman Rogers, Congressman Meek, and Members of the Committee, my name is Leigh Bradley and I am the Senior Vice President for Enterprise Risk at the American Red Cross.

I want to thank you for providing me with the opportunity to appear before you today to talk about the American Red Cross response to the attacks of September 11th—work that is ongoing to this very day. I appreciate the opportunity to share with you our lessons learned regarding fraud prevention, detection, and controls.

The attacks on the United States that occurred on September 11, 2001, tested the American Red Cross and America in ways we had not experienced as an organization or as a nation. It is a day that will remain burned into the minds of all who witnessed on national television two of our nation's tallest and proudest buildings fall more than 100 stories, a massive inferno at the Pentagon and a plane crash in a remote field in Shanksville, Pennsylvania. Thousands of innocent people died on September 11, including members of the first response community who put their lives at risk to save others. Since September 11, thousands more have since suffered from the physical and emotional stress of responding to these vicious attacks. All

who witnessed this day will remember where they were, what they were doing, and will always recount their feelings and emotions as we, as a nation, were overcome with grief.

The American Red Cross had been America's partner in disaster preparedness, prevention and response for nearly 120 years on that fateful day in September. In our long history, we have aided soldiers on the battlefield, supported victims of all disasters, and provided support to first responders.

Our experience in the aftermath of the Oklahoma City Bombings in 1995 helped to prepare us for this day. Almost immediately after the first plane struck the World Trade Center, Red Cross volunteers and personnel were on the scene ready to aid in the response.

I want to acknowledge the work of Alan Goodman who is with me today. Alan is the Executive Director of the American Red Cross September 11th Recovery Program (SRP). For the past four years, Alan has been at the helm of this program, which has provided longer term recovery to tens of thousands of individuals and families, including families of the deceased, the physically injured rescue and recovery workers and their families, and people who were living or working in the areas of the attacks.

Response to September 11, 2001

One year after the terrorist attacks occurred on 9/11, the American Red Cross issued a report to the American people regarding the activities of the Red Cross, the Liberty Disaster Relief Fund, and the execution of the September 11th Recovery Program. Included in this report was a chronology of our response, which is attached to my testimony. (Appendix I)

Before I discuss the Red Cross response to 9/11 and some of the lessons learned, it is important that I briefly share what the Red Cross traditionally does during times of disaster and how this response differed.

The American Red Cross responds to disasters in communities across the nation each and every day. In fact, we respond to more than 70,000 disasters each year. The vast majority of disasters we respond to are single family home fires. We also respond to large-scale disasters, such as hurricanes, floods, tornadoes, and man-made events. There is one constant in all of our response operations and that is to ensure the immediate emergency needs of our clients are met.

Individual client assistance has been provided by the American Red Cross for as long as the organization has been in existence. Red Cross individual client assistance includes much more than just financial support. In fact, traditional individual client assistance has been based on a cadre of services to ensure that the health and welfare needs of our clients are met. This includes feeding and sheltering operations, mental health assistance, first aid, and relief and recovery referrals. We partner with other nongovernmental organizations, the for profit community, and with all levels of government to ensure that the emergency needs of disaster victims are met. In each response, our first priority is to ensure that those affected by disaster have a safe shelter and are provided with the basic necessities of life.

The next priority is to assist families in taking the first steps toward recovery. This is the purpose and concern that individual client assistance is designed to serve. It has long been the case that while shelter, feeding and the distribution of critical items are sufficient to stabilize individuals and families, it is not sufficient to meet all short term emergency needs necessary for disaster victims to begin their individual road to recovery. Critical items of assistance such as resources for food, changes of clothing and bedding bridge the gap between mass care activities and the receipt of state and federal recovery assistance. This allows a family a modicum of independence and a flexible resource for the types of essential items mentioned above. Ultimately, within the framework of disaster assistance provided by other agencies, as well as state and federal programs, individual client assistance helps bridge the gap between mass care activities and loans, temporary housing, and other assistance.

The response of the American public in the wake of 9/11 was extraordinary. When thousands of Americans needed help following the attacks, tens of thousands volunteered with the Red Cross, and tens of thousands made financial contributions. The American Red Cross received more than $1 billion in contributions. While the Red Cross often provides financial assistance for the immediate emergency needs of our clients, the intent of our donors was to ensure this money was earmarked for the victims of 9/11.

To that end, we created the Liberty Disaster Relief Fund as a distinct and segregated fund for those financial donations and to assist those directly affected by the September 11th attacks. Former Senate Majority Leader George Mitchell was appointed as the independent overseer of the fund. Under the distribution plan, and

consistent with the Red Cross mission of providing immediate emergency disaster relief, the majority of funds were to be distributed to the families of those who were killed in the September 11 attacks, those who were seriously injured, and others directly affected by the disaster.

For an organization that is accustomed to providing de minimus amounts of financial assistance—money that is meant to provide for immediate emergency needs such as a change of clothes, toiletries, or diapers for children—this meant providing much larger sums of money.

The American Red Cross had two phases of response to the tragic events of September 11. Phase One represents the immediate response to the terrorist attacks, dating from September 11, 2001 through October 1, 2002, and is referred to as the Relief Operation Phase. Phase Two encompasses the long term recovery effort, dating from October 2, 2002 to the present, and is referred to as September 11th Recovery Program (SRP) Phase.

Relief Operation Phase

- **Family Gift Program #1 (FGP I)**—The FGP I provided three months of rent, food, utilities and other ongoing expenses to family members of those missing, deceased, or injured from the World Trade Center (WTC), Pentagon, or Shanksville, Pennsylvania events.

SRP Phase

- **Family Gift Program #2 (FGP II)**—The FGP II began on December 6, 2001, and provided six months of living expenses to family members and injured clients who received FGP I and nine months of expenses to clients who initially sought financial assistance after December 2002.
- **Family Gift #3 (FGP III)**—FGP I and FGP II met the early financial needs of the victims covered under the Family Gift Program. The first two gifts were designed to cover the first nine months of living expenses and these gifts were all disbursed prior to June 30, 2002. In January 2002, the Cross determined that the Family Gift Program should also cover unmet essential living expenses for an entire year through September 11, 2002. The third Family Gift (FGP III) was created to cover expenses for the months ending on September 11, 2002. The third Family Gift (FGP III) was created to cover expenses for the months ending on September 11, 2002. No funds were distributed for FGP III until July of 2002.

Specifically, FGP III granted expenses, depending on whether or not clients received the previous two gifts, to financially dependent immediate and extended family members of decedents, child guardians, and the "seriously injured." The "seriously injured" were defined as individuals who were in the immediate vicinity of the WTC, the Pentagon or the Pennsylvania crash site on 9/11 and as a result suffered a verifiable, serious physical injury or illness for which they were admitted to a hospital for at least 24 hours between 9/11 and 9/18/01. The FGP III ended on June 15, 2004.

- **The Supplemental Gift Program**—The Supplemental Gift Program began in August 2002. Each estate and seriously injured client was originally eligible to receive a gift of $45,000 to be distributed to those individuals named as executors or administrators of the estate. In November 13, 2002, the Liberty Committee approved an increase of the gift amount to $55,000.

To be eligible for the Supplemental Gift, injured clients must have met the FGP III criteria and additionally have been totally disabled for 90 consecutive days. Gifts to estates were awarded with the agreed upon restriction that they be distributed only to individual beneficiaries, rather than to charities or academic institutions. Supplemental gifts made to the seriously injured have no other restrictions following verification of eligibility.

- **Special Circumstances Gift Program (SCG)**—The SCG Program is a needs-based gift provided to seriously injured who qualified for the Supplemental Gift as well as financially dependent extended, nontraditional, and traditional family members who were eligible for the FGP III, had not received substantial amounts of assistance from other sources, and continued to have unmet needs. All awards were determined by a Review Committee on a case-by-case basis, taking into account the individual's unmet financial needs, the level of dependence on the deceased and any 9/11 related special circumstance. The SCG ended in December 2004.
- **Disaster Responders**—Clients who were officially deployed as disaster responders to the WTC, Pentagon, or Pennsylvania are eligible to receive all of the above benefits if they meet other specific criteria, such as for injury or economic need.

• **Additional Assistance**—An additional assistance program began in April 2003 to assist disabled individuals and family members. Eligible clients were able to receive up to six months of financial assistance for demonstrated unmet, essential housing and living expenses. This program ended in December 2005.

To be eligible, family members were required to demonstrate financial need and one of the following: financial dependence upon the decedent, a mental health condition that led to a continuous 90-day period of disability, or had been appointed the legal guardian of the minor child/children of a decedent. Disabled individuals were required to have suffered a 90-day disabling respiratory, mental health or physical disability and demonstrate financial need.

Joint Relief Operation Phase and SRP Phase

• **Displaced Residents**—Clients whose primary residence was south of Canal Street in Manhattan and who were displaced from their homes, had their homes damaged, or had access to their homes disrupted were eligible to receive assistance which may include relocation, temporary housing costs, rent/mortgage, cleaning, moving, storage, and air purifiers.

• **Economically Impacted**—Clients who worked below Canal Street in Manhattan and were unemployed due to the 9/11 attacks were eligible for three months of assistance with rent, food, and utilities until February 7, 2002. After February 7th, clients were eligible for a one month grant disbursed according to household size. The last day for economically impacted clients to register for Red Cross assistance was March 28, 2002.

In total, the September 11 Recovery Program has provided support to nearly 60,000 individuals and families directly affected by the September 11 terrorist attacks. While the direct services provided by SRP, including financial assistance and referral to social work agencies for case management needs, ended on December 30, 2005, the program had been established around five major initiatives:

• **Long Term Mental Health Services**—based on financial need, this program provided financial assistance for services including individual, group and family counseling; psychotropic medication coverage; hospitalization; and inpatient and outpatient substance abuse treatment. Programming will continue through the end of 2007.

• **Long Term Health Care Services**—this program provided financial assistance and clinical case management for uncovered health expenses directly related to injuries or illnesses caused or exacerbated by the events of 9/11.

• **Family Support Services**—This program provided individualized support and guidance to eligible families to ensure that they had access to the resources they needed for their recovery. Trained Red Cross Family Support specialists assisted with determining health care and mental health needs, identifying resources, making referrals, providing assistance through three financial assistance programs, identifying long-term needs and planning for the future.

• **Assistance to Residences**—For displaced residents with ongoing needs, the Red Cross provided air purifiers and HEPA vacuums, helped to relocate individuals and families, and provided reimbursement for expenses incurred during displacement. In addition, this program offered mental health assistance to affected residents who experienced emotional trauma as a result of 9/11.

• **Communication Coordination**—To help meet the needs of those affected by the September 11 attacks and maximize efficient use of resources, the Red Cross coordinated with other groups including community organizations, constituency groups, advocacy organizations, local elected officials, faith-based and interfaith organizations, and other nonprofit and government agencies providing direct services and benefits to those affected. The Red Cross is a founding member of the 9/11 United Services Group (USG), which coordinated 13 service agencies to help ensure that those affected by the events of September 11 were able to get the help they need. The Red Cross assisted the USG in developing a shared database that has helped various charities provide financial assistance and services to victims of the September 11 attack more efficiently.

At the end of the first quarter of 2006,[1] the Liberty Disaster Relief Fund had collected a total of $1.080 billion. Approximately $738 million of the funds received has been expended in financial assistance to those directly affected; $159 million has been expended for immediate and long-term program costs; $66 million has been ex-

[1] These figures represent contributions and expenditures through March 31, 2006 and are the most current data available. The next report of the Liberty Disaster Relief Fund will be released on the fifth anniversary of 9/11 on September 11, 2006.

pended for indirect services; and about $60 million has been used for fund stewardship. As of the end of March, 2006, $55 million remained in the Liberty Fund.

The Red Cross will use the balance remaining in the Liberty Disaster Relief Fund to support non-profit agencies that can deliver a variety of services to the people whose lives were the most seriously affected by the terrorist attacks in the communities where they live and work. These services include mental health and wellness for adults, adolescents and children; health diagnosis and treatment for rescue and recovery workers; financial assistance; and community recovery in lower Manhattan.

Fraud Prevention, Detection and Controls

Waste, fraud and abuse are very serious issues to the American Red Cross. As an independent nonprofit agency, we rely on the donations of the American public to provide services free of charge to victims of disaster. We have an obligation to our donors to ensure that we are good stewards of the donated dollar. The Red Cross treats its obligation to deter and detect fraud or abuse with the utmost seriousness and when appropriate seeks prosecution of fraudulent activity to the fullest extent of the law.

During times of disasters there are individuals who take advantage of the generosity of the American people and of the very agencies and institutions that provide services to those in need. That has held true in all Red Cross disaster responses, and unfortunately, it was evident during our response to September 11. Attached to my testimony are examples of fraud that we witnessed as an organization during our response to September 11. (Appendix II)

We learned a number of valuable lessons in our response to 9/11 and have implemented a number of changes in the Red Cross response to disasters and to prevent, detect and control fraud. I will address some of the lessons learned and elaborate on fraud prevention, detection and controls that have been put in place as a result of our response to 9/11.

But first let me describe the 9/11 compliance and enforcement response. 1,473 cases were investigated by the Red Cross involving actual or potential allegations of fraud, and many of these cases were referred to federal, state and local prosecutors for full investigation and prosecution. There were some cases that were not pursued by law enforcement and these were reviewed by the Red Cross for possible civil prosecution as I discuss below.

Methods of Prevention

The Red Cross executed a number of policies and methods to mitigate fraud from occurring. These include:

1. Except where immediate assistance was necessary, require applicants for assistance to document financial need and/or injury caused or exacerbated by the disaster.
2. For every eligibility requirement, we established a corresponding documentation requirement that was specific and enforced.
3. Required applicants to affirm that the information provided and recorded in the case file was accurate and true.
4. Whether automated or manual processes, developed more effective case tracking mechanisms to detect and track fraud and ensure that those not entitled to benefits did not receive them.
5. Implemented at the outset of any disaster relief effort the types of fraud detection and prevention efforts, including cooperation with other charities and governmental entities.
6. Make certain that all decisions about program design and eligibility criteria were made by a centralized authority and were communicated to the field clearly, in writing.
7. Developed forms and procedures that minimize discretion for case workers and clearly articulated the ground rules for discretionary decisions by supervisors.
8. Delineated clearly the responsibilities of all those involved in the review and approval process by making clear that someone was obliged to make sure all necessary information and documentation was provided.

Methods of Detection

Detection of fraud in the aftermath of September 11th occurred in a variety of ways. The most prevalent and successful methods include:

1. **Casework**—Many cases involved the presentation of false documents, false identities and false victims.
2. **Internal Controls**—Disaster Accounting was alerted to duplication of benefits, forged checks, changes in address, etc.

3. **Neighbors, Family Members and Associates**—Individuals would alert the Red Cross to the possibility of fraudulent claims, which were investigated.

4. **Law Enforcement**—Red Cross was alerted to on-going investigations involving FEMA, NYPD and NYFD as to the possibility of fraud.

5. **Case Audit Unit**—would discover inconsistent data, documentation and statements, which would lead to further investigation.

The Red Cross identified 20 cases as possible targets for civil suits. Hogan & Hartson LLP, a nationally recognized law firm, represented the Red Cross in these civil proceedings on a pro bono basis. After further investigation on these 20 cases, we decided to refrain from pursuing ten of the 20 cases because of factors, such as an inability to locate and serve the defendant with legal process or the defendant did not have sufficient financial assets that could satisfy a judgment. However, we filed suit in the remaining 10 cases. The total amount sought to recover in these 10 cases is $111,352. As of this date, two cases have been completed, with $25,894 recovered through settlements. There is a settlement in a third case for $15,600, with monthly payments of $100 for 156 months. The defendant made the first payment but has defaulted on remaining payments. We have filed a motion with the court to enforce the settlement agreement, which is pending. We have obtained a default judgment in a fourth case and we are moving forward with the appropriate procedures to garnish the defendant's wages. The remaining six cases are in various stages of active litigation.

One of the lessons that the Red Cross learned from 9/11 was the need to more aggressively pursue fraud perpetrated against the Red Cross though the civil court process and to include verifying that Red Cross insurers kept their commitments to pay fraud claims filed by the Red Cross. Two cases illustrate this point.

- In the Southeastern Connecticut Chapter matter, the Red Cross filed an employee dishonesty claim with Royal Insurance Company arising out of the embezzlement of 9/11 funds by the Executive Director of the Southeastern Connecticut Chapter. The Red Cross filed a claim with Royal for $173,657, the total amount of the loss, even though the local prosecutor valued the provable loss as $120,000. In December, 2003, the Red Cross reached a settlement of our claim with Royal for $97,710. The policy at the time had a deductible of $50,000, so we received from Royal $47,710. It was determined between the Chapter and Red Cross National Headquarters that the Liberty Fund would receive 79% of this settlement.
- In the Hudson County Chapter matter, the Executive Director of the Chapter embezzled $1,113,577 from the Chapter that was a provable loss. With additional costs associated with the embezzlement that were covered by our fidelity loss policy, the total claim submitted to Royal Insurance was $2,490,593.70. Royal Insurance paid part of the claim in the amount of $1,676,024.65 in August, 2003, leaving $787,796 as an amount that Royal said was not covered by the policy. The Red Cross filed suit against Royal and the case was settled for $475,000 in November, 2003. Thus, the total amount recovered from Royal in this matter was $2,151,024.65.

The Red Cross will continue to work with federal, state and local law enforcement regarding fraud against the Red Cross and will actively pursue in the civil courts those provable cases not prosecuted in the criminal courts. The Red Cross also will file appropriate claims with its insurance companies and will pursue claims for any fraud losses against those insurance companies that wrongfully deny claims.

Methods of Controls

The detection and prevention of fraud is a small, but important component of the design of a disaster relief program. The September 11th Program provides myriad examples of the kinds of fraud that people will try to perpetrate if substantial sums of money are available. Many types of fraud can be minimized by taking proper steps in the design and controls of the eligibility criteria and documentation requirements for the programs.

In developing a response to any disaster, the Red Cross must do at least two things; 1) define the individuals who are eligible to receive assistance and; 2) define the assistance that each will receive.

An important issue for defining eligibility is creating an authoritative list of those who are entitled to benefits/assistance. This was an ongoing problem for all of the charities that responded to the September 11 attacks. In a future disaster, it will be important for the charities and governmental entities to work together to develop a comprehensive list of those injured, deceased, and entitled to benefits. Where an individual seeks benefits for a relative who is not on the list, some additional documentation should be required. Additionally, documentation beyond a simple assertion that an individual was killed must be provided for claims of death. Many of

the significant cases of fraud against the Red Cross (in dollar terms) occurred when people falsely claimed that a loved one had been killed.

A well-designed program with appropriate levels of controls should balance the interest in minimizing fraud with the interest in ensuring that victims receive assistance without undue administrative burden.

Failure to obtain adequate documentation or documentation of any kind was a significant problem in the early Family Gift Programs (FGP I; FGP II) when the standards of "assumed" and "attested" eligibility were utilized. Many case files have nothing (other than case worker notes) to substantiate the claims made or the assistance provided. This problem was rectified when the "demonstrated" eligibility standard was used for the final family gift distribution. Although there are numerous examples of individuals who forged documents, a substantive amount of fraud was committed by those who lied, but were never asked to provide documentation to back up their claims. A number of additional suspected fraud cases were identified when applicants were unable to provide the required documentation to substantiate their additional claims of ongoing financial assistance.

Finally, those who design future financial assistance programs must be cognizant that the ability often given to case workers to be creative and flexible in helping applicants to obtain benefits or assistance often has the effect of encouraging case workers to bend or break rules for eligibility. To the extent such flexibility is encouraged, it should be done at the supervisory level and it should be clear that flexibility cannot result in providing additional funds to those who are not eligible.

Coordinated Assistance Network (CAN)

One of the great successes to come out of the entire nongovernmental organization community's response to 9/11 was the development of the Coordinated Assistance Network (CAN). Our experiences in 9/11 showed clearly that having clients find their way through a web of service providers caused added confusion in an already trying time. Several disaster clients were lost within the improvised system; others were shuttled from appointment to appointment, having to tell their painful story time and time again.

The Coordinated Assistance Network provides the framework and tools to make casework management easier and more efficient though advanced collaboration and also adds additional safeguards to prevent fraud. CAN enables disaster clients to visit any one of the participating organizations, tell their story, provide required documentation, and—with their permission—have that information shared automatically with the partner agencies that are able to assist them. Through a secure, web-based system, an agency can instantly review each client's specific situation and the services received—in real time—helping to provide better services to the client, eliminate duplication of benefits, and measurably lessen the burden for each participating agency.

Since 9/11

In addition to the valuable lessons we have learned and incorporated as a result of our response to 9/11, our nation has continued to see individuals take advantage of the generosity of the American public and the agencies responsible for helping victims recover from disaster. This past year, the American Red Cross provided assistance to more than 1.4 million families impacted by the devastation wrought by Hurricanes Katrina, Rita and Wilma. $1.2 billion of emergency financial assistance was provided to those million families. To stop those that attempt to cheat the system, the Red Cross participates in the Department of Justice's Hurricane Katrina Fraud Task Force, which also includes members from the FBI, the United States Secret Service, the Federal Trade Commission, the Postal Inspector's Office, and the Executive Office of the United States Attorneys, among others. The Red Cross is assisting in hundreds of investigations now in progress. Every resource is precious to the Red Cross and we are taking every measure to aggressively pursue any illegal activity. To date, there have been 76 indictments and 55 convictions.

As of June 14, we are investigating 7,109 cases of suspected and actual fraud. These represent a combination of cases turned over to law enforcement and cases being investigated internally. We estimate the potential of approximately $9.5 million in cases stemming from this fraud.

There were instances where individuals or families received duplicative assistance that was neither fraud nor abuse on behalf of our clients, but rather a simple oversight or human error. I am pleased to report to this Committee today that as of May 1, 2006, the American Red Cross had collected $2.3 million in returned assistance from clients who had received duplicate payments.

As a result of the fraud we have experienced during and since 9/11 and the 2005 hurricane season, the American Red Cross is incorporating even stronger controls to mitigate future abuses. These include improvements to our Client Assistance Sys-

tem (CAS) software, with reporting enhancements to provide a single system of record to support the delivery of assistance to those in need; and improvements in chapter advance procedures and new monitoring and control processes to support the use of the cash-enabled client assistance cards (CAC).

Closing Remarks

Mr. Chairman, Congressman Meeks, and Members of the Committee, I want to thank you again for providing me the opportunity to share with you our experiences in our response to September 11. The American Red Cross provided assistance to nearly 60,000 individuals and families impacted by the devastating attacks on America on September 11, 2001. As the September 11th Recovery Program begins to wind down nearly five years after the first plane struck the World Trade Center, the American Red Cross continues to respond to disasters, both natural and man-made, each day in communities across the country.

We are proud to be America's partner in disaster prevention, preparedness, and response, and we urge all Americans to be prepared for whatever disaster may strike.

I am happy to respond to any questions you may have.

Mr. ROGERS. And I would like to start with the questions, but first, I would like to make an acknowledgment. In listening to Ms. Hearn, Mr. Varoli, and Mr. Getnick, what you had to say with regard to the debris removal after the attack in New York City, was accurate from all of our staff's efforts. It appears that that was a shining moment for the City, and FEMA did an exceptional job in removing that debris under budget, far under budget, in half the time it was anticipated. So that really was a time, as you put it, when folks were working in collaboration and in a proficient way.

Having said that, Mr. Varoli, according to media reports that had to do with what spurred these hearings, there is at least $63.2 million in FEMA money for Ground Zero clean-up that was paid to companies accused of mob ties. Is this accurate, and if so, how did it occur?

Mr. VAROLI. I am stumbling in response because I don't know where that number came from. I am not familiar with the 63.2 or who the contractors were. I would maybe look to Commissioner Hearn if she is aware of that number. I am not.

Mr. ROGERS. Set aside the amount. Mob ties at all. Were you aware of any mob activity in the debris removal activities?

Mr. VAROLI. I personally was not aware. The way DDC was set up, and I tried to highlight in the testimony, we were there to provide the expertise of the construction and the engineering issues that arose. We looked to KPMG as our assistant, as the engineering audit outsource firm, and we looked to DHS with the expertise in rooting out foreign corruption, and I believe they also looked to and relied upon the monitors, so maybe I would refer to Mr. Getnick.

Mr. ROGERS. Mr. Getnick, are you aware of any mob ties to debris removal activities?

Mr. GETNICK. Yes. I would like to speak to that because I think it goes to the heart of the inquiry. This morning it goes to the remarks of Congressman Pascrell at the start of the hearing today. Just so we identify where Getnick & Getnick fit into the process, the World Trade Center site was divided up into four quadrants, and on each of those quadrants there was a construction manager. And so we were one of the four integrity monitors assigned to the quadrant which was the Turner Construction site.

So, for example, you mentioned the Daily News article. I am going to speak to the Turner quadrant, and that is sufficient, because in the Daily News article they identified $26.7 million of the moneys you are talking about.

What the article map of Ground Zero was supposed to say back on December 5th was that Turner Construction hired a contracting company that was owned by an individual who was a reputed Lucchese associate, one of the five families who was indicted in 1995 on charges of using a bogus minority-owned business to legally win government work, and as the article then goes on to say, charges were later dismissed. And this contractor was—contracting company was paid $26.7 million.

So that is the nature of the allegations with respect to that particular quadrant, and if you take your figure, you have the same type of methodology which you build up.

And what I really want to get into is the nuts and bolts of how you deal with a situation like that real-time, real situation. Let us dig down and see what we have and what we don't have there, because exactly what was reported was exactly what the monitors uncovered.

We have a company 6 years earlier where an individual who is in a principal position was indicted for a crime that did not result in a conviction. So you don't have a convicted company. You don't have a company that is currently under indictment. You have a company that has an individual who is a reputed Mafia associate, and what do you do with that?

Well, here is what they do with it. First of all, you have to use your intelligence, literally your intelligence and your intelligence sources to find out about it right away, which is exactly what we did. And then when you find out about it, you report it. You report it to DHSOI, you report it to DDC, and you essentially set up a triage just the way you have a triage in an emergency room: Here are your serious cases, the next ones, the least serious cases. And you go, this is a serious case. We have to be on top of that. We have to see who is this contractor now subcontracting to, and sure enough you look at the subcontractor, and one of the subcontractors we found again is a very similar situation. You look at the principal. The father of the principal was indicted but not convicted. So again, you are not going to be in a situation to throw someone like that off the project. You can't debar the company, but you can certainly dig down and make sure that you are concentrating your resources there.

So in that particular situation, we did just that by using investigators in the field, by using forensic accountants who are going to the home office examining some records, and then using lawyers to put that together from an evidentiary point of view.

Mr. ROGERS. Do you believe the $63 million figure is accurate?

Mr. GETNICK. It is possible that number is accurate. We have to understand what the number represents. So, for example, in the case that I just said, we started out with an initial requisition, which was a $2 million requisition, worked at it, sat down and knocked out the problematic billings to under $800,000.

So now we are going to ask a question: What happened to the $800,000? Did that get paid to a company that at one time was

under an indictment that never got convicted; that used a subcontractor; that in turn the father of the current owner was indicted for a case who was never convicted? Yes. That is where the $800,000 went.

But the important thing is that the $800,000, which was less than half of what was billed, was an appropriate amount to pay for work that was actually performed. And the $1.2-plus million never got paid. And guess what? That requisition came in less time and less problems because everyone understood real time, real basis, these questions were being asked.

So I think at the end of the day the fair answer to the question is that money was paid, but that money was not paid to companies that were convicted. That money was not paid to members of the Mafia. That money was paid after it was scrutinized to make sure it was going for its intended purpose.

Mr. ROGERS. Ms. Hearn, would you concur with Mr. Getnick's observations?

Ms. HEARN. I do, and I discussed it with him at length. And I think that the Daily News articles are a terrific illustration of why DOI needed to be down at the site doing what it did.

I think that everybody knows that former Mayor Giuliani is a former Federal prosecutor and an organized crime prosecutor at that, and he recognized early on as surely as night follows day that organized crime would be looking to get into Ground Zero. Billing schemes are perpetrated on U.S. companies under nonemergency circumstances. Billing schemes in the construction business, demolition trade, waste business, which is what this project was, are pervasive with organized crime.

We knew what we were up against, and that is why we were down there. And that is why we had a presence at the four quadrants for which I gave you a diagram, physically out there counting heads, who is there, what equipment is there. Equipment is being moved around every hour, every day. What are we being billed for? Who are you, Mr. Truck Driver, and so forth and so on, doing best efforts to figure out who was down there. And without issuing a press release, I can tell you that some of the individuals and companies listed in the Daily News articles were, as we say, invited off the site.

Mr. ROGERS. Thank you very much. My time has expired.

The Chair now recognizes the Ranking Member and any questions he may have.

Mr. MEEK. Thank you so very much, and I want to commend all of you for your efforts in your different areas of involvement with this whole recovery, and also understanding of what has happened and how we can improve on what is good, and also hopefully do without those setbacks that we found along the way.

Ms. Bradley, I wanted to ask you a question about the Red Cross. The Red Cross plays a very strong role in the recovery process. We have FEMA and all of these other agencies that are responding, but it is the only entity outside of the General Baptist Convention—I think they come in third or fourth as it relates to recovery efforts out there. Southern Baptists. I'm sorry—that respond mainly with food and not assistance. You can correct me about who comes in second or third.

But when it came down to this event, the issue of fraud, I believe you were here for the first panel, and we have talked about the past. We are talking about the future at the same time, and we are talking about the present. As we speak now, several hundreds of miles away from here along the gulf coast, a lot of this is still being played out with Red Cross, FEMA, a number of other agencies, and to be able to stop the fraud from happening, we have to know that we have put things in place to stop it in every way.

I was trying to find out in the panel of trying to get the panelists, I guess, to work together, and especially FEMA, to give us some direction on what they are doing as it relates to verifying real residency. Now, we know that some folks are out there, and they are going to say some things, and when the folks—well, the individuals go out and they say, I am going to lie, I am going to try to steal. That is a hard will and desire to toss water on, especially when they are there knowing that everyone else is running around and the pressure is on to get dollars out the door.

I am saying all of that to say that I couldn't help but take a look at your testimony on page 5 where you talked about your civil case. I think 20 of them were identified; 10 of them were actually prosecuted. I think $111,000 were recovered.

I believe on the Website it said you helped 60,000 individuals as it relates to the whole 9/11 experience.

Looking at that, I know you use another statistic, over 100-someodd people or 90-something were prosecuted. These individuals are carrying out fraud. They hit them well in the pocket. Why did the Red Cross only go after so far those that were involved in fraud civilly?

Ms. BRADLEY. Let me first explain to you. I think it is an important context to give to the discussion. At the American Red Cross every day we balance two vitally important missions, and one is getting emergency assistance into the hands of disaster victims, whether it is a natural disaster or manmade disaster. But equally important is making sure that we are going to have money to perform those missions. So we have got to constantly assure our donors that we are vigilantly protecting our assets, meaning their money. So there is a constant balance of trying to look at the situation, and particularly in the chaos of the first few days or weeks of a catastrophic disaster, we have to make some determinations on whether or not we are going to err on the side of getting services relief into the hands of people who so desperately need it versus making sure that we have an ironclad system. And the hope every day when we come to work is that we sort of strike just the right balance, meaning that there will always be ways for criminals to infiltrate our system.

So the idea right now, particularly after Katrina, Rita and Wilma, at the Red Cross is to provide as much capability to prevent fraud as we possibly can, and that is why I mentioned our CAS system. It is a computer, it is an IT system that allows—it is all in one place, and you can upload client information so that if Leigh Bradley takes your client information, your ID, it is going to go into our IT system so you can't go 100 miles down the road and try to convince us that you have never gotten any assistance from the Red Cross before, because somebody is going to know

right there in front of them on a computer screen that, wait a minute, let me ask you a few questions. Did you, in fact, receive client assistance just a week ago, let us say, in Montgomery, Alabama?

Mr. MEEK. I don't want to cut you off, but I was mainly asking my question towards the civil cases. Why only 20 and why only 10 were—you decided to move forth on all of the fraud cases, and the reason why I am asking the question is that so many Americans did pull their debit card and credit card out of their wallets and call the Red Cross, and it is like even individuals that lived in the New York area, and I have constituents who do the same things with Wilma, Katrina. I personally did it, and when you hear about the fraud, it is like the incident taking place all over again. It is like you are being victimized again even though it may be small.

I think it is important to say that we have very—we have strong fraud prevention in place; not only are we going to go after criminally, but go after in a civil way so that we hit them in a way they hit us, and us meaning the people of goodwill, Red Cross donors and all. That was my question. But I hear exactly what you are saying in your system.

I just want to go back to what you were answering, another question. In your system do you have the ability to find Social Security numbers and verifying addresses with your in-house system that you have at the Red Cross now with your CAN system?

Ms. BRADLEY. We, too, like FEMA, used ChoicePoint during Katrina, Wilma and Rita. We don't have the kind of database that would be required not—it is not so much to check Social Security numbers, it is a special database that allows us to ask additional questions. Maybe you come in to see me, you don't have your wallet. You have to leave your house without anything. Maybe you have never owned a home before. So you come to me and you say, I need assistance, and our system might have some information about you, some specific, uniquely identifying information about you. But in order for us to verify and authenticate your identification, we need a much more complete and robust data system, and it doesn't have to be ChoicePoint. We happen to contract with them because we felt like that they had really sort of the best product on the market at the time. And that is how we conduct identification verification and authentication.

And then to answer your question about the civil cases, because I definitely want to make sure that everyone is clear, I feel like we are about as vigilant as any organization in this country in pursuing cases, and the only reason we are pursuing some of the cases civilly is because we have exhausted the criminal remedy, and we can't seem to get those cases prosecuted, but we don't want to give up even though it is 2006.

So as I said earlier, we have—we received 1,473 allegations of wrongdoing, and we continue—as I mentioned, we have 213 remaining cases that are being investigated. We have 20 pending cases that hopefully will go to trial soon that we will have resolved. So we continue to work hard on the criminal side of the house, but when we don't get the relief that we are seeking from the criminal justice system, we will pursue them civilly.

We have also hired Hogan & Hartson, a nationally recognized law firm, to work up all of the civil cases for us, and I want to report to you—I am happy to report to you they are doing all of that work on a pro bono basis, and there will be more cases. But I will admit that if the scales are weighted, they were certainly weighted on the criminal side, and I will tell you why: Because we found out that it had a real deterrent affect for us.

Let me give you a quick example. In 9/11 we didn't have any clients return money to us. In Katrina, Rita, and Wilma, we have had over $2 million in client assistance returned to us already without even asking them to do this. And we believe it is the determination of pursuing these cases in the criminal arena that has helped us get the money back, and we will pursue other options, too. I hope that—

Mr. MEEK. Thank you very much. We were trying to figure out the system of verifying. Thank you. My time is well overdue. Thank you.

Mr. ROGERS. The gentleman's time has expired.

The Chair will recognize Mr. King for any questions he may have.

Mr. KING. I want to thank all of the witnesses for their testimony today and for what they have contributed, I believe, to a very worthwhile hearing.

Ms. Lemack, are you a resident of New York State?

Ms. LEMACK. No.

Mr. KING. They are entitled to lifetime mental health coverage through the New York State Compensation Fund.

Ms. LEMACK. It might be capped at $25,000. At least that is how it is in Massachusetts.

Mr. KING. It is my understanding it is lifetime.

Ms. LEMACK. I was saying in Massachusetts the Victim Compensation Act is capped at $25,000.

Mr. KING. My understanding is it is unlimited.

Ms. LEMACK. In Massachusetts it is also per family, so if you have five children in one family, they are all drawing off of that.

Mr. KING. I thought I would maybe give you some free advice.

Ms. LEMACK. Trying to get me to move.

Mr. KING. Love to have you in New York.

I think it is important to put this in perspective, because as someone who was close, I was able to watch a lot of what went on. I thought the recovery effort considering everything was monumental, and it really did represent the best of the City and of its people, and I think it is unfortunate that even though they are isolated, that any event at all has put any kind of a cloud over that. But I think it is very significant that considering the absolute enormity of the devastation, what was done was done as quickly as it was. And it is important to note that—I mean the City employees who contributed, you talk about the employees, EMS workers, design and construction, DOI, you can go through the whole list of City employers were there day after day. As far as I know, there was not even payroll missed by the City. People didn't lose work. They were there, and I think it is something that should really be brought out, and you did a good job of putting this all into perspective.

Especially, Mr. Varoli. I was reading your written testimony. I think it is important for people to realize what was going on at that time and what the City was confronted with and how it overcame so much. I think it is extraordinary.

Let me take you back to September 10th, and if you can go back to September 10th and recite any laws or regulations or any procedures, I would ask any of the three of you what you would have done if you can go back to that day, which would have prevented as much of the fraud and abuse that did exist, and I am putting it in context. I believe in the overall picture it was not significant, but again, even $1 wasted funds in the face of such a tragedy is wrong. But if you can go back to September 10th, 2001, what changes would you have made, whether it is a city charter or regulations or, you know, provisions applying to disasters, construction projects, that could have perhaps avoided some of that fraud that did occur, I guess, down the line?

Ms. HEARN. We have in place at DOI at any given time a precleared, prevetted list of monitors in various fields of discipline that are ready to go in any situation. The City School Construction Authority Inspector General has a precleared, prequalified list of contractors and subcontractors ready to go to build schools in the city, and so that list was drawn upon when folks were being put in place for 9/11.

There is an agency in the city of New York which is called now the Business Integrity Commission. I believe that you received some written testimony from them. At the time they were called the Trade Waste Association. They are a small city agency whose job is to keep mob-related trade waste and haulers out of licensed city business, and so that is an agency that was in place with a database of licensed carters and debris removers. That was drawn upon on 9/11.

So I think that the answer is—it is a conceptual one. It is not a specific one. It is that whatever you can do to not have to scramble when the disaster hits is helpful. And the city, you know, drew upon those different existing procedures that were in place to deal with our nonemergency matters that come up in such a large city. And then, of course, you had unbelievably strong leadership in city government at the time, and you did have a formidable prosecutor. Mary Jo White was the U.S. Attorney of the Southern District at the time. I was working for her at the time. I was a Deputy Chief of the Criminal Division in the Southern District up until December 31st, 2001, and then I became the DOI Commissioner.

So really everybody just mobilized both to try and prevent what we surely knew was to be a magnet for fraud and organized crime, and I think that the early days or weeks at the site were probably pretty chaotic. And I think that it probably took until October or so for all of these different enforcement mechanisms to get their arms around the situation, but they then did take control and got a handle on who and what was down there, and there was scrutinizing billing. And it is not news that there is mob ties in the construction business, but we sure made our best effort to make sure there were no indicted companies down there or anybody who we knew or learned who was of that ilk working down there.

Now, there were companies listed in the Daily News article that were paid various moneys, and the monitors would tell you that every nickel of those moneys paid out to those firms was scrutinized beyond belief by the monitors, and not just looking at a piece of paper, but by being down there and comparing what they saw with boots-on-the-ground kind of surveillance to what was being billed for.

And so I don't want to speak for Mr. Getnick. He is one of the monitors from one of the quadrants. He can attest to this himself, but he has told me, and the other monitors have said the same, that they feel that any money that went out towards those expenditures in the Daily News articles were for services that were rendered. Who they were rendered by, you know, associates of who they were rendered by notwithstanding, they were for services rendered. And any companies that really were not companies that DOI, the monitors felt should not be down there, even if they were rendering services, they were invited off the site, as I have said.

Mr. KING. Mr. Varoli.

Mr. VAROLI. It is an incredible question and I am not sure I can answer it fully. I guess what I would suggest is what would have been helpful on September 10, some way of having in place contracts with contractors, so the situation that arose, which I believe came up in the previous panel, with the one photographer in FEMA would not have occurred if there were set contracts or at least forms of contracts in place either by FEMA or by the city of New York saying, okay, these are the emergency contracts.

In addition, what I think was helpful and what I spent most of my time working on was dealing with the contractual issues specifically with the construction managers and vis-a-vis the subcontractors. There were lots of issues and concerns expressed by the construction managers and by the city of New York to some degree on the issues of insurance and identification. And if that had been dealt with up front on September 10, and if we had onboard or on the shelf what sometimes we refer to requirements of an emergency contractor in place who has the coordination and skills and ability to take on the debris management side, that would have I think saved some additional time.

Again, we did this in 9 months. Original projection, 2 years. We did this less—I think the dollars come out to $467 million. Again, we were looking at—at least over a billion dollars. So it is hard to say, you know, we could have done that much better. But those are some of the things I can think of off the top of my head.

Mr. KING. Thank you. Mr. Getnick.

Mr. GETNICK. Yes thank you.

I understand that the committee is considering legislation which will address fraud prevention in disaster relief programs. So I want to speak to the whole point of integrity monitors and this term I have been using, IPSIG, and say that when I am speaking about integrity monitors and IPSIG, it is not a generic term. It is Independent Private Sector Inspector General that meets the standards and code of ethics of the International Association of Independent Private Sector Inspectors General. It is really very very important because it is a methodology that is tried and true, and it works, and it distinguishes the multidisciplinary approach we are talking

about that works so well from what might normally be a CPA-style audit, which might be fine for certain—but not for what we are doing here.

There are six things, specifically six items I will point out, and I will summarize because they are in my written remarks.

First, as Commissioner Gill Hearn said, with respect to integrity monitors as well, a list of pre—I am saying legislation should require, one, a list of prequalified organizations which can act as integrity monitors so that qualified individuals can quickly mobilize to monitor disaster relief programs. And these organizations have to have members with multidisciplinary skills, legal investigative forensic auditing loss prevention skills, and extensive experience in acting as integrity monitors on other government projects.

Two, the obligations and the duties of the integrity monitor at a disaster recovery site should be clearly delineated and adhere to a code of ethics such as one followed by members of the IA IPSIG, and that code is attached to my testimony today.

Third, the construction manager or the contractor overseeing the disaster relief program should be required, as a condition of its contract with the government, to cooperate with the integrity monitor. So you don't get to work on a Federal disaster relief project unless you have signed on that you will provide access to all books and records, access to all personnel, and you are going to—very important—require all your subcontractors and your subcontractors of your subcontractors to do the same.

The biggest problem is you have a general contractor and construction manager, and everyone recognizes the name and recognizes the company and life is great, but they don't do the work. It is the sub, and the sub of the sub, and the sub of the sub. They all have to be in the program. And as you work up the chain of authority, everyone has to understand they are responsible for what went on below.

Fourth, the hallmark of an IPSIG and integrity monitor is its independence. Integrity monitors should have no prior business or personal relationships with the monitored entity which would create a conflict of interest or the appearance of one.

Fifth, indemnification should be provided to the integrity monitor similar to the same kind of indemnification provided to public officials during the course of their official duties. I have been there. I can tell you that when you tell people you are going to take $2 million off your bill, the first thing they are going to say is, we are going to sue you and you are basically going to spend the rest of your life in court; now let's negotiate.

Well, we don't give into that sort of thing, and the other integrity monitors didn't give into that sort of thing. But you need the built-in statutory indemnification to make that work.

And likewise of that, although it may appear self-serving for me to say this, it is quite important, six, that the payment to the integrity monitor services should be guaranteed on a regular basis to see that the integrity monitor is not thwarted in carrying out its obligations by companies that are withholding or delaying payment in an attempt to deter the integrity monitor from performing its duties.

And I should mention one other thing. There was one other monitor we are not talking about today so far, and that is DOI, which monitored the monitors to make sure that our bills were very carefully scrutinized and that there was nothing being paid for by the city in connection with the integrity monitors' bills that wasn't thought through and discussed to make sure that real value was being delivered.

Mr. KING. Thank you very much. Thanks, Mr. Chairman.

Mr. ROGERS. Thank you. The Chair now recognizes the gentleman from New Jersey, Mr. Pascrell, for questions he may have.

Mr. PASCRELL. Thank you, Mr. Chairman. I thank all the folks who testified today. I wanted to say to Ms. Lemack that—two things. The ports bill had a Victims Assistance Office. Hopefully, we are going to get that done. But the authorization bill includes the Victims Assistance Office within the policy, Office of Homeland Security. So because of your efforts and because of the FBI, I think we are going to have exactly what you have asked for if we get this thing passed, and we move like a dinosaur. So let's stay on our case and keep on wagging our tails.

I had a couple questions, if I may, Mr. Chairman, and that is I want to ask Mr. Varoli, what is happening to the Deutsche Bank?

Mr. VAROLI. Well, I am glad to say that the Department of Design and Construction is not involved in the Deutsche Bank.

Mr. PASCRELL. You are glad to say?

Mr. VAROLI. I am. There are a lot of issues with that bank, and actually it is being handled by the Lower Manhattan Development Corporation. The Department of Design and Construction has no involvement with that piece of property.

Mr. PASCRELL. Who is going to be held responsible—maybe you can tell me this—for the fact that 5 years after this disaster, we have found body parts in the Deutsche Bank, and that they can't get it all out of their own way to start to really do the work there. Who is responsible for that?

Mr. VAROLI. It is my understanding, Congressman, that the Lower Manhattan Development Corporation will be here tomorrow, and they are the entity.

Mr. PASCRELL. Oh, okay. I didn't know that. I am sorry.

Mr. VAROLI. I didn't know it either until Commissioner Gill Hearn whispered it to me.

Mr. PASCRELL. I would like to ask some questions to Mr. Getnick. I listened very carefully to what you had to say. How did Turner, AMEC, Bovis and Tully get selected?

Mr. GETNICK. I can't answer that question.

Mr. VAROLI. I can answer that question. As I mentioned in my testimony, both in the written and in the oral, the Department of Design and Construction is there in the city of New York to know the business of construction and engineering. The entities that were selected, the majority of the four, I believe we have done business with three of them—actually extensive—

Mr. PASCRELL. They are pretty famous.

Mr. VAROLI. They are very large firm.

Mr. PASCRELL. Why were they selected? There were a lot of other large companies. Who decided this?

Mr. VAROLI. My commissioner and the first deputy commissioner, and this was all done on the fly. This was done that evening when we were searching for lights to bring to the site to start this search for the victims. I can tell you off the top of my head, for example, Tully Construction—Tully Construction was in the middle of finishing up a project that they had just done on route 9A, which was a State contract, and 9A runs right through or right past the World Trade Center.

Mr. PASCRELL. Right in the central area, so they were already on site.

Mr. VAROLI. They were already on site. Bovis Lend Lease was a company we had worked with when a beam had fallen out of Yankee Stadium, and they knew our emergency procedures. And we did a lot of business with them, so we called them. Turner Construction is another large international construction company that has done a lot.

Mr. PASCRELL. I am familiar with all these companies. I just want to know who selected them, because going back to what Ms. Lemack said, we are going to do everything we can to bring transparency to the whole process so we know why certain companies, multinational companies, are chosen for specific jobs. I think that is important for the public to know, and as—

Getting back to Mr. Getnick, you are right. The further you get away from the event, the more difficult it is to get the truth. So let's go back the best we can to these contracts that were under scrutiny, under questioned companies. Just because a company is indicted and is not charged—may be charged with something else or might be convicted on something else; correct, Mr. Getnick?

Mr. GETNICK. Yes.

Mr. PASCRELL. May be charged, may be indicted with certain charges, or certain charges may be made. And then in order not to be found guilty of those charges, you plead guilty to a lesser offense.

Mr. GETNICK. That could be the case. That was not the case in the example I gave earlier.

Mr. PASCRELL. On none of the cases, is that what you are saying? Let me put the question this way—

Mr. GETNICK. What I was asked about and can testify about our quadrant, the moneys that were paid, that $26.7 million that was designated to a particular contractor and the sub, that was not the case.

Mr. PASCRELL. So you are only talking about your quadrant, and you can't speak for the other?

Mr. GETNICK. I can't speak to the others with specificity, but I can say that was generally—

Mr. PASCRELL. You can understand my question. You can be charged on one—on some specific charges and then not be found guilty on those charges. So you know, you say they were not found guilty on these charges, as an example, as a generality. But you could—you could plead guilty on a lesser charge.

Mr. GETNICK. Yes. And let's be very specific as to those other quadrants. There were, in fact, other companies that were found that did not meet the qualifications that should have been met.

Mr. PASCRELL. And why didn't they?

Mr. GETNICK. They were thrown off.

Mr. PASCRELL. Why didn't they?

Mr. GETNICK. In one case, one company was convicted of a crime post-9/11, but during the cleanup. And so as a result of that, midstream that company was removed from the site.

Mr. PASCRELL. So, you know, you understand the questions and why we are asking those kinds of questions. How those companies got on site to begin with is interesting also because they might have been thrown off, but the fact was they were there. They were thrown off for very specific reasons.

Mr. GETNICK. Fair enough.

Mr. PASCRELL. Okay. I just wanted to clarify that issue. But again, going back to the point—transparency should be our guideline here, and I think you would agree, and I think from what your testimony—I read your testimony again, and I think that is what you are trying to get at. So everybody knows what is going on.

Mr. GETNICK. I agree completely. I just also want to point out—

Mr. PASCRELL. Sure.

Mr. GETNICK. —the practical aspects of gaining transparency, and I don't want to give away any proprietary secrets, but some of the stuff isn't really that difficult if you get to it at the time and do it right. And I probably wouldn't feel right if I didn't acknowledge the fact of a particular—

Mr. PASCRELL. But we are asking the questions 5 years after—5 years after the fact.

Mr. GETNICK. Yeah. But one of the good answers you are going to get after the fact is on the 9/11 cleanup, those things did take place real-time. And I was going to say, I have the benefit of working with a fellow by the name of Joe Peppi, and Joe Peppi is a former member of the DA squad in Manhattan. He is chief of our investigations and he just has this extraordinary practical insight of how you investigate in way that produces practical results. So we knew that this is essentially a debris removal project and the real dollars were going to be concentrated in the trucking. That is where the real dollars were. And the question is, how do you go about doing that? How do you develop your data ways? And you know what Joe Peppi said? Joe Peppi said, we have to get guys on these trucks. I said, What do you mean, we have to get guys on these trucks? He said, Look, we have people on the DA's squad, we have got people from the major K squad, we have got people from the intelligence squad, and we have people from the Organized Crime Control Bureau. If I can't get one of my former detectives on a truck and take a 3-hour trip from the site to Fresh Kills and back, and by the end of that trip have enough of a relationship with the driver to say how much are you getting paid per hour, what are you getting paid on the weekend, what are you getting paid for overtime, and what are you getting paid into your pension and benefit funds, well, something is wrong. And guess what? Nothing was wrong, because he put those people on those trucks and each time for each 3-hour investment of time up and back, we came up with that information. That is the database. That is the database by which you know what every contractor and what every subcontractor is really doing by way of their payments, and that is what we are talking when we talk about payroll fraud.

So when we saw the certified payrolls come back, we knew this company has the individual listed and they have the truck listed and they have the rate listed and they have all the payments listed and they have got it signed off and they have it certified; except for one big problem, which was that we were on the truck talking to the driver, and we know that that driver wasn't getting paid that amount, and we know that those benefits were never being paid, and some of those people are coming from different geographical areas and they are never going to see any of those benefit funds. So guess what? We sat down and then we began to basically say you have got two choices, you can submit this certified payroll, in which case we will take it from you, or you can rework it. That is the choice you have. And most people understood that that choice was the difference between being prosecuted and the ability to go forward and continue to work the site.

Mr. PASCRELL. You know, I must say, Mr. Chairman, most people in the hauling business are honest working people.

Mr. GETNICK. That is absolutely the case. When you say most people are honest—

Mr. PASCRELL. So I don't want to imply—son the other hand, we are not naive. And we must follow through on our own abilities, or hopefully abilities to monitor these kinds of situations so we know where the public's money is being spent. And that is the basis of our aggressiveness. Nothing more.

Mr. GETNICK. I completely agree with you, Congressman. I just want to say one other thing. When we ask the question, How do people get to that site, let's just go back on how people got to that site. Any person who had a heavy piece of equipment who was in the geographical area was headed towards that site. People just showed up. You have lights, you have my lights. You have a truck; here is my truck.

Everyone was just pitching in on those early hours, and my first memory of being on that site was watching someone in a crane that was just basically moving to the left, picking up dirt and moving to the right and dumping it at a speed which I don't understand how the person didn't get motion sickness; and it didn't stop, and I said, well, you know when does this guy stop? They said he just doesn't stop.

So that is what we were dealing with. And, yes, we did get on top of the fraud, we did get on top of the waste, we did get on top of the abuse. But you make the most important point, which is the people who came to that site were, by and large, honest, hard-working people. And the most important thing that we did was to basically let that legacy be the legacy of the World Trade Center cleanup as opposed to a very small minority that would have taken it in a different direction.

Mr. PASCRELL. Thank you Mr. Chairman.

Mr. ROGERS. I thank the gentleman. Also I thank the panelists for your valuable time and contribution to the hearing. I would also remind you, as I did the first panel, that many Members are not here because they have other committee hearings. They, along with Members that were here, will have additional questions that they will probably submit to you. The record will be left open for 10 days. I would ask you that if you all are provided additional ques-

tions, that you reply to those in writing so that we can submit them for the record and help us to produce a really good report. Your presence here today has been very valuable, and I do appreciate it. And with that, this hearing is adjourned.

[Whereupon, at 5:55 p.m., the Subcommittee was adjourned.]

LSSONS LEARNED IN PREVENTING WASTE, FRAUD, ABUSE, AND MISMANAGEMENT PART II

Thursday, July 13, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 10:12 a.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, King, McCaul, Meek, Pascrell, and Lowey.

Mr. ROGERS. [Presiding.] This hearing of the Management, Integration and Oversight Subcommittee of the Committee on Homeland Security is called to order.

This morning, we are holding our second of a series of three hearings as a part of the Subcommittee's examination of the use and misuse of $20 billion in Federal aid provided to New York City in the aftermath of the September 11th terrorist attack.

This hearing will review programs that provided Federal funding to individuals, businesses, and organizations to recover from the devastation. And in the interest of time, the Ranking Member and I have both agreed to forego opening statements.

We would like to welcome our witnesses, especially those from New York, and thank them for taking time out of their busy schedules to be with us today. We would remind all witnesses that your entire opening statements have been submitted in writing. All Members have a copy of those.

And for the purposes of your opening statement now, I would ask that you try to limit your remarks to five minutes or less, to summarize so that we will have more time for interaction and questions and answers.

So with that, the Chair calls the first panel and recognizes Ms. Ruth Ritzema, Special Agent in Charge of the New York Department of Housing and Urban Development Office of Inspector General.

Welcome.

STATEMENT OF RUTH RITZEMA

Ms. RITZEMA. Good morning.

Chairman Rogers, Ranking Member Meek, members of the subcommittee, thank you for inviting me to testify today on the lessons learned after the events of September 11, 2001.

The New York HUD OIG office of investigations, of which I am the special agent in charge, was located at 6 World Trade Center. It housed approximately 35 special agents, forensic auditors, and support staff.

On that morning, half our staff was working in the office when the first plane hit the north tower. As I stood and watched massive destruction and our office burn, I realized how lucky we were that none of our staff was injured or lost.

From the very first hours, we teamed up with the Federal Bureau of Investigation and assisted in searching for evidence and conducting the investigation of the terrorist incident. In the aftermath, Congress gave HUD $3.4 billion in Community Development Block Grants disaster aid for New York City.

The Empire State Development Corporation, ESDC, was allocated $700 million. The Lower Manhattan Development Corporation, LMDC, was allocated $2.7 billion.

The Congress required that we audit the funds every 6 months to ensure that ESDC and LMDC had adequate financial management systems and adequate block grant monitoring procedures.

Early collaboration with other agencies was important to the success of our auditing efforts. Coordination with Small Business Administration resulted in minimizing duplication of benefits. We also coordinated with the Federal Emergency Management Agency and the Internal Revenue Service.

The unusual nature of this audit recognized that the funds needed to be dispersed quickly. Early in the program, our audits identified weaknesses and internal controls and program design. We audited on an almost real-time basis that gave the auditee an early opportunity to take corrective action and improve controls.

To date, we have audited over $1 billion in disbursements. The result of these audits include findings of duplications of benefits and payments, of overpayments, of ineligible and unsupported costs, and of improvements needed in collection efforts.

As a federal agent, of course, fraud is my biggest concern. We have grouped our efforts into the three general areas of HUD expenses: immediate disaster relief funding, mid-term grant relief, and long-term rebuilding expenditures.

The U.S. Attorney's World Trade Center Fraud Working Group was established to address all types of immediate and mid-term grant relief fraud and included many local and federal law enforcement agencies.

The working group attempted to, among other things, identify all the various agency dollars, de-conflict cases, use automation to detect criminal activity, pass on criminal trends to enable better training, identify legal weaknesses in the various programs, pass on recommendations to make the programs more fraud resistant, and coordinate amnesty programs, as well as, of course, facilitate federal, state and local prosecutions.

Our offices worked over 115 matters. And although a number of our cases have been completed, we still have 64 cases that are active under investigation.

One example is a case involving an individual who claimed his executive search firm sustained damage at Two World Trade Center. He was convicted on 18 counts of defrauding nearly $350,000 from private and government agencies of disaster benefits. Using forged documents, he received Business Recovery Grants for nonexistent equipment that belonged to a property that he never leased and was supposedly lost when the tower collapsed.

Prior to the start of major construction efforts, the construction integrity team was established to evaluate vulnerabilities and improper activities regarding the rebuilding of Lower Manhattan. This team worked on many projects, including setting up a fraud prevention hotline, vetting contractors and subcontractors, developing and providing fraud awareness training, and supporting the use of independent private-sector inspector generals or monitors.

The destruction and aftermath of Gulf Coast hurricanes challenged the HUD OIG with a task even more daunting than the reconstruction of Lower Manhattan. New York City received from HUD nearly $3.5 billion; at this juncture, the Gulf Coast states have received almost $17 billion.

Many of the lessons learned from our 9/11 experiences are being applied to our response to the hurricanes in the Gulf Coast. Like New York, in the Gulf Coast we are conducting audits at an early stage, training state and local entities in program fraud awareness, participating in joint teams, setting up hotlines and fraud awareness campaigns, and promoting the vetting contractors and subcontractors, as well as the use of independent private-sector IGs or monitors.

In closing, I would like to thank the subcommittee for the opportunity to talk about the work that the agents, auditors, attorneys and support people of the HUD OIG has accomplished since the onset of this tragic and trying event. We remain committed to the department's mission of providing safe, decent, sanitary and affordable housing and of providing economic development for our country's communities.

I look forward to answering questions that members may have.

[The statement of Ms. Ritzema follows:]

PREPARED STATEMENT OF RUTH A. RITZEMA

Chairman Rogers, Ranking Member Meek, members of the Subcommittee; thank you for inviting me to testify today on the lessons learned after the events of September 11, 2001. Although this hearing is about the oversight efforts in fraud detection, prevention and control, which I will elaborate in great detail on, I wanted to start off my testimony by quickly sharing with you how the events of that day directly and intimately impacted me.

Events of September 11th

The Department of Housing and Urban Development's Office of Inspector General (HUD OIG) Office of Investigations, of which I am the Special Agent in Charge, was at 6 World Trade Center. It housed approximately thirty-five HUD OIG employees—special agents, forensic auditors and support staff.

On that morning, fortuitously, our New York City special agents were out of the office at a quarterly firearms qualification. Unfortunately, our forensic auditors and support staff were on site when the first plane hit the North Tower, which was adjacent to our office. All of the auditors and support staff in the building heard the explosion and one of our secretaries, who saw pieces of the plane and building fall,

immediately told everyone to evacuate prior to any alarms going off. They fled across the street near the financial district where they watched the building burn. The group became separated when the second plane went into the South Tower.

Four of my special agents from our regional sub-office in Buffalo, New York, had flown in for their firearms qualification and they were to meet at our building at 9:00 a.m. for case reviews. The agents were traveling on the subway and made a lucky mistake by getting off at City Hall instead of the next exit that would have put them in the basement of the World Trade Center complex at exactly the wrong time.

I had meetings scheduled for that day in New Jersey and was across the river when I received a page from an agent about a fire at the World Trade Center. When I heard on the radio about the second plane going in, and worried about my own people, I immediately headed into the City using the shoulder of the New Jersey Turnpike to bypass the stopped traffic. As I approached the extension, I could see the towers on fire. I repeatedly tried to get through to headquarters, the staff or the offices, but as hard as I tried I only got a busy signal.

As I was driving towards the City, the first of the two towers collapsed before my eyes and I heard on the radio that the Pentagon had also been attacked. I drove through the Holland Tunnel to the federal building located at 26 Federal Plaza, which is six blocks away from the World Trade Center and is also where the HUD OIG Office of Audit is located. A Federal Bureau of Investigations (FBI) agent told me that the emergency law enforcement command post was setting up at the church adjacent to the World Trade Center complex.

Running down Broadway, I was struck by how surreal the whole situation appeared. The beautiful cloudless day had turned all dark with soot and smoke in the air. People tried to turn me away from Ground Zero until I threw on my "Federal Agent" vest cover. I stopped from time to time to try to get help for a couple of people who had pretty serious burns. I then continued to run to the command post to check and make sure that our people were out safe. I just arrived at the church adjacent to the towers when the second tower collapsed literally right in front of me.

At that point, I have no memory of what happened during the collapse. My next memory is being about a block away with firemen all around and hearing screaming radio transmissions of firemen who were getting buried and were desperately trying to give their coordinates; "we're at two o'clock from the fountain" (the fountain was located in the middle of the plaza). After the air cleared some, another FBI agent saw me and told me that we were rallying in Chinatown and he and I ran there.

I immediately agreed to work with and assist the FBI in any capacity. Our Assistant Special Agents in Charge (ASACs) had rallied our agents and were standing by for instruction. One of my ASAC's and I went back to what was formerly our office and watched the building burn. Shortly thereafter, 7 World Trade Center collapsed. Training from my years in the military kicked in as we dispersed and established security perimeters to deal with the rumors and false reports swirling about in the dark mist of that day. Thankfully, and most importantly, we accounted for our people, but we had lost everything else—our evidence, all our case files, and our equipment. The HUD OIG had previously suffered a tragedy when one of our special agents died in the Oklahoma City bombing and I was very grateful how lucky we were considering our proximity to the devastation.

A command post was set up at 290 Broadway and it seemed that every law enforcement-related agency was in that room with a phone that rarely worked and a handwritten piece of paper taped in front of their table to identify their agency. Our OIG agents were stationed all over the city—at command post, airports, Ground Zero or whatever other hot spot came up. They also searched for evidence with rakes, shovels and gloved hands at the landfill in Staten Island. This command post was move to the "Intrepid" in the Hudson River and to a garage on the West Side Highway where for the next few months our special agents continued to assist in the terrorist investigation and to transition back to HUD-related oversight activities.

Auditing Activities

In the aftermath, Congress authorized HUD to provide the State of New York with $3.483 billion in Community Development Block Grant (CDBG) disaster assistance to aid recovery and revitalization and earmarked at least $500 million of this to compensate small businesses, nonprofit organizations, and individuals for economic losses. Out of these funds, the Empire State Development Corporation (ESDC), designated by New York State to develop and administer economic and business recovery grant and loan programs, was allocated $700 million. The Lower Manhattan Development Corporation (LMDC), established to administer and de-

velop programs to rebuild and revitalize lower Manhattan, was allocated $2.783 billion.

Direction from the legislation insisted on speed in assisting businesses located in lower Manhattan hardest hit by the attack. For instance, applicants for Business Recovery Grants (BRG) were required to have a response to their request within 45 days of application submission. Congress also insisted on the utmost integrity from the program and required that the HUD OIG maintain a continuous audit activity of funds allocated to the rebuilding efforts. The Congress required that we report on the expenditure of the funds every six months. Our audit objectives to fulfill this mandate were to determine whether ESDC and LMDC:

- Disbursed the CDBG disaster funds to applicants in a timely manner;
- Disbursed the CDBG disaster funds to eligible applicants in accordance with HUD-approved action plans;
- Had financial management systems to adequately safeguard the funds; and
- Developed and implemented adequate procedures for monitoring the CDBG disaster assistance programs.

HUD OIG called for a meeting with Inspectors General from all the affected agencies to begin investigative and auditing coordination and cooperation in the New York/New Jersey office. Early collaboration with other agencies was important to the success of our auditing efforts. As a result, procedures were developed that provided that if an entity already received a Small Business Administration (SBA) grant and applied for a BRG grant, that entity could not receive a BRG grant if the total of both grants exceeded its economic loss. Likewise, we met with Federal Emergency Management Agency (FEMA) officials to also work on the issue of duplication of benefits among our programs.

We further collaborated with the Internal Revenue Service (IRS) to obtain a copy of an applicant's tax transcript, which was then used to verify that the tax information included on the application for computing economic loss was accurate. We discovered that some applicants did not file a tax return but still submitted a tax return on their BRG application and/or they sometimes included a higher taxable income than what was actually filed with the IRS in order to inflate economic loss. The auditors referred these over for investigation.

Additionally, we coordinated with the Social Security Administration (SSA) to test whether the social security numbers from our audit sample were legitimate. If our auditors discovered a discrepancy (i.e., the age of applicant did not agree with the age registered with the SSA), they referred it to investigations. In general, if the auditors detected any suspicious information during the course of its financial review, for instance, in the ESDC's Business Retention Grant (BRG) or Small Firm Attraction and Retention Grant (SFARG) programs or in the LMDC's Residential Grant program, it referred it to investigations for further review. This greatly enhanced anti-fraud and abuse endeavors.

HUD OIG auditors took a proactive approach that stressed prevention of fraud and abuse, as opposed to solely a detection emphasis whereby audits would take place long after the funds had been expended. The unusual nature of this audit recognized that the funds needed to be disbursed quickly and that Congress had waived the pre-set CDBG statutory requirements that governed the parameters of who were to receive grants. Early in the program our audits identified significant weaknesses in internal controls and program design. We conducted audits in an almost real-time basis that gave the auditee an early opportunity to take corrective action and improve controls and procedures for future expenditures. Audits were started no more than six months after the disbursements had been made. While this was resource intensive and caused a strain on our other operations as we had not been given any additional funds to undertake this initiative, we felt it was important that we remain aggressive and in the forefront.

To date, we have audited over $1 billion dollars in disbursements. The results of these audits include findings of duplication of benefits and payments; of overpayments; of ineligible and unsupported costs, and of improvements needed in collection efforts. For example, our audit work found that over $2 million had been disbursed to the Hudson River Park Improvements Program contrary to the terms of the subrecipient agreement.

In furthering our early collaborative work with the SBA, only eight months after the attack, we issued an interim audit report noting the duplication of benefits between SBA loans and the ESDC's BRG program. We also reported on concerns we had with the calculation of recipients' economic loss amounts for the BRG program. As a response, ESDC developed procedures and formulas that tried to prevent duplication. ESDC also revised its application for the BRG program to require recipients to itemize the amount of claimed economic loss. In addition, it has responded by:

- Revising and enhancing controls and procedures to minimize ineligible and incorrect grant payments;
- Instituting additional efforts to collect grant overpayments;
- Hiring additional internal audit and investigative staff; and
- Establishing an audit staff of retired New York State Department of Public Service Commission employees to review the claims submitted by utility companies under the Utility Restoration and Infrastructure Rebuilding Program (i.e., they have completed audits of claims for two utility companies and disallowed in excess of $33 million of the companies' $99 million claim for reimbursement).

Investigative Activities

In addition to our audit work evaluating operational and administrative controls and other financial matters, we are also intensively involved in anti-fraud and abuse efforts. We have grouped our efforts into the three general areas of HUD expenses: immediate disaster relief funding, mid-term grant relief, and long term rebuilding expenditures. Our Office of Investigation works in cooperation with the Office of the United States Attorney to prosecute recipients that have fraudulently obtained CDBG funds. We have established working relationships with other federal agencies and State and city entities. Very early on, due in large part to what our auditors were initially finding, we met with the U.S. Attorney's office to discuss the vulnerabilities and fraud patterns that were identified.

Originally established as an informal group by the U.S. Attorney's office, the World Trade Center Fraud Working Group solidified and began to meet monthly to discuss fraud concerns and share information on schemes. The working group was made up of high-level management that allowed for the discussion of complex matters and encouraged an environment where issues were expeditiously addressed. The working group attempted to, among other things, identify all the various agency dollars flowing into lower Manhattan, de-conflict cases, use automation to detect criminal activity, pass on criminal trends to enable better training, coordinate cases for maximum impact, identify legal weaknesses in the various programs and pass on recommendations to make them more fraud resistant, coordinate amnesty programs, and facilitate federal, State and local prosecutions.

This concentration of law enforcement and prosecutorial efforts resulted in the arrest and conviction of many perpetrators and also generated publicity that we believe had, to some extent, a deterrent effect. Members of the group included the:

- Office of the United States Attorney's-Southern District of New York
- Office of the Manhattan District Attorney
- Department of Labor-Office of Inspector General
- Department of Transportation-Office of Inspector General
- Federal Emergency and Management Agency—Office of Inspector General
- Small Business Administration-Office of Inspector General
- Social Security Administration—Office of the Inspector General
- Environmental Protection Agency—Office of Inspector General
- Internal Revenue Service—Criminal Investigation Division
- U.S. Postal Inspection Service
- New York City Department of Investigation
- Lower Manhattan Development Corporation
- State of New York—Office of Inspector General
- State of New York Insurance Department

Through our joint efforts, we have identified a number of types of potential criminal vulnerabilities that relate to the disaster assistance funding for lower Manhattan. These include:

1. False Statements and Claims
2. Wire Fraud
3. Mail Fraud
4. Theft or Bribery
5. Tax Evasion
6. Bid Rigging
7. Prevailing Wage Fraud
8. No Show Jobs
9. Artificial Price Market Inflation
10. Contract Fraud: Invoicing and Double Billing
11. Environmental Crimes
12. False Payrolls
13. Public Corruption
14. Embezzlement
15. Insurance Fraud
16. Collusion

17. Kickbacks

Every day our HUD OIG agents are at work on cases of fraud stemming from disaster funding for lower Manhattan. We received over 115 referrals as well as work we initiated. Although a number of our cases have been completed, we still have 62 cases open that are under investigation.

An example is the case against an individual who claimed his executive search firm sustained damage at 2 World Trade Center. He was convicted on 18 counts of defrauding nearly $350,000 from private and government agencies of disaster benefits including grants and loans. FEMA, SBA, HUD and the Red Cross were among the targets of his fraud. Using forged documents, he received Business Recovery Grants for non-existent equipment that was supposedly lost when the tower collapsed.

In a further example, as I speak to you today, there is a trial that is proceeding against a man who submitted fraudulent applications to government programs, received $118,000 that he was not entitled to, and applied for another grant when his scheme was uncovered. The amount of the grant award was calculated on the size of the business's expenses. So while his business was eligible for funds, he padded his application with thousands of dollars of phony expenses. He included lists of fake employees, business expenses, social security numbers, checks, wage reports that he supposedly filed with New York State—but never did, lease agreements, and signatures that were forged onto other documents.

Another case involved a Maryland man, who was sentenced to 24 months incarceration, to 26 months of probation, was ordered to pay restitution of $170,000, voluntarily forfeited $280,000 to the government, and was fined $10,200 for obtaining Business Recovery Grants claiming he had a business in lower Manhattan. In reality, the floor he claimed he was on was actually entirely occupied by a city agency. He offered a tax return that listed his business in lower Manhattan and reported gross earnings of $3.3 million. Our investigation proved he had no business in lower Manhattan but worked from his home in Maryland and that the business reported minimal gross earnings.

Two other instances illustrate some of the early matters we were investigating. A New Jersey resident, who sublet his unit in lower Manhattan, fraudulently submitted a two-year commitment grant application, claiming he resided at his apartment on Pearl Street. A Manhattan woman claimed she lived on St. John Street and intended to stay in her apartment until the following year. In reality, she had moved uptown to W. 63rd Street. She had given LMDC a doctored lease and repeatedly lied about her address.

A case of public corruption was brought against an official of the New York State Division of Housing and Community Renewal. This official illegally obtained a LMDC Residential Retention Grant saying his father lived with him in lower Manhattan and he then sublet the unit at market rent prices.

Moreover, we found individuals who thought they would have easy access to money by establishing phony addresses. One such individual gave his address as 121 Reade Street, when in fact he lived further uptown on West 21st Street. This cost him a $2,000 fine, 200 hours of community service and one year's probation.

The LMDC Residential Grant Program received more than 40,000 applications and distributed more than $235 million. With each successful prosecution, we hoped that people who had lied to receive grant money had become anxious. To give these people a limited chance to come forward, a Fraudulent Grant Recipient Amnesty program was established. To date, over 160 households have returned money to the program.

Lessons Learned from September 11th Experiences

In addition to the establishment of a joint fraud working group, there are a number of initiatives that occurred, some of which we helped facilitate, which we believe are important to fraud detection, control and prevention.

A lower Manhattan Construction Command Center was organized to coordinate all construction valued at over $25 million. As a result, a **Construction Integrity Team** was established which, among other things, consists of federal and local OIGs working in cooperation to evaluate vulnerabilities and improper activities. It has shared information so as to assist each of the contracting agencies in vetting contractors and subcontractors and to ensure the integrity of the process. It has set up an information campaign to deter fraudulent activity. It is also a productive venue to share facts on fraudulent and abusive trends. As construction and redevelopment begins, we anticipate that we will see more fraud and abuse involving contractors as HUD's funding moves away from benefit reimbursement to development efforts.

In order to provide a mechanism for the State and City to receive information on potential improper activity relating to construction, a Fraud Prevention Hotline was

created under the direction and control of the Command Center. It was designed to receive allegations of corruption or criminal activity by any agency employee, public official, contractor employee, agent, subcontractor, vendor, or labor official. This hotline began operations in 2005. Posters publicizing the hotline are, and will be, located in all construction work sites and trailers. A press release was issued to inform the public. In addition, flyers are inserted in paychecks and stickers are placed on the back of employee identification cards in order to highlight the hotline's presence. Moreover, a website was created that contains a complaint form.

We also cooperated on a project that has established an employee baseline background check from third party databases that is overseen by a screening company. The background review will search for organized crime connections, terrorism ties, any previous histories of violence in construction, and theft and integrity issues. While recognizing that some employees involved in construction may have had past criminal problems, this check will try to evaluate the nature of the crimes committed. It is important that the unions buy in to this process, as they did so with this project, or it will be very difficult to undertake.

Our oversight efforts have shown that the most effective way to proceed is to have monitoring be constant, continuous and at all the different levels of activity. **Monitors** should be concerned with: funds disbursement from the U.S. Treasury to State financial institutions; disbursements from the grantee to the sub-grantees; invoices and paperwork of the grantees and sub-grantees; timely reports for award and expenses; and timely reports on fraud prevention.

As I believe you have heard about in previous testimony, we also advocate the use of integrity monitors, also sometimes known as **Independent Private Sector Inspectors General** (IPSIGs). These are monitors with legal, auditing, investigative and loss prevention skills that are employed usually by a government entity to ensure compliance with relevant laws, regulations and contracts. They can be helpful in the procurement or licensing phase of contracts and can assist in the vetting of initial contractors. In general, they act to deter, prevent, uncover and report unethical or illegal conduct that is especially useful if agency resources are inadequate to handle the response needed.

The HUD OIG labored to provide useful **fraud awareness training** to granting agencies. We gathered trends in criminal activity from a host of other law enforcement agencies in order to facilitate our training. We worked together with the ESDC and LMDC to train them on fraud detection techniques, particularly before grants were disbursed, as well as on identifying fraud indicators. This enabled the grantees to subsequently identify possible fraud and retain the necessary documentation for prosecution. We established a rapport that was designed to receive referrals from them on a timely basis. Although hard to measure, we believe these joint efforts helped to prevent, or to mitigate, a number of potential frauds as well as to uncover, and provide, evidence of criminal activity. We are currently working on a training module that will be geared to the contracting community as rebuilding efforts begin in earnest and that will include instruction in areas such as bribery awareness, false invoice detection, and bid rigging schemes. Throughout the grant implementation and distribution process, we continually educated the grantees on how to structure their application forms in a manner that would positively identify the applicant to reduce the potential for fraudulent applications and that would enumerate on the form the penalties for committing fraud.

From an auditing standpoint, we also believe there were important lessons learned. We believe it beneficial to: coordinate with other auditing entities to prevent overlap and duplication; hold meetings with auditees when new programs begin; utilize consultants or experts when necessary; use statistical sampling to better estimate results; discuss results early with auditees and local agency officials to prevent surprises; establish a relationship such that auditees will notify OIGs immediately upon the discovery of fraud; and work closely with investigators to get referrals to them quickly.

Oversight of Hurricane-related Disaster Relief Efforts

The destruction and aftermath of Hurricanes Katrina, Wilma and Rita challenge the HUD OIG with a task even more daunting than the reconstruction of lower Manhattan following the September 11th attack. Once again, an area of our nation has been hit by an unexpected disaster that has taxed emergency services and redirected federal Inspectors General toward assisting local government and overseeing the expenditure of a large amount of federal money. However, it also important to understand that there are differences, as they relate to our oversight efforts, between these two disasters.

From a HUD standpoint, New York City received approximately $3.5 billion. At this juncture, the Gulf Coast States have received almost $17 billion in assistance

from HUD. With post-September 11th relief efforts: there were only two major "pass through" entities of CDBG funds; there were far fewer prospective grantees and sub-grantees, there was a limited land area to consider; and the oversight activities were, to some extent, more controllable. With the post-hurricane relief efforts: there is a multitude of "pass through" entities of CDBG funds in numerous States; there are thousands of grantees and sub-grantees; there is a huge land area of effected devastation; and, consequently, there is a much more arduous task for oversight.

Though we had some disaster experience with Hurricane Andrew in Florida a number of years back, we were definitely on a learning curve with our September 11th oversight activities. Each of our encounters have taught us some general lessons including probably the most important lesson—that OIG teams on the ground, and at headquarters, must be proactive rather than reactive. This posture extends to collaboration. Joint task forces combine assets, manpower, information technology, budgets and other agency specialties to monitor expenditures and to attack fraudulent and criminal activities. To be truly effective, an OIG must continuously work to prevent waste, fraud and abuse by acting in real time and in a purposeful way to have a deterrent effect. Some of our best practices garnered from September 11th have become invaluable to us in this current effort. These include endeavors such as:

- Criminal investigators and auditors training State and local entities on how to uncover fraud, how to identify fraud indicators, how to retain necessary documentation; and how to make referrals to appropriate law enforcement;
- Participating in joint teams, such as grant fraud task forces and construction integrity teams;
- Setting up of hotlines and information campaigns on how to report fraud; and
- Properly vetting contractors and subcontractors and creating a clearinghouse database, as well as systems to conduct employee background checks.

In particular, we have especially honed our training capabilities over time and are providing in-depth and varied instructional opportunities on topics such as fraud detection in disaster relief settings to a host of entities in the effected Gulf Coast area. The first State to submit their plan was the State of Mississippi through their agency, the Mississippi Development Authority (MDA). The MDA met on several occasions with the HUD OIG to discuss their plan, listen to our concerns, and to be briefed by HUD OIG audit and investigative managers on the potential for scams and how to deal with application fraud, such as false statements, identity theft and false documents. In addition, as part of our fraud awareness efforts, the HUD OIG educated MDA contract appraisers hired to assess property damage on fraud red flags. Homeowners applying for grant money received a HUD OIG fraud awareness bulletin as part of their application packet.

Though not the focus of this testimony, I would like to inform the Subcommittee that while we are working together to put controls in place we do, however, still have some concerns. From an audit oversight standpoint, the MDA plan, oversight and monitoring of grant funds ceases after the State has issued "compensation" funds to the homeowner "to be used at the discretion of the homeowner." The MDA plan is concerned with the funds to the point when they are given to the homeowner, at which point they are allowed to work through their personal disaster recovery as they see fit. We do not think that monitoring and oversight should end at this phase and we have remaining concerns about how "compensation" plan that basically reimburses will spur the rebuilding of now blighted communities. What is to become of these communities in the future?

In general, our Office of Investigation down in the Gulf Coast region has created a far reaching fraud prevention program designed to: (1) create a training course for other agents/auditors and program officials to teach them to identify fraud specifically in CDBG programs; (2) sponsor fraud prevention meetings between HUD OIG and the major programs of HUD; and (3) sponsor fraud prevention meetings between the HUD OIG and industry groups such as the Mortgage Bankers Association, the Public Housing Authorities Directors Association; and the National Association of Housing and Redevelopment Officials.

As part of this prevention program, the HUD OIG also created a Suspicious Activity Report (SAR) that will be given to HUD grantees, sub-grantees, and others associated with delivering disaster funds. The SAR is a method of informing HUD OIG of suspected irregularities in the delivery of HUD program money.

Conclusion

In closing I would like to thank the Subcommittee for the opportunity to talk about the work that the agents, auditors, attorneys and support people of the HUD OIG have accomplished since the onset of this tragic and trying event. Our people do it because we are committed to the Department's mission of providing safe, de-

cent, sanitary and affordable housing for the Nation, and of providing economic development for our country's communities. I look forward to answering questions that members may have.

Mr. ROGERS. Thank you, Ms. Ritzema.

The Chair now recognizes the Honorable Eric Thorson, Inspector General for the Small Business Administration, for your statement. Welcome.

STATEMENT OF ERIC THORSON

Mr. THORSON. Chairman Rogers, Ranking Member Meek, and distinguished members of the subcommittee, thank you for inviting me to discuss the efforts by our office to oversee the SBA's response to the September 11th terrorist attacks.

The attacks not only caused tragic loss of life, but also greatly disrupted the national economy. The SBA responded with two economic assistance programs.

First, SBA guaranteed loans made by lenders to affected small businesses under what is known as the Supplemental Terrorist Activities Relief Program, or more commonly known as STAR loans. Second, SBA made direct disaster loans with no lender involved to affected small businesses.

My testimony today discusses our oversight of these two programs.

First, the STAR loan program. Congress authorized SBA to guarantee loans to small businesses adversely affected by the 9/11 attacks and their aftermath. This was seen as a program to assist businesses throughout the country that were harmed by the economic consequences of the attacks.

Congress provided authority for SBA to guarantee up to $4.5 billion in loans. In the fall of 2005, the Senate Small Business and Entrepreneurship Committee and the SBA Administrator asked the OIG to review the STAR program. We conducted an audit to determine whether borrowers were eligible to receive STAR loans and whether SBA established adequate controls to verify borrower eligibility.

We reviewed a statistically meaningful sample of 59 STAR loans made by 27 different lenders. Based upon a review of the lenders' loan files and discussion with available borrowers, we were not able to determine whether 50 of the 59 borrowers, or 85 percent in the sample, were adversely affected by the 9/11 attacks and their aftermath.

For a small number of these loans, the lender failed to prepare any justification to document borrower eligibility, which was required by the SBA and their procedures. For many others, the lenders' eligibility justification was either vague or contradicted other information in the lenders' files.

Further, of 42 borrowers that we were able to interview, only two stated they were even aware that they had received a STAR loan; 36 borrowers said they were not asked or could not recall being asked about the impact of the attacks on their businesses.

In trying to establish the reason behind these findings, we found that SBA did not implement adequate internal controls to ensure that only eligible borrowers obtained these loans. SBA did issue

program guidance, requiring lenders to prepare and file written justifications showing borrower eligibility.

However, after only limited lender participation, SBA began to vigorously promote the program to pursuade lenders to approve the STAR loans. These officials advised lenders that virtually every small business had suffered some direct or indirect adverse impact and could likely, therefore, qualify for a STAR loan.

Further, SBA officials assured lenders that the agency would not second-guess their eligibility justifications; in fact, SBA did not require lenders to provide their eligibility justifications to the agency and therefore had no way of knowing whether lenders were making good decisions or not.

It is important to note that we did not find that any businesses legitimately affected by the 9/11 attacks were precluded from obtaining a STAR loan. In fact, when the loan program appropriation expired in January of 2003, program funds were still available and were then transferred to the regular 7(a) loan program.

As a result of our audit, we recommended SBA, for future special programs where SBA guaranteed loans are used for disaster relief, to: first, require loan applicants to submit statements justifying how the business was harmed by the disaster; second require lenders to verify applicant claims of injury and fully document borrower eligibility in detail; and third, implement controls to verify lender compliance.

In addition to the STAR loan program, SBA made disaster loans to businesses affected by the 9/11 attacks. Under the disaster loan, SBA is authorized to fund repairs of damage to homes and businesses and to provide economic injury loans to provide working capital.

We initiated a proactive investigative program because we believed that these loans were particularly vulnerable to fraud. Our investigative effort involved the OIG's auditing division, which screened a sample of the loans that had gone into default, to identify indicators of fraud. Where the auditors flagged potential fraud, loans were then referred to the OIG investigations division for additional action.

Based on this investigative program, as well as referrals from other sources, we opened 51 cases on loans valued at approximately $20 million. Thus far, we have closed 37 cases, with 14 still open. We have obtained 10 indictments, 10 convictions and over $1 million in restitution and settlements.

The types of fraud we identified involved: claiming losses even though their companies were not located in the disaster area; false claims related to personal property or equipment damage; and misuse of disaster loan proceeds.

We did obtain a prison sentence and financial restitution from both the president and the managing partner of a business that received a disaster loan based upon false claims that the company had been located in the World Trade Center.

Although fraud will inevitably occur when there are governmental benefits, these efforts highlight the need for agencies to balance the need to get money to victims of disasters, such as 9/11 attacks, balancing that against implementing strong controls to pre-

vent fraud and abuse. Once that money has been distributed, it is extremely difficult or impossible to get back.

I thank you for the opportunity to be here today, and I will look forward to answering your questions.

[The statement of Mr. Thorson follows:]

PREPARED STATEMENT OF ERIC M. THORSON

Introduction. Chairman Rogers, Ranking Member Meek, distinguished Members of the Subcommittee, thank you for inviting me here today to discuss the efforts by the Small Business Administration (SBA) Office of Inspector General (OIG) in connection with the SBA's response to the September 11th terrorist attacks. September 11, 2001, was a day in American history that we can never forget. Beyond the tragic loss of life, the terrorist attacks disrupted the economy of the United States. The SBA responded to the economic downturn by providing guaranties on loans made by private lenders through the Section 7(a) Loan Guaranty program, and by making loans directly to affected small businesses under the Disaster Loan program. My testimony today addresses the OIG's efforts to review the efficiency and management of these 9/11 assistance programs and to prosecute wrongdoers who took advantage of this national tragedy by obtaining loans through fraudulent means.

Overview of the OIG's Audit of the STAR Loan Program. In January 2002, Congress authorized SBA to provide financial assistance to small businesses that were affected by the 9/11 attacks and their aftermath through what is known as the Supplemental Terrorist Activity Relief or "STAR" loan program. Newspaper articles in the Fall of 2005 raised questions as to whether borrowers obtained STAR loans even though they had not been affected by the terrorist attacks. As a result, Senator Snowe, who chairs the Senate Small Business and Entrepreneurship Committee, and the SBA Administrator asked the OIG to review this program. The audit objectives were to determine if STAR loan recipients were appropriately qualified to receive STAR loans and if SBA established and implemented proper administrative procedures to verify STAR loan recipient eligibility. However, before getting into the results of our review, let me provide a short background on the STAR loan program, which was administered under the Section 7(a) Loan Guaranty program.

Overview of 7(a) Program. Under the Section 7(a) of the Small Business Act, SBA may guaranty up to 85 percent of a loan made by an authorized lender to a small business. This program is known as the "7(a) program." In 1983, SBA implemented the Preferred Lenders Program (PLP) which allows designated lenders to process, service, and liquidate SBA-guarantied loans with reduced SBA oversight and, as SBA's budget for salaries and expenses has shrunk over the past decade, the Agency has increasingly delegated this authority to lenders.

Loans made under the 7(a) program that go into default are individually reviewed by SBA to determine whether the lender complied with the Agency's lending requirements. Generally, this review is the primary means that SBA uses to determine lender compliance with Agency regulations and requirements. If it is determined that the lender did not comply materially with SBA's regulations, SBA can negotiate a settlement of the guaranty amount or deny payment of the guaranty entirely.

The STAR Loan Program. Under the STAR loan program, SBA was authorized by Congress to charge lenders reduced fees for guaranties on loans made to small businesses which were deemed "adversely affected" by the September 11th terrorist attacks and their aftermath. Although the term "adversely affected" was not defined, Congressional staff and SBA program managers appear to agree that Congress intended the program to benefit not only those businesses that were directly impacted by the attacks, i.e., firms located near the World Trade Center or the Pentagon, but also businesses across the country that were harmed by the economic consequences of the attacks. Congress appropriated $75 million for the STAR loan program, which provided authority for SBA to guaranty up to $4.5 billion in loans. Funds were available from January 11, 2002, through January 10, 2003.

SBA Guidance on the STAR Loan Program. SBA issued guidance on the STAR loan program that defined an "adversely affected small business" as any business that "suffered economic harm or disruption of its business operations as a direct or indirect result of the terrorist attacks . . . ." Qualifying businesses were not limited to a "particular geographic area or to any specific type of business." SBA procedures required lenders to determine that the loan applicant was adversely affected by the terrorist attacks and to prepare and maintain in its loan file "a write-up summarizing the analysis and its conclusion that the loan is eligible for the STAR program." The guidance made clear that a lender would be deemed not to have met

its responsibility for determining that a borrower was adversely affected if the lender did not provide a narrative justification demonstrating the basis for its conclusion. Borrowers were permitted to use STAR loan funds for any purpose authorized for 7(a) loans. Lenders also had authority to reclassify loans made under the regular 7(a) program as STAR loans if the borrower was eligible.

Our review found that lenders were initially reluctant to use the STAR loan program due to concerns that SBA would second guess their justifications and deny payment of the loan guaranty. Congressional staff expressed concern about the lenders' lack of interest in the program and urged SBA to promote the use of the program. SBA reacted by vigorously promoting the program through articles in trade journals, speeches at lender conferences, and by directing its district offices throughout the country to contact local lenders to persuade them to approve STAR loans. SBA advised lenders that a very large percentage of small businesses could qualify for STAR loans and assured lenders that SBA would not second guess their justifications.

OIG Audit of the STAR Loan Program. The OIG conducted an audit of a statistical sample of 59 STAR loans from the universe of 7,058 STAR loans approved between January 11, 2002 and January 10, 2003, to determine whether loan recipients were eligible to receive the loans. There were 27 lenders included in the sample. Using accepted statistical methodology, the audit results could be projected with 95 percent certainty. For 50 of the 59 borrowers (85 percent) in the sample, we were unable to determine from the lenders' loan files and discussion with available borrowers whether the borrowers were adversely affected by the 9/11 attacks and their aftermath, as required for STAR loan eligibility. For these 50 loans, the required justification was either (1) missing—5 loans; (2) merely a conclusion with no support—4 loans; (3) based on the adverse affects suffered by the business being purchased with a STAR loan rather than the "loan applicant" and SBA procedures did not specify whether such loans could qualify—11 loans; (4) contrary to documentation in the lender's loan file or borrower statements—21 loans; or (5) vague and neither contrary to nor supported by documentation in the lender's loan file or borrower statements—9 loans. Although these results do not necessarily show that the 50 borrowers were ineligible for the program, they indicate that lenders failed to prepare adequate justifications and obtain supporting documentation to determine eligibility.

Further, of 42 borrowers that we were able to contact, only two stated they were aware that they had received a STAR loan. Thirty-six borrowers said they were not asked, or could not recall if they were asked, about the impact of the attacks on their businesses. We concluded that, in many cases, funds appropriated for guaranties on loans to small businesses adversely affected by the terrorist attacks may not have been used for that purpose.

Inadequacy of SBA Program Controls. In trying to establish the reasons behind these findings, we determined that SBA did not implement adequate internal controls and oversight to ensure that only eligible borrowers obtained STAR loans. Although SBA established guidance for the program requiring lenders to prepare and file written justifications showing borrower eligibility, senior SBA officials, in order to encourage the use of the STAR loan program, broadened the scope of program eligibility. Public statements made by senior SBA officials conveyed SBA's expansive interpretation of the term "adversely affected" and that SBA believed that virtually every small business had suffered some direct or indirect adverse impact and could likely qualify for a STAR loan. Further, SBA officials reassured lenders that the Agency would not second guess their eligibility justifications. SBA also did not require lenders to provide their justifications to the Agency, either at the time a loan was made or at the time that a lender requested SBA to honor the guaranty on a defaulted loan.

I should note that, although the SBA guaranties may not have been used for appropriated purposes, we did not find that any businesses legitimately affected by the 9/11 attacks were precluded from obtaining a STAR loan. Indeed, when the STAR loan program appropriation expired in January 2003, funds for the program were still available and were transferred to the regular 7(a) loan program. Therefore, it does not appear that eligible businesses were prevented from receiving STAR loans due to a lack of funds. Furthermore, the default rate for STAR loans does not appear excessive in comparison to similar SBA-guarantied loans. As of September 30, 2005, only 8 percent of disbursed STAR loans approved between January 11, 2002, and January 10, 2003, had been transferred to liquidation status, while 10 percent of the 7(a) loans approved during the same time period had been transferred to liquidation status.

Lessons Learned. What were the lessons learned from this review? For future special programs where 7(a) loans are used for nationwide disaster relief, the OIG rec-

ommended that SBA: (1) require loan applicants to justify how the business was harmed by the disaster; (2) require lenders to obtain supporting documentation to verify applicant claims of injury and provide detailed justifications showing applicant eligibility; and (3) implement effective internal controls and program oversight to ensure borrower eligibility and lender compliance. Specifically related to the STAR loan program, the OIG recommended that the Agency: (1) implement procedures to require lenders to submit STAR loan justifications when seeking SBA's purchase of a STAR loan guaranty; (2) establish criteria to provide more definitive guidance and examples for purchase reviewers to use in determining what constitutes an inadequate justification for STAR eligibility; (3) for future purchase requests, determine whether STAR loans that contain inadequate justifications can be reclassified as 7(a) loans or whether SBA can deny lender requests for purchase of the guaranties under SBA regulations; and (4) review guaranties the Agency has already paid under the STAR loan program to determine whether lenders were paid despite the absence of adequate borrower eligibility justifications. If there is inadequate justification, we recommended that the Agency determine whether SBA should reclassify the loan as a 7(a) loan or seek recovery of the guaranties from the lenders.

Disaster Loans for Businesses Hurt by 9/11. The Small Business Act also permits SBA to make direct loans to victims of declared disasters. Disaster loans, which are available to businesses and to homeowners, can be used to fund repairs of physical damage to homes and businesses, and to provide working capital to disaster-impacted businesses to allow them to pay their bills or otherwise fund operational needs. These latter loans are known as Economic Injury Disaster Loans (EIDL). These loans are made at a low interest rate, generally less than 4 percent, with generous repayment terms, which can last up to 30 years. In order to make Federal assistance available to more businesses that were impacted by the September 11th terrorist attacks, and not just those located in the declared disaster areas, SBA expanded the EIDL program to assist small businesses located outside the declared disaster areas. SBA disbursed over $1.1 billion in 9/11 disaster loans.

9/11 Disaster Loan Fraud. In 2003, the OIG began a proactive review of defaulted 9/11 EIDLs to assess whether there was fraud involved in obtaining or using loan proceeds. Inevitably, some of these disaster loans involved fraud due to loan transactions being expedited in order to provide quick relief to disaster victims. The OIG's Auditing Division screened a sample of defaulted 9/11 loans to identify indicators of fraud. Where indicators existed, these loans were then examined further by investigators. Based on these referrals, as well as those from other sources such as OIG Hotline, Office of Disaster Assistance, other law enforcement, etc., the OIG's Investigations Division opened 51 cases on loans valued at approximately $20 million. Thus far, 37 cases have been closed, and 14 cases are in an open status at various stages of investigation. There have been 10 indictments, 10 convictions, and over $1 million in restitution and settlements.

The types of fraud schemes we identified in these cases included individuals and businesses claiming losses even though their companies were not located in the disaster area, false claims related to personal property or equipment damage, misuse of the disaster loan proceeds, and false statements concerning financial status. For example, in one case, the president and the managing partner of a business received an SBA disaster loan by falsely claiming that their company had been located at the World Trade Center. In fact, the business was not located there on September 11, 2001, and the individuals were salaried employees of another company at the time. They were sentenced to incarceration and ordered to pay a combined total of $618,000 in restitution.

OIG Finding Regarding SBA Collection of 9/11 Disaster Loans. While the auditors were screening defaulted loan files, it became apparent that SBA was not always pursuing collection timely. Therefore, the OIG conducted a review to determine if delinquent 9/11 disaster loans were serviced appropriately. As of September 30, 2004, 1,495 of these loans, valued at $208.8 million, were delinquent. The Office of Management and Budget (OMB) requires that agencies promptly act on the collection of delinquent debts, using all available collection tools to maximize collections. Since 1993, SBA has employed the issuance of demand letters as an important part of the loan liquidation process.

The OIG reviewed a sample of delinquent loans and found that SBA sent pre-demand or demand letters to only 4 of the 17 borrowers who should have received them. We found that insufficient staffing of SBA's liquidation center prevented personnel from following proper collection methods. Instead of properly issuing pre-demand and demand letters to collect delinquent loan funds, personnel were used to service bankruptcies, collateral activities, and/or borrower initiated offers of compromise.

OIG Recommendations on Proper Debt Collection. The OIG recommended that the Agency revise its procedures to direct servicing centers to send timely pre-demand and demand letters to delinquent borrowers and to maintain copies of these letters in loan files. Additionally, we recommended that the Agency ensure that sufficient staff resources are devoted to liquidation center activities to fulfill the debt collection responsibilities required by OMB. Attention to the collection of funds when a loan is delinquent must be part of SBA's most basic responsibilities.

Conclusion. Thank you for the opportunity to comment. I look forward to answering any questions that you may have.

Mr. ROGERS. Thank you, Inspector Thorson.

The Chair now recognizes Mr. Douglas Small, Deputy Assistant Secretary of the Employment and Training Administration of the Department of Labor, for your statement. Thank you.

STATEMENT OF DOUGLAS SMALL

Mr. SMALL. Mr. Chairman and members of the subcommittee, good morning. I am pleased to have the opportunity to testify here before you today on behalf of the U.S. Department of Labor's Employment and Training Administration to discuss the agency's response to the terrorist attacks of September 11, 2001, the lessons that we have learned about disaster preparedness and program oversight as a result of that terrible tragedy.

The Employment and Training Administration is responsible for an array of programs and services to assist workers who have lost their jobs or might lose their jobs as a result of a disaster. These include the Unemployment Compensation Program, also known as unemployment insurance, the Disaster Unemployment Assistance Program, national emergency grants, and training services and employment services available through about 3,500 one-stop career centers.

These career centers are positioned to serve disaster victims because they are geographically dispersed, and they are staffed by trained professionals, and their focus is on individual assistance.

Each of us who served our nation during the time of the terrorist attacks of September 11th were faced with unprecedented challenges and problems that demanded immediate results, and generally those results were delivered. I would like to highlight federal assistance to New York following the terrorist attacks.

Labor Secretary Elaine Chao and Assistant Secretary Emily DeRocco acted swiftly to ensure that the state had resources to meet the needs of workers whose employment was permanently or temporarily impaired by the terrorist attack.

Secretary Chao awarded a $25 million national emergency grant to New York. Congress provided those funds in the 2001 emergency supplemental appropriations. That bill also included $175 million in workers compensation programs, and an earmark for $32.5 million for the Consortium of Worker Education.

New York was also allocated $7.6 million in emergency funding for administrative costs associated with processing unemployment claims. The department has also made funds available to Virginia and other states that were dealing with economic aftershocks and industry layoffs resulting from the terrorist attacks.

In response to the unique circumstances related to those attacks, the department issued emergency regulations to permit individuals who were unemployed due to the closure of Washington National

Airport eligible for disaster and employment assistance. The deadline for applying for disaster and employment assistance was extended from the 26 to 39 weeks, as well for any individuals who lost their jobs as a result of the attacks.

State agencies in New York and Virginia were able to handle the unemployment compensation and disaster unemployment assistance claims. New York was able to handle them through telephone calls that enabled them to be able to process those claims through their call center in upstate New York, since the center in downtown New York City was temporarily closed due to the damage of the attacks.

Virginia actually set up a temporary claims center at the Ronald Reagan Washington National Airport, which was closed following those attacks. That was staffed by volunteers from the U.S. Department of Labor and neighboring states that helped in the processing of those claims.

As a grant-making agency, the Employment and Training Administration follows detailed written procedures to strengthen safeguards and the integrity of the grant-making process.

We supported the post–9/11 recommendations of the Office of the Inspector General, which asked us to more clearly delineate roles and responsibilities for personnel of the various departments at the Employment and Training Administration and at Labor. As a result, we issued guidance on the roles and responsibilities for the Employment and Training Administration for all phases of grant administration.

With respect to unemployment compensation, the department requires each state to operate a benefit payment control program that prevents, detects and recovers improper payments. The department recently established a performance measure for improper payments.

In addition, the president's 2006 and 2007 fiscal year budget proposals contain a program integrity proposal that, if enacted, would help states reduce improper payments and produce significant cost savings, while protecting those who are eligible, especially in the event of a massive disaster like September 11th.

I would just to briefly say that the lessons learned from 9/11 helped us considerably in our responses to Hurricane Katrina. We were able to respond immediately with national emergency grants. We applied over $206 million immediately to states that were impacted and evacuee host states, as well. And we were able to provide unemployment compensation and disaster employment assistance to approximately 293,000 people who received over $784 million in unemployment compensation.

We have also created a number of tools to assist in proper monitoring and oversight.

In conclusion, I would like to say that the terrorist attacks and the hurricanes each were large catastrophic events were different and required a unique response, and that we must develop many different strategies if we are going to rapidly respond to different circumstances as they arise.

We have developed new tools. We have an electronic application system for national emergency grants to expedite that processing. We have developed a core monitoring guide that helps us look at

disasters and monitor them more effectively and to try to help people become more rapidly re-employed.

Additionally, we are in the process of developing a couple of tools that we think will be effective: community blueprints, and strategic action for regional transformation teams, which we think could assist states, immediately looking at the economic impact of these disasters.

Mr. Chairman, this concludes my testimony, and I am prepared to respond to any questions that you may have at this time.

Thank you.

[The statement of Mr. Small follows:]

PREPARED STATEMENT OF DOUGLAS F. SMALL

Good morning. Chairman Rogers, Ranking Member Meek and distinguished members of the Subcommittee, thank you for this opportunity to discuss the Department of Labor's Employment and Training Administration's response to the terrorist attacks of September 11, 2001.

In the aftermath of that terrible tragedy, the Employment and Training Administration (ETA) engaged in a number of activities to ensure that the affected workers received income support, job training, job search assistance, and other employment related services. Today, I will testify about these activities, and the lessons we learned about disaster preparedness and program oversight during that time period. I would also like to take this opportunity to discuss a very different kind of disaster—Hurricane Katrina, and the lessons that we learned from responding to the vast devastation and displacement that it left in its wake. Finally, I will share with the subcommittee how these lessons have helped shape our future disaster response and oversight activities.

ETA is responsible for an array of programs and services to assist workers who have lost or might lose their jobs as a result of disasters. These include the Unemployment Compensation program (UC), Disaster Unemployment Assistance (DUA), National Emergency Grants (NEGs), and the wide variety of employment and training services that are available through One–Stop Career Centers.

Before I go into more detail about our disaster response and oversight activities after the terrorist attacks of September 11, 2001, I would like to give a brief overview of each of the programs I have just mentioned. The UC program provides temporary partial income support (also known as unemployment insurance) to laid-off workers to help ensure that some of the basic necessities of life are met while the individuals look for work. It is also an important economic stabilization tool. Benefits are provided for up to 26 weeks in most states and the benefit amount is based on past work and wages. During periods of high unemployment, up to 13 additional weeks of benefits are available under the Extended Benefits program. In general, UC is available to workers who have significant recent work experience and are unemployed through no fault of their own.

The UC program is a federal-state partnership based upon Federal law, but administered by state employees under state law. Federal law defines certain requirements and each state designs its own UC program within the framework of the Federal requirements. The primary functions of the Federal government include: setting broad overall policy for administration of the UC program; monitoring state performance; and providing technical assistance when necessary. The primary functions of states include: taking claims; determining eligibility; and ensuring timely payment of benefits to unemployed workers.

The DUA program provides financial assistance to individuals who are not eligible for regular UC (such as the self-employed and recent entrants to the labor market) and whose employment has been interrupted as a direct result of a major disaster. DUA benefits are triggered when the President declares a major disaster in specified areas of a state.

NEGs are funded through the Secretary's reserve as authorized under the Workforce Investment Act of 1998 (WIA). In response to a natural disaster, states can apply for NEG funds to provide temporary disaster relief employment for individuals who have lost their jobs as a result of the disaster, are eligible dislocated workers, or are otherwise unemployed. This temporary employment is to work on projects that provide food, clothing, shelter and other humanitarian assistance for disaster victims as well as to conduct demolition, cleaning, repair, renovation and reconstruction of damaged or destroyed public structures, facilities and lands located

in the disaster area. The funds may also be used to provide other employment and training activities. Once FEMA has declared a disaster eligible for public assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a state may submit an application for NEG disaster funds. A short application process for disaster relief NEGs is in place for States to request funds to respond to immediate needs.

One-Stop Career Centers are the local access point for employment and training services, such as job search and placement services, job vacancy listings, career planning and guidance, and supportive services. Over a dozen federal programs are partners in the One–Stop Career Center system. Currently, there are almost 3,500 comprehensive and affiliate One–Stop Career Centers around the country.

ETA's Response to 9/11

All of us who served our nation during the time of the September 11 attacks vividly recall the pervasive atmosphere of urgency, "can-do" improvisation, broad generosity, and concern for those who were suffering. All of us in government, including the Department of Labor, were faced with new challenges and problems that demanded immediate results—and generally, those results were delivered.

Following the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, the Secretary of Labor awarded a $25 million National Emergency Grant (NEG) to New York to assist approximately 6,900 dislocated workers from industries directly impacted in New York City by the disaster. Temporary jobs were not created as a result of the nature of the disaster and the health hazards involved. The NEG funds originated in the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks in the United States (Public Law 107–38). The state of New York subcontracted with 17 organizations to provide employment and training services.

The Secretary also awarded a National Emergency Grant to Virginia for $3.5 million, which served approximately 5,000 workers, including those from airline and related industries. Several grants were awarded to states that were impacted by layoffs in the airline and related industries dealing with the economic aftershocks of the terrorist attacks of September 11, 2001. They included NEG awards to Minnesota for $8 million (to serve approximately 2,500 workers), Illinois for $5 million (to serve approximately 2,375 workers), Florida for $3.4 million (to serve approximately 2,000 workers), New Jersey for $3.2 million (to serve approximately 2,500 workers), and Massachusetts for $2.4 million (to serve approximately 600 workers).

The Emergency Supplemental Appropriations Act also provided $175 million for New York Workers Compensation Programs, and included an earmark for $32.5 million to the Consortium for Worker Education, a New York City based organization.

New York was also allocated $7.6 million in emergency funding for administrative costs associated with processing unemployment compensation. The allocations were made in two installments of $3.1 million and $4.5 million.

ETA Regional Office staff provided technical support to New York State, which not only experienced more than a 100% increase in unemployment insurance claims, but was also restricted by the peripheral physical damage in New York City. The ETA Regional Office also coordinated activities between affected state agencies and FEMA and provided Federal staff to the city's disaster center to assist with UC claims.

The state agencies in New York and Virginia were able to handle state UC and DUA claims filing. New York handled claims filing primarily by telephone and as a result was able to process UC claims through its upstate call center even though its New York City call center was closed temporarily due to damage from the attacks. Virginia (which took claims in person) set up a temporary claims center at the Ronald Reagan Washington National Airport, which was closed for a period following the attacks. Volunteers from the U.S. Department of Labor and neighboring states helped Virginia staff this temporary claims center which handled UC claims primarily from airport workers.

In response to the unique circumstances related to the terrorist attacks, the Department of Labor issued emergency regulations to permit individuals who were unemployed due to the closure of the airport to be eligible for DUA. In addition, the deadline for applying for DUA was extended in New York. Congress also extended DUA benefits from 26 to 39 weeks for individuals who lost their jobs because of the terrorist attacks on 9/11. Approximately 3,400 people received $14 million in DUA.

Oversight Activities

Grant making in a time of crisis requires an equal emphasis on expediency and efficiency. ETA follows detailed, written procedures for each of its grants, and continuously upgrades these safeguards to strengthen the integrity of the grant-making process.

Following recommendations by the Office of the Inspector General (OIG) to more clearly delineate the roles and responsibilities of personnel in various departmental offices with respect to the grant process, especially in emergency situations, ETA issued a new Employment and Training Order (ETO) in 2003. This ETO clarified the roles and responsibilities within ETA for grant administration, including the Regional Office federal project officer responsibilities. To further strengthen oversight and financial management of NEGs, ETA also issued internal guidance on the roles and responsibilities for the grant awards, covering all aspects of the administrative process, including the assurance that the process is efficient and transparent. This includes monitoring of NEG projects for compliance with the grant fiscal and program requirements to avoid fraud and abuse.

Finally, with respect to UC, the Department requires each state to operate a Benefit Payment Control program that prevents, detects, and recovers improper UC payments. States utilize a wide array of tools to detect potential improper UC payments including in-depth investigations and cross-matches with databases from other government agencies to determine, among other things, if individuals are still receiving UC after they returned to work. The Department recently established a new performance measure for improper UC payments, which was consistent with recommendations of the OIG. The Department also has provided state UC agencies with funds to use the latest technology to detect potential improper payments. Since each state UC agency already had this oversight system in place before 9/11, they did not have to create a new oversight program after the attacks to determine if UC benefits were improperly paid. In addition, the President's fiscal year 2006 and fiscal year 2007 budget proposals have included UC program integrity proposals which, if enacted, would help states reduce improper UC payments and produce significant cost savings while protecting UC for those who are eligible, especially in the event of a massive disaster like September 11.

ETA's Response to Hurricane Katrina

Although Hurricane Katrina was a disaster of a very different nature than the 9/11 tragedy, ETA's activities were informed by our experience handling services after the terrorist attacks on September 11, 2001. In New York and Virginia, the disaster was mainly localized, and the state infrastructure for the state workforce investment system remained largely intact. During Hurricane Katrina, the states that were primarily affected—Alabama, Louisiana and Mississippi—experienced severe loss of infrastructure, and the displacement of workforce system staff. As a result the state workforce systems were not able to readily respond—even, in one case, to be able to electronically submit an application for a NEG.

ETA has had substantial experience with disasters caused by hurricanes, yet this experience did not fully prepare the agency to respond to a disaster of the magnitude of Hurricane Katrina in which state infrastructure was devastated. In addition to the large numbers of persons who lost their employment due to the devastation, significant numbers of persons evacuated the immediate areas of devastation and relocated to other nearby states, causing new and different challenges for the workforce system.

ETA responded quickly with NEGs and other resources to the affected states and evacuee host states. A total of $236 million was awarded in NEGs to states for the 2005 Gulf Coast Hurricanes.

The UC and the DUA programs provided crucial financial assistance to victims of hurricanes Katrina and Rita. ETA estimates that approximately 293,000 people received $784 million in UC in the areas affected by the hurricanes. Approximately 197,000 people received $395 million in DUA.

After the Hurricanes, ETA was in close contact with state officials in the impacted states and provided a wide array of assistance including:

- Quick distribution of $44 million in UC administrative grants to help Louisiana, Mississippi, and Alabama repair and replace damaged infrastructure for the UC program and to expand their capacity to process a surge in claims;
- Extending the time allowed for individuals to apply for DUA and to provide documentation of wages and employment because of the difficulties many evacuees faced;
- Recruiting states to help Louisiana and Mississippi with claims filing via a toll-free phone number that routed calls from unemployed workers in Louisiana and Mississippi to call centers in other states; and
- Working with the U.S. Department of Health and Human Services (HHS) to expedite Mississippi and Louisiana obtaining authorization to cross-match their UC claims against the National Directory of New Hires (NDNH). (UC beneficiaries who continue to claim benefits after returning to work are the number

one cause of UC overpayments and the NDNH includes information on all new hires nationwide.)

In addition, Congress enacted legislation providing $500 million to Alabama, Louisiana, and Mississippi to help pay the costs of regular UC benefits. Congress also enacted the Katrina Emergency Assistance Act of 2005 which extended DUA benefits from 26 up to 39 weeks for victims of Hurricanes Katrina and Rita. (Along with DUA recipients, individuals who received their full entitlement to UC were potentially eligible for 13 additional weeks of benefits.) Congress also enacted the Flexibility for Displaced Workers Act (Public Law 109–72), which provided additional flexibility for serving disaster affected individuals using NEG funds.

The Department and ETA spearheaded several other initiatives to help displaced workers and impacted communities. These included:

- Implementing the Pathways to Construction Employment Initiative to support economic revitalization in Louisiana and Mississippi through a partnership between each state's workforce agency and the community college system to establish and operate construction career pathways. Each state was awarded $5 million to implement the projects.
- Awarding High Growth Job Training Grants to Alabama, Louisiana, Mississippi, and Texas to train workers for jobs and careers in critical industries such as construction, energy, health care, transportation, and safety/security. Each state received $3 million to implement these projects.
- Awarding $63 million in Community–Based Job Training Initiative grants to 35 community colleges in the Gulf Coast and the Southeast whose programs will be critical to rebuilding the regional economy.
- Developing the Reintegration Counselor Program, which deployed highly skilled counselors to increase the capacity of One–Stop Career Centers in serving hundreds of thousands of individuals displaced from their families and jobs. ETA provided $13,500,000 to fund more than 150 counselors in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas and Virginia.
- Deploying Disability Program Navigators to assist individuals with disabilities in the affected region ($5 million was awarded to support this initiative).
- Implementing the Hurricane Recovery Coach, an innovative online tutorial developed for workers, businesses, and reintegration counselors/workforce staff impacted by the Hurricanes Katrina and Rita. The Hurricane Recovery Coach identifies common employment and recovery issues facing evacuees and others who have been affected by the hurricanes and provides step-by-step instructions to help users find resources to related information.
- Forming the Mississippi/Manpower partnership between One–Stop Career Centers and Manpower, Inc. to encourage evacuees to return home to work and to certify an evacuee's work readiness skills. This program created "Coming Home Portfolios" that include job training, support services and employment opportunities.
- Providing waiver flexibility to seven states to help states target services to affected individuals and local areas. A total of 46 WIA waivers and three Workflex Plans were approved for the states of Alabama, Arkansas, Georgia, Louisiana, Mississippi, and Texas.

One-Stop Career Center System

One-Stops Career Centers were uniquely positioned to be an access point for services for Hurricane victims, because they were geographically dispersed and already the focus for individuals seeking unemployment and disaster benefits and searching for temporary or full-time employment. One–Stop Career Center staff are trained and experienced in serving a wide range of customers with multiple needs.

In addition to the almost 3,500 One–Stop Career Centers around the country, many states have developed the capacity to provide mobile One–Stop services, particularly in remote areas. This was a service that was critical during the massive displacement resulting from Hurricane Katrina, when dozens of mobile career centers were deployed to provide service at evacuee shelters. After Hurricane Katrina, evacuees were in every state in shelters and were rapidly moving into new communities. The One–Stop Career Centers and affiliates nationwide served as access points for benefits and services for evacuees while away from home or in their new hometown. One–Stop Career Centers also helped evacuees connect to jobs across state boundaries.

During the disaster and in its aftermath, One–Stop Centers had the capacity to broadcast employment and career opportunities nationwide with an array of Internet-based tools to assist during the disaster. These web tools included the

CareerOneStop comprehensive Web site: *www.careeronestop.org* and *www.servicelocator.org*.

One-Stop Career Centers also supported FEMA in identifying the skilled and specialized workforce necessary to help in recovery and disaster relief efforts.

Monitoring and Oversight of Katrina Activities

ETA has developed several tools to ensure that proper monitoring and oversight is taking place in the aftermath of Hurricane Katrina. First, ETA's regional offices produce a weekly stewardship report on all key activities. This report was initially required by the Office of Management and Budget (OMB) in September 2005 to document the agency's analysis and response to the financial risks posed by the huge rapid response required in the aftermath of the Katrina disaster. Required information included:

- Identification of abnormal risks presented by the emergency for fraud, waste and abuse of funds/assets;
- Evaluation of the effectiveness of existing controls to prevent/detect each risk;
- Additional controls to be implemented for the emergency; and
- Normal and/or additional monitoring of programs and transactions to be used to track the effectiveness of implemented controls.

DOL senior management requested the Office of the Chief Financial Officer (OCFO) to recast the OMB report into a weekly report which would specifically identify and track DOL financial control issues relating to Katrina recovery efforts. In response, the Employment and Training Administration developed a reporting process which includes:

a. Reports from the regional offices on Katrina related events:
   i. Significant actions for the week;
   ii. New issues identified as affecting timeliness of response or vulnerability to fraud, waste and abuse;
   iii. Status of progress in addressing issues requiring on-going efforts to ameliorate the risk;
   iv. Any other information pertinent to the Katrina recovery effort financial situation, such as Office of Inspector General investigations, State officials/agencies' communications or investigations, etc.

b. Reports from the program offices on Katrina related issues involving policy or other high-level responses.

c. Status of funding and expenditure for each Katrina related grant or program.

This report is presented weekly to the Deputy Secretary of Labor to keep senior management apprised of the financial status of the recovery effort and to highlight possible or actual vulnerabilities and the efforts of DOL towards abating those vulnerabilities.

For NEG projects, this report looks at overall participant enrollments and financial draw downs for both direct disaster projects and for evacuee projects. This report also looks at all major monitoring activities as well as any issues identified by the states or by regions that need resolution including policy issues, grant actions and similar matters that affect the success of the disaster response.

Regional Monitoring, Oversight and Technical Assistance

Since Hurricane Katrina, ETA has been involved in significant on the ground support to affected states. ETA Regional Office staff has monitored affected states on their DUA programs in accordance with the Secretary's standards, and has provided numerous onsite and remote technical assistance, in addition to actual onsite monitoring and oversight since the onset of Katrina and Rita.

Immediately after the Hurricane hit, the Dallas Regional Office formed an internal Hurricane Team to work directly with Louisiana Department of Labor officials to provide onsite and remote technical assistance, oversight and monitoring, and act as a liaison to obtain assistance from other states and regions for technology and staffing support. To date, the members of this team have made 68 separate and joint onsite technical assistance and monitoring visits to states in the region in response to Hurricanes Katrina and Rita. The team has also assisted the Louisiana Department of Labor in implementing and carrying out the new National Directory of New Hires for cross matching UI and DUA claimants across state lines to help alleviate fraud and abuse of UI and DUA funds.

Lessons Learned in the Aftermath of 9/11 and Hurricane Katrina

As a result of the terrorist attacks of September 11, 2001, and impact on the Gulf Coast in 2005 from Hurricanes Katrina and Rita, we have learned that each large catastrophic event is different and that we must develop a wide array of tools so that we are able to rapidly respond to different circumstances as they arise. Although there are many things we can do to prepare for a disaster, we have also

learned that events of this magnitude always entail circumstances that may not be foreseen. For example, after September 11th, there was a need to change DUA regulations in order to serve workers who were unemployed due to the closure of Ronald Reagan Washington National Airport. The mass relocation of victims of Hurricane Katrina required new and different responses, including unprecedented coordination between states to handle claims for UC and DUA.

We learned that in times of disaster, it is critical for the workforce system to collaborate with other government agencies and have access to information about resources that these agencies can provide. For example, in the aftermath of the Hurricanes, dislocated individuals who could be engaged in NEG funded temporary disaster projects required housing since most housing in the affected areas was destroyed. The workforce system can arrange for recruitment and placement, but did not have ready access to information about when individuals would become eligible for housing assistance, making the job placement situation difficult.

Another lesson that we learned from these disasters is that telephone and internet claim filing for UC and DUA benefits provides needed flexibility in the aftermath of a destructive event. Although states have gradually stopped taking claims in person, not all states have adopted telephone and internet claims filing systems. The Department has encouraged states to adopt these systems by providing them with implementation grants. As of March 2001, 22 states had implemented telephone claims filing operations and 8 states had implemented internet claims filing operations. Since 2001, we have given states over $15 million for telephone and internet claims filing systems. Now, 38 states have telephone claims filing operations and 43 states have internet claims filing operations.

Remaining Challenges

Although we have made a tremendous amount of progress in our disaster preparedness, there are still some remaining challenges that we have identified, which include:

Streamlining DUA Funding. Although DUA is funded by FEMA, the Department of Labor is responsible for administering the program through the state agencies that administer state UC programs. The basic concept is simple—FEMA transfers funds to the Department which, in turn, gives funds to the affected states to pay DUA benefits and administrative costs. The process involves multiple levels of review and approval by FEMA and DOL before needed funds are authorized for transfer. As a result, there have been instances when states were forced to delay DUA payments because funding was received late. An important challenge is to streamline the approval and fund issuance process so DUA funds can reach disaster stricken states as soon as they are needed to make payments.

Developing Business and Disaster Recovery Plans. Hurricanes, fires, floods, earthquakes, and tornadoes, as well as physical and cyber terrorism, computer and telecommunications failures, and pandemics could cause mass unemployment that exceed the claims processing capacity of the impacted states. After Hurricane Katrina, we learned that most states do not have plans for providing services after a mass unemployment inducing disaster or when the UC agency headquarters are destroyed. Thus, a remaining challenge is the development of business continuity and disaster recovery plans that address loss of communication, loss of computer processing capability, and loss of primary workspace, and ways in which essential business functions will continue until normal capability is restored and vital facilities are accessible.

Developing Cooperative Agreements between States. During Katrina, several states provided support to the impacted states, yet there were initial problems associated with how assisting states would be reimbursed for assistance provided such as staffing and mobile one-stop systems. In the future, ETA believes that it is important to encourage states to establish a set of protocols and cooperative arrangements to deliver services when the home state is unable.

Developing and Implementing DUA Internet Claims System. Hurricanes Katrina and Rita highlighted the gap in operating efficiency between UC and DUA claims processing. It is important to automate DUA claims processing and integrate those systems with state UC systems.

Sharing Information between Agencies to Locate Victims and Provide Services. Hurricane Katrina highlighted the barriers to information sharing between federal agencies. This is a challenge because without this information sharing it is more difficult to locate disaster victims and provide needed services.

Next Steps

As a result of disaster planning since 9/11 and Katrina, ETA has developed several new policies and tools which can be utilized in a future emergency. We have also developed the ability to catalyze a wide array of partners working collaboratively in support of disaster response activities.

We have also examined several approaches to providing assistance in the event of disasters to support communities in times of economic shock; we are currently developing STrategic Action for Regional Transformation ("START") Teams of senior

ETA officials that can get on site quickly and bring information and resources to assist in the development of a state and local response. ETA is also developing Community Blueprints designed to support communities suffering economic shocks to reassess their economic landscape and develop response and growth strategies. We have also compiled a comprehensive Federal Resource Guide that catalogues resources and services available across the federal government to help individuals and communities.

Conclusion

The September 11, 2001 terrorist attacks and the 2005 Hurricane Season created challenges unlike any we have seen before. In response to these challenges, we have developed new tools to provide technical assistance to affected states; monitor and oversee how funds are being spent; and help displaced workers access income support and other services, and become quickly reemployed. In addition we have developed tools to assist communities dealing with the economic impact of these disasters. We will continue to devote significant time and resources to developing these tools further and preparing for potential disasters.

Mr. Chairman, this concludes my testimony. Again, I appreciate the opportunity to appear before you on behalf of the Employment and Training Administration. I am prepared to respond to any questions that you may have at this time. Thank you.

Mr. ROGERS. Thank you, Mr. Small, for your statement.

The Chair now recognizes a good Alabamian, Mr. Leroy Frazer, Bureau Chief of the Special Prosecutions Bureau of the New York County District Attorney's office. He is a former student at Talladega College and Tuskegee University, both of which are in my district.

So as with one of our panelists yesterday, he doesn't think I have an accent.

Mr. FRAZER. Of course not, Mr. Chairman.

Mr. ROGERS. Welcome, Mr. Frazer.

STATEMENT OF LEROY FRAZER

Mr. FRAZER. Thank you.

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before you today to testify on behalf of the Honorable Robert M. Morgenthau, the district attorney of New York County, regarding the fraud cases our office prosecuted in the wake of the September 11th attacks.

The horrific attacks on September 11th led to an unprecedented outpouring of charitable donations by the American people. These donations and the aid designated by Congress were administered primarily by FEMA, the American Red Cross, Safe Horizons Corporation, and some other charitable organizations.

At a time when countless acts of heroism were exhibited, others tried to profit from the confusion. I appear before you to relay our efforts in combating fraud in the aftermath of the September 11th attacks on our nation.

To that end, the Manhattan District Attorney's office prosecuted approximately 539 September 11th-related cases, with approximately 98 percent of them fraud-related, with proceeds totaling over $5.8 million. We also learned some valuable lessons on how to detect and combat such fraud and how, in the future, we can seek to prevent it from occurring in the first place.

Initially we met with the inspector general from FEMA who informed us that it is not uncommon in instances of national disasters that people unaffected by the disaster submit fraudulent applications for aid. To address that, we felt it was important to cen-

tralize investigative efforts both within and without the office in order to be effective.

Next, we determined that the principal organizations that were distributing funds, as I said, were FEMA, American Red Cross, Safe Horizons and the Robin Hood Foundation. We arranged to have a contact person at each of these organizations for purposes of receiving grand jury subpoenas and coordinating the dissemination of information.

We also coordinated with local law enforcement and federal law enforcement. We called a meeting, and we had representatives from the following agencies: FEMA, Social Security, Postal Inspectors, FBI, Secret Service, INS, the New York State attorney general, the New York State Insurance Department, NYPD, New York City Department of Investigation, and New York City Law Department.

Once again, individuals were designated to ensure the coordinated flow of information.

The initial wave of arrests came about because a worker or workers at the Port Authority of New York and New Jersey alerted the agency's inspector general that some of its workers were applying for aid from the Red Cross, claiming they had lost days' work due to 9/11.

Even though Port Authority offices were located in the World Trade Center, the Port Authority had relocated its workers, and no one lost even a single day's pay.

We investigated the allegations and, in November of 2001, initially arrested twelve individuals for lying to Red Cross and Safe Horizons about losing work. A further investigation resulted in a dozen more being charged 2 months later, totaling thefts of about just under $20,000.

As a result of a coordinated, multi-agency investigation, in March of 2002, we announced charges against 22 people for filing for death certificates falsely claiming that members of their family had died in the attacks. Fourteen of the defendants received funds totaling in excess of $750,000, while the other eight were caught before they were able to receive any funds.

An example of those cases was one Michigan man who claimed that his brother had died at the World Trade Center. In that instance, he preyed upon the person at Red Cross, who was there to help and to try and give him what he deserved. And he used that against her and against the charity by coming up with a number of different reasons why they needed additional funds.

Another man, a Queens man, invented a 13th child out of 12 children, and we found out later that he used aliases from two of his children, who were serving time in different states. He also received a significant amount of money from the charities as a result of that. He went to trial, and he was convicted after trial.

Additional prosecutions demonstrated the extent that individuals would go in order to fraudulently obtain funds.

One such person who went so far as to actually, not only submit DNA samples that were fake, but also have a funeral, a memorial service, and submit the name in order to collect money, and had the charities pay for those things.

Finally, I would tell you—my time is running out. I would like to move ahead and say that there were some obvious problems that arose in the investigation and prosecution of September 11th fraud cases. Many of the charity's volunteers were from different parts of the country, which made it more difficult to contact witnesses to investigate cases and sufficiently prepare them for grand jury proceedings.

Additionally, due to the high volume of applications processed, volunteers were not always able to recall the details of every interview conducted. It would be helpful in the future if there were a training program for relief workers, including an orientation program regarding tools to employ to detect fraud in screening applications for aid.

While it is difficult to detect a fraudulent claim at the outset, the more supporting documentation obtained from a claimant the better equipped we would be to investigate and prosecute a fraudulent claim.

Moreover, there should be prominent and conspicuous language on all applications for aid warning that statements are done under a penalty of perjury and, if false statements are made, the claimant will be prosecuted. In addition, it would be prudent to require that declarations of loss contain a notary's signature.

Nevertheless, despite numerous instances of fraud, it was evident from interviewing employees and volunteers of the relief agencies that each of them was committed to assisting victims of the September 11th disaster in an expeditious manner.

The New York County district attorney's office has been successful in prosecuting those who unlawfully attempted to enrich themselves by taking advantage of the tragedy that affected our nation. Those who made a calculated decision to take money and profit from confusion during a time of a national crisis were apprehended and punished.

As a result of the district attorney's prosecutions, we believe an important message was conveyed to the public that those who thought they could profit from the World Trade Center aftermath were mistaken.

Thank you.

[The statement of Mr. Frazer follows:]

PREPARED STATEMENT OF LEROY FRAZER

Mr. Chairman and members of the Sub-Committee, I am Leroy Frazer, Jr., Bureau Chief of the Special Prosecutions Bureau in the Manhattan District Attorney's Office. I appreciate this opportunity to appear before you today to testify on behalf of Robert M. Morgenthau, the District Attorney of New York County, regarding the fraud cases our office prosecuted in the wake of the September 11th attacks. Permit me to introduce to the members of the subcommittee my Deputy Bureau Chief, Joan Delaney.

The horrific attacks on September 11, 2001 led to an unprecedented out pouring of charitable donations by the American people. These donations and the aid designated by Congress were administered primarily by FEMA, the American Red Cross and Safe Horizons Corporation. At a time when countless acts of heroism were exhibited, others tried to profit from the confusion.

I appear before you to relay our efforts in combating fraud in the aftermath of the 9/11 attacks on our nation. Although the amount of fraud detected represented a small percentage of the funds allocated, we felt and still feel that it is essential for the public to know that there would be a strong effort to detect and prosecute individuals responsible for taking advantage of a national tragedy to line their own pockets. To that end the Manhattan District Attorney's office prosecuted 539 Sep-

tember 11th related cases, with approximately 98% of them fraud-related with proceeds totaling over $5.8 million dollars. We also learned some valuable lessons on how to detect and combat such fraud and how, in the future, we can seek to prevent it from occurring in the first place.

In the immediate aftermath of the attacks it was clear that most New Yorkers wanted to help in any way possible. Long lines formed throughout the city to give blood only to find out that, unfortunately, there was not going to be a significant need. Some donated supplies to the search and rescue workers at ground zero while still others volunteered to distribute food and supplies, or to help affected people fill out forms to request aid. However as we soon learned, along with those who wanted to help, came others who sought to prey upon tragedy to promote their own self interests.

Initially we met with the Inspector General from FEMA who informed us that it is not uncommon in instances of national disasters that people unaffected by the disaster submit fraudulent applications for aid. To address that we felt it was important to centralize investigative efforts both within and without the office in order to be effective. Towards that end Mr. Morgenthau directed that the frauds committed against the charities be handled principally by one section of the office, the Special Prosecutions Bureau. Next we determined that the principal organizations that were distributing funds were FEMA, American Red Cross, Safe Horizons and the Robin Hood Foundation. We arranged to have contact persons at each for purposes of receiving grand jury subpoenas when needed and coordinating the dissemination of information.

We also coordinated the efforts of law enforcement. A meeting was called with representatives from the following agencies: FEMA, Social Security, Postal Inspectors, FBI, Secret Service, INS, New York State Attorney General, the New York State Insurance Department, NYPD, NYC Department of Investigation, and NYC Department of Law. Once again individuals were designated to ensure the coordinated flow of information. This proved to be essential in our prosecutions because most defendants applied to several different charities and many lived outside of New York City.

The initial wave of arrests came about because a worker from the Port Authority of New York and New Jersey alerted the agency's Inspector General that some of its workers were applying for aid from the Red Cross claiming that they lost days at work due to 9/11. Even though Port Authority offices were located in the World Trade Center, the Port Authority had relocated its workers and no one lost even a single day's pay. We investigated the allegations and on November 8, 2001 arrested twelve workers for lying to the Red Cross and Safe Horizons in order to receive relief funds. Further investigation resulted in a dozen more being charged two months later. The thefts totaled $19,582.

I indicated earlier the citizens of New York City volunteered to help in any way possible. A group of lawyers volunteered to help victim's families fill out the paperwork to expedite death certificates. This valuable program was coordinated by the NYC Law Department, but there were those who took unfair advantage of it. As a result of a coordinated multi-agency investigation on March 21, 2002 we announced charges against 22 people for filing for death certificates falsely claiming that members of their family died in the attacks. Fourteen of the defendants received funds totaling $759,465, while the other eight were caught before they received any funds. These cases included:

- A Michigan man, Daniel Djoro, who reported that his brother, Daniel Zagbre, had been at the World trade center for a business meeting at the time of the attacks. Daniel Zagbre was in fact a fictitious name the defendant himself had used in the past. Djoro obtained $272,800 from the Red Cross and Safe Horizon. Dijoro pled guilty and was sentenced to 4 years in jail.
- A Queens's man, Cyril Kendall, reported that his 13th child had accompanied him to a job interview at the World Trade Center and had perished in the attack. The investigation revealed that the child never existed and in fact the name he had given had been used in the past as an alias by two of his other 12 children. Kendall received a total of $190,000 from Red Cross and Safe Horizon. Upon conviction after trial Kendall was sentenced to 30 years in jail.
- A Utah man, Ricardo Frutos, claimed that a brother, niece and nephew died at the World Trade Center. The investigation revealed that the people reported dead had never existed, a fact which was confirmed by family members. Frutos received $47,257 from Red Cross. He pled guilty and was sentenced to 3 years in jail.

Additional prosecutions demonstrated the extent that individuals would go in order to fraudulently obtain funds. One such person was Carlton McNish who reported that his wife, Jisley McNish, went to work that morning at Cantor Fitzgerald

and never returned home. He reported this to the New York City Police Department on October 3, 2001 and then submitted DNA from a hairbrush and a comb to the New York City Office of the Chief Medical Examiner's Office on October 5, 2001. McNish then went to Pier 94 on October 16, 2001 and met with a volunteer attorney who helped him fill out an affidavit to apply for a death certificate. In the affidavit, the defendant claimed that his wife went to work that morning at Cantor Fitzgerald and that she called him at around 9:30 a.m. to tell him that an airplane had hit the building, that the building was filling with smoke and that she and several co-worker's were trying to leave. He claimed that she never returned home that day. The affidavit was ultimately filed with the New York City Corporation Counsel. The wife's name was included on the City's official list of missing persons and the name appears on the World Trade Center memorial.

The defendant submitted a copy of this affidavit and a picture of his "deceased wife" to the Medical Examiner's office. He submitted an affidavit to the American Red Cross, Safe Horizon and the Salvation Army, claiming that he was in need of financial assistance because he was dependent on his wife's income and obligated to support their three children. From October 2001 to January 2002, the defendant received $68,000 from the American Red Cross, $30,000 from Safe Horizon, and $1,000 from the Salvation Army. In addition, he received $5,000 from the Robin Hood Foundation because his wife's name was on the Mayor's official list of missing persons. The defendant also called in an application to the Federal Emergency Management Administration, but did not get any money after the certification form that was mailed to him was returned unsigned.

Meanwhile, in November of 2001, the defendant went to a funeral home in the Bronx and arranged a memorial service for his deceased wife which occurred in December of 2002. He gave the funeral home a photo of the woman which was used in the memorial program detailing the life of "Jasclliny McNish." The funeral home helped the defendant apply to the Crime Victim's Assistance Board in Albany to get funds to pay for the memorial service. The defendant also submitted the funeral bill to the American Red Cross and Safe Horizon and received money from both charities for the full amount of the bill which totaled $6,279. The American Red Cross became suspicious when as of March of 2002; the defendant could not provide documentation for his "children" or for his wife's employment at Cantor Fitzgerald. They contacted Cantor Fitzgerald and were informed that no one by the name "Jocelyn McNish" (the name the defendant gave the American Red Cross) or "Jasclliny McNish" (the name on the affidavit) ever worked for Cantor Fitzgerald. At the same time, the NYPD was investigating the defendant's missing person report because he could not confirm the spelling of his wife's name, her employment and various other pertinent details that should have been known to him.

During the course of the investigation, it was discovered that the defendant was not married to anyone by the name of Jasclliny, Jisley or Jocelyn McNish, and that he did not have three minor children as he claimed on his various applications for relief. There is no evidence that, even though her name was read from the list of those killed at the World Trade Center during the 2002 and 2003 memorial services, the woman the defendant claimed to be his deceased wife ever existed. McNish pled guilty and was sentenced to 7 years in jail.

Woodrow Flemming was a 48 year old homeless man who resided in a city shelter. He claimed to have been a vendor in the World Trade Center area and produced a W–2 form purportedly from Woodrow Flemming and Associates and a forged letter on the letterhead of an attorney attesting to the fact that the attorney had purchased books from him. Upon receiving close to $10,000 in aid, Flemming recruited several additional "employees" from the shelter and brought them to the relief center, supplied them with similar forged documents, and paid them between $100 and $1100 in order to turn over their relief checks to him. In total, Flemming stole $108, 905. Each defendant eventually pled guilty and Flemming was sentenced to 12 years in jail.

A similar case involved a business called K.C.'s Barbershop which was located approximately four blocks from the World Trade Center. It actually was a very small shop with room for one barber's chair, yet 11 barbers submitted documentation claiming to have worked there and each one was prosecuted.

Beatrice Kaufman had a business and residence in the affected area. She owned a temporary employment agency and had planned to combine and renovate two apartments. During the summer of 2001 she had made arrangements to stay at the Helmsley Carlton Hotel during the construction period and was due to relocate there on September 11, 2001. Construction had begun prior to 9/11 and she was living in her home in the Hamptons, where she remained on 9/11. After returning to the city post 9/11, Kaufman submitted identical bills for her hotel fees and living expenses to her personal and business insurance carriers, as well as FEMA, falsely

claiming that the World Trade Center attacks had caused her to suddenly and unexpectedly evacuate her apartment and that her agency had lost valuable contracts due to the attacks. She told her insurers and FEMA that she was physically and emotionally unable to return to her apartment until February 2002, a date which happened to coincide with the completion of the renovation. In total she received $108,713 from her insurance companies and $5,940 from FEMA. She pled guilty and received a sentence of 6 months jail and 4 1/2 years probation.

Finally I will tell you about thefts from the city's Municipal Credit Union (MCU). MCU's membership is open to, among others, employees of the city, state and federal governments and employees in the health care industry, and is located at 22 Cortlandt Street, near where the World Trade Center towers stood. As a result of the collapse of the towers, MCU's own ATM machines were disabled and MCU intermittently lost its computer link to the New York Cash Exchange (NYSE) network which administers bank-to-bank transactions and processes ATM transactions, including withdrawals. When the link to the NYCE network was interrupted, NYCE had no ability to access MCU account balances to ensure that there were sufficient funds to cover a withdrawal when a member withdrew cash using his MCU-issued ATM card or used as a Visa credit card. Upon learning this MCU made a determination not to shut down its entire ATM operation because of the hardship it might impose on members, particularly those adversely affected by the tragedy, but rather to allow NYCE to continue to dispense cash to MCU account holders. Although the vast majority of its members abided by this short term "honor system," a number of them withdrew amounts of money far in excess of their normal balances. Initial estimates for unauthorized withdrawals totaled 4000 employees and as much as $15 million. MCU offered those who had overdrawn an opportunity to convert the unauthorized withdrawals to personal loans and many did. Subsequently our office, working with the NYC Department of Investigation and NYPD, arrested 101 individuals who illegally withdrew amounts in excess of $7500. Examples of their cases are:

- Terry Hutchinson-Jones, a nurse at Manhattan Psychiatric Center, never had a positive end of month balance in the eight months prior to 9/11. Despite the fact that she had a negative account balance for all that time, she made 54 ATM cash withdrawals between September 18th and the end of October, leaving her with a balance of -$18,111.01. Twenty-three of those withdrawals were for $500 each; for example, she made two withdrawals of $500 each from the same branch of Banco Popular on October 4th, 5th, 6th, 7th, 8th, and 9th, among other withdrawals.
- James Allen, an employee of the Housing Authority, never had an end of month account balance that exceeded $130 in the eight months prior to 9/11. Nonetheless, he made 53 ATM withdrawals ranging from $20 to $300 each, and charged 101 Visa purchases using his Municipal Credit Union ATM card between September 19th and October 22nd. The Visa purchases were at stores including Foot Locker, Jimmy Jazz, Joy Joy Jewelry, Bronx BBQ, Hot Booz Liquor and the 216th Street Motel. As a result of this activity, this individual's account balance was -$10,378.70 as of the end of October, 2001.
- An employee of Mt. Sinai Hospital never had an end of month account balance that exceeded $95 in the six months prior to 9/11. Despite that, he made 91 ATM withdrawals from September 16th to October 30th, when his account balance reached -$10,757.37. Sixty-one of those withdrawals were for $100. For example, on September 16th, he made one cash withdrawal of $20, followed by four more for $40 each, and followed by three for $100 each, all from the same ATM location. The next day, September 17th, he made three cash withdrawals of $100 each from the same Chase branch in the Bronx; two more $100 withdrawals were made from the same Chase branch on September 18th. On September 19th, he made two $100 cash withdrawals and used his ATM card to make six debit purchases, including the purchase of two Metro cards. By October 2nd, and in the days that followed, many of his cash withdrawals were for $200 each.
- Another Municipal Credit Union member never had an end of month account balance that exceeded $566 in the eight months prior to 9/11. Nevertheless, he made 50 ATM withdrawals totaling $8,700 between September 16th and November 8th. He also used his MCU card to make 89 Visa purchases at stores including Gap, Cookies Department Store, Leather World, Barefoot Shoes, Jeans Plus, Dynasty Restaurant, and BX Sports. As a result of this activity, his account balance was —$12,570.75 at the end of November, 2001.

Subsequent to first round of arrests, a substantial number of members contacted the Municipal Credit Union to convert their unauthorized withdrawals to personal loans and begin repayments. Ten months later we conducted a second round of ar-

rests targeting those individuals who had taken amounts in excess of $5000. We found these group arrests were an effective tool in getting people to take responsibility for their actions.

There were some obvious problems that arose in the investigation and prosecution of the 9/11 fraud cases. Many of the charity's volunteers were from different parts of the country which made it more difficult to contact witnesses to investigate cases and sufficiently prepare them for Grand Jury proceedings. Additionally, due to the high volume of applications processed, volunteers were not always able to recall the details of every interview conducted. It would be helpful in the future if there was a training program for relief workers, including an orientation program regarding tools to employ to detect fraud in screening applications for aid. While it is difficult to detect a fraudulent claim at the outset, the more supporting documentation obtained from a claimant the better equipped we would be to investigate and prosecute a fraudulent claim. Moreover, there should be prominent and conspicuous language on all applications for aid warning that the statements made are done so under a penalty of perjury and, if false statements are made, the claimant will be prosecuted. In addition, it would be prudent to require that declarations of loss contain a notary's signature. Nevertheless, despite numerous instances of fraud, it was evident from interviewing employees and volunteers of the relief agencies, that each of them was committed to assisting victims of the 9/11 disaster in an expeditious manner.

The New York County District Attorney's Office has been successful in prosecuting those who unlawfully attempted to enrich themselves by taking advantage of the tragedy that affected our nation. Those who made a calculated decision to take money and profit from the confusion during a time of a national crisis were apprehended and punished. As a result of the District Attorney's prosecutions, an important message was conveyed to the public that those who thought they could profit from the World Trade Center aftermath were mistaken.

I would be pleased to answer any questions.

Mr. ROGERS. Thank you, Mr. Frazer. And in addition to being a great Alabamian, I understand from the staff that today is your birthday. So on behalf of all the Committee, happy birthday. No tough questions for you.

[Laughter.]

Mr. FRAZER. Thank you very much.

Mr. ROGERS. But I would like to start with the questioning, and with you.

Yesterday, in our first hearing on the response in New York City, one of my frustrations, as I learned from Mr. Skinner's testimony, was that because of a host of problems with the structuring of current laws and documentation around this Federal aid, many of the criminal acts that came out of the distribution process of the aid could not be prosecuted.

Unfortunately, one local news organization construed that as a criticism from me of the D.A.'s office in Manhattan, when it could not have been further from the truth. I am critical of the set of circumstances that prohibited or impinged on the D.A.'s ability to successfully prosecute.

What I am after, as one of many things, out of this series of hearings is to find out what we can do differently to ensure, in the future, that district attorneys and attorneys general are able to successfully prosecute every criminal act that arises out of a post-disaster aid circumstance.

So I would offer that to you to say: what in your mind and your experience could we do to make sure that your office and offices like yours around the country are able to prosecute every criminal act that arises out of these post-disaster relief circumstances?

Mr. FRAZER. Well, first of all, of course, Mr. Chairman, resources are always needed in order to look at additional instances of crime that more likely comes about when an incident like this happens.

Mr. ROGERS. Let me stop you there and ask this question: would your office—and let's talk about yours for the example I am offering—be able to retain private attorneys to come in a deputy capacity to work as prosecutors to help you during a surge period of time?

For example, if you felt like in post-disaster, for the next 18 months or 36 months, you were going to have a large swell of cases to pursue—far beyond what your office could do under its current manning and budget—would you be able to take a temporary source of money to deal with just those cases and reach out into your community for additional resources to prosecute those cases that, subsequent to that, would be able to then go back into their private endeavors?

Is that a realistic option?

Mr. FRAZER. Sir, it is a realistic option that we would be able to get experienced attorneys that would be able to come on and prosecute those cases. Yes, we would either, as you suggest, get private attorneys to be hired as assistant district attorneys or even move some of the attorneys within the office, and focus on this type of work, and supplement their work by hiring additional attorneys.

The goal there would be to get the best prosecutions that we can in order to achieve the goals that you speak about.

Mr. ROGERS. But the bottom line is, if you had some additional funding post-disaster for disaster-related prosecutions, you could use temporary money to meet that need and ensure that everybody was prosecuted—or let me put it this way—nobody was not prosecuted for lack of resources?

Mr. FRAZER. The short answer to that is, yes, we can always use additional resources.

Mr. ROGERS. Now, we come back to the threshold concern that I had yesterday. And that is, what I understood from our panelists yesterday, was that the primary reason that the District Attorney's office did not prosecute individuals after relief was not so much resources available to them, it was that they didn't feel like they could have a successful prosecution, because in several of the instances they didn't think they could prove intent.

What I am looking for is tangible suggestions, given the abuses that you are familiar with, as to what we could do to tighten the language or documentation to ensure that you could successfully prosecute some of the abuses you referred to in your testimony.

Mr. FRAZER. Yes. Again, your key word was "documentation." There was some prosecutions were intent was an issue. And in order to address that, one would require additional documentation that is clear language that was relied on in order for the money to be turned over to that individual.

So therefore if, in fact, we can prove that this representation that was relied on as false, then we can prove the intent that person had in order to—that they lied in order to get the funds.

In addition, the way a program is actually set up and the language and the parameters that are set up have to be clear and distinct, and it would be helpful, of course, if, in fact, one is ask for

either proof of damage or that inspections are done prior to any grants being given in specific instances.

Mr. ROGERS. Let me ask you, if an individual who was seeking post-disaster aid were required to sign some sort of acknowledgement upon their request that it was, in fact, a legitimate acknowledgement, a legitimate request, would that be sufficient to allow you to prosecute, if you could prove that, in fact, it was not a legitimate claim?

Mr. FRAZER. Well, yes and no. It is difficult to answer that, only because in some instances on a number of the forms that the charity had there was a line that was an acknowledgement that was there to be signed. However, it wasn't clear that the charity relied on specific things in order to turn over the money.

Mr. ROGERS. So you would have to have the charity then sign an acknowledgement that it relied on an underlying application as a part of its distribution?

Mr. FRAZER. Yes, that would be helpful.

Mr. ROGERS. And those two acknowledgements together would give you the nexus for prosecution?

Mr. FRAZER. That is correct, sir.

Mr. ROGERS. Okay, thank you. And my time has expired.

The Chair now recognizes the Ranking Member, Mr. Meek of Florida, for his questions.

Mr. MEEK. Thank you, Mr. Chairman.

I wanted to not only welcome but thank the panel for coming before us. And these hearings have been very helpful, not only for our staff, but also for the members.

We are charged with the obligation and the duty to not only legislate, but also recommend new ways of how we can prevent the loss of not only taxpayers' dollars, but also those individuals that donate to the Red Cross or what have you, or individual assistance, as it relates to FEMA or the SBA.

I guess, well, my questions are going to go along the lines of?hopefully you can give me some feedback that will be able to help us in preventing fraud in the future.

I know that FEMA and a number of agencies, mainly around the area of law enforcement, they had these TOPOFF programs that move throughout the country where they exercise an event, need it be a hurricane or a terrorist attack. Has there been such a program to go through a dry run, as it relates to fraud?

Some of the things—and Mr. Frazer talked about training and assistance and attorneys. Is there such a program? Are you all doing that in New York now, saying, "Okay, let's just say an event took place. What are our next steps or lessons learned from the last event?" Has that taken place?

Mr. THORSON. I will pick up on this. For SBA, I think as all of the people on the panel said, I think we have all tried to learn from 9/11 and translate that to what is going on in the Gulf.

From the OIG's point of view, we have made recommendations to both SBA, and in working with other agencies such as HUD, for instance, on issues such as data-sharing and making sure that duplicative payments aren't made.

On the prosecution side or the investigative side, one of the things that we have tried to do is to learn from the different kinds

of cases that originated out of the 9/11 disaster loans. And, in fact, our office has just this month established a new region, which will run from Florida, through Mississippi, Alabama, and Louisiana, headquartered in New Orleans, with both auditors and investigators, to develop some of these kinds of cases.

All of these relate to lessons that were learned out of 9/11, as well.

Mr. MEEK. And I am glad to hear that some thought and action has gone into that. But I guess pretty much the answer to my question is that right now we don't have something in place—when I say "we," the federal government and local government working together, and local law enforcement together—in preventing.

We had the Government Accountability Office represented yesterday on the panel, and he said there is, like, pennies of recovery on every dollar that is stolen, or taken, as it relates to fraud. I am thinking that, as this committee starts to look at this and as we start to move into our authorization bill for next week, maybe, just maybe we need to put some language in there that would give some direction to, not only the federal agencies, to work with the local agencies and how we can before the crime invest the time that we would invest in a terrorist attack or in a hurricane or what have you.

Because all of that is the same. I mean, if you are going to prepare, you are going to prepare. And you have to prepare, and you are not going to be able to share. You will be able to share information prior to the event, if it ever happens, better than sharing it after the event and trying to figure out, "Okay, how can we information share?" And then the stovepipes start, and we run into a problem.

This was identified in the 9/11 report. And in your position, you know, in your office, you see this all the time. And I am pretty sure in offices similar to yours in other agencies, they say, "Well, that was in a report, and I told them that this would happen, or we should do this."

Is there such a program now? If not, maybe we need to—I know it can be beneficial, from what I am hearing here, as it relates to information, as it relates to prosecution.

The chairman, you heard he wants to make sure we prosecute as many cases as possible. Well, that is going to take a little pregame. You know, it is going to take some practice to make sure that we are all familiar with one another, and the forms, and the people to call when we do have an event.

I am sorry, you wanted to—

Mr. THORSON. Well, I think I was sort of saying the same thing, only I probably didn't go into as much detail. The Department of Justice has an entire task force put together, and it isn't just to look backwards. It is to try and figure out how to be ready again.

In describing the region that our I.G. office set up, it is not by coincidence that it includes Florida, Alabama and Mississippi. That is for the future. We know there are going to be more disasters. We know that Florida, Alabama, Mississippi, that area, every hurricane season we are going to get hit. And we have to be ready to be able to address that.

So these are proactive moves. And the work that is being done with, as I mentioned, HUD, and the Department of Justice, and others, it really is with the future in mind, as to not just how to handle what is going on right now, but what can we do and do better?

The Katrina Fraud Task Force, for instance, that is a great example of learning lessons out of 9/11 and translating them to what is going on today.

And even though, to address your question a little bit more accurately, even though it is a past event, when you look at Katrina, the truth is: What they are doing and what all of the IGs are doing in particular, and other agencies, in their disaster responses will translate into what is coming. And, unfortunately, we know it will come.

Mr. MEEK. My time is up. But just in closing, I still think it is important, even in a place like San Francisco, I mean, for the federal government to have a TOPOFF program and prevent fraud in a non-event. Katrina, it is happened. The task forces are there. The task force is still going on, I am pretty sure, in the New York City area.

But what is happening in Las Vegas, Nevada? I mean, the local government folks, those are the folks that kind of put their hands up saying, "Okay, now how do we do this, I mean, and work with you at the same time, and share information?" They know how to prosecute, but how do we work together as a team?

And so said that maybe that may be an exercise that we need to go through, because we know in these areas, especially as it relates to the threat level when you talk about terrorism, we pretty much know where these individuals may think about carrying out an act.

So if we are doing that in a TOPOFF program, as it relates to that first responders, fraud, it will be great if someone comes before this committee and says, "Guess what, Congressman? We went through this with Newark Police Department—well, not only police department in Newark, prosecutor's office—and we have this. And so we were familiar with it."

Even if it is over a video conference or what have you, we can still get together with the technology and automation that we have, because what I am hearing here is not rocket scientist stuff. It is we just need to communicate better. We need to know what the next person knows, and that is what the panel said yesterday.

Well, it would be good if we could share information as though it is something we have to write off to MIT for, but it is something that we can do and it just takes some due diligence.

But I appreciate your response.

Mr. Chairman, I have gone over my time. Thank you.

Mr. ROGERS. The gentleman yields back.

The Chair now recognizes the Chairman of the Full Committee, Mr. King of New York.

Mr. KING. Thank you, Chairman Rogers.

I want to thank all of the witnesses for your testimony this morning. It has been very helpful, and I appreciate the public service you performed.

I really only have, I guess, two main questions. I know that sometimes in the past privacy concerns have made it difficult for government agencies, prosecutors to go after, you know, the guilty.

I was just wondering if, in this case, whether or not, for instance, charities or even other government agencies, that their refusal to disclose information on victims because of privacy concerns in any way hindered your efforts at prosecution or in doing an effective order?

I guess we will start with Ms. Ritzema and then work our way down.

Ms. RITZEMA. Yes, Chairman. We did have challenges with the Privacy Act's provisions. As I stated, we had a working group, a grant fraud working group that got together with all of the IGs and then other law enforcement entities to coordinate our investigations and our investigative resources.

Because of the Privacy Act, we were not able to conduct any kind of matches of that data that would have really helped us streamline in evaluating where fraud trends were and where actual fraud cases were. We were very primitive in 9/11. We actually had to bring lists of our bad guys and say, "Okay, can you guys run these against your lists and see if they applied to your programs?" and so on, because of the privacy considerations.

Now, there are ways of getting around those, but it was very cumbersome. And we needed to do this stuff right away. As you probably know, it is very time-consuming.

For Katrina, we had our—having learned from 9/11, our general counsel was able to recognize what we would need to do to start to do some of that, and we have entered into a MOU with FEMA at this juncture so that we will be able to share some information. And we will continue to work on those MOUs.

But it is a very cumbersome, long-term project. And if we could find a way—if Congress could do something that allowed for disasters, we could streamline this process, it would be very helpful in ferreting out fraud.

Mr. KING. I will be interested in what the other witnesses have to say, but I think it would be worthwhile for me to follow up to give us some ideas as to how you feel we could, you know, alleviate those concerns without violating privacy rights, but at the same time not allowing, you know, the guilty to hide behind privacy laws.

Ms. RITZEMA. Yes, sir. Our legal counsel has done a lot of work so that we could provide that information to the committee.

Mr. KING. Thank you very much.

Mr. Thorson? Anybody else want to comment on that or?

Mr. SMALL. With regard to fraud prevention, as far as grant administration, we had some difficulty with Hurricane Katrina, in the fact that so many of the evacuees were moving into different areas, and old line boundaries in states and other federal agency jurisdictions made us realize that we need better communication and collaboration between agencies and in sharing of information in general, in order to make sure that we don't duplicate service delivery and we make sure that people are recipients and getting the benefits they deserve as expediently as possible.

Mr. FRAZER. We also saw instances where privacy issues might be raised, but we could get around it, of course, with a grand jury subpoena when necessary. However, when someone is claiming that they had to receive medical care, or someone in their family did, or psychiatric care as a result of it, that presented certain issues at times.

I would suggest that either attach to a form a waiver paragraph or an additional page of a waiver saying that that person who is receiving the funds gives up any right to privacy as it relates to the giving of these funds or issues that arise out of the granting of the funds.

Mr. KING. Thank you.

Mr. Thorson, do you have any comments on that?

Mr. THORSON. The whole data-sharing issue is one that is being discussed between SBA and many other federal agencies. And I would go along with what the other comments that have been made here this morning; it really is a big issue.

We are involved right now in the idea of how to make sure that the loans aren't duplicative with, say, HUD grants or others, and the Privacy Act issues and sharing of data issues require a major effort to get through that.

Mr. KING. Thank you.

My time is about to expire. I just want to add to what Chairman Rogers said to Mr. Frazer about the New York District Attorney's office. I mean, this is a model District Attorneys office in the country going back to Frank Hogan, and certainly Robert Morgenthau for, I guess, the last 25, 30 years.

I mean, two legends who really—and that office is known as the premier prosecutor's office in the country. And I just wanted to emphasize what Chairman Rogers said. And this has nothing to do with politics, with both Mr. Hogan and Mr. Morgenthau of the other party, not that the office has ever been political at all, but just very professional.

And I want to again commend your office for the work that you have done in so many ways, so many regards over the years.

I yield back the balance of my time.

Mr. ROGERS. The gentleman yields back.

The Chair now recognizes the Ranking Member.

Mr. MEEK. Thank you, Mr. Chairman.

I would ask unanimous consent to seat Ms. Lowey and participate in the subcommittee hearing.

Mr. ROGERS. Without objection, so ordered.

The gentleman from New Jersey, Mr. Pascrell, is now recognized for any questions he may have.

Mr. PASCRELL. Thank you.

For any member of the committee, I would like to know if you had any resistance when you initiated your review of what was going on in the individual departments, any resistance at all from anybody? Would you tell us about it if there was any?

Ms. RITZEMA. No, sir, we worked with HUD and with the Empire State Development Corporation, ESDC. Again, it was congressionally mandated. It was written in the language, and it was going to get done. Everyone understood that right from the start, so there was no problems.

Mr. PASCRELL. So none of you in each of your activities had any resistance from anybody? Is that correct or incorrect?

Ms. RITZEMA. Yes.

Mr. PASCRELL. Thank you.

Mr. Thorson, as of late 2004, you had—in your department, that is, in U.S. small business department—had about 1 percent of all the $20 billion that was allocated and committed to New York City. That was your slice of this, 1 percent.

And out of the $250 million, you had about 1,500 loans that add up to about $208 million, which were delinquent. So, in other words, two-thirds of all the loans that went through your department, went through small business, were delinquent at that point.

Is that correct? Am I reading the record correctly?

Mr. THORSON. I am not sure what exactly the statistics are. I don't have that in front of me, but I am not doubting your numbers.

Mr. PASCRELL. Well, it says that there are $208.8 million in delinquent loans out of—and you only had $250 million to begin with. Unless my numbers are incorrect, and I don't think that they are, that is quite a chunk of what you were allocated. Now, what is the reason for that primarily?

Mr. THORSON. Actually, there could be any number of reasons, but one of the things that we do in these cases is to come in and try and look at the loans that have defaulted and review them—actually on many different loan programs—and try and find out exactly what the problem is.

On disaster loans, where those are made directly—

Mr. PASCRELL. Well, you have had some years to figure that out. Tell us what the reasons on.

Mr. THORSON. Well, one of the things that we look for is, if you are talking about loans that are made—for instance, I mentioned the STAR loans, which are made by lenders, one of the things that we go back and do—because, in that case, SBA pays a guarantee, a major portion of the loan to that lender in case of a default—what the I.G.'s office does is to go back and try and determine whether the bank or lending agency that made those loans fulfilled all the requirements upon them in order to make those loans.

If there is a default, then the idea is to get the money, the government portion back, and to assess why those loans defaulted. I can't address exactly what the reasons were for that particular case, but it is something that we do on a regular basis.

Mr. PASCRELL. Well, here is 2 years later. I mean, I quoted you figures up to the end of 2004. I am asking you, 2 years later, has the money been recovered? Can you answer the question, yes or no?

Mr. THORSON. I am sure not all of it has been, absolutely.

Mr. PASCRELL. Mr. Chairman, one of the major areas within the commitment of the $20 billion is the $5 billion to the Liberty Zone tax benefits. We don't have anybody testifying about that, and I know it is fairly complex.

And I was wondering before I go on with my further questions, can we can get any information, because that was a pretty big chunk, obviously, one-fourth of the entire $20 billion?

The only thing that exceeded that was FEMA. Through FEMA, we allocated $8.8 billion. Right next to that was this tax program, but I don't see any information about it. Is there a reason for that?

Mr. ROGERS. Yes, sir, it is being reviewed by our staff, and we do intend to put language in our final report on that specific issue.

Mr. PASCRELL. Are we going to have anybody testifying in the future concerning that program?

Mr. ROGERS. Not that I am aware of.

Mr. PASCRELL. Because you are talking about a lot of money here.

Mr. ROGERS. Well, and the staff have been conducting some pretty extensive interviews on these subjects, but we only have so many people on our panels. And, you know, we are holding three hearings, and all hearings have had two panels full of folks that have been very helpful. But we just couldn't get everybody that we wanted to on these panels.

Mr. PASCRELL. I have one question to ask Mr. Small. Would you allow me to do that?

Mr. ROGERS. Absolutely.

Mr. PASCRELL. Labor Department. I have a very jaundiced view of the Labor Department, so excuse me jaundiced view.

There are unique circumstances, you write, Mr. Small, related to the terrorist attacks. The Department of Labor issued emergency regulations to permit individuals who were unemployed due to the closure of the airport to be eligible for disaster unemployment assistance.

The deadline for applying for that assistance was extended in New York City, correct me if I am wrong. Congress extended the DUA benefits from 26 to 39 weeks for individuals who lost their jobs. Was that adequate enough? Are there people out there after that deadline was reached who fell in the category of not being able to find work?

Mr. SMALL. We do not believe so, and I will say why. First of all, with New York, we gave out a $25 million national emergency grant.

Mr. PASCRELL. Right.

Mr. SMALL. Of that $25 million, and $5 million was returned. With the state of Virginia, it was $3.5 million for a national emergency grant. We transferred a lot of funding in for the unemployment compensation and the disaster employment, and basically supported the other industries, such as the airline industry in several different states.

And we basically believe that the lessons we learned were just that we had to be more expedient and make sure that we had, you know, coverage for everyone, but we believe that we covered those that were seeking assistance.

Mr. PASCRELL. Were there any of those dollars used in Manhattan not pertaining to the airport, but those folks who lost their jobs, in terms of assistance?

Mr. SMALL. Yes, in New York alone, we know that there was an increase by 100 percent of filings of unemployment claims.

Mr. PASCRELL. Right.

Mr. SMALL. So based on the data that we have, again those filings that were done for New York were always done by phone. The

fact that that was done that way enabled them to process those claims through New York State processing centers outside of New York City.

So we believe that everyone was covered that needed assistance, as well as being able to staff from our federal regional offices in New York City assistance for those call centers.

Mr. PASCRELL. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROGERS. I think the gentleman's time is expired.

The Chair now recognizes the gentleman from Texas, Mr. McCaul, for his questions.

Mr. MCCAUL. Thank you, Mr. Chairman. I believe this is yet another example of waste, fraud and abuse at the expense of the American taxpayer and ultimately an insult to the real victims of September the 11th and the tragic events.

I want to focus on the STAR loan program. A local television station in my hometown of Austin, KVUE–24, did an investigative report into the program. And the results were disturbing.

It revealed that a frozen custard stand received $635,000. A car repair shop received $1.2 million. A motor and sailboat dealer received over a million dollars. And a shoe store received over $500,000. This is all in the Austin area. In total, 122 Austin-area businesses in Texas received over $47 million in STAR loans.

The congressional intent of the STAR loan program was to give loans to businesses, small businesses, that had been adversely affected and impacted by the September the 11th terrorist attacks. Now, I believe one could hardly argue that these loans are in any way, shape or form related to the September 11th attacks.

So my question is to Inspector Thorson. It is my understanding that the SBA officials in this matter urged lenders to broaden the eligibility of this program. Now, I would like to know: Who are these SBA officials? And will there be any accountability for these loans?

Mr. THORSON. First of all, on the intent, the congressional intent was something that we felt was important, and we did research. And we are not able to really find that, except for the fact that we did learn that it was not intended to be strictly geographically limited to New York or Washington, where the events took place.

I was not with SBA when those stories came out, my—first I was that I was heading for something where these types of stories were going to play a part in my life. And here we are.

But I was offended by these stories. But I will tell you one thing that I did learn: To the small businesses that were affected, they take a bit of a different viewpoint. And I am not going to justify some of this, because I can't, but I want to give you a couple of examples.

A dog boutique or something similar to that, whose major business is providing kennel service. People kennel their dogs when they travel. There was no travel.

Now, that may seem a stretch, but if you look at it from the small businessman's point of view, in a broad definition of adversely affected, you can see where they are coming from.

One of the ones that I laughed at was somebody mentioned a doughnut shop some place. And, well, how in the world can that

have affected? Well, what if that doughnut shop was located in the concourse of an airport? Airports were shut down.

So, again, I am not trying to justify some of these things, but the point I am trying to make is that if you take these down to the grassroots level and you look at these individual cases, there is not always a clear cut horror story behind them.

And, in fact, sometimes the justification is actually pretty sound, even though on first glance you wouldn't think so.

There is no question that the officials at SBA, some of them, did encourage the lenders to broaden this program, and part of that was because they were receiving criticism that people weren't using this program that had been initiated by the Congress and they wanted to provide funds and get these loans out there.

Mr. MCCAUL. If I could interject, when the individuals who received these loans—as my time is running out—the individuals who did receive these loans, when they were interviewed, they knew nothing about the STAR loan program. They said there was absolutely no connection between their business and the tragic events of September the 11th, and yet they did receive these loans.

Did the SBA make any effort to determine or verify the eligibility of these applicants?

Mr. THORSON. They really left that—and this was one of the things we pointed out in our report—they really left that up to the lenders. They put all of that onto them. They did define what the lender was supposed to do, but there was no oversight. And we don't feel there was any oversight of those lenders to provide the justification that was required.

And that gets to the point you just made, because the truth is, how can you provide justification without explaining to the borrower why you are asking for it, which would be to tell them what kind of loan they are getting?

So your point is well taken. And logic would tell you that you would have to tell this individual why he is getting the type of loan he has, but the truth is some of them had no idea it was. And some borrowers were offended that they were participating in a program that was designed for 9/11 victims.

Mr. MCCAUL. I would ask that your office look at these individuals in the SBA who apparently went against congressional intent and ensure that this doesn't happen again, in the event we have another tragic event in this country.

And, Mr. Chairman, I would like to ask for unanimous consent to enter into the record the transcript from the investigative report.

Mr. ROGERS. Without objection, so ordered.

[The transcript follows:]

FOR THE RECORD

SUBMITTED FOR THE RECORD BY HON. MICHAEL T. MCCAUL

KVUE ANCHOR INTRO

IN TONIGHT'S DEFENDERS REPORT, A LOOK AT THE WAY THE GOVERNMENT IS SPENDING YOUR MONEY.
AFTER SEPTEMBER 11TH, CONGRESS PASSED LEGISLATION ALLOCATING MORE THAN A BILLION DOLLARS TO SMALL BUSINESSES DIRECTLY IMPACTED BY THE TERRORIST ATTACKS.

MORE THAN HALF OF THAT MONEY WENT TO BUSINESSES IN NEW YORK CITY.
THEN—CONGRESS PASSED MORE LEGISLATION FOR SMALL BUSINESSES ADVERSLEY AFFECTED.
AND AS YOUR ABOUT TO SEE, MILLIONS OF THAT MONEY ENDED UP HERE IN CENTRAL TEXAS.

KVUE SCRIPT

4 YEARS AND 182 MORNINGS AFTER THE TERROR

AFTER THE DEATH OF AMERICA'S TWIN TOWERS AND NEARLY 3 THOUSAND OF ITS PEOPLE

SIGNS OF ECONOMIC RECOVERY ARE EMERGING EVEN—SOME 1700 MILES AWAY—IN TEXAS' CAPITOL CITY.

BUT, THE BLUEPRINT FOR RECOVERY—HAS ITS SHARE OF PROBLEMS.

TAKE THE SMALL BUSINESS ADMINISTRATION'S STAR LOAN PROGRAM FOR EXAMPLE.

IN JANUARY OF 2002—CONGRESS PASSED LEGISLATION FOR A 3.7 BILLION DOLLAR LOAN PROGRAM DESIGNED TO HELP SMALL BUSINESSES ADVERSELY AFFECTED BY 9-11 AND ITS AFTERMATH. "STAR" STANDS FOR SUPPLEMENTAL TERRORIST ACTIVITY
RELIEF. IT'S IMPORTANT TO NOTE—
BUSINESSES NATIONWIDE WERE ELIGIBLE—

AND IN CENTRAL TEXAS, PUBLIC RECORDS REVEAL 122 BUSINESS OWNERS RECEIVED OVER $47, MILLION 789,100 DOLLARS IN STAR LOAN FUNDING.

¤0]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--tape 1 gary @ 17:27)
"weather-all this is gary"

AMONG THEM, GARY WILLIAMSON--THE OWNER OF WEATHER--ALL--

¤1]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--tape 1 gary :51)
"we're a manufacturer of electrical enclosures."

GARY SAYS HE UNDERSTANDS WHY YOU MIGHT QUESTION HIS BUSINESS'S ELIGIBLITY FOR TERRORISM RELIEF FUNDING--BECAUSE HE QUESTIONS IT TOO!

¤2]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY TAPE 1 4:38 TO 4:42)
"i didn't know anything until you gave me that letter that it was for 9-11 type situation."

[STAND UP]
GARY RECIVED ONE OF 95 CERTFIED LETTERS I SENT TO LOCAL BUSINESS OWNERS WHO WERE GRANTED STAR LOANS. I OFFERED THEM AN OPPORTUNITY TO EXPLAIN WHY THEY FELT THEIR BUSINESS WAS ADVERSELY AFFECTED BY TERRORISM. ONLY 7 PEOPLE RESPONED TO THE LETTER AND GARY WAS ONE OF THEM.

HE SAYS HE HAD NO IDEA HIS LOAN--FOR 430 thousand DOLLARS--WAS BASED SOLEY ON HIS ECONOMIC STATUS AFTER 9-11.

¤3]] C1.5 G 0 [[

TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY TAPE 1 24:33 TO 24:39)
″if they said hardship for 9-11 hardship i would have said no we don't qualify--which we don't.″

HIS PROOF--HIS APPLICATION WAS FOR A START UP LOAN. HE WASN'T SUFFERING FROM ECONOMIC HARDSHIP--HE WAS TRYING TO BUY HIS OWN BUSINESS.

¤4]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY TAPE 1 9:05 TO 9:09)
″--i'm not so sure that was te smartest thing to do to buy a business then.″

AND GARY IS HARDLY THE EXCEPTION.

¤5]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--JACK JOHNSON @ 2:54)
″this is the first time i've ever heard of it″

JACK JOHNSON OWNS AUTOMATION ENERGY TECHNOLOGY IN SOUTH AUSTIN. HE WAS GRANTED A 15 THOUSAND DOLLAR STAR LOAN IN SEPTEMBER OF 2002.
¤6]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--JACK 5:09 TO 5:12)
″ANY QUESTIONS EVER ASKED OF YOU ABOUT TERRORISM? no nothing.″

HE SAYS HIS LENDER--WELLS FARGO BANK NEVER TOLD HIM HE WAS APPLYING FOR TERRORISM RELIEF AND HIS LOAN APPROVAL LETTER CONFIRMS IT.

¤7]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT-nats of jack reading letter @ 22:26-)
″subject to SBA loan eligibility...″

IT DETAILS THE DOCUMENTATION REQUIRED TO RECEIVE THE FUNDS--AND NOT ONCE--IS THE STAR LOAN PROGRAM OR TERRORISM EVER MENTIONED.

AND LOOK AT SOME OF THE OTHER CENTRAL TEXAS BUSINESSES GRANTED STAR LOANS.
THE KWIK KAR LUBE AND TUNE ON WEST PARMER--WAS GRANTED 1.189 MIL.
AUSTIN BOAT AND MOTORS ON HIGHWAY 620 WAS APPROVED FOR 1.015 MIL IN TERRORISM RELIEF.
SHAKE'S FROZEN CUSTARD OF CEDAR PARK RECEIVED 634,400.
AND KARA-VEL SHOE STORES IN AUSTIN WAS GIVEN A TOTAL OF 570 THOUSAND DOLLARS--ALL IN TERRORISM RELIEV FUNDING

¤8]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--2 SOT--MCCAUL @ 13:58 14:02)

″get the SBA officials to testify before Congress about what were yu thinking???″

US REPRESENTATIVE, MICHAEL MCCAUL SERVES ON THE COMMITTEE FOR HOMELAND SECURITY IN WASHINGTON. HE SAYS AN INVESTIGATION WILL BE LAUNCHED INTO THE ACTIONS OF THE S-B-A.

¤(9]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--MCCAUL @ 1:32 TO 1:43)
″initially you think--well why did these businesses apply for this 9-11 emergency loan program and the fact of the matter is they didn't even have any knowledge that that's what happended.″

MCCAUL SAYS THERE ARE 2 PROBLEMS TO INVESTIGATE. 1--WHY BUSINESSES NOT ADVERSLY IMPACTED BY 9-11 RECEIVED TERRORISM RELIEF AND 2--WHY THEY WERE GRANTED A STAR LOAN WITHOUT THEIR KNOWLEDGED--
¤(10]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--MCCAUL 1:44)
″i really fault the small business administration and the higher ranking officials.″

IN OCTOBER OF 2005--MY REQUEST FOR AN ON CAMERA INTERVIEW WITH THE SBA WAS DENIED. BUT, I DID RECEIVE THIS WRITTEN STATMENT FROM MICHAEL STAMLER--THE MEDIA RELATIONS MANAGER IN WASHINGTON.

HE SAYS--IN PART--THE LENDER MUST FIND THAT THE LOAN APPLICANT WAS ADVERSELY AFFECTED BY THE TERRORIST EVENTS OF SEPTEMBER 11, 2001 AND PREPARE AND MAINTAIN IN ITS LOAN FILE A WRITE UP SUMMARIZING ITS ANALYSIS AND ITS CONCLUSION THAT THE LOAN IS ELIGBLE FOR THE STAR PROGRAM.

¤(11]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--JACK JOHNSON 4:39)

″DO YOU RECALL EVER CONTRIBUTING TO A FILE AT ALL FOR TERRORISM RELIEF? i don not!″

¤(12]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY TAPE 1 @ 6:47 TO 6:50)
″i never said anyting about 9-11 or anyting about that″.

I ALSO ASKED HOW THE SBA RESPONDS TO ALLEGATIONS THAT TEXAS BUSINESSES RECEIVED A STAR LOAN-WITHOUT MEETING THE QUALIFICATIONS-- THE RESPONSES--

″IF YOUR STATION IS INTERESTED IN TRYING TO SHAME DECENT LOCAL BUSINESS OWNERS WHO APPLIED FOR THE LOANS IN GOOD FAITH YOU SHOULD RECONSIDER. THE LOANS ARE PERFORMING QUITE WELL, AND IT IS LIKELY THAT THERE WILL END UP BEING VERY LITTLE IMPACT ON TAXPAYERS.

3 MONTHS AFTER THAT STATMENT--THE SMALL BUSINESS ADMINISTRATION'S INSPECTOR GENERAL RELEASED THE RESULTS OF AN INTERNAL AUDIT THAT REVEALED--″SBA DID NOT IMPLEMENT ADEQUATE INTERNAL CONTROLS AND OVERSIGHT OF THE STAR PROGRAM TO ENSURE THAT ONLY ELIGIBLE BORROWERS OBTAINED STAR LOANS″. IT ALSO STATES ″AID MAY HAVE BEEN DISBURSED TO BUSINESSES THAT MAY NOT HAVE

BEEN IMPACTED BY SEPTEMBER 11TH AT ALL--AND ONLY 4.7 PERCENT OF STAR LOAN RECIPIENTS WERE EVEN AWARE THAT THEY HAD RECEIVED LOANS THROUGH THE STAR PROGRAM".

AFTER THE RELEASE OF THIS AUDIT--I OFFERED THE SBA ANOTHER ON CAMERA INTERVIEW TO CLARIFY THEIR ORIGINAL STATEMENTS AND INFORMATION. NONE OF MY PHONE CALLS AND WRITTEN REQUESTS HAVE BEEN ACKNOWLEDGED.

¤13]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--MCCAUL TAPE 1 @ 2:08 TO 2:16)
"we're going to be taking a close look at these officials and bring them before congress and have them testify before our committee and they're going to have to answer the hard questions."

¤14]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY @ 24:51 TAPE 1)
"if I knew the money was allocated strictly for 9-11 the people in NY qualify--I don't"

GARY BELIEVES HIS VOICE REPRESENTS HUNDREDS--POSSIBLY THOUSANDS ACROSS THE COUNTRY--ALL FROM BUSINESS OWNERS WHO FEEL THEY WERE MISLED BY THE FEDERAL GOVERNMENT.

¤15]] C1.5 G 0 [[
TAKE SOT
TRUNS=
OUTCUE:
TAPE: TC:
¶(--SOT--GARY 16:55 to 17:00)
"why are they telling the banks 1 thing and you another--why? that doesn't make any sense"

KVUE TAG

WELLS FARGO ISSUES A STATEMENT ABOUT THIS STORY--SAYING--IN PART
"The SBA encouraged lenders to utilize a broad and inclusive definition of small businesses impacted by these events to help spur an economic recovery, and we are confident that Wells Fargo fully complied with those directives."
WE'D ALSO LIKE TO REITERATE, THE SMALL BUSINESS OWNERS WHO RECEIVED STAR LOANS DID NOTHING WRONG BY RECEIVING THE SBA FUNDING. THEY SIMPLY DIDN'T KNOW WHAT THEY WERE RECEIVING. AND THE SBA MAINTAINS STAR DID NOT TAKE AWAY ANYTHING FROM NEW YORK DISASTER VICTIMS--SINCE THEY WERE GIVEN FUNDING UNDER A COMPLETELY DIFFERENT PROGRAM.

Mr. ROGERS. The gentleman's time is expired.

The Chair now recognizes the gentlelady from New York, Ms. Lowey, for any questions she may have.

Welcome.

Mrs. LOWEY. Thank you. Thank you very much, Mr. Chairman.

And I wanted to be here because, as my colleagues would say, I really believe that support for these programs through the 18 years that I have been in the Congress are undermined because of the constant focus on waste, fraud and abuse. And I keep wondering, what have we learned? What can we do differently?

And I have a few questions in that regard. First of all, Mr. Thorson, when the STAR loan program was proposed, were you in-

volved? Did you propose any kind of controls? Because you have been working on these issues, and I would imagine that something could be learned from your experience.

So rather than "gotcha" at the end—and then I am going to get to Mr. Frazer, because that is your job—did they reject some of your proposals? It seems we never learn.

And then I would want to know from Mr. Frazer, are there some fraud cases that you have been working on where we did get them and given them penalties? And if you had been brought in, someone like yourselves, at the beginning of these programs, could you have recommended controls to be put in place?

I think I mentioned at another hearing it was astonishing to me that, 2 1/2 years after the Iraq war has been prosecuted, we finally, because of I.G. Bowen, have put in computers. Well, isn't that interesting: 2 1/2 years, they are finally tracking the expenses.

So my question again is, to Mr. Thorson, were you consulted? Did you have proposals? Did they listen? Were they rejected?

And what do you think you have learned, Mr. Frazer, that we could put in place before to avoid some of these high-profile frauds?

Mr. THORSON. Well, first of all—and I really hate saying this, because it sounds like I am trying to duck your question. I am not—

Mrs. LOWEY. So don't.

Mr. THORSON. I have been with the SBA about 3 months, so I wasn't there when this program was done, but I am going to try and answer your question the best I can anyway. And forgive me for saying that, because I do feel like—

Mrs. LOWEY. Forgive me for not knowing.

Mr. THORSON. One of the things that we do want to do in our office is to work with the agency and, to use your term, to not just have a "gotcha" at the end. There were things that I think I would have recognized, because I did read—I knew I was coming to the agency at that point, and I knew I wanted to read everything I could about it.

And one of the things that I think we would all learn—and this includes the Congress—the definitions. When you specify these programs, the definitions need to be very clear.

And if they are not clear, then the agency needs to request clarification and to make sure that the intent of what they are trying to do with this program is executed properly and not just broadened to the point to satisfy whatever the latest pressure was.

I think, in this particular case, having been on the other side of the dais for a number of years, both in the House and the Senate, and done a lot of hearings, I would have recognized this was really a program that had potential for disaster.

Mrs. LOWEY. Now, you recognized it. What about the people running the program? Have they ever run a program before? They didn't recognize it? They didn't—

Mr. THORSON. I think what happened, in trying to get these loans out and affect the national economy, not just these local geographical areas hit, I think they took the stance that almost any business in this country was affected economically by what happened. I think that summarizes their feeling.

Whether that was a valid statement or not, I guess we could debate for a long time. I think it probably, from our reports, shows they maybe went a little too far in how they did that.

But I really think part of their problem was the lack of oversight on the lenders. Once they basically freed the lenders up to go and say anybody can have these loans, because almost by definition they felt that any business could qualify and would be affected in some adverse way.

Well, we know that is not true. I mean, there were some businesses that were not affected. But I think what happened is, in their desire to really expand the program, which was certainly the pressure they were receiving, that they, first of all, broadened it too far and, second of all, did not provide enough oversight over the lenders who took that as the incentive to just let it go to anybody, no matter what the justification.

Mrs. LOWEY. Thank you.

Mr. FRAZER. Yes. One of the key things that we did learn as a result of all of our investigations was, besides the documentation that we have talked about already, if at the time?when the people from the charities, the volunteers and the workers came and started, they were affecting people like ourselves.

And they were feeling the brunt of the tragedy. And they came, and they wanted to give out money and to give aid to those who were deserving.

And I think that if, in fact, prior to their actually sitting at the table to give out money, they go through some training?not so much training, even a lecture series where they are able to hear about certain fraud indicators to look out for, maybe tell them about some prior prosecutions or incidents that has happened in the past, then there would somehow be?the desire to give and help would be tempered by the fact that some people are looking to take advantage of them.

I think that would be useful in the future.

Mrs. LOWEY. Thank you, Mr. Chairman. I hope, as a result of these excellent hearings you are holding, that we can learn something so that next year or the next incident we are still not talking about waste, fraud and abuse. Thank you very much, Mr. Chairman.

Mr. ROGERS. Thank you. The gentlelady's time is expired.

The Ranking Member is recognized.

Mr. MEEK. Thank you, Mr. Chairman.

Ms. Lowey, I know that along the airlines, especially being a ranking member of a subcommittee and an appropriations committee, many times?and someone has gone through this quite a bit in Florida, especially in south Florida, as it relates to hurricane—the reason why I was asking the question of what happens prior to the event, because after the event I know what happens.

Legislation in haste. Policymakers calling folks that are sitting at the dais saying, "What are you doing? Why don't we have those dollars out there? Why do we have this pot of money still sitting there?"

And it is 2 or 3 months later, and then they start to push of running these dollars through. And then it is the victimization of the taxpayer all over again.

And I am hoping through this report—and I mentioned the authorization bill that may not be the proper vehicle for next week. But as we start to close the book on this report, maybe, just maybe, Mr. Chairman, we can—I know the Small Business Committee has done some work, and one of your New Yorkers is the ranking member there.

They have had to do some work. And I am hoping that our staff would talk with them about the work they have done on the STAR program and programs like it, so that we don't find ourselves doing this all over again.

I just have a strange feeling that this is happening right now in the Gulf. A number of the programs that we have now—with all due respect to all the law enforcement agencies we have there to watch them—it is being carried out right now.

So we have to legislate and put some sort of guidance and parameters in what I may call non-event times prior to the event, because after the event, you know, the bill goes from the committee to the floor within the same week.

The Department of Homeland Security slammed together in haste, not well-thought-out. And we are going through the process now of trying to correct that very slowly.

So I just wanted to say that out loud, Mr. Chairman, because I believe that we should in order report hopefully use that as a guiding—some sort of set of guiding principles that can hopefully go into legislation.

We don't want to nail folks down to where they can't turn right or left when you have to make a decision, but we also expect for goodwill and common sense to prevail and say that, "Well, this doesn't sound right," especially with this STAR program.

I didn't really want to get into that personally in my comments today, but it is so very, very important as it relates to the integrity of the whole process of preventing fraud in the future.

Thank you, Mr. Chairman.

Mr. ROGERS. Thank you.

And that is the intent of this subcommittee's efforts and the reason why Chairman King asked us to investigate this. We do intend to come up with a report that is meaningful and does make a difference for the future.

With that, I would like to remind all panelists—first of all, thank you for your time and your participation. It has been of great help to us in our efforts.

We would like to remind you that other Members and some of the Members who are here, since we only did one round of questions, may have some additional questions for you, which they will submit to you. I would ask that you respond to those in writing. We are going to leave the record open for 10 days for that purpose.

And with that, thank you. And this panel is excused.

The Chair now recognizes the second panel. And we would like to welcome you and thank you for your time and participation.

Our first witness will be Ms. Eileen Mildenberger, Chief Operating Officer of the Empire State Development Corporation, for your statement.

As I have told the earlier panel, if you all were here, your entire written statement has been submitted, and all Members have a

copy. So we would ask that you summarize—try to keep your remarks to five minutes or less—so that we will have more time for questions and answers.

Mr. KING. Mr. Chairman?

Mr. ROGERS. Chairman King?

Mr. KING. Mr. Chairman, I would just like to make a statement for the record that my son worked for Ms. Mildenberger at the Empire State Development Corporation in 1996 and 1997.

So while I don't see any conflict of interests or any impropriety, I will recuse myself for any questioning of Ms. Mildenberger. And I will not question any of the witnesses regarding ESDC.

Mr. ROGERS. Understood. Thank you, Mr. Chairman.

Ms. Mildenberger, the floor is yours.

STATEMENT OF EILEEN MILDENBERGER

Ms. MILDENBERGER. Thank you for the opportunity to discuss Empire State Development, the state's lead economic development agency's efforts and initiatives following the 2001 terrorist attacks on the World Trade Center.

I am pleased to report that Manhattan is once again a vibrant center of commerce. I would like to review where we have come and what we have done.

On September 10, 2001, the district of south of 14th Street had 20,000 small businesses and 103 large businesses, with had more than 500 employees each. Large firms amounted to only 0.5 percent of all of the businesses, but employed 42 percent of all the workers.

Following September 11th, virtually all of these companies, and a half million employees, were affected. While the physical impact of the 9/11 attacks was geographically limited to the blocks near the World Trade Center, the attacks had a far more substantial economic impact. An independent source estimated 64,000 jobs could be permanently lost.

Governor Pataki's initiative to establish a unified federal, state, and city command, and to designate Empire State Development as the lead agency for economic recovery, under the leadership of our chairman, Charles Gargano, made it possible for New York State to implement a quick and effective response to the attacks, the goals of which were to keep businesses in Lower Manhattan and to preserve New York's position as the global center for finance.

Within 48 hours of the attacks, ESD set up a walk-in center in New York City and 1–800 number to field inquiries about assistance for businesses. These were in operation before the fires at the Trade Center were put out.

Using state funds, ESD guaranteed $33 million in bridge loans, and we also had a substantial grants program. We did this knowing that federal funds would soon be on the way.

The Department of Housing and Urban Development's Community Development Block Grant was identified as the most appropriate vehicle to fund New York's economic recovery efforts. Thanks to quick action by Congress, substantial federal resources were made available for this.

Our efforts had two primary objectives. The first was to help businesses make up the loss of working capital. And the second

was to provide incentives for businesses to return to or remain in Lower Manhattan.

With $1.2 billion in HUD funds, we created three large programs, the first of which was the Job Creation and Retention grant program, intended to retain and attract anchor firms. Seventy-two large companies accepted grants, totaling $292 million, the results of which created more than 70,000 jobs in Manhattan and a total of 91,000 jobs throughout New York City.

Four-and-a-half months after the attacks began, we also provided assistance to small businesses through the Business Recovery Grant program. Over a half-a-billion dollars, $563 million, was provided through these programs for small businesses located south of 14th Street.

In addition to that, 6 months later we started another small firm, an Attraction and Retention Grant program, which provided over $115 million to 2,200 small businesses. These firms employ over 37,000 people, one-third of whom which are low-income or low-wage earners.

In addition, other programs for small businesses resulted in $42 million of loans and $5 million in technical assistance.

I just want to emphasize for today's meeting that carefully followed federal rules, including development of an action plan that was reviewed and approved by New York City, the Department of Housing and Urban Development, and widely circulated for public comment before the plans were implemented.

Our economic development staff took pride and took efforts to make sure that each request that was asked for assistance was carefully reviewed. The BRG program, for instance, had at least five different independent reviews. The large grant program underwent a thorough economic analysis and approval by our board of directors.

HUD inspectors general concluded, "ESDC generally disbursed the CDBG disaster funds to eligible applicants in accordance with the HUD-approved action plan."

In recognizing the time of the subcommittee, I just want to say that, with great care was taken to ensure that we had a fair and efficient process, balanced with documentation and accountability.

We often pursued third-party verification prior to awarding grants, which included: asking applicants to provide tax information; site visits to the business locations; speaking with landlords; also, coordinating with the State Department of Labor to confirm that they had employees at that location, which were reported prior to the attacks.

Today, less than 5 years after September 11th, businesses have returned and a residential influx has taken place in New York, in Lower Manhattan. Specifically, the Lower Manhattan office market is showing signs of sustained recovery, with the vacancy rate downtown that dropped from nearly 14 percent at the beginning of 2005 to currently near 10.5 percent.

ESD recognizes that we have contributed a lot and we still have a lot to do. We are proud of accomplishments thus far, and through the leadership and vision of Governor Pataki, Mayors Giuliani, Bloomberg, our congressional delegation and their colleagues, we have not only helped to renew Lower Manhattan, but we have re-

built the confidence of the business community in one of the most important parts of our city, state, and country.

Thank you very much.

[The statement of Ms. Mildenberger follows:]

PREPARED STATEMENT OF EILEEN MILDENBERGER

Thank you for the opportunity to provide testimony on Empire State Development's economic recovery initiatives following the terrorist attacks on the World Trade Center. I am pleased to report that lower Manhattan is once again a vibrant center of commerce.

Let me review how far we've come and what we've done.

On September 10, 2001, the district of south of 14th Street had 20,000 small businesses and 103 large businesses with more than 500 employees each. Large firms amounted to only half of 1% of all the businesses in the area, but employed 42 percent of all workers.

Following September 11th, virtually all of these companies—and a half million employees—were affected.

While the physical impact of the 9/11 attacks was geographically limited to the blocks near the World Trade Center, the attacks had a far more substantial economic impact. An independent source estimated 64,000 jobs could be permanently lost.

Governor Pataki's initiative to establish a unified Federal/state/city command, and to designate Empire State Development as the lead agency for economic recovery, made it possible for New York State to implement a quick and effective response to the attacks, the goals of which were to keep businesses in lower Manhattan and to preserve New York's position as the global center for finance.

Within 48 hours of the attacks, ESD had set up a walk-in center in New York City and 1–800 number to field inquiries about assistance for businesses. These were in operation before the fires at the Trade Center were out.

Using State funds, we guaranteed $33 million in bridge loans from banks to nearly 1,000 qualified small businesses. We instituted a grant program for retail businesses, approving more than 3,000 applications and $13 million in grants.

It soon was clear that Federal help would be needed. The Department of Housing and Urban Development's Community Development Block Grant was identified as the most appropriate vehicle to fund New York's economic recovery efforts. Thanks to quick action by Congress, substantial federal resources were made available.

Our effort had two primary objectives: To help small businesses make up the loss of working capital, and to provide incentives for businesses to return to, or remain in, lower Manhattan.

With $1.2 billion in HUD funds, we created our three largest programs.

The Job Creation and Retention Program (JCRP) was intended to retain and attract large "anchor" firms. Seventy-seven companies accepted grants totaling $292 million. They have committed to retain and create more than 70,000 jobs in lower Manhattan and a total of 91,000 jobs citywide. Four and one-half months after the attacks, we began providing $563 million in business recovery grants to compensate small business loss. Business Recovery Grants were available to eligible businesses south of 14th Street with fewer than 500 employees and with unreimbursed economic losses. In addition, $13 million was allocated to large businesses that employ 200 workers or less at their downtown locations.

BRG provided assistance to more than 14,000 businesses. The average grant was nearly $39,000 and compensated only 16.8% of the average firm's loss.

Six months after the attacks, we began the Small Firm Attraction and Retention Grant (SFARG) program. Through SFARG, we have disbursed nearly $115 million to 2,200 small businesses that made a 5 year lease commitment to stay in lower Manhattan. These firms employ over 37,000, nearly 1/3 of whom are low-wage earners. Second grant disbursements, totaling $42 million, to eligible companies that stay downtown, will take the program into mid-2007. In other programs, we provided $42 million in business recovery loans and nearly $5 million for technical services for small businesses.

We carefully followed Federal rules, including development of an action plan that was reviewed and approved by New York City and the Department of Housing and Urban Development, and widely circulated for public comment.

Our economic development staff reviewed every request for assistance. Each BRG grant received at least five different reviews. JCRP grants underwent a thorough economic analysis and approval from our Board of Directors. HUD's Inspector Gen-

eral concluded, "ESDC generally disbursed the CDBG disaster assistance funds to eligible applicants in accordance with the HUD approved action plan."

Great care was taken to ensure a fair and efficient process, balanced with careful documentation and accountability. We often pursued third-party verification prior to awarding funds. This included: reviewing the Port Authority's master list of World Trade Center tenants; requested tax information from the IRS; site visits; speaking with landlords; and confirming employee numbers with the State Department of Labor.

Where fraud has been detected, ESD has worked closely with law enforcement. As of this time, only two cases have gone to trial.

Our initiatives to help rebuild the lower Manhattan economy taught some important lessons. Among them:

- Building relatively simple-to-administer and simple-to-apply-for assistance programs with objective, transparent rules understandable to potential grant recipients.
- Scaling programs to match organizational capacity.
- Establishing procedures to catch errors and potential fraud.
- Recognizing that some federal and state loan programs are not well-suited to the purpose of disaster recovery.

Today, less than five years after September 11th, businesses have returned, and a residential influx has taken place in lower Manhattan.

Specifically, the lower Manhattan office market is showing signs of sustained recovery. The vacancy rate downtown dropped from nearly 14% at the beginning of 2005 to 10.6% at year end, its lowest level since September 11th. In the past year, the number of downtown businesses increased by 6%.

With the recovery of the area's business economy, lower Manhattan has become home to a burgeoning residential community. Today, there are more than 20,000 residential units south of Chambers Street, a 10% increase over 2004. 29 developments are under construction, adding almost 4,000 new units in the next few years.

And tourism in New York City is at a record high, with 41 million visitors in 2005, and visitor spending at $21 billion in 2004.

ESD's assistance has contributed to this new vitality.

We have more to do, of course, but are proud of what has been accomplished thus far. Through the leadership and vision of Governor Pataki, Mayors Giuliani and Bloomberg and our Congressional Delegation and their colleagues, we have not only helped renew lower Manhattan, but we have rebuilt the confidence of the business and residential community in one of the most important parts of our city, State, and country.

Thank you.

Mr. ROGERS. Thank you, Ms. Mildenberger, for your statement.

The Chair now recognizes Mr. Stefan Pryor, President of the Lower Manhattan Development Corporation, to testify. Mr. Pryor is accompanied by a member of the board of LMDC, Mr. Thomas Johnson, who serves as Chairman of LMDC's Audit and Finance Committee. And I understand he is in the audience.

With that, welcome, Mr. Pryor, and we look forward to your statement.

STATEMENT OF STEFAN PRYOR

Mr. PRYOR. Thank you.

Chairman Rogers, Ranking Member Meek, Committee Chairman King, I want to thank you very much for this opportunity to testify on the revitalization and the resurgence of Lower Manhattan after September 11th.

And I would particularly like to thank this subcommittee and the United States Congress as a whole for your support throughout the recovery and rebuilding period. We couldn't be in this position, in which we have made tremendous progress, without your tremendous help.

LMDC was created following September 11th to help plan and coordinate the rebuilding of Lower Manhattan. We are a subsidiary

of Empire State Development Corporation, and our Board of Directors is appointed by George Pataki and Mayor Bloomberg.

Congress allocated $2.783 billion of the $21 billion total aid package to the LMDC for our efforts.

Today, I will give you a brief description of some of LMDC's activities, centered on ensuring the development of a revitalized, 21st-century downtown. I will then describe the climate of accountability and controls we have established at LMDC to ensure integrity in the implementation of these priorities.

The scene in Lower Manhattan has changed so significantly in less than 5 years that people often forget what we did experience in 2001. We suffered, of course, the unconscionable, tragic loss of 2,749 people at the World Trade Center on September 11th.

On the days immediately following, I remember well how my own residential street, which is about a block from the World Trade Center, was affected. There were military personnel in the street; you had to stop and show I.D. to get to your home.

To say the least, there were deterrents to remaining downtown. In fact, there were concerns that we would have a permanent exodus from downtown as a result of the events.

I witnessed moving vans lining the streets, as residential vacancy rates were reported as high as 50 percent in some of the residential buildings. Businesses were moving away, fearing Lower Manhattan would never again be a thriving commercial district.

We lost 60,000 to 80,000 jobs as a result. Of course, the 10 million square feet of office space at the World Trade Center itself was destroyed. These are the negative images and tough conditions that were part of our daily experience downtown, those of us who live and work there and, in the aftermath of September 11th, were also broadcast across the world.

So again there were some who questioned whether it would ever be possible to recover. Yet, in less than 5 years since September 11th, we have already seen significant progress.

On the World Trade Center site itself, LMDC selected the master plan for the site, a plan that continues to guide the rebuilding today and is well on its way to implementation. As a function of the master plan, for example, we have witnessed the construction and opening of Seven World Trade Center, the last building to fall on September 11th and the first to rise again.

The construction of the Freedom Tower has become. And the Santiago Calatrava-designed transportation hub at the World Trade Center, which was crushed—the original version thereof was crushed on September 11th—the construction is under way with a temporary service already operational.

LMDC also guided the process for the selection of the heart of the master plan, the memorial, and we have since led the planning and design efforts there. And we have already begun site preparation work on the construction of a memorial.

It was very clear from the beginning of our planning and public outreach that making Lower Manhattan viable would require more than rebuilding the Trade Center itself, so engaged in a number of initiatives beyond the World Trade Center site to ensure that we created an environment that, over the long term, could sustain

businesses and residents, and we believe we have done so. You are familiar with a number of our programs.

I would like to actually jump to the controls that we put in place to describe to you how we have ensured integrity along the way, in the course of our work.

Our board of directors provides oversight and clear direction to management. The board itself consists of distinguished citizens, corporate executives, government officials and community leaders. As a subset of our board, our audit and finance committee is co-chaired by Tom Johnson.

Tom has been introduced to you, and he is the retired chairman and CEO of GreenPoint Bank. And he is also the father of Scott Johnson, who was lost on September 11th.

And Larry Babbio, the vice chairman and president of Verizon, they co-chair our audit committee. We met as recently as yesterday. They are a very active committee, and we are grateful for their support and help in making sure that we have a clean operation.

The second layer of controls are day-to-day project managers and attorneys who monitor their assigned projects all the way through implementation. Those are members of our staff.

Third, our compliance monitoring department performs risk-based reviews on LMDC sub-recipient relationships, focusing on both HUD and LMDC compliance.

Fourth, our internal audit department objectively evaluates and reports on risks and controls weaknesses directly. Working directly with the board's audit and finance committee, the internal auditor himself reports to Tom Johnson, not to me.

As a fifth level of oversight, LMDC retains external auditors to review LMDC's general purpose financial statements.

Sixth, HUD's Office of Block Grant Assistance conducts semi-annual monitoring reviews of LMDC management's performance, concentrating on program compliance. I know there are representatives of that office here in the audience today, and they are involved and is much more active than those period reviews.

Finally, the HUD Office of the Inspector General has had a very active role. And these audit results are reported every 6 months, so we work closely with that office, as well.

Beyond that, beyond those seven layers, LMDC has established a department to conduct proactive investigations. On our staff, we hired investigators, a former assistant U.S. attorney, who, working with our general counsel, herself a former assistant U.S. attorney, has brought forward cases proactively.

For example, in the case of our residential grant program, some of which you have heard about in the written testimony that has been submitted, to make sure that we detect, uncover and bring forward for prosecution cases of fraud, so that these things happen as part of our system rather than a reaction to what we are doing.

In conclusion, if I may, Mr. Chairman—I know that my time is expired—I wanted to just state that, through the public process, the very expensive public consultation that we did, through the setting of priorities, and through this multi-layered system of controls, we believe that we are making real progress, something the nation can be proud of.

And we conducted an economic analysis of the impact of our work. And I would like to point out that, through the series of investments that you are helping to make that we already have on the ground, by 2025, we except economic output will increase to $23.2 billion, and that ranged to $25 billion, annually, and increase employment by maybe in excess of 100,000 people as a result of these interventions downtown.

Remember, we lost 60,000 to 80,000 jobs in an instant on September 11th, so the idea that we can resurge and regain our positions as the financial capital of the world is so very important. And we think we are many steps in that direction.

Thank you, Mr. Chairman.

[The statement of Mr. Pryor follows:]

PREPARED STATEMENT OF STEFAN PRYOR

Thank you for this opportunity to testify on the redevelopment and resurgence of Lower Manhattan.

LMDC was created following September 11th to help plan and coordinate the rebuilding of Lower Manhattan. We are a subsidiary of the Empire State Development Corporation, and our Board of Directors is appointed by the New York State Governor, George Pataki, and the New York City Mayor, Michael Bloomberg. Congress allocated $2.783 billion of the $21 billion total aid package to the LMDC for our efforts.

The scene in Lower Manhattan has changed so significantly in less than five years that people often forget what we faced in 2001. We suffered the unconscionable, tragic loss of 2,749 people at the World Trade Center on September 11th. On the days immediately following, I remember well how my own residential street, about a block from Ground Zero, was cordoned off; we had to enter our homes through military checkpoints. I witnessed moving vans lining the streets as residential vacancy rates soared as high as 50% in some buildings. And businesses were moving away, fearing Lower Manhattan would never again be a thriving commercial district. Sixty to 80,000 jobs disappeared, along with 10 million square feet of office space at the World Trade Center site, and Lower Manhattan slipped from the third to the fourth largest central business district in the country. These are the negative images, tough conditions, and dire predictions that, for those of us who live and work downtown, were part of our daily experience. And these are the images, conditions and predictions that, in the aftermath of 9/11, were broadcast across the world.

As a result, there were some who questioned whether it would ever be possible to truly recover. Yet in less than five years since September 11th we have already seen significant progress. We've witnessed the construction and opening of 7 World Trade Center—the last building to fall on September 11th and the first to rise again. A block away, Goldman Sachs is building its world headquarters right next to American Express and Verizon, who remained downtown, determined that it would be rebuilt. Inside the World Trade Center site, the construction of the World Trade Center Transportation Hub is under way, as is the site preparation for the Memorial and the construction of the Freedom Tower. Surrounding the World Trade Center site, the West Street Southern Promenade (a remade portion of the highway that abuts the site) opened to the public last week, and the new Fulton Transit Center is under construction—along with other revitalization projects beyond the World Trade Center site. The value of construction now underway or soon to begin totals $10 billion, with over $20 billion to be invested over the next five years.

My testimony today will focus on the climate of accountability and control we have established at LMDC. In talking to you about our oversight and controls, I would like to outline our public process briefly, how it led to the establishment of our priorities, and how our controls have ensured integrity in the implementation of those priorities—and in the development of a revitalized 21st century central business district.

We take great pride that LMDC has led one of the most extensive public processes ever undertaken by a government agency. We believe our public process has been essential to ensuring our Federal funding is spent properly and on the most meritorious projects. We have held over 200 public meetings over the past five years. Some of those meetings have been broadcast live over the Internet, allowing people from around the world to view our planning activities and provide their comments

and suggestions. All of our draft plans are subject to public comment and then revised to take that comment into account.

We have also held hundreds of meetings with community groups and advisory councils which represent the various communities impacted by September 11th and the rebuilding—including victims' families, survivors, residential and business community leaders, elected officials, planners, architects, and other stakeholders. This remarkable level of public participation has been highly effective. It is impossible to create an agenda that pleases all constituencies all of the time—but what we have demonstrated is a public agency's plans benefit from more rather than less public input and that a comprehensive outreach and feedback process lead to results that have credibility and, as a result, durability.

To begin, LMDC responded immediately to the public's concerns about retaining and attracting residents and businesses. The program played a central role in restoring occupancy rates to more than 95%, as well as in spurring new investment. A survey of residents conducted by the Alliance for Downtown NY found that nearly 32% of all current residents living below Chambers Street had moved to the area between September 2001 and May 2003. Among those new residents, a majority—51%—said LMDC's grant had been a factor in their decision to move to Lower Manhattan. The program infused $226 million in grants to more than 65,000 households. Battery Park City today boasts its highest occupancy rate in its history, and Lower Manhattan is the fastest growing residential market in the city.

To attract and retain businesses downtown, the LMDC also provided funding to ESDC, which administered a variety of grant programs and employee training assistance programs that played a major role in the promising commercial reports we see today. You will hear more about these programs from our ESDC colleagues, but I want to point out briefly that according to Cushman and Wakefield, more than 850,000 square feet of new leases were signed in Lower Manhattan during the fourth quarter of 2005—and this figure does not include Goldman Sachs' new 1.9 million square foot headquarters.

Following our immediate residential and business recovery efforts, LMDC made a conscious decision based on public input to use the remainder of our funds on investments that would drive long-term economic growth. We knew we would have to create conditions that would not only result in the restoration of the 60 to 80,000 jobs lost, but would also provide for a durable and vital environment that would ensure those jobs would be secured over the long term. Our plans emerged from public input and trends of cities around the world that indicated that successful central business districts are increasingly also vibrant, active live and work communities.

When we embarked on the selection of a Master Plan for the World Trade Center site, we began by holding public forums with live webcasts throughout the New York City regions. One of these forums—"Listening to the City"—brought more than 5,000 people together in one location to consider what should be built on the World Trade Center site. That process resulted in LMDC's selection of Daniel Libeskind's Master Plan in 2002—a plan that continues to guide the rebuilding today. We believe the public input that drove this process was crucial to the Master Plan's long-term viability. While the LMDC is not directly responsible for the construction of these buildings, we are proud that Libeskind's Master Plan for the site has endured, and that it is well on its way to implementation.

The selection of the centerpiece of the site, the Memorial, was also the result of extensive public input. LMDC's Families Advisory Council helped shape the principles upon which the design was selected, and we held an open international competition in 2003. In a true testament to the extraordinary level of interest in the Memorial's creation, we received 5,201 submissions. A prestigious Memorial Jury selected the winner in January 2004—a design called "Reflecting Absence." We recently made modifications to the Memorial design and its companion museum to ensure that these important centerpieces of downtown will be delivered on budget and on schedule for opening on September 11, 2009, while remaining true to the vision selected in 2004. The Memorial must and will be a magnificent and fitting tribute to those we lost.

We are proud that all of our stakeholders played an important role in the creation of this moving tribute. A recent NY State Supreme Court decision found that the LMDC's public outreach on the Memorial has been "exhaustive and beyond anything required by law," noting also that we have acted in a "commendable and sensitive manner."

It was clear from the beginning of our planning and public outreach that making Lower Manhattan viable and attractive in the long term would require more than financial incentives and the rebuilding of the World Trade Center site itself. We realized we had to transform Lower Manhattan's neighborhoods to make them viable and attractive to residents and visitors—as well as competitive in the attraction of

businesses in order to create the 21st century downtown I've referenced. For example, with our funding, over 20 park and open spaces have been either created or renovated. We have also provided funding for major projects like the downtown segment of Hudson River Park and the East River Waterfront which, together with Battery Park, will surround Lower Manhattan's shore lines on all three sides with over 10 consecutive miles of green spaces, boardwalks, esplanades, cultural activities, urban beaches, and active piers.

As another example of our off-site funding recipients, one of the hardest hit areas of Lower Manhattan after September 11th was Chinatown. Because of Chinatown's unique needs in the aftermath of September 11th, we hired a community liaison dedicated exclusively to this neighborhood, and created a Chinatown working group consisting of representatives of the neighborhood to determine what the community itself saw as its priorities. The LMDC acted quickly to kick off an award-winning tourism promotion campaign that has brought millions of new visitors to the neighborhood to shop, eat, and visit Chinatown's cultural institutions. We funded and launched several important initiatives in the Chinatown community, including:

- The community's first ever Local Development Corporation, a coordinating vehicle for the neighborhood's recovery
- a comprehensive Clean Streets Program—addressing the number one concern cited by Chinatown residents and businesses
- construction of the Chinatown visitor kiosk to guide newcomers to the neighborhood
- Major traffic and transportation plans to improve conditions created in part by post–9/11 security
- The rehabilitation of parks including Columbus Park and its historic pavilion
- Plans for a Chinatown arts center
- $40 million in Residential Grant disbursements
- $60 million in Business Recovery grants.

These are only a few of the LMDC's Chinatown initiatives, which taken together total more than $170 million in funding commitments.

In Chinatown, the Lower East Side, and other areas of Lower Manhattan, we made a pledge that we would commit $50 million of our funds to affordable housing—one of the largest allocations to affordable housing by a government entity in recent years. We are proud to say we are living up to that commitment with five diverse projects that will generate and preserve nearly 3,000 units of affordable housing.

These particular projects offer just a glimpse of how our funding has addressed the needs voiced by the public. I'd now like to say a few words about how our funding is distributed, and the controls that guide our process. All of our activities are framed according to HUD rules, and as a result, the public and Congress have reviewed our plans through the Partial Action Plan process.

Once funding is allocated, we place enormous emphasis on ensuring that the money is spent properly. We have instituted seven layers of controls on our projects. An effective internal control environment starts with the tone set at the highest organizational level:

- At the LMDC, our Board of Directors provides oversight and clear direction to LMDC management. The Board itself consists of distinguished citizens—corporate executives, government officials, and community leaders. Following approval by the Board's Audit and Finance Committee, the full Board must approve every funding allocation. Our Audit and Finance Committee is Co-Chaired by Tom Johnson—the retied Chairman and CEO of GreenPoint Bank and GreenPoint Financial Corporation, and father of Scott Johnson, who was lost on September 11th—and Larry Babbio, the Vice Chairman and President of Verizon. Our Board has instituted private-sector style accountability by drawing upon their expertise in these matters and applying them to the operation of our agency.
- In addition to Board oversight, we have multiple layers of protections, beginning with day-to-day project managers and attorneys assigned to each project who not only craft the agreements but also monitor the projects throughout their implementation, ensuring recipients comply with all HUD and LMDC requirements and adhere to the program activities, budgets, and other requirements of the agreements.
- In addition to our Board and the project management structure, the third layer of oversight is provided by our compliance/monitoring department, which performs risk-based reviews on LMDC subrecipient relationships focusing on both HUD and LMDC compliance.
- A fourth level is provided by the LMDC's internal audit department, whose primary mission is to objectively evaluate and report on risks and control weak-

nesses. This department reports directly to the Board's Audit and Finance Committee, ensuring independence and promoting comprehensive audit coverage.

• In addition to our extensive internal controls, we also implement a variety of external measures. As a fifth level of oversight, LMDC retains external auditors to review LMDC's general purpose financial statements.

• A sixth level of oversight is provided by HUD's Office of Block Grant Assistance, which conducts semi-annual monitoring reviews of LMDC management's performance, concentrating on program compliance. To date HUD Monitoring has issued six reports. The last three reports identified no "Findings" or "Concerns" and noted that findings identified in the earlier reports were all resolved. In the last two reports, Mr. Richard J. Kennedy, Director, Office of Block Grant Assistance, commended LMDC on its "exemplary administration of its grant programs."

• The HUD Office of Inspector General provides the seventh oversight role, performing continuous audit procedures of LMDC and its major grants. These audit results are reported every six months to LMDC, the HUD Director of CDBG Grants, and Congress. HUD IG has dedicated four to eight auditors to review LMDC. To date they have issued six Audit Reports the most recent of which identified one finding that has already been resolved with no monetary exposure to the LMDC.

In addition to these seven layers of oversight, review, and audit controls, LMDC established a department to conduct investigations and assist in the performance of background checks, and formulate policies to prevent or detect fraud or other criminal activity. This department was created by our former Chief Investigator, who is a former Assistant US Attorney; our General Counsel, herself a former Assistant US Attorney; and a former NYPD Detective of more than 20 years' experience, who continues to run the department today. The investigations staff also manages an external integrity monitor, a firm of professionals who review existing procedures and processes for fraud, corruption, cost abuse, safety, and environmental risks.

Although these are our standard, comprehensive procedures, we have customized procedures for particular programs when necessary. For example, in the Residential Grant Program, the LMDC proactively brought eight cases forward that were subsequently prosecuted by the U.S. Attorney's Office for the Southern District of New York. All defendants were charged in complaints with violations of federal law: (1) 18 U.S.C. Section 641 (fraudulent acceptance of federal funds) and 18 U.S.C. Section 1341 (mail fraud). The control mechanism in many of these cases was returned mail. As a further control, grant recipients were required to re-certify every six months.

We are proud that our controls have created an environment of integrity and have ensured that we operate a tightly-run organization. The HUD Office of Block Grant Assistance commends us in their reports "for successfully carrying out [our] commitment to high quality management of [our] grant programs." We believe that the LMDC can and will serve as a model to other agencies in other parts of the country. Two weeks ago, HUD Inspector General Kenneth Donohue testified before the U.S. Senate Homeland Security and Government Affairs Subcommittee on Federal Financial Management, Government Information, and International Security, stating, "I have seen the success of active monitoring efforts with 'monitors' used by the Lower Manhattan Development Corporation in preventing waste and fraud in post–9/11 rebuilding activities and I have testified previously to this effective concept for use in disaster relief efforts in the Gulf States."

In closing, I would like to thank the members of this Subcommittee and the United States Congress as a whole for your support for the post-9/11 rebuilding. We are confident that the public processes we implemented—in combination with our multi-layered approach to oversight, review, and audit—are ensuring that the public's funds are being managed with the utmost integrity—and with favorable results. During the next few years, the benefits of LMDC's investments are likely to be compounded, as the impact of major investments in developments underway at the World Trade Center site and transportation infrastructure build on the impacts of investments made before. Economic analysts have estimated that by 2025, the major development projects undertaken by the LMDC, drawing upon your $2.8 billion in resources, will increase economic output in New York City by $19.4 to $21.4 billion annually, and increase employment by 98,700 jobs. If we take into account total program spending, including investments made in Lower Manhattan by our partner agencies and organizations, the ongoing impact in 2025 rises to $23.2 to $25.2 billion in annual economic impact, and 116,000 to 131,000 jobs. These investments will position Lower Manhattan as a thriving 21st century downtown, ensure that it serves as a key economic engine for the nation, and—indeed—secures its position as the financial capital of the world.

We thank you for your partnership in the mission of rebuilding and revitalizing Lower Manhattan.

Mr. ROGERS. Thank you, Mr. Pryor, for your statement.

The Chair now recognizes Mr. John Wang, Founder and President of the Asian-American Business Development Center, for your statement.

Welcome, Mr. Wang.

STATEMENT OF JOHN WANG

Mr. WANG. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to be invited to testify before the committee on how one community, namely Chinatown, fared in the aftermath of the September 11th terrorist attack on the World Trade Center in New York City.

Tens of billions of dollars appropriated by the Congress were directed into the city, to help rebuild its economy, but Chinatown received a negligible amount.

My name is John Wang. I am president of the Asian–American Business Development Center, which was founded in 1994 to assist Asian–American-owned businesses to build capacity and improve skills in order for them to compete in the mainstream marketplace.

By 2001, Chinatown had already been a major tourist attraction for decades, and yet it was also a community at risk, because of increasing isolation from the mainstream economy, outdated business practices, and the effects of a deepening economic recession that the city was experiencing.

And while you can see that Chinatown is about a dozen city blocks away from the World Trade Center, the impact was immediate. New Yorkers stayed at home; tourists stayed away from New York City; no one was going to Chinatown.

That affected 400 restaurants, 500 retail outlets of various kinds, 200 street vendors, 300 manufacturers, 250 jewelry stores, just to name some of the types of business. Chinatown virtually shut down.

Yet the government failed to recognize the need of the community and provide appropriate assistance. Just to cite a few examples, 6 months after September 11, the garment industry, a backbone of the Chinatown economy, 12 percent of factories closing.

Over 1,000 garment workers lost their jobs, and another 5,000 workers were working only 2 or 3 days per week. Restaurants, the other lifeblood of Chinatown economy, the businesses were dropping anywhere between 20 to 40 percent.

Over 250 jewelry stores, that they also lost a tremendous amount of business, despite offering 20 percent to 40 percent discounts to attract customers.

Then the SARS crisis took place in early 2003. It was a double whammy to Chinatown.

In April 2003, 18 months after September 11th, AABDC surveyed over 200 businesses throughout Chinatown, including restaurants, jewelry stores, beauty salons, retail establishments. And here are some findings.

Ninety-seven percent of the businesses surveyed said that business was down from pre–September 11th levels. Sixty-four percent

said there were fewer tourists. Eighty percent said the tourists were spending less.

But most damning of all was that business owners in Chinatown felt they have been completely overlooked and ignored since September 11th, and more recently with the impact of SARS.

Looking to survive, many businesses applied for government assistance. And according to the 2003 survey, only 20 percent of businesses surveyed had received any disaster-related loans.

These loans came mostly from the Small Business Administration, and the median loan amount was $23,000. Sixty-two percent had received the WTC Business Recovery Grant. However, the median grant amount was much lower, at $1,896.

Another grant program, the Small Firm Attraction and Retention Grant, was not widely available to many of the businesses. Only 11 percent of the businesses received the SFARG, with a median grant amount of $7,000. And ninety-nine percent of those surveyed felt that government was not doing enough to help Chinatown.

It should not be a surprise to any observer of the Lower Manhattan disaster relief program to understand how Chinatown community felt the way it did. Chinatown is a vibrant part of the New York City, yet the Chinatown community was not invited to participate, nor was it given an opportunity to provide input, on how the programs should be designed to address the needs and provide meaningful assistance to community residents and businesses.

With the formation of the Lower Manhattan Development Corporation, no community representative was considered, let alone selected, to sit on the board of LMDC. And to this day, there is still no representation on the board of LMDC for the Chinatown community.

The result was a community poorly served by the programs that were not designed with it in mind. Let me give you couple of examples of programs developed.

One, the main shopping street in Chinatown is Canal Street. Yet, it is baffling that a program supposedly to help small businesses would use Canal Street as a boundary to define those on the south side of the street were eligible for financial assistance and those on the north were not.

In a community of immigrants, where there is much transition, landlords were notoriously reluctant to give long-term leases, so why is there a program which demanded a 5-year lease in order to qualify to apply for assistance?

In June 2003, AABDC undertook another study of these two programs I mentioned earlier, the Business Recovery Grant and SFARG. And that study finds that less than half of the 731 businesses that sought assistance from AABDC received a grant. And more than half of those who received a grant received only $3,000 in Business Recovery Grant or the Small Firm Attraction and Retention Grant.

In total, over $3.1 million in grant monies have been awarded to 347 businesses as the AABDC have assisted. To put this matter in perspective, when compared to the Empire State Development Corporation's preliminary numbers from March 2003, the average Business Recovery Grant to Lower Manhattan businesses was $33,680 as compared to only $7,829 for Chinatown businesses. And

one Lower Manhattan corporation, American Express, alone received $22 million.

In conclusion, I wish to reiterate the point I have repeatedly raised with anyone who is willing to listen, that to revitalize, and maintain, expand Chinatown is money well-spent. Not only is it one of the most important economic, social, political centers of Chinese–Americans, but it is also a major tourist attraction in New York City.

But it will require some bold thinking and innovative planning to revitalize Chinatown. Short-term and temporary promotional activities will not be enough. And I have in my testimony provided some of the solutions I thought that could be help to Chinatown.

And I thank the committee for giving me this opportunity to testify here today.

[The statement of Mr. Wang follows:]

PREPARED STATEMENT OF JOHN WANG

Ladies and Gentlemen, I appreciate the opportunity to be invited to testify before this committee on how one community, namely Chinatown, fared in the aftermath of the September 11th terrorist attacks on the World Trade Center in New York City. Tens of billions of dollars appropriated by the Congress were directed into the city, to help rebuild its economy, but Chinatown received a negligible amount.

My name is John Wang. I am President of the Asian American Business Development Center, a 501(c)(3) not-for-profit organization that was established in 1994 in New York City with a grant from the Small Business Administration. I set up AABDC in Chinatown to assist Asian-owned businesses to build capacity and improve skills in order for them to be able to compete in the mainstream marketplace. For 10 years, we have worked hand-in-hand with the businesses in the area.

Chinatown in New York City is the largest and oldest in the United States. It is a community of immigrants since the 1870s, and from 1965 to 1970 the population of Chinatown nearly doubled, rising from around 20,000 to almost 35,000. Since then it's population has increased by 500% to around 180,000 today. By 2001, Chinatown had already been a major tourist attraction for decades, and yet it was also a community at risk because of increasing isolation from the mainstream economy, outdated business practices and the effects of a deepening economic recession that the city was experiencing.

While you will see (please refer to map) that Chinatown is about a dozen city blocks away from the World Trade Center, the impact was immediate—New Yorkers stayed at home, tourists stayed away from New York City. No one was going to Chinatown. That affected 400 restaurants, 500 retail outlets of various kinds, 200 street vendors, 300 manufacturers, 250 jewelry stores, just to name some of the types of businesses. Chinatown virtually started to close down.

Yet the government failed to recognize the devastation suffered by Chinatown and did not include the community in the 'major disaster zone'.

Just to cite a few examples, six months after September 11:

• the garment industry, a backbone of the Chinatown economy, hit the lowest point in its long history with 12% of factories closing (30 in number); over 1,000 garment workers lost their jobs and another 5,000 workers were working only 2 to 3 days per week. It has since further declined.

• Restaurants, the other lifeblood of Chinatown's economy, were reeling from a shortage of customers—lack of tourists combined with the loss of spending by garment workers. Despite some promotional activities during the Lunar New Year in February 2002, businesses were continuing to decline, showing losses of 20% to 40%.

• One of Chinatown's attractions was its abundance of small shops selling items at low prices. Walk-in activity and sales had dropped by as much as 50%.

• Over 250 jewelry stores that lined Canal Street and the Bowery, which competed with the city's Diamond District on 47th Street in terms of variety and prices, saw business drop, despite offering from 20% to 40% discounts to attract customers.

The SARs crisis took place in early 2003, and it was a double whammy to Chinatown. In April 2003, 18 months after September 11th, AABDC surveyed over 200 businesses throughout Chinatown including restaurants, jewelry stores, beauty salons, retail establishments, professional offices, and garment manufacturers. Here are some findings:

• 97% of the businesses surveyed said that business was down from pre-September 11th levels.
• When asked specifically about the impact of SARS, 84% said that their business had dropped because of the SARS crisis.
• Travel agencies in Chinatown were especially hit hard by the perceived threat of SARS, some reported that they were about to go out of business.
• As a whole, owners were reporting that business was down by over 30%, with many down by 50-60%.
• The drop in the number of tourists coming to New York City was one of the major reasons for the steep decrease in business
• 64% said there were fewer tourists.
• 80% said the tourists were spending less.
• But most damning of all was that business owners in Chinatown felt they have been completely overlooked and ignored since September 11th and more recently with the impact of SARS.

Looking to survive, many businesses applied for government assistance. Yet, according to the 2003 survey:

• only some had received loans and/or grants and many did not qualify for assistance.
• For those who did qualify, most received very little in the amount of grant money and even fewer have received loans.
• For example, only 20% of businesses surveyed had received any disaster-related loans.
• These loans came mostly from the Small Business Administration and the median loan amount was $23,000.
• 62% had received the WTC Business Recovery Grant (BRG). However, the median grant amount was much lower at $1,896.
• Another grant program, the WTC Small Firm Attraction and Retention Grant (SFARG), was not widely available. Only 11% of businesses received the SFARG with a median grant amount of $7,000.
• 99% of those surveyed felt that government was not doing enough to help Chinatown.

It should not be a surprise to any observer of the Lower Manhattan disaster relief program to understand how the Chinatown community felt the way it did. Chinatown is a vibrant part of New York City, yet the Chinatown community was not invited to participate nor was it given an opportunity to provide input on how the programs should be designed to address the needs and provide meaningful assistance to community residents and businesses. Even longstanding problems such as garbage, parking and traffic around Chinatown were not addressed.

With the formation of the Lower Manhattan Development Corporation, no community representative was considered, let alone selected, to sit on the board of LMDC and to this very day there is still no representation on the board of LMDC for the Chinatown community.

The result was a community poorly served by programs that were not designed with it in mind. Let me give you couple of examples of programs developed by the Empire State Development Corporation (New York State's economic development agency and parent agency of LMDC):

• The main shopping street in Chinatown is Canal Street. Yet, it is baffling that a program supposedly to help small businesses, would use Canal Street as a boundary to define that those on the south side of the street were eligible for financial assistance and those on the north were not!
• In a community of immigrants, where there is much transition, landlords were notoriously reluctant to give long term leases to tenants, so why is there a program which demanded a five-year lease in order to qualify to apply for assistance?

A short while ago I mentioned two grant programs - the World Trade Center Business Recovery Grant ("BRG") and the Small Firm Attraction and Retention Grant ("SFARG"). In June 2003, AABDC undertook a study of these two federal grant programs, based on 731 businesses that had sought assistance from AABDC. The report, "AABDC Financial Assistance Center: Findings from the Application Process for the World Trade Center Business Recovery Grant and Small Firm Attraction and Retention Grant Programs," found that:

• less than half of the 731 businesses that sought assistance received a grant—46.4% received BRG and 23.1% received SFARG.
• and more than half of those who received a grant, received only $3,000 in BRG and/or SFARG.
• Because so many businesses that sought assistance were small businesses (85.2%) with less than $300,000 in annual gross revenues and less than ten employees (87%), the overwhelming majority (205 out of 339 businesses) received

less than $3,000 in BRG and less than $9,000 in SFARG (25 out of 39 businesses).

• In total, over $3.1 million in grant monies have been awarded to 347 businesses—$2.7 million in BRG and $463,000 in SFARG.

• 56.2% of businesses received less than $3,000 in total grant money.

• The BRG awards ranged from $100 to $150,000 with the average grant award of $2,195 for businesses with less than $300K in annual gross revenue.

• Certain types of businesses were more likely than others to receive a grant. For example, laundromats (66.7%) were much more likely than car services (3.6%) to receive a BRG. Car service, street vendors and laundromats were not granted a SFARG.

To put this into perspective, when compared to the Empire State Development Corporation's preliminary numbers from March 2003:

• the average BRG award to Lower Manhattan businesses was $33,680 as compared to only $7,829 for Chinatown businesses

• and one Lower Manhattan corporation, American Express, alone received $22 million in grant money.

The report analyzed problems with the two grant programs and offered some recommendations that many business owners believe would help them in receiving the financial assistance these programs had intended. I will not go into detail here, as I have submitted a copy of the report along with my testimony for the Committee to review.

In conclusion, I wish to reiterate points I have repeatedly raised with anyone who is willing to listen, that to revitalize, maintain and expand Chinatown is money well spent. Not only is it one of the most important economic, social and political centers of Chinese Americans, but it is also a major tourist attraction in New York City. But it will require some bold thinking and innovative planning. To revitalize Chinatown, short term and temporary promotional activities will not be enough. What is needed are forward-looking strategies and a long-range plan that can bring Chinatown into the 21st century.

While there is a general consensus that Chinatown will require targeted government and private sector interventions to stimulate its economy and ensure its future prospects, there is no commitment from state or city government to undertake a comprehensive action.

As Federal, State and City agencies turn to rebuilding Lower Manhattan, a primary concern should be on finding ways to stop the marginalizing of Chinatown's businesses and reverse its decline. It needs access to the funding, tools and networks needed to be part of New York City and State's economic recovery and to participate in the 21st century economy.

Here, as I have done elsewhere, I would propose:

(1) an economic development strategy for Chinatown needs to be formulated, based on a number of comprehensive studies conducted post-9/11 by several community organizations;

(2) the New York City Department of City Planning, in consultation with the community, should conduct a land use and zoning study to understand how the community's past development has shaped current land use and analyze the best and most appropriate use to promote future economic development;

(3) a commercial development and investment strategy is needed to maximize Chinatown's strategic location and its links to the worldwide Chinese and Asian community where Chinatown, part of a global marketplace, is ideally situated to be an international business and trade center.

This clearly and unmistakably aligns Chinatown's economic with that of New York City and State and failure to take Chinatown into consideration in rebuilding Lower Manhattan is at city and state's own peril.

I thank the committee for giving me this opportunity to testify today.

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Background on Asian American Business Development Center

AABDC is a 501(c)(3) not-for-profit organization that was established in 1994 with a grant from the Small Business Administration. AABDC's mission is to advance the capacity of Asian-owned businesses in areas needed to enable such businesses to compete in the mainstream marketplace.

AABDC acts upon its mission by:

• Providing information and technical assistance through consulting services, workshops, seminars, and conferences;

• Improving access to procurement opportunities;

• Increasing international trade opportunities;

• Increasing access to current technology and technology training;

- Providing a valuable networking structure that promotes visibility and access; and
- Facilitating and promoting strategic ventures between Asian and non-Asian businesses.

Major programmatic areas undertaken by AABDC to serve the small business community include:

ASIAN BUSINESS PARTNERSHIPS

In its efforts to assist Asian American businesses to compete in the mainstream marketplace, AABDC actively develops alliances and partnerships with public agencies(such as U.S. Small Business Administration and Port Authority of NY & NJ), Empire State Development Corporation, NYC Department of Small Business Services and private sectors organizations to provide better access to information, resources and markets.

US-CHINA TRADE RELATIONS

A key part of AABDC's strategy is facilitating business opportunities between Asian American business owners and firms in Asia and connects firms in Asia with corporate decision-makers here in the U.S. To meet that objective, AABDC organizes trade delegations to and from Asia and maintains close relationships with Asian officials and business representatives stationed in the United States.

NEW MAJORITY ALLIANCE

In partnership with the Harlem Business Alliance (HBA) and the Institute for Multicultural Business, Inc., AABDC launched a New Majority Initiative providing means for Asian American, African American and Hispanic American business owners to build economic alliances with Fortune 500 companies.

Mr. ROGERS. Thank you, Mr. Wang, for your statement.

The Chair now recognizes Ms. Bettina Damiani?

Ms. DAMIANI. Damiani.

Mr. ROGERS. Damiani.

STATEMENT OF BETTINA DAMIANI, PROJECT DIRECTOR, GOOD JOBS NEW YORK

Ms. DAMIANI. Thank you.

Good morning, and thank you for inviting me to testify about the allocation of federal funds after the September 11, 2001, attacks on New York City. My name is Bettina Damiani, and I direct Good Jobs New York.

I am here to discuss how Congress—able to process where subsidies were granted to large companies and luxury housing developers with minimal input from New Yorkers. This was egregious, concerning that the brunt of the economic attacks were felt in low-wage industries, such as restaurants, air transport, retail, and garment manufacturing.

Federal resources did little help ease workers or the heroic cops, firefighters and rescue workers we saw on television the following weeks after the attack. For instance, Congress removed requirements that public hearings be held and that the majority of funds must benefit low-and moderate-income communities.

New York took full advantage of these waivers by creating a process for distributing funds that was not respectful of inclusiveness, transparency or equity.

ESDC, under the authority of Governor Pataki, and its subsidiary, LMDC, were charged with distributing these funds. The boards of these organizations are comprised of corporate executives and real estate interests. And LMDC board, charged with allocating over $2 billion in cash grants, didn't include experts from affordable housing or workforce development.

And aside from one community member, there was no community representation. And as we just heard, Chinatown has been completely ignored, as well as the Lower East Side community.

The limited vision of these boards resulted in the lack of response to those who needed it most, like workers from the famed Windows on the World restaurant, located in the World Trade Center. A collaborative effort by some of the workers to open a restaurant called Colors led them to apply for LMDC funds.

After getting the runaround for years, the group finally opened a restaurant in Greenwich village, but without any 9/11 funds. They might do fine there, but there is no synergy between them and being part of the rebuilding effort.

It was not surprising, considering the composition of the board and the lack of framework and deadline associated with the LMDC process. Those with ties to the board members seemingly had much better luck. Board members recuse themselves from votes at least 27 times, as over $100 million went to groups they were associated with.

We have never implied that board members did anything illegal. Nevertheless, this large number of recusals is an appearance of favoritism. Additionally, almost every vote was unanimously approved, raising questions about whether the important decisions were really being made.

Maybe if Congress hadn't waived the income requirements 9/11 funds would have aided those who truly need assistance to start or expand small businesses. Instead, hundreds of millions of dollars in cash were handed to some of the biggest names in business, including Bank of New York, Deloitte and Touche, and Goldman Sachs, even while high-profile recipients, like American Express and HIP Health care stated publicly that their desire to go downtown had nothing to do with those grants.

The lack of public hearings—the LMDC has held one on the allocation of CDBG grants, which was last year—has denied New Yorkers a key empowerment tool at a historic moment. The LMDC's decisions to opt for a write-in comment period instead of public hearings prevents a more accountable, face-to-face dialogue between the public and board members and is a deterrent to broad, public participation.

However, LMDC has made steps towards better transparency and fairer allocations by funding improvements in parks in Chinatown and the Lower East Side, and finally last year released a framework towards neighborhood groups and promote open space.

Another lost opportunity was Congress's design of Liberty Bonds. Removing the requirement that 20 percent of the units be for low- and moderate-income tenants shows disregard for New York City's notorious affordable housing crisis.

I think the majority of Americans would be vexed to learn that the rents in 9/11-subsidized studio apartments often start at $2,000 a month. And a handful of affordable studios start at around $1,500 a month. Clearly, the influx of this new residential community is a wealthy one that is being subsidized by federal resources.

Officials' response to the affordable housing crisis was $50 million to create 232 units and preserve about 3,000 units. But to put this in perspective, the Bank of New York received $40 million

cash from the same pot of money after 9/11. We gave cash to a bank after 9/11, when small business in Chinatown were struggling and people can't afford to pay their rent.

Regarding the commercial Liberty Bonds, Congress restricted their use to commercial real estate projects, mostly located in the Liberty Zone. And outside the zone, projects had to include at least 100,000 square feet of commercial space.

This tax-exempt financing tool could have been used to diversify our economy by supporting smaller growing businesses. Instead, the bonds went to finance high-end office space, such as $1.65 billion in Liberty Bonds for Goldman Sachs downtown and $650 million for Bank of America to locate in one of the most desirable blocks in one of the most premier business districts in the world, midtown Manhattan.

The early design of release and recovery programs had a lasting impact on the fairness of the rebuilding. In the future, it is critical for local groups to be at the decisionmaking table in the early stages of program design. This will help to ensure a broad array of businesses and individuals do benefit.

Thank you very much.

[The statement of Ms. Damiani follows:]

PREPARED STATEMENT OF BETTINA DAMIANI, PROJECT DIRECTOR, GOOD JOBS NEW YORK

Good morning and thank you for inviting me to testify about the allocation of Federal funds after the September 11, 2001 attacks on New York City.

My name is Bettina Damiani, and I direct Good Jobs New York, a project of Good Jobs First (GJF) and the Fiscal Policy Institute (FPI). FPI focuses on tax, budget, economic and related public policy issues in New York State and Good Jobs First is a national resource center on accountable development and smart growth for working families based here in Washington, DC.

Shortly after the September 11, 2001 attacks on Lower Manhattan, GJNY launched "Reconstruction Watch" to track the resources earmarked for economic development, corporate retention and job creation. GJNY had been created two years earlier to monitor economic development incentives in New York City, so we were uniquely qualified to help bring transparency to these new resources.

Reconstruction Watch assists New Yorkers with research and policy analysis on the redevelopment of Lower Manhattan. Through our research, website (www.reconstructionwatch.net) and publications we provide timely information to grassroots groups, small business and civic associations, housing groups, labor unions, and environmentalists to help them more effectively participate in this massive process reshaping the rebuilding of our city.

Who Was Impacted by the Attacks

It was assumed by most Americans and public officials that the economic brunt of the harm from the attacks would fall on the Finance, Insurance and Real Estate (FIRE) sector due to the location of the attacks at the World Trade Center. Though workers across the spectrum faced hardships after 9/11, many of the resulting layoffs were concentrated in low- and moderate-wage industries such as restaurants, air transport, hotel, retail, building services and garment manufacturing.[1]

The economic devastation affected thousands of small businesses in New York City, especially those located in Lower Manhattan—below 14th Street—that were physically isolated when parts of the area was closed off to traffic for weeks after the after the attacks. Within Lower Manhattan, the low-income, immigrant neighborhoods of Chinatown and the Lower East Side suffered severe economic consequences due to their proximity to Ground Zero. Additionally the attacks created disruptions that affected the larger city economy and businesses and workers in all five boroughs. The garment industry—largely based in Chinatown—was the indus-

[1] Fiscal Policy Institute, The Employment Impact of the September 11 World Trade Center Attacks: Updated Estimates based on the Benchmarked Employment Data, March 8, 2002.

try hardest hit by reduced work volume and hundreds of small manufacturers and contractors were placed in peril.[2]

Low-wage workers throughout New York City were also impacted. According to an analysis by the Fiscal Policy Institute, 60% of the workers who were likely to have been laid off had an average wage of only $11.00 and hour, and over 60% of unemployment claims filed in the weeks following September 11, 2001 that were related to the attacks came from residents of the Bronx, Brooklyn, and Queens. Queens, home to our city's two airports saw a staggering decline of jobs and work hours.[3]

Inequitable Resource Distribution

Despite the harms to low- and moderate-income workers and neighborhoods after 9/11, a disproportionate amount of rebuilding funds have been allocated to build luxury rental housing and to retain large, profitable corporations, including some that admitted they never intended to leave New York or that they planned to return. For example:

- While Americans praised courageous firefighters, police, and emergency personnel for their rescue efforts, Federal resources that could have provided housing for them and other moderate-income working New Yorkers within Lower Manhattan have instead created thousands of luxury rental units.
- While the Chinatown garment industry was withering, officials doled out cash grants to large firms such as $25 million to American Express and $40 million to Bank of New York. Adding salt to the wounds, after receiving the money American Express publicly stated that it planned to return to Manhattan even without the funds.

Without a doubt, large firms play a vital role in our city and nation's economy and deserve serious consideration in the rebuilding effort. Any productive planning effort would be responsive to the whole spectrum of businesses and community needs. Yet after 9/11, Federal rebuilding incentives have grossly favored high-end jobs and housing.

This inequitable distribution of resources was enabled by broad waivers approved by Congress that loosened longstanding regulations on how federal development funds could be spent. These waivers created a process by which enormous subsidies were granted with minimal input from New York taxpayers in an alarmingly unaccountable fashion and gave public officials, notably Governor Pataki, carte blanche to provide subsidies to large companies and luxury housing developers.

Simply stated, economic development programs designed with 9/11 resources failed to help those who needed it most because the interests of low- and moderate-income New Yorkers were officially excluded as a required consideration in the programs' outcome.

The majority of GJNY's research and our testimony today focuses on two post-9/11 funding sources—Community Development Block Grants and Liberty Bonds. Together, these programs accounted for nearly $10.7 billion in rebuilding resources. A more extensive list of programs that made up the $20 billion Federal economic development package is located on our website—www.goodjobsny.org.

We focused on these programs because they were mostly discretionary programs (excluding some of the business recovery grants). That is, they provided local officials with choice regarding the recipient and size of the subsidies and required public comment, either written or public testimony, prior the disbursement of funds.

In my testimony today, I intend to bring to your attention specific policy decisions made by Congress regarding the use of CDBG and Liberty Bonds, and to examine the consequences of these programs when they were implemented on the local and state level with minimal guidelines and oversight.

Congress and the CDBG Program: What Went Wrong?

While Good Jobs New York acknowledges that Congress intended to provide New York with flexible and streamlined rebuilding programs, it should not have been at the expense of public input and the equitable distribution of resources.

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[2] Ibid.

[3] According to a study by researchers at the Fiscal Policy Institute, the higher incidence of 9/11-induced unemployment and underemployment among workers in low-wage occupations meant that household wage earnings fell by double digits in New York City in the six months after the attacks. James A. Parrott and Oliver D. Cooke, "The Economic Impact of 9/11 on New York City's Low-Wage Workers and Households," in Howard Chernick, ed., *Resilient City, The Economic Impact of 9/11,* New York: Russell Sage Foundation, 2005.

For instance, GJNY has repeatedly and publicly questioned why Congress waived the following requirements pertaining to Community Development Block Grants:[4]

- The majority of Community Development Block Grant (CDBG) funds must be for activities that benefit low—and moderate-income communities;
- Public hearings must be held prior to the allocation of funds in an effort to "empower" members of the community.

The elimination of these particular provisions amounts to an abandonment of legislative responsibility and oversight that suggests indifference to the principles inscribed in the programs' goals.[5]

They're in the Money—The Lower Manhattan Development Corporation

Indeed, Congress' decision to remove regulations on the allocation of CDBG funds created an environment where funds administered by the Lower Manhattan Development Corporation (LMDC) need not consider public input or equity.

The LMDC was specifically created by the Empire State Development Corporation (the economic development authority directed by Governor Pataki) to implement the programs and allocate the cash grants after the attacks and therefore should have been respectful of inclusiveness and transparency. Instead, state officials took full advantage of the federal waivers by implementing restricted public comment opportunities and allocating a disproportionate amount of funds to prominent firms.

For most of its existence, the 16-member board of the LMDC—half appointed by the mayor and the half by the governor—was composed mostly of large-company executives and real estate interests. The LMDC clearly should be a board that equally represents all communities and businesses impacted by the attacks. However, with no representatives from Chinatown and the Lower East Side, and no advocates or experts from the fields of housing or workforce development, the LMDC proceeded to implement the redevelopment plans of the city's politically-connected elite, particularly in the interest of real estate.

In fact, LMDC Board members' companies, organizations, and affiliates benefited from the programs so routinely that board members had to recuse themselves from voting on projects at least twenty-seven times. Including:

- Nearly $5 million went to the Downtown Alliance, a businesses organization that board member Carl Weisbrod was President of until last July. An additional $9 million went to organizations Mr. Weisbrod had ties with.[6]
- $3.5 million has gone to the Tribeca Film Festival. Board member Madelyn Wils at the time was president and CEO of the Tribeca Film Institute. Approximately another $9 million went to organization Ms. Wils had ties to.[7]

As we point out in our 2004 study, *"They're in the Money We're in the Dark: A Review of The Lower Manhattan Development Corporation's Use of 9/11 Funds"* board members have not done anything illegal. Board members were careful to recuse themselves when proposals submitted by their organizations or by organizations on whose boards they serve were presented. Nevertheless, these recusals gave the appearance of favoritism.

But, the significance of those recusals is diminished when one takes into account the context in which they occurred. There was little chance that the recusals would have made a difference in the outcome of the votes, given that aside from recusals, LMDC board members have unanimously voted to approve all allocation proposals that made it to a vote. This raises questions regarding whether proposals were publicly being evaluated on their merits.

While the composition of the board seemed to help organizations that had ties to LMDC board members, those groups representing low-income and unemployed people were left baffled by a lack of clear guidelines and timeframes.[8]

Even service workers from the World Trade Center were denied an opportunity to apply for funds when a collaborative group of employees from Windows on the World—the famed restaurant that was located on the top of the World Trade Center Tower—submitted an application for $1 million to open a restaurant in Lower Manhattan.

After getting the runaround for years and delaying the opening of the restaurant—called Colors—the group wound up smaller than they would have been and the restaurant is not in Lower Manhattan, where they would have liked to locate. Instead it opened in Greenwich Village, where they may do fine but there's

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[4] Available at http://www.goodjobsny.org/rec_links.htm

[5] Available at http://www.hud.gov/offices/cpd/communitydevelopment/programs/

[6] Good Jobs New York, The LMDC—They're in the Money; We're in the Dark: A Review of The Lower Manhattan Development Corporation's Use of 9/11 Funds, August 2004.

[7] Ibid.

[8] Errol Louis, The 9–11 Black Hole, *New York Daily News,* July 6, 2004.

not the synergy of them helping the rebuilding effort and the rebuilding effort helping them.

Unfortunately, even a program established to help small businesses—Small Business Recovery Grants—was exploited by savvy firms. A program geared towards small businesses conjures up images of the local pizzeria, the cobbler or restaurant. Yet, a New York Times report showed that a majority of these grants were allocated to wealthy law firms and brokerage houses.[9]

Ultimately, there were startling consequences to the federal decision to waive the requirement that a minimal percentage of CDBG funds be directed toward activities that benefit low-income residents. Hundreds of millions of dollars in Community Development Block Grants were handed to some of the biggest names in business, including Bank of New York, Deloitte & Touche, and Goldman Sachs, even while high profile recipients such as American Express and HIP Healthcare publicly stated that these subsidies had no impact on the decision to move back downtown. Historically, incentives rarely influence site-location decisions for such large firms, but these funds could have made an enormous impact for struggling businesses such as those in Chinatown.

Waiving Public Participation

The Congressional waiver allowing CDBG grants to be allocated without a public hearing left those wanting to support or protest a proposal with no outlet and denied New Yorkers a key empowerment tool at a historic moment.

The LMDC decision to opt for a two-week write-in comment period instead of public hearings prevented a more accountable, face-to-face dialog between the public and board members and was ultimately a deterrent to broad public participation.

It's not as if people weren't interested. Leading citywide organizations like the Regional Plan Association, Pratt Institute Center for Community and Environmental Development and New York University along with LMDC helped sponsor the historic "Listening to the City" public event held in the summer of 2002. This was an opportunity for the LMDC to creatively explore rebuilding options based on the input of over 5,000 New Yorkers, who overwhelmingly indicated that affordable housing and quality jobs were top priorities. While the LMDC cites its financial support for the event in almost every HUD report, it fails to describe how, or if, it plans to integrate the comments into its programming. The programs established and recipients of LMDC grants demonstrate that the agency has been largely unresponsive to these demands.[10]

This is a similar problem with the invitation only workshops the LMDC held throughout Lower Manhattan in the summer of 2003. Outcomes of these workshop were presented a year after the meetings. And, consistent with the "Listening to the City" experience, the LMDC has been largely unresponsive to the housing and employment concerns of lower-income neighborhoods.

A particular point of contention is the unfilled promise of CDBG grants for affordable housing. Affordable housing has repeatedly ranked high on the list of demands for rebuilding. In July of 2003, then HUD Secretary Mel Martinez joined Mayor Bloomberg and Governor Pataki to announce $50 million in CDBG funds for affordable housing in Lower Manhattan.

Then last year, officials "renewed" LMDC's commitment for affordable housing pledging $50 million for the preservation of nearly 3,000 units and the creation of at most 232 units.[11] A housing study commissioned in September 2002, initially to be performed by the Weitzman Group for $700,000 was later transferred to the NYC Housing Development Corporation for a reduced cost of $490,000. However, the study has never been made public.

Several other key documents have not been made public, such as other planning, budget and financial reports. Without the public having access to completed studies, there is no ability to monitor the findings of the reports or to determine how they are being used to guide the ongoing distribution of resources.

While far from being equitable, the LMDC has made steps towards better transparency and fairer allocation of resources.

- Two years ago, the public comment period was extended from two weeks to one month;
- LMDC has funded improvements to parks in Chinatown and the Lower East Side;
- A public hearing was held in the spring of 2005;

[9] Edward Wyatt and Joseph P. Fried, Two Years Later, the Money; Downtown Grants Found To Favor Investment Field, *The New York Times,* September 8, 2003.

[10] link to outcome report

[11] LMDC press release, June 16, 2005.

- Last year the LMDC released a framework and deadlines for the allocation of the remaining $800,000 in funds available at the time to assist cultural institutions and to promote open space, including a major project along the East River. Currently, there is an estimated $225,000 remaining;
- From its inception the LMDC has posted copies of board minutes and the board meeting schedule on its site as well as copies of reports to the US Department of Housing and Urban Renewal.

Congress and Liberty Bonds: What Went Wrong?

Tax-exempt bonds are often an invaluable resource for a wide range of businesses that require government assistance to finance capital projects, such as mass transit. However, it would not be an understatement to say that the allocation of $8 billion in Private Activity Bonds—aka Liberty Bonds—has greatly benefited the real estate industry at the expense of low and moderate-income New Yorkers.

Split between residential and commercial, the Congressional design of the Liberty Bond program all but ensured that the bonds would exclusively subsidize large real estate projects while neglecting the affordable housing crisis in New York City and the capital needs of industrial businesses and small commercial developments outside Lower Manhattan.

As explained below, the vast majority of Liberty Bonds were used to finance high-end office space and luxury housing.

Liberty Bonds: Commercial Use

- Congress restricted the use of Liberty Bonds to commercial real estate projects mostly located in the Liberty Zone;
- For the $2 billion in bonds that could be used outside the Liberty Zone, projects must include at least 100,000 square feet commercial space.

While this tax-exempt financing tool could have served to diversify the New York City economy by supporting smaller, growing businesses, all of the commercial Liberty Bonds were used to finance high-end office space and to a lesser extent, hotels. It is understandable that after the attacks, efforts to promote building—in a brick and mortar sense—would be pushed. Construction jobs in New York City, especially in Lower Manhattan are good paying union jobs. However, this alone does not justify the unnecessary use of the bonds to finance Class-A office developments in the most desirable office markets in the world.

For example, why did officials approve $650 million in Liberty Bonds for Bank of America in midtown Manhattan over Chinatown? If bonds were allocated based on need, and more businesses were eligible, a broader group of firms might have benefited.

To date the largest allocation of Liberty Bonds was for $1.65 billion issued for Goldman Sachs to remain downtown, where the company has been located for 136 years.[12] A Goldman spokesperson had said that the company would only look to build its new headquarters in Manhattan[13]—leaving open the possibility of a move to midtown—after the firm expressed legitimate security concerns related to a proposed tunnel under the potential site of its building.

Clearly, Goldman with profits of $10.10 billion last quarter wasn't hinging its headquarters bets on cheap financing. What it lacked—and needed to make a sound location decision—was a clear understanding of the rebuilding process from public officials. Not until Goldman considered a move to midtown did the Governor address the firms' valid security concerns of a proposed tunnel near where the firm wanted to build. After announcing a tunnel would not be built, Goldman received a consolation prize—an increase of $650 million from the originally proposed $1 billion in Liberty Bonds for a total of $1.65 billion, $25 million in CDBG funds and up to $150 million in tax breaks.[14]

GJNY did approve of $114 million in Liberty Bonds for the developer Forest City Ratner to develop a commercial office tower in Brooklyn that now houses Bank of New York. We felt that the percentage of Liberty Bonds that could be allocated outside of Lower Manhattan fit purposes like these—helping to create environments for businesses in other areas of New York City to help limit firms from leave the city immediately after 9/11.[15]

Liberty Bonds-Residential Use

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[12] Over $3 billion of Liberty Bonds has been reserved for the World Trade Center site.

[13] Matthew Schuerman and Tom McGeveran, The View From 7: As Tower Tops, Goldman Sacks, New York Observer, April 11, 2005.

[14] Additional details at http://www.goodjobsny.org/GS_news.htm

[15] Details of the Bank of New York subsidy are available on GJNY database of deals, http://www.goodjobsny.org/deals.htm

- Normally, Federal government requires housing projects financed with federally tax-exempt bonds to set aside 20 percent of the units for affordable housing—this was waived for Liberty Bonds.

The vast majority of housing units built with Liberty Bonds are market rate and unaffordable to New Yorkers. Nearly all of the units rent at market rates ranging from studios for $2,062 per month to three-bedrooms for $6,267 per month. Many of the projects will set aside only 5% of the units in each building for non-market rates. While non-market, these units are targeted to households that earn approximately $94,200 per year for a family of four with rents ranging from $1,649/month for a studio to $2,449/month for a three-bedroom.[16]

These apartments are out of reach to the vast majority of New Yorkers whose median household income is $38,293.[17] This includes New York City police officers, firefighters and teachers.

The small non-market rent set-aside and the high income requirement make these proposals a major departure from the long-standing "80/20" affordable housing program of the New York State Housing Finance Agency (NYSHFA), the agency that allocated Gov. Pataki's portion of the Liberty Bonds. The 80/20 program, which meets the Federal Tax Code requirements for housing financed with federally tax-exempt bonds, sets 20% of the units aside for households making at most, half the NYC Area Median Income. In contrast, the Liberty Bond Program sets aside units for households earning 50% more than the New York City Area Median Income.[18]

With skyrocketing rents, Lower Manhattan has become the most desirable place to live in New York City, though unaffordable.[19] In fact, the approximately 350 units set aside for moderate income are mostly studios and one-bedrooms.

The New York City Housing Development Corporation (HDC) didn't set aside the 5% non-market rate units the state did in its allocation. Instead, HDC charged a 3% developers fee on the bond application that would then be used for developing affordable housing in other areas of the city.

While Mayor Bloomberg certainly deserves credit for thinking outside the box and generating new revenues for affordable housing, it is unfair to relegate low and moderate-income New Yorkers to the periphery of our city.[20] Catering to developers and landlords by creating only luxury housing with Liberty Bonds has exacerbated the gentrification pressures on Chinatown and the Lower East Side.

The Byzantine Process of Liberty Bond Allocation

The complexity of allocating Liberty Bonds via four different authorities (described in the chart) diluted the public's ability to participate. Fortunately, the 1986 Tax Equity and Fiscal Responsibility Act (TEFRA) requires a hearing prior to the allocation of private activity bonds. Therefore, the IDA, LDC, HDC, and HFA did hold hearings. However, each differed in its public hearing announcement procedure, access to materials prior to hearings, and final voting by board members.

Tracking these disparate hearings and procedures was a Kafkaesque. Public hearing notices were posted in different publications; places, dates and times of hearings and board meetings varied.

To its credit, the LMDC does have regular board meetings and provides details of proposed expenditures but it does not have a public hearing process. Instead, the agency held invitation-only workshops and just one public hearing last spring.

Even those authorities with intact public hearing processes don't equal a democratic decision making process:

- In March, 2003, the New York State Housing Finance Agency refused to provide GJNY copies of materials prior to a hearing on the allocation Liberty Bonds. The result was our research analyst hand-copying the materials while being closely watched by an HFA staff member.
- In May, 2003, public testimony was given by several groups at the New York City Housing Development Corporation regarding the allocation of Liberty Bonds to build a luxury apartment. Board members approved the project having never witnessed the testimony—since they don't attend the hearings—and having never even been given copies of the testimony.

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[16] Liberty Bond Housing Coalition statement: http://www.goodjobsny.org/rec__sign__on.htm.
[17] According to the 2000 U.S. Census.
[18] Liberty Bond Housing Coalition statement: http://www.goodjobsny.org/rec__sign__on.htm.
[19] David Dunlap, Liberty Bonds' Yield: a New Downtown, *The New York Times,* May 30, 2004.
[20] New York City Housing Development Corporation press release, July 17, 2003.

Disaster Relief Funds and UI Funds

Though not under the appropriation of CDBG or Liberty Bonds, it would be remiss to exclude the very serious problems with which funds were allocated to displaced workers. Mimicking the irrational "Liberty Zone" for businesses recovery funds, only workers living in Manhattan had access to mortgage and rental assistance programs. Again, the workers in the remaining four boroughs, where left to fend for themselves. The baggage handler in Kew Gardens had no recourse since his or her place of employment was in Queens.

For an economy the size of New York City, many workers make a living in the cash economy—waiting tables, working part-time or as consultants. All these workers fell through the safety net that is unemployment insurance.

Lessons Learned: There's Still Hope

In New York, there were very positive lessons—such as the extraordinary rescue, recovery, and cleanup effort after the collapse of the buildings. In the years following the attacks, community members came together eager to participate in the rebuilding with their neighbors. Yet, there were negative lessons, such as the vast waste of resources in tax breaks and corporate retention deals.

There are also very big decisions that years later are still far from settled. The early design of relief and recovery programs had a lasting impact on the fairness of the rebuilding effort. Structures and systems were "cast in stone" that should have promoted broad civic participation in the rebuilding process, but instead made the process very undemocratic. In the future, it is critical for Congress to consult a broad coalition of local groups in the early stages of program design, so that groups representing an array of business and individual needs can be an active part of the process.

Despite the skewed allocation of cash grants, there is still an opportunity to use 9/11 to create a dynamic and inclusive Lower Manhattan. There are approximately $2 billion of unused tax credits available to New York. New York City was promised these funds and they should be allocated as soon as possible.[21]

Governor George Pataki and other public officials continue to push for a $6 billion rail link that would improve job access for Long Island residents while the City's unemployment rate remains high. This costly rail link proposal, possibly funded with 9/11 rebuilding resources, has ranked behind local transportation needs when Lower Manhattan residents have been asked for their rebuilding priorities, even at LMDC- sponsored events.

This would not be a bad idea in the future, but not yet. Chinatown residents still struggle with infrastructure needs, not to mention the clogged artery of Canal Street, a major thoroughfare for Lower Manhattan.

Mr. ROGERS. Thank you, Ms. Damiani. I failed to introduce you as the Project Director for Good Jobs New York.

We are going to have a round of questions now. And I would like to start first with Mr. Wang.

You made reference in your written statement to some proposals that you would suggest to remedy these concerns in the future. The first one is that an economic development strategy for Chinatown needs to be formulated based on a number of comprehensive studies conducted post–9/11.

Would that economic strategy come out of the Lower Manhattan Development office? Or where would that come from, in your view?

Mr. WANG. Well, I think, working with LMDC and the ESD, then I think that the community together can put—also with the city of New York, we can formulate an economic development strategy to help to revitalize the community. And there are a number of different proposals that have been submitted to LMDC. And so, of course—

Mr. ROGERS. And how have those been responded to?

[21] Governor Pataki press release, July 29, 2004.

Mr. WANG. Well, I think that this so far has not been the comprehensive kind of approach to how to revitalize the community. I think, certainly, recognizing ESD and LMDC have been doing, you know, different kind of work, cleaning up Chinatown and addressing some of the traffic issues.

But then the whole issue, I guess, is, how do we make sure that communities that have long been standing, over 100 years, in the city, that can be revitalized and continue to contribute?

Mr. ROGERS. What I am looking for, and what this Subcommittee has been working on is, to take lessons from what happened post-9/11—to put in place good policy in the future to make sure that we don't have the same missteps in the future, post-disaster. And I hope there is never another one in New York City, but wherever it happens.

So I guess what I am looking for from you is some policy guidelines that we could embrace.

Mr. WANG. I think what is important is to have the community representative involved in the LMDC or ESD, in the policymaking decision—

Mr. ROGERS. Ms. Mildenberger, do you know of any criteria that were followed to ensure that there was representation, more broad representation, on groups that you helped form?

Ms. MILDENBERGER. Absolutely. In fact, what we did with the small business programs was we had several people who spoke different languages, many dialects of Chinese. We also communicated the programs in the local papers in Chinese.

And another thing that we did was we provided technical assistance. And of 22 firms that helped us provide technical assistance, we made sure we selected five competent firms that helped with specifically only businesses in Chinatown.

Mr. ROGERS. Well, my question is though, the Lower Manhattan Development Corporation doesn't have apparently this representation on their board, and they answer to you, don't they?

Mr. Pryor?

Mr. PRYOR. Yes, if I may. Thank you, Mr. Chairman.

In fact, there are a number of mechanisms through which Chinatown has been very deliberately and specifically involved in our process. Starting with we had?despite some testimony that was made earlier, we have had over 200 public meetings, including public meetings, forums where there was extensive input taken in Chinatown, right in the neighborhood.

We have a standing working group, an advisory group, of our agency which includes a wide range of Chinatown organizations and individuals. It meets on a very frequent basis.

And what they have informed, Mr. Chairman, is a whole series of initiatives, totaling $170 million for improvements in Chinatown.

Mr. ROGERS. But you don't have any Asian–Americans on your board?

Mr. PRYOR. No.

Mr. ROGERS. I do want to?before my time runs out, I want to visit another topic with Ms. Mildenberger.

And you made reference to this in your opening statement. The HUD OIG found that ESDC did not have systems in place to prevent the disbursement of Business Recovery Grants to companies

that received disaster loans for the same purposes from the Small Business Administration, which was in violation of the Stafford Act.

According to an analysis of data obtained by this Subcommittee, as many as 2,390 Business Recovery Grants were issued to 1,229 businesses that also received a total of 1,489 disaster loans for the same purposes from the SBA.

My question is: what adjustments did ESDC make to the Business Recovery Grant program, when this kind of duplication was brought to its attention?

Ms. MILDENBERGER. Absolutely. Thank you for raising that point.

When it came to ESD's—when we became aware of the Stafford Act violation, what we did was we worked hand-in-hand with HUD, and we worked hand-in-hand with SBA.

Any applicant who received both BRG funds from ESD and received an SBA loan, what we did was we made sure that we went back and had the applicant testify, pretty much fill out an application, which listed their economic damage.

What we then had to do was to make sure that the damage exceeded any monies that they received from insurance proceeds, from Empire State Development proceeds, and from SBA loan proceeds. So there was the ability for recipients to receive both an SBA loan and a recovery grant—

Mr. ROGERS. And then did it, in fact, happen extensively?

Ms. MILDENBERGER. Absolutely, it happened. And it happened because the economic loss suffered by those applicants was far exceeded by any assistance that was given under the federal programs.

In a handful of cases, if federal funds were given over the economic loss, we recovered those funds.

Mr. ROGERS. And my last question: what recommendation would you make to better prevent duplicative payments in the future?

Ms. MILDENBERGER. I think that is a very, very question. And I think we work hand-in-hand with HUD. We were running from September 12th on to try and formulate programs. Communication, as Member Meek had said earlier, is the key.

We run a state agency. We weren't familiar with every federal program, vice versa with HUD. When we then got talking with SBA, with HUD, we had a very good communication and just making each other aware of different potential red flags would make the businesses receive money in a more efficient way, with less hassle.

So I think keep that door of communication open between federal, state and city is hugely important.

Mr. ROGERS. Thank you very much. My time is expired.

The Chair now recognizes the Ranking Member, Mr. Meek, for any questions he may have.

Mr. MEEK. Thank you so very much, Mr. Chairman.

And I want to thank the panel for coming before us.

Yesterday, we had the response. And today, in our first round is recovery. And later on, it will be about—well, now it is about rebuilding.

And I think that what we have here is a situation—and it usually happens in these instances—"underserved communities" or

business communities are left behind. Meanwhile, the individuals that were prepared financially to be a part of the decisionmaking, and knew who to call, and know how to get on certain boards or access got there.

I would just say, as more of constructive from what I have heard?because we will not get to the bottom of the issues between the left and the right side of the table here today. But I can say that the access and having folks sit on the board is very, very important.

Mr. Pryor, how many folks do you have on your board, sir?

Mr. PRYOR. We have 12 members of our board.

Mr. MEEK. Okay. So it is like what you may consider a diverse board, based on the area of interests?

Mr. PRYOR. Yes, it is a diverse board.

Mr. MEEK. When you say that, what is the diversity?

Mr. PRYOR. There are representatives that would be inclusive of multiple sectors, inclusive of the business sector, the community board, which is the local-most representative body of residents in the immediate vicinity of Ground Zero. We have a representative of labor, of the building trades unions.

We have representatives of other kind of leading citizens from the private and public sector. And we have government representatives, as well.

In response to the chairman's question earlier, I should have stated that a point in time we did have an Asian–American member of our board. She happens to have left the board for professional pursuits. But I think it is quite important to note that, beyond our board, there are many mechanisms through which our agency has reached out to the community and consulted in the course of our decisionmaking.

Mr. MEEK. I just want to—as someone who has been around this for a little while and heard similar discussions of folks feeling left behind. And Mr. Wang made some very strong comments in his not only printed statement, but also verbal.

And I think it is important for future programs and for us to be able to put federal dollars out there, taxpayers' dollars. And obviously it is a local New York scene, also, as it relates to accountability and fair play.

It is very, very important, because that is the reason why we are going through this process, so that we can learn from past mistakes.

One other issue—I am trying to remember. I don't want to say Good Jobs New York or what have you. I will call you by your first name.

Ms. DAMIANI. It is Bettina Damiani.

Mr. MEEK. That is correct. I just want to make sure for the record that, when it is printed, that they will know who I am talking to.

You mentioned something as it relates to not only the Ground Zero area, but small businesses that have been trying to penetrate, "the bureaucracy" or the agencies that are actually giving the dollars. I am pretty sure you were here for the discussion on the STAR program and a number of programs that are out there.

And I know that it turns the stomach of those that are trying, that are there, that would like to take advantage of the opportunities. The opportunities are still there. It is not something that, even though it was 5 years ago, it is still there, as it relates to small businesses being able to hopefully take advantage of these two entities that are there and other agencies that are out there.

What are you finding now, in the people that you are representing? What are you finding now is the biggest impediment of them being able to access these dollars?

Ms. DAMIANI. The two funding sources that we follow most closely were Liberty Bonds and the Community Development Block Grants. There are pretty much no more Liberty Bonds available. They have all been allocated.

The residential bonds went relatively quickly, compared to the commercial bonds, which, depending on what is happening at the World Trade Center site, you can pretty much say have all been allocated.

Access is the different—many, many different authorities that are allocating these funds. While the LMDC was very much dominant around the cash grants, it is like alphabet soup. It is the IDA, the EDC, the LDC, you know, the HDC, the HFA, each having a completely different process in which to provide public participation and to apply for these funds.

So unless you are already very well-versed in how to access these kind of resources, there wasn't a really great opportunity to encourage an entrepreneurial spirit, so to speak, to get people that might have the desire to participate in the rebuilding, to become more involved. It was a very burdensome process.

Mr. MEEK. I still feel that maybe I don't know all I need to know because I am not there on the ground. There are opportunities that are still ongoing that would be able to assist businesses if they needed, am I correct?

Ms. DAMIANI. There are some. And I think the ESDC and LMDC can be more detailed about that. There is some money going on directly in the areas I mentioned on the Lower East Side currently.

And there is some money that is still being given out just recently. There was money given out to a large firm in Lower Manhattan.

Mr. MEEK. If I may, Mr. Chairman, Mr. Wang, I wanted to ask you, sir, ongoing. If you had to leave this hearing here today and you came to report, but if you had—if you wanted to take a very takeaways back, especially having the representatives from organizations that can be a part of the solution of your, obviously, constituency or membership or what have you, what will be—you are asked today to be able to resolve some of the ongoing issues?

Obviously, Mr. Pryor, in a very confident way said that they have tried to reach out, that they have advisory committees, that there was an Asian–American on the board at one time. That person has now left to pursue other opportunities.

What will be those takeaways? Because I think that this is educational for us, but sometimes we have these hearings, and things are said, and in many cases resolved, if can be resolved. Obviously, this is something that takes place in New York. Now it is an issue that has been brought to the table here in the capital.

What are two of the things that you think that will help the businesses? Because there is a fast death, as it relates to businesses closing, and a slow one. And I believe you probably still have some membership in the Chinatown community.

Mr. WANG. Well, one thing, as Mr. Chairman pointed out, I think it is important to have a representative from the community to sit on the LMDC board, because you are at the table, you are able to contribute, and you are able to have input, and you are able to help them make a decision.

And second, I think as a couple of days ago, Mr. Pryor and I, we had a discussion in terms of how to help the businesses locally, because in the Lower Manhattan in the next 10 years there is about $50 billion investment in rebuilding of the Lower Manhattan.

And then I suggest to him that perhaps we can have a "Buy from Chinatown" program, and that every contractor that gets a contractor in rebuilding Lower Manhattan—for every dollar they spend, spend, you know, a cent in buying goods and services from Chinatown. That can do tremendous good in helping to revitalize the community's business.

Mr. MEEK. Thank you very much.

Mr. Chairman, I think that efforts are all efforts of good will. And I know that, as we start moving towards closing the books on our report, that hopefully it will help us in the future.

I go back to, again—and I have said in the two previous hearings that it is important—and especially for Chairman King—that we, especially from someone like myself from South Florida that goes through these hurricanes constantly and we are in this mode of recovery, and assistance, and we will rebuild.

And you have sisters, women of the storm in New Orleans. You have all of these groups that kind of come together.

State, federal and local governments invest dollars into these entities to continue the spirit of rebuilding and recovery. But it is important that we give them some sort of direction. I think our role is to make sure that everyone can be in the same fish tank and not gobbled up, a big fish gobbling the so-called small fish.

And they don't have the opportunity to have representation. I know that we believe, when we pass things here in the Congress, that there is goodwill a broad application will prevail, and sometimes, in some cases, it doesn't.

And that is one of the great debates we are having now, as it relates to the reauthorization of the Voting Rights Act, making sure that those that need protection, historically, get that protection until we get to a point that we know that we live in an environment and a world where goodwill will prevail without the parameters.

We are not there yet, and it is not just talking about what is happening in New York, but it is what is happening in the country.

So I look forward again, and I want to thank you all for coming before us today.

Mr. ROGERS. I thank the gentleman.

The Chair now recognizes the Chairman of the Full Committee, Mr. King, for his questions.

Mr. KING. Thank you, Chairman Rogers.

And let me commend you and the Ranking Member for the extraordinary progress you have made over the last day, in learning to walk through the minefield of New York's ethnic names. You are really making a lot of progress. And I knew a million Damianis growing up, but I guess you guys didn't.

As I said before, I will restrict my questions to Mr. Wang and Ms. Damiani.

Obviously, after September 11th, one of the intentions was to keep political pressures away from the distribution of funds and the decisions being made. I am wondering, though, if we are planning for the future, should there, in fact, maybe be some more political involvement?

For instance, most of the area affected by September 11th is represented by the Speaker of the New York State Assembly. I am wondering, for instance, what impact or input he had into this—whether you could go to him during this time?

The community boards, how much of a role do they play? And do you think they should have a larger role, or will that just make it more confusing to have local politicians—should there be this set aside, in effect, between local politics and the board? Or do you think it would be better to have more local input?

And I will just ask Mr. Wang and Ms. Damiani.

Mr. WANG. Well, of course, as to the speaker's role, I think the probably speaker can better answer. I am sure that in his office he has certainly spent quite a bit of time in helping the community.

And I think that certainly the political process—you know, elected representative of the community certainly is important. And obviously the councilman has also been involved—he is the chair of the Lower Manhattan Development Committee and the city council.

But the question also, I think, you know, is important and I keep coming back to is the community needs to have a voice at the table, so that the need and the problem can be heard. And then the program can be developed to address the specific needs of the community.

Mr. KING. Ms. Damiani?

Ms. DAMIANI. I think it is sort of a double-edged sword. Yes, there should be more representation on the board where people can be held accountable, and often that is elected officials. People get to vote them in or vote them out.

So it would have been, in certain instances, very helpful to have some elected officials that represent the area on the board. Councilmember Gerson, who represents the area, is not on the LMDC board.

There are three community boards that represent the area, Community Board One, Two and Three. The one representative is from Community Board One, which represents Tribeca, with an average household income of over $110,000 a year. Community Boards Two and Three are less and around $30,000 a year.

So, yes, I think having representatives from Community Board Two and Three would have helped to balance the scales a little bit, and also having elected officials that represent the area would have helped bring some more accountability.

Mr. KING. Now, having the Speaker of the Assembly representing the area, was he able to provide any assistance to you? Like, when you had individual issues, did you go to him?

Mr. WANG. Yes, certainly, I think the speaker recently?most recently, I think, helped to the Empire Zone, which is one of the new ESDC programs in New York State. To designate Chinatown as an Empire Zone, and we are certainly anticipating that program to take affect, and then there is some of the benefits that can help the community to recover, revitalize.

And, you know, Speaker Silver, I think, in many instances he has been representing the community for a long time, and he has oftentimes spoke out on behalf of the community.

Mr. KING. I have no further questions.

Mr. ROGERS. As I told the earlier panel, I want to thank you for your time and commitment for being here. Your written statements are very helpful to us, and your cooperation with our staff in interviews has been very helpful in this process.

We will have, I am sure, written questions submitted to you posthearing. We are going to leave the record open for 10 days. And if you all are provided with questions, I would ask that you respond to those in writing within that 10 days so that we can have the benefit of that as we continue to work toward this report.

And with that, we thank you for your attendance. And we are in adjournment.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

LESSONS LEARNED IN PREVENTING WASTE, FRAUD, ABUSE, AND MISMANAGEMENT PART III

Thursday, July 13, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 2:12 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, King, Meek and Pascrell.

Mr. ROGERS. [Presiding.] The Committee on Homeland Security's Subcommittee on Management, Integration and Oversight will come to order.

This afternoon, we are holding our final hearing to examine the status and use of approximately $20 billion in Federal aid provided to New York City after September 11. This hearing will look ahead at what fraud controls are in place for the use of Federal 9/11 assistance to help rebuild the infrastructure in Lower Manhattan.

In the interest of time, the Ranking Member and I have agreed to forego opening statements. And also because we are going to be called for a series of votes in the not-too-distant future, we have agreed to combine the two panels into one panel, and then we will allow two rounds of questions for the Members.

We want to welcome our witnesses and thank you for taking the time to be here with us today in your busy schedules.

Before we begin, I would like to ask unanimous consent that a written statement from the Honorable Thomas McCormack, Chairman of the New York City Business Integrity Commission, be included in the record. Without objection, so ordered.

[The statement of Mr. McCormack follows:]

FOR THE RECORD

SUBMITTED BY HON. MIKE ROGERS

PREPARED STATEMENT OF THOMAS MCCORMACK, CHAIR OF THE BUSINESS INTEGRITY COMMISSION OF THE CITY OF NEW YORK

THURSDAY, JULY 13, 2006

Good morning Subcommittee Chair Rogers, Committee Chair King, and members of the Subcommittee on Management, Integration, and Oversight of the House Committee on Homeland Security. Thank you for the opportunity to testify concerning the role of the New York City Business Integrity Commission ("BIC") in the detection, prevention and control of fraud during the World Trade Center disaster in New York City on and after September 11, 2001. I will begin with a broad overview of what BIC is and what it does.

In November 2001, a New York City charter revision measure created a new commission to incorporate into one City agency the then-separate functions of the former New York City Trade Waste Commission, the former Gambling Control Commission, and the regulation of public wholesale food markets in the City of New York. Each of these separate initiatives had been in existence before this new charter agency, the Business Integrity Commission, was created to consolidate them.

BIC is both a law enforcement and regulatory agency. It provides oversight of the private waste carting industry, public wholesale food markets, and shipboard gambling, which, currently, is an inactive industry in New York City. New York City law requires a license or registration for a company or individual to operate a business in any of these industries. BIC investigates the backgrounds of applicants for these licenses or registrations before making determinations to grant or deny the applications. Our statute requires that applicants for licenses or registrations possess good character, honesty and integrity, in order to receive permission to operate in the City.

BIC's mission is to eliminate the influence of organized crime and other forms of criminality and corruption from the industries it regulates. BIC achieves this mandate in three ways: background investigation, criminal investigation, and regulatory enforcement. BIC's professional staff consists of a squad of New York City Police Department ("NYPD") detectives detached to BIC by the NYPD Organized Crime Investigation Division ("OCID"), attorneys, investigators, and forensic auditors. BIC's investigative and legal staff routinely works closely with all City, State and Federal law enforcement agencies and prosecutors to conduct criminal investigations, and to gather information essential to the vetting of applications for licenses and registrations.

BIC's predecessor agency was the Trade Waste Commission ("TWC"), which I mentioned earlier. Created by New York City Local Law 42 of 1996, TWC's specific mission was to eliminate the control of organized crime over the private carting industry in the City of New York. Major prosecutions of private carters, most notably a 1996 prosecution by the District Attorney of New York County, had found that an organized crime-controlled cartel had dominated the carting industry for several decades. This cartel restricted competition, controlled prices and allocated the commercial customers of private carters into specific geographic areas where the carters were designated to operate. When carters sought to obtain customers outside their assigned areas, the cartel, which functioned as a group of trade associations, resolved disputes among carters and required "compensation payments" from certain carters who took other carters customers, with a percentage of the money flowing back to the organized crime families that controlled the specific areas in which the carters were permitted to operate. Since its inception, the commission has granted hundreds of carting licenses and registrations to applicants after fully investigating and vetting their backgrounds. These licensees and registrants now compete for the accounts of commercial waste customers in the City of New York.

As law enforcement officers, many members of TWC were drawn immediately into the City's response to the catastrophe at the World Trade Center on September 11, 2001. Many TWC members participated in the search and recovery efforts at the place that quickly came to be known as Ground Zero, as soon as that undertaking began. It became clear that, as the agency that regulated private carters—an industry whose services were critical to the clean-up of the area—TWC would have three roles in the restoration of the site.

These three roles were: 1) the coordination of the movement of private carters at Ground Zero to cart away debris, as well as the oversight of other carters providing general private sanitation to businesses in Lower Manhattan as a whole, during a period in which the area was subject to the highest security measures in its history; 2) the formulation of a long-term plan for debris haulage by qualified carters at the site; 3) the conduct of criminal and administrative investigations into the activities of private carters associated with the clean-up project.

First, regarding the effort to coordinate carters' movements, shortly after the collapse of the World Trade Center, private carting companies in the Greater Metropolitan area began offering their services to assist in the efforts to remove debris from the site. As you know, this job was unprecedented in its scope and challenge. The City established a command center in a building that sits on a pier in Midtown Manhattan, and, each of the City, State and Federal agencies that participated in the search, recovery and clean-up operations functioned in that location. TWC temporarily relocated its office to this command center. In fact, TWC's actual office, which was located just across the street from New York's City Hall, was closed for many weeks after the fall of the World Trade Center, because it stood in an area that had been impacted by the collapse.

From this command center, TWC worked around the clock with a host of government agencies, like the NYPD, New York State Police, the Federal Bureau of Investigation ("FBI"), the New York City Department of Investigation ("DOI"), the Federal Emergency Management Agency (FEMA), and the National Guard, to coordinate the movements of carters in the highly-secure Ground Zero and adjoining areas in which they had to work. There were checkpoints and security clearances, and moment-to-moment interfacing with law enforcement and military personnel on the streets to ensure that these critical carting operations moved along smoothly, but always in strict compliance with security requirements. This coordination continued for the duration of the clean-up initiative.

With respect to the requirement for a long-term plan for debris haulage, TWC's role as regulator of the private carting industry was to ensure that the companies participating in the clean-up would meet our statutory requirement to possess good character, honesty and integrity. A good number of the carters who hauled debris from Ground Zero began the work as volunteers on the site in the hours after the collapse. Many had come to the scene of the disaster with their trucks from cities and towns in the Greater Metropolitan area where, obviously, they had not needed a New York City license to operate. Thus, they had not been vetted by TWC. Given the fact that their participation in the World Trade Center clean-up placed them in the City of New York, TWC's task was to identify carters who had not applied for TWC licenses or registrations, notify them to apply, and vet them. In an effort to preclude disruptions to the vital clean-up operation, we granted temporary permission to operate to each unlicensed carter who submitted an application to us, while we investigated their backgrounds.

And then, we had our law enforcement role to discharge. We worked closely with the NYPD, the New York State Organized Crime Task Force, the FBI, and DOI to pursue a number of leads concerning trucking activities at Ground Zero.

Shortly after the clean-up began, there were allegations that members of organized crime were mounting an effort to steal scrap metal from the World Trade Center to sell as recycled steel. TWC, NYPD, the New Jersey State Attorney General's Office and DOI investigated this information. We conducted intensive surveillance of trucks leaving the World Trade Center with steel recovered from the debris.

As you know, in the days after the attack on and the collapse of the World Trade Center, the City made available its Fresh Kills Landfill on Staten Island to accept all of the debris from the site. Consequently, all debris and steel from the World Trade Center should have found its way to Fresh Kills, either by truck at the beginning of the operation, or by truck or barge as the effort broadened.

During the course of this investigation, we located a few loads of World Trade Center steel in scrap yards in New Jersey and Long Island. We worked closely with the New York County District Attorney Rackets Bureau and obtained several search warrants to enter these yards, inventory the material and reclaim it. In fact, at all of the locations where we recovered the steel, we made arrangements with the New York City Department of Sanitation ("DSNY"), to deploy the City's own trucks to these out-of-city facilities, re-load the steel on to DSNY vehicles and transport the material to Fresh Kills. We turned our evidence over to the New York County District Attorney who convened a grand jury to hear the case. My understanding is that this Grand Jury returned no indictment.

As law enforcement intelligence about companies on the site developed, the City decided to apply oversight over the demolition, excavation and debris-removal contractors working on the project by retaining Independent Private Sector Inspectors

General ("IPSIGS") to vet and investigate contractors on the jobs. DOI took the lead in retaining, directing and supervising these IPSIG's. TWC worked very closely with DOI and the Lower Manhattan Construction Command Center ("LMCCC") in vetting all of the carters who worked on the project. Currently, LMCCC has copies of our lists of carters who are licensed or registered to operate in the City. By using these lists to select carters for prospective work in the Ground Zero areas, LMCCC will have the benefit of retaining carting companies whose backgrounds have been fully vetted and who have received permission to operate as the result of that vetting.

As the clean-up of Ground Zero progressed in late 2001 and early 2002, TWC and OCID detectives continued to pursue investigations. We attended regular meetings in the office of the New York County District Attorney with DOI investigators to discuss these investigations. Investigators from FEMA's Office of the Inspector General also participated in these meetings. In order to ensure that there would be no further diversion of World Trade Center steel, TWC and OCID assigned their investigators to man posts each night to monitor data provided by Global Positioning System devices that were installed on private carters' trucks under DOI's direction. I believe this surveillance system and investigative oversight achieved their purpose. There were no additional reports of World Trade Center steel diversion for the duration of the clean-up project.

I think the lesson learned from this experience regarding the detection, prevention and control of fraud is not substantially different from similar lessons learned by members of the law enforcement community in other major operations in which I have participated. Major issues bring together many parties, simply as a result of their magnitude and importance. Each agency naturally brings to the problem the objectives of its own mission and the training and expertise of its members. Each agency will pursue a course of action shaped by its mission, training and expertise. But, each agency must cooperate with the other members of the team to reach the mutually-agreed objective. And, they need to have that realization from the outset.

For example, the FBI and military at Ground Zero had grave concerns about non-essential traffic in the area after the attack. But, the clean-up was vital, and the City had to prevent harm to public health and safety. There were hundreds of stores and restaurants in the area surrounding Ground Zero that had simply stopped operating in the hours after the attack. Freezers and refrigerators stocked with perishable food became inoperable. Food began rotting, and the private carters who normally service these commercial establishments could not pursue business as normal. Careful coordination that was mindful of public health as well as public security was necessary to move these carters in and out of certain areas. The task fell to the City Department of Sanitation to collect commercial waste in the most challenging circumstances.

TWC and other city agencies and the federal personnel charged with ensuring security worked together to find ways to get private sanitation companies through the streets, or, when that measure could not succeed, to get City personnel and trucks to do the job. These logistics were not easy to implement, but the alternative was to be at loggerheads. The measures succeeded in the end, because the different members of the team-all of whom brought different mandates and approaches to the problem- kept the goal in mind: our mission was to clean-up Ground Zero, while addressing the various valid concerns and the different methods each member brought to the issue.

As you know, the clean-up of Ground Zero, which appeared to be a daunting task in the days following September 11, was fully completed on schedule. Based on that fact, I must think that our approach to the detection, prevention and control of potential fraud against the project was successful as well.

This concludes my prepared testimony. Thank you.

Mr. ROGERS. The Chair now calls the first panel, and recognizes Bernard Cohen, Director of the Lower Manhattan Recovery Office, of the Federal Transit Administration, for your statement.

I would remind you, Mr. Cohen and all members of the panel, that your entire written statement has been provided to every Member and it will be included in the record. So if you would like to summarize your statement in the opening, that would be sufficient and allow us more time for questioning.

With that, Mr. Cohen, welcome, and we look forward to your statement.

STATEMENT OF BERNARD COHEN

Mr. COHEN. I am pleased to testify to testify on the substantial progress that we are making in the lower Manhattan transportation recovery effort.

The terrorist attack of September 11, 2001, crippled lower Manhattan's transportation infrastructure. We lost the Port Authority-operated PATH line from New Jersey to the World Trade Center and the WTC PATH station. Two New York City subway lines were heavily damaged, along with Route 9A West Street, a major arterial highway.

Shortly after President Bush declared New York a national disaster area, Congress appropriated $20 billion for many aspects of lower Manhattan's recovery, out of which $4.55 billion was budgeted for transportation needs. That recovery effort still benefits today from sound decisions that the FTA and other public agencies made immediately after the president's declaration, including a proactive commitment to coordination.

For example, after we created a dedicated office in lower Manhattan, FTA worked to establish "one-stop shopping" for federal transportation funds. Working with FEMA, FTA assumed the role of lead federal agency for all transportation recovery projects and moved transportation funding and projects forward. In that capacity, FTA formulated a straightforward, but challenging mission to streamline transit recovery, while maintaining our stewardship of federal taxpayer dollars.

A total of $4 billion of the $4.55 billion budget has now been committed to lower Manhattan transportation projects. That is 91 percent of all program dollars available. I am very pleased to report that all of the three major fully funded transit projects for which initial grants were made are under construction today. With these three projects, the federal government and lower Manhattan have seized the opportunity not only to recovery, but to improve transit.

Construction began in March of this year on the permanent World Trade Center PATH terminal. The terminal is scheduled for completion in June of 2011, and the display you see to my left is a depiction of the Santiago Calatrava design for the new permanent PATH terminal that is now under construction at the World Trade Center site.

FTA has also provided a $478 million grant to develop a state-of-the-art World Trade Site Security Center that will screen all vehicles. This facility will ensure that vehicles serving the buildings or parking in the center will not be used as weapons.

In July of 2005, the Metropolitan Transportation Authority began construction of the multi-level Fulton Street Transit Center, which serves 275,000 people a day. Completion of construction is scheduled for June of 2009, and the slide you see to my left shows the piece of equipment that is driving the secant piles that will be the prelude to the excavation for the new corridor that will connect the Fulton Street complex to the World Trade Center site.

Also in December of 2003, FTA awarded MTA a grant of up to $420 million for the South Ferry Terminal Station, the last station at the southern end of the IRT 1 subway line. Construction began in March 2005 and should be completed in April 2008.

What you see to my left is the excavation for the new station which will have three entrances instead of one; will be accessible to people with disabilities, which the current station is not; and will modernize one of the most outdated stations in the New York City subway system. I should add that there are two agreements with FHWA. LMRO is also providing $287 million toward the reconstruction of Route 9A West Street.

Community leaders envision these transit projects as anchors of the overall economic and social recovery effort that is unfolding today and will continue in to the next decade. We have been the beneficiaries of a broad recognition that transportation is the first chapter in the lower Manhattan success story.

The LMRO office has also made a priority of working collaboratively with other major players in transportation reconstruction, which was crucial in the project selection process. Because we worked closely with the committee formed by Governor Pataki to select projects, we have been able to advance well-designed transit projects that have been inspired optimism and investment dollars to rebuild.

Recognizing the unique nature of lower Manhattan's recovery, we have employed a number of innovative practices. For example, FTA adopted a novel risk-based oversight approach to management that anticipates and mitigates risks, rather than trying to undo problems after the fact. Throughout this process, the LMRO office has endeavored to streamline the process, even as we have exercised a truly exceptional level of active oversight, paying close attention to costs, scheduled, design development, financial systems, and procurement procedures for every project.

The lower Manhattan transit recovery is as much a story of building relationships as it is of building stations, road, and rail. From the start, we made coordination a priority. Our dual focus on streamlining and stewardship has paid off. When complete, the major projects now under way will transform the transportation landscape in lower Manhattan. They will make the system dramatically more visible, secure, navigable, accessible, and customer-friendly.

We have already made significant progress, and we remain committed to getting the job done for New Yorkers and all Americans.

Thank you.

[The statement of Mr. Cohen follows:]

PREPARED STATEMENT OF BERNARD COHEN

Thank you, Mr. Chairman and members of the committee. I am pleased to join this panel, and to have an opportunity to testify on the progress we are making in the Lower Manhattan transportation recovery effort. My name is Bernard Cohen, Director of the Federal Transit Administration's (FTA) Lower Manhattan Recovery Office (LMRO).

The terrorist attacks of September 11, 2001, crippled Lower Manhattan's transportation infrastructure. The worst of this devastation was not visible above ground. Lower Manhattan lost the PATH line from New Jersey to the World Trade Center—operated by the Port Authority of New York and New Jersey (Port Authority) that had carried an average of 67,000 passengers daily. Debris from the Twin Towers crushed the PATH World Trade Center station—the gateway to New York City for so many. Two New York City subway lines were heavily damaged, along with a major arterial highway. Remarkably, despite the scale of this destruction, not a single life was lost on transit due to the terrorist attacks on that day.

Shortly after 9/11, President Bush declared New York a national disaster area. Congress appropriated $20 billion for many aspects of Lower Manhattan's recovery, out of which they budgeted $4.55 billion for transportation needs. An additional $200 million for ferry facilities and rail infrastructure was appropriated by Congress and made part of the overall transportation recovery effort.

That recovery effort still benefits today from sound decisions that public agencies made immediately after the President's declaration. The most elemental of these decisions was a proactive commitment to coordination. Nine months after the attacks, FTA established a beachhead in Lower Manhattan—a dedicated office that strengthened lines of communication and collaboration in Lower Manhattan. FTA worked to establish "one-stop shopping" for Federal transportation funds, to ease administrative burdens on project sponsors. Through a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA), FTA became the lead agency to move transportation money and projects forward.

When we became the lead agency in this effort, we formulated a straightforward but challenging mission: to streamline transit recovery while maintaining responsible stewardship of taxpayer dollars, and exceptional oversight. Unlike other FTA-funded projects, the Lower Manhattan projects are almost entirely Federally funded, so we felt the stewardship obligation just as keenly as the imperative that we revive Lower Manhattan's transit lifelines as quickly as possible.

We also recognized that we would have to operate simultaneously in two "time zones"—the immediate and the long term—to meet the transit needs of Lower Manhattan.

The LMRO has now obligated most of the money entrusted to Lower Manhattan transportation. A total of $4 billion of the $4.55 billion budget has been committed to projects. This figure includes a reserve for each project as a prudent measure of stewardship to ensure that we have the resources in place to complete our program.

I am very pleased to report that all of the three major, fully-funded transit projects for which initial grants were made are under construction today. These projects promise not only to improve service, but also to enhance dramatically the passenger convenience and visibility of transit in Lower Manhattan. Indeed, the United States, determined to come back from the 9/11 attacks stronger than ever, resolved not just to reconstruct Lower Manhattan's infrastructure as it existed before, but to improve upon it. The recovery presented Lower Manhattan with an opportunity to modernize and rationalize its infamous "spaghetti bowl" tangle of transit lines. The Federal Government and Lower Manhattan have seized that opportunity. We are creating a vastly more visible, navigable, seamless, and customer-friendly system for Lower Manhattan.

Construction began in March of this year on the permanent World Trade Center PATH terminal. Since 2003, FTA has awarded the Port Authority up to $2.2 billion for the PATH terminal, and project sponsors completed their environmental review in June 2005. In addition to restoring commuter service, the project includes pedestrian connections to the Fulton Street Transit Center and the World Financial Center. The Port Authority has engaged the renowned architect Santiago Calatrava to design the PATH terminal, which many have come to regard as the Grand Central Station of Lower Manhattan, a transit focal point. The majestic glass and steel terminal is scheduled for completion in June 2011.

FTA has also provided a $478 million grant to develop a state of the art World Trade Center Site Security Center that will screen all vehicles for security threats and provide parking for tour buses. This facility will ensure that vehicles servicing the buildings or parking in the Center will not be used as weapons.

In July 2005, the Metropolitan Transportation Authority (MTA) began construction of the Fulton Street Transit Center, used by 275,000 people a day. The construction agreement between FTA and MTA provides for up to $847 million in Federal funds. This grant will fully fund a multi-level complex of stations that will serve 12 different subway lines. The existing maze of narrow ramps, stairs, and platforms will be transformed into a more spacious and rational configuration. A prominent transit center will replace street entrances previously hidden inside buildings. MTA was awarded this grant in December 2003. The environmental review for Fulton was completed in November 2004, and completion of construction is scheduled for June 2009.

Also in December 2003, FTA awarded MTA a grant up to $420 million for the South Ferry Terminal Station, the last station at the southern end of the IRT 1 subway line. This project will eliminate the tight-curve platforms that prevent operators from opening the doors on the rear five cars of their trains. It will increase the number of entrances from one to three, and make the station accessible to disabled passengers. Construction on the terminal began in March 2005, and should be completed by April 2008.

I should add that LMRO is also providing $287 million toward the cost of rebuilding Route 9A/West Street, the major north-south state arterial highway that runs down the West Side of Lower Manhattan. FTA and the Federal Highway Administration have executed two Memoranda of Agreement in the last two years to provide for the transfer of funds and outline the oversight responsibilities of each agency. This roadway project is already under construction and is scheduled to be completed by June 2009.

Community leaders envision these transit projects as anchors of the overall recovery effort that is unfolding today, and will continue into the next decade.

Over the last four years, many of our office's priorities have also been Lower Manhattan's priorities. The economic renaissance in many respects begins with the vanguard of transit systems that can carry riders, visitors, and workers into and out of the area. We have been the beneficiaries of a broad understanding that transportation is a first chapter in the Lower Manhattan success story.

The LMRO has also made a priority of working collaboratively with other major players in transportation reconstruction, which was crucial in the project selection process. FTA worked closely with a committee formed by Governor Pataki and including key city and state transportation agencies, as well as the Lower Manhattan Development Corporation. This committee generated the initial list of transportation recovery projects from which our three projects were selected. Because of this collaboration, we have been able to advance well-designed, well-received transit projects. In turn, the business community has responded with a burst of optimism to renovate and build in Lower Manhattan.

As construction progresses on the three major transit projects, Lower Manhattan has become an incubator for innovations and lessons learned that can benefit other transit systems and projects.

Certainly, the Lower Manhattan context rewards innovation, and creative ways of doing business. FTA adopted a novel, risk-based oversight approach to management. We undertook formal risk assessments early in the development of each project, and tailored our oversight accordingly. We focused on the preemption of risks rather than the mitigation of problems after the fact. We established reserves for our projects based on our risk assessments in order to ensure that sufficient resources will be in place to complete the recovery projects.

Throughout this entire process, the LMRO has endeavored to exercise a truly exceptional level of proactive oversight. Specifically, this means that we have paid close attention to costs and schedules at every step. We have given project sponsors approval to move through various phases of design and development. We have entered into construction agreements when sponsors have been ready to begin work. And, we have carefully scrutinized and reviewed procurement procedures and financial systems.

We have applied the same extraordinary degree of oversight to transit security in Lower Manhattan. FTA has been centrally involved in, and well aware of, key security design features for all of the projects, from the earliest phases of work. Security features are being integrated into the very design of these projects. FTA retained a consultant to review security documents that we required our project sponsors to prepare, including threat and vulnerability assessments, construction site security plans, security management plans, and design guidelines.

To meet environmental standards while advancing these important projects as quickly as possible, we worked closely with project sponsors to create an active environmental oversight approach. We adapted a Cumulative Effects Analysis approach to assess the overall environmental impact of all of the transit projects in Lower Manhattan. Our project sponsors, in turn, have made a landmark agreement to implement aggressive mitigations for those effects. Collaborating with project sponsors, we established one single, consistent set of methodologies, data, sources, and assumptions for all of the projects. These shared assumptions allowed for comparability across projects, and vastly shortened the time traditionally needed to prepare and review environmental documents.

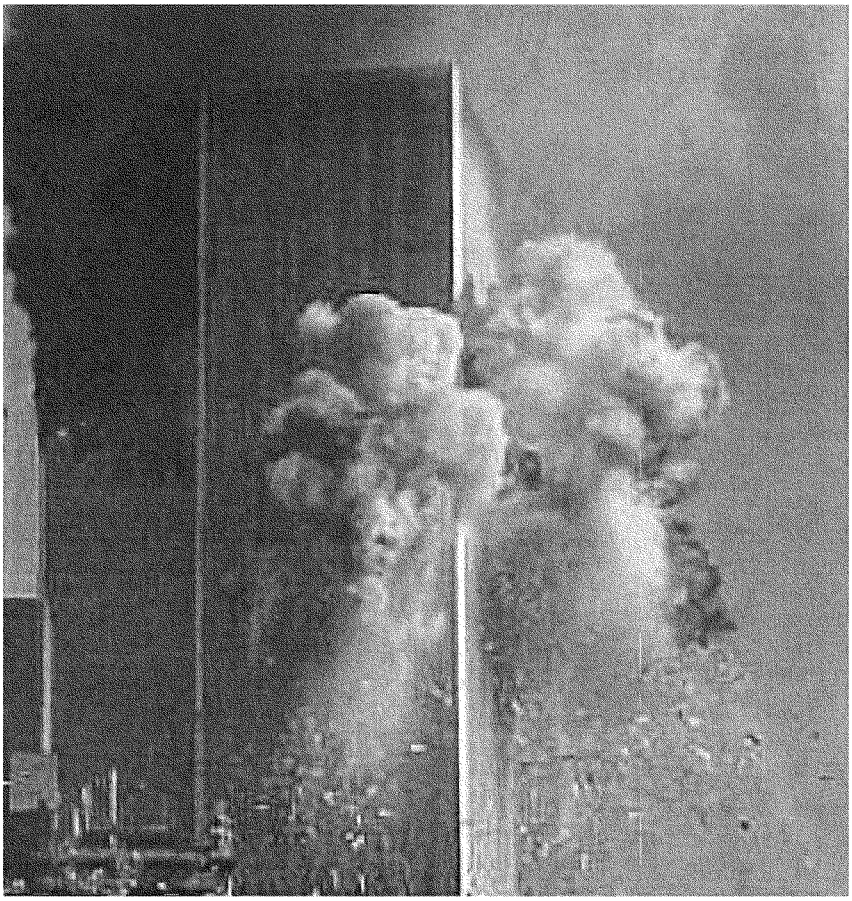
None of these was a "cookie cutter" approach. In our environmental streamlining, risk assessment, and project oversight, we have drawn on our collective experience and our creativity to customize solutions that fit specific projects.

The Lower Manhattan transit recovery is as much a story of building relationships as it is of building track, road, and rail. From the start, we have focused on coordination and regular communication with state and local officials, public and private project sponsors, other Federal agencies, the business community, organizations representing the families of the victims of 9/11, and other major players in this complex undertaking. That legacy of coordination endures today in the Lower Manhattan Construction Command Center (LMCCC), which is funded largely through an FTA grant. The LMCCC began as a voluntary collaboration among project spon-

sors dedicated to minimizing the negative impact of overlapping construction projects on an already-fragile community. The LMCCC emerged from that undertaking as a formal organization that, today, coordinates construction logistics. The LMCCC formalizes the kind of coordination that has characterized the transit recovery effort from its earliest days.

FTA's dual focus on streamlining and stewardship has paid off. Four years after we first established a beachhead in Lower Manhattan, we have committed the bulk of the Federal transit money to three major, popularly-acclaimed transit projects, for which construction is already well underway. When complete, these projects will transform—even revolutionize—the transit landscape in Lower Manhattan. They will make the transit system dramatically more iconic, secure, accessible, and customer-friendly than it was in pre–9/11 days.

On behalf of the entire LMRO and FTA, thank you for this opportunity to update you on our progress. Now I'd be happy to answer any questions.



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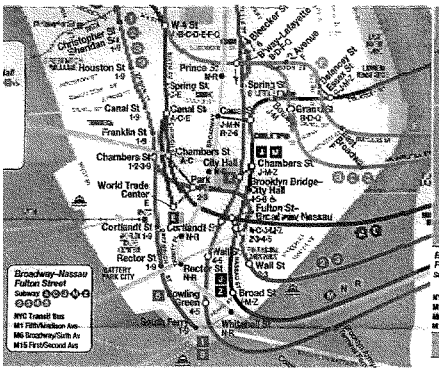
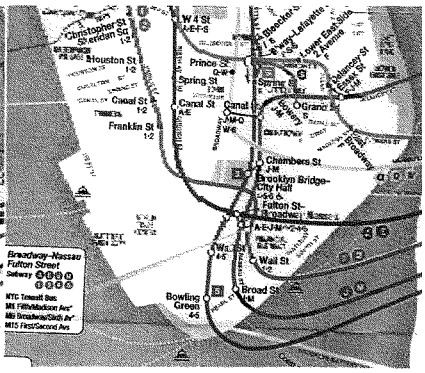
PATH and MTA Services Altered

Pre-September 11, 2001



Post-September 11, 2001



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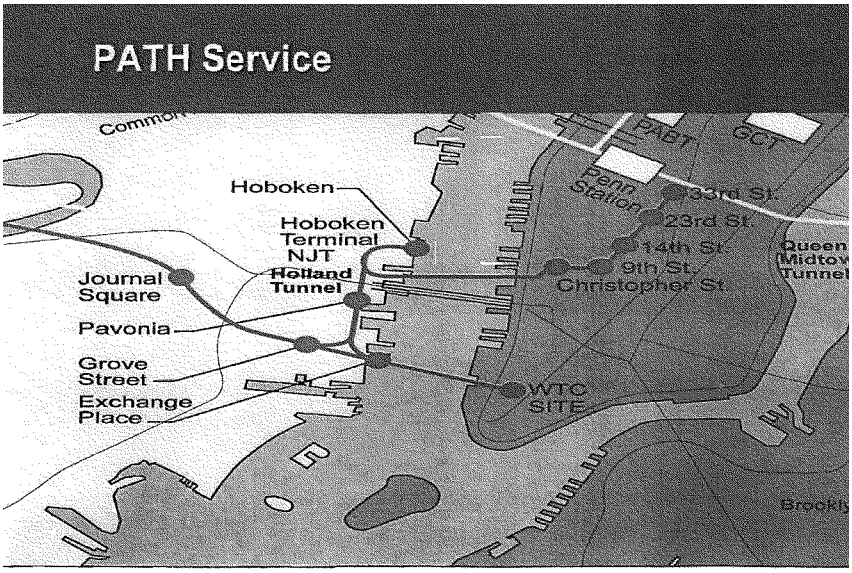
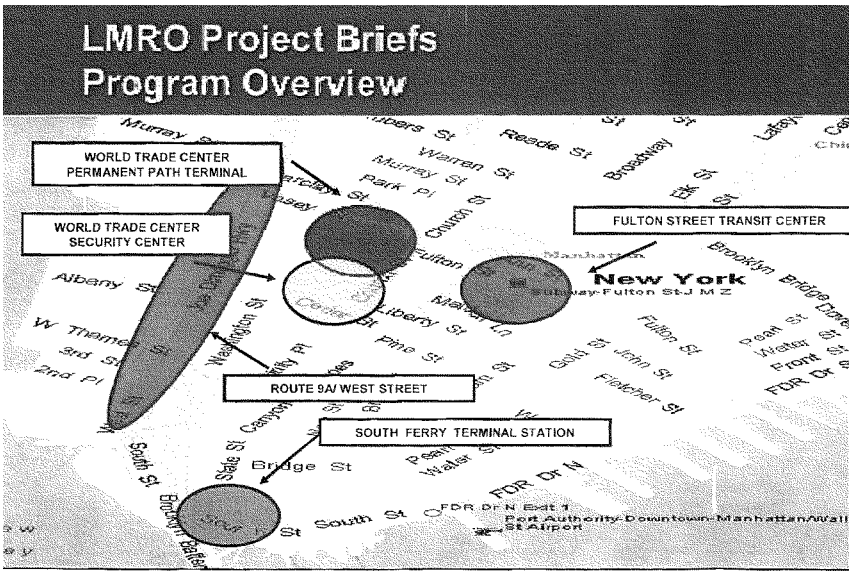
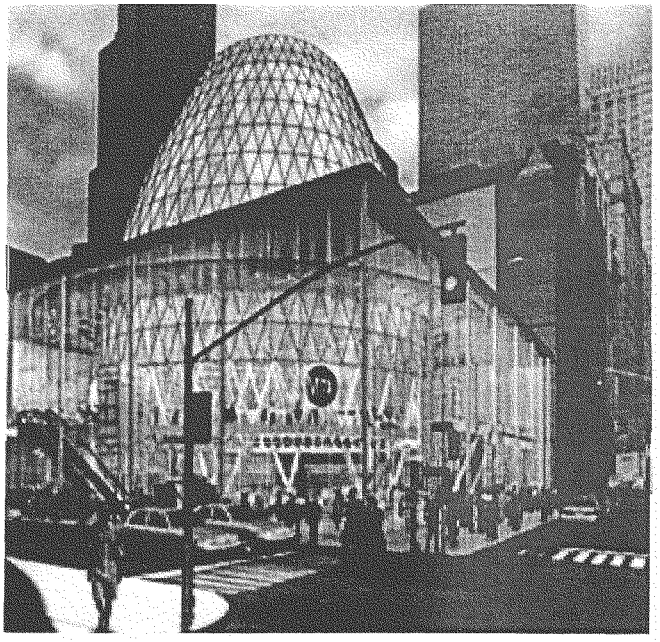

PATH Service
Hoboken
Hoboken Terminal NJT
Holland Tunnel
Journal Square
Pavonia
Grove Street
Exchange Place
WTC SITE
Penn Station
33rd St
23rd St
14th St
9th St
Christopher St
PABT
GCT

8


LMRO Project Briefs
Program Overview
WORLD TRADE CENTER PERMANENT PATH TERMINAL
WORLD TRADE CENTER SECURITY CENTER
FULTON STREET TRANSIT CENTER
ROUTE 9A/ WEST STREET
SOUTH FERRY TERMINAL STATION
New York
Broadway
Albany St
Fulton St
Liberty St
Pine St
Gold St
John St
Fletcher St
Bridge St
South St
FDR Dr N

9

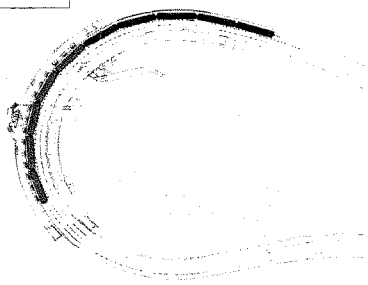


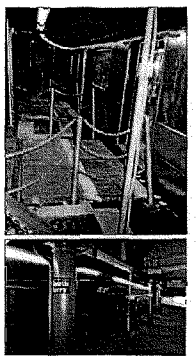
Reprinted with the Permission of the Federal Transit Administration Lower Manhattan Recovery Office 11

South Ferry Terminal Station Current Conditions

Rear five cars cannot load or unload

Only one exit; no ADA access





Delays can affect entire 1/9 and 2/3 subway lines

Federal Transit Administration
Lower Manhattan Recovery Office - LMRO

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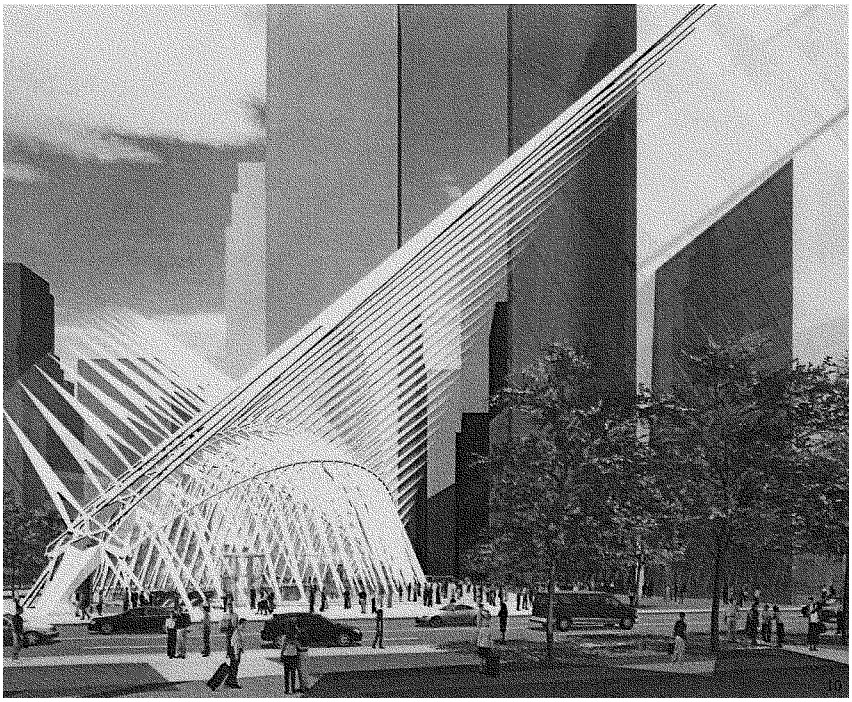
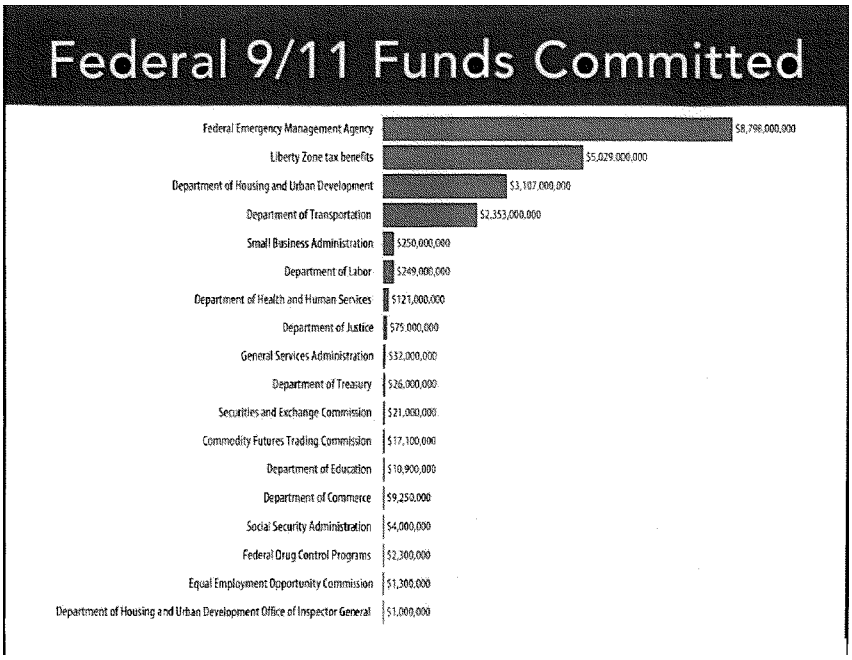


Federal 9/11 Funds Committed

Initial Response	Compensation for Losses	Economic Revitalization	Rebuilding
$2.55 Billion	**$5.254 Billion**	**$6.390 Billion**	**$5.492 Billion**

2



Mr. ROGERS. Thank you, Mr. Cohen, for your statement.

The Chair now recognizes Mr. Todd Zinser, Acting Inspector General of the Department of Transportation, for your statement. Mr. Zinser?

STATEMENT OF TODD ZINSER, ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION

Mr. ZINSER. Thank you, Mr. Chairman, Mr. King, Mr. Pascrell. We commend the subcommittee for holding this series of hearings and appreciate the opportunity to testify on the importance of vigorous oversight of major transportation projects like those under way in lower Manhattan.

The destruction caused by the terrorist attack is a tragic reminder of the importance of transportation in our daily lives and why they remain prime targets for terrorists. Today, we will address key lessons learned from our work on transportation infrastructure projects across the country that should be applied, and in some cases are already being applied to the reconstruction of lower Manhattan.

Our audit work on transportation infrastructure projects has primarily focused on projects costing more than $1 billion, or so-called mega-projects. For example, for the past several years at the direction of Congress we have audited the annual finance plan of the $14.6 billion "big dig" project in Boston, and 15 months ago in April of 2005, as a result of a review of the tunnel leaks on that project, we testified that the project could consider a project-wide construction quality review.

Our criminal and civil fraud investigations have focused on highway, transit, and airport projects where there are indications of fraud, regardless of the size of the project. We have investigated schemes including false claims for material and labor, product substitution, bribery, schemes involving disadvantaged business enterprises, and in some instances of payoffs to organized crime.

Over the last few years, our report on top management challenges in the department has pointed to the need for FTA and the Federal Highway Administration to strengthen their oversight and stewardship of the more than $30 billion in transit and highway funds spent each year, and they have been taking steps to do so. FTA's Lower Manhattan Recovery Office has the lead oversight role for DOT on lower Manhattan reconstruction. The office and its oversight activities are funded by nearly $90 million FTA received as part of the disaster funding.

We strongly supported this funding, and in our view it is critical in any future disaster that some portion, even if it is just 1 percent, of the disaster funding be set aside for oversight activities. OIG's role in lower Manhattan will be to provide an independent perspective on the projects and the oversight activities of the agencies involved. To do this, we have informed the department and would like the subcommittee to know that we have established an OIG-lower Manhattan transportation oversight team based in our New York regional office located just north of Canal Street in Manhattan.

Our investigative work on transportation infrastructure projects has resulted in two primary lessons. First, build coalitions with other federal, state and local law enforcement agencies and program officials to prevent and detect fraud. This is already under way by the establishment of the lower Manhattan construction integrity team, where a comprehensive range of federal, state and local agencies have developed measures to prevent fraud, such as recommended practices for vetting potential contractors.

Second, take aggressive action to prevent and detect fraud and have strong policies in place to send the message that fraud will not be tolerated. Program staff should be alert and promptly report suspected fraud. U.S. Attorney's offices should be educated and in some cases, even though fraud cases may not meet their prosecutorial threshold, they should prosecute cases. This is a strong deterrent.

Finally, suspension and debarment policies like the one implemented by Secretary Mineta at DOT in 2005 are important tools to protect taxpayer dollars from irresponsible contractors and can deter future fraud.

Our audit work on mega-projects has resulted in identification of several tools that should be applied to these projects. First, prepare reliable cost estimates. This will be especially critical for lower Manhattan because the total amount of federal funding for the five transportation projects under way is currently fixed at $4.55 billion. Project managers must have reliable and current cost estimates, track them closely and aggressively control costs. Otherwise, costs could easily exceed the current federal funding commitment and it is unclear what the source of additional funds would be.

Second, focus on project and financial management by using sound oversight practices such as FTA's use of project management oversight contractors.

Third, prepare regularly updated finance plans to identify costs, scheduled, funding sources and risks to a project, or in the case of lower Manhattan, ensure that each project has something analogous to a realistic, regularly updated finance plan.

Fourth, actively use value engineering to control costs by analyzing and implementing design alternatives. This is already being applied, resulting in the identification of $67 million in potential savings on the design of the Fulton Street Transit Center.

Fifth, carefully manage project schedules to minimize costly delays, including the use of integrated master schedules to coordinate the work of numerous contractors and subcontractors on large projects.

Finally, recover overpayments from contractors and have a strong cost recovery program in place to recover the costs of construction claims caused by design and engineering errors or omissions.

Mr. Chairman, those are our lessons learned on all the work that we have done over the years. This concludes our prepared remarks. We would be happy to answer any questions.

[The statement of Mr. Zinser follows:]

PREPARED STATEMENT OF TODD J. ZINSER

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

We appreciate this opportunity to testify today on the importance of vigorous oversight of major transportation projects like those underway in the reconstruction of Lower Manhattan. The terrorist attacks of September 11, 2001 caused unprecedented damage to New York City's transportation infrastructure, including the Port Authority Trans–Hudson (PATH) terminal and the Route 9A (West Street) highway near the World Trade Center site. The destruction caused by these attacks is a tragic reminder of the importance of transportation systems in our everyday lives and why these systems remain prime targets to terrorists.

Our testimony today will address important lessons learned from our work on federally funded transportation projects across the country that should be applied, and in some cases are already being applied, to the reconstruction of Lower Manhattan. Primarily, our audit work at the Office of Inspector General (OIG) has focused on mega-projects, that is, those infrastructure projects costing more than $1 billion, while our criminal and civil fraud investigations have focused on highway, transit, and airport projects where there are indications of fraud regardless of the size of the project.

Based on this body of work, we believe that certain sound investigative, management, and oversight practices should be considered wherever major transportation construction may be undertaken. This seems especially important in the reconstruction of Lower Manhattan. With the loss of life and with such significant parts of the transportation system destroyed at the hands of terrorists, we should do all we can to ensure that the residents of New York and the American tax payers get the most from the Federal funding being invested and that these projects are free of fraud.

Accordingly, we have informed the Department and would like you, Mr. Chairman, and the Subcommittee to know that we have established an *OIG Lower Manhattan Transportation Oversight Team* to support oversight of Lower Manhattan projects. Although we are a relatively small OIG with limited resources, compared to the approximately $55 billion that the U.S. Department of Transportation (DOT) spends annually, we are now able to redeploy resources and expertise from our work on Boston's $14.6 billion Central Artery/Tunnel Project, which is nearly complete.

In response to the extensive devastation caused by the September 11 attacks, the Federal Government dedicated $4.55 billion for projects to reconstruct and enhance Lower Manhattan's transportation infrastructure. These high-priority projects will require vigilant oversight by DOT, state and local governments, and transit agen-

cies. The projects are massive in scale and will require oversight of numerous contractors and subcontractors, tracking costs and schedules, and preventing fraud, among other things.

Over the last few years, our management challenges reports to the Secretary and Congress have pointed to the need for the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) to strengthen stewardship over investments in highway and transit projects.[1] As we reported to the Secretary in November 2005, a 1-percent improvement in the efficiency with which states managed the $700 billion investment in highway projects over the last 6 years would have yielded an additional $7 billion for other infrastructure improvements. Thus, improving efficiency in even a small percentage of the funds invested in the reconstruction of Lower Manhattan could result in millions of dollars in savings. FHWA and FTA have been working to strengthen their oversight practices.

Other infrastructure projects in the New York Metropolitan area will add to the challenges DOT faces. Significant amounts of Federal funding are also being dedicated to other ongoing transportation projects in the area, most notably the large-scale East Side Access and the Second Avenue Subway projects. Although these projects are not being funded with the $4.55 billion, they are still large and complex and will need proactive DOT oversight. Adding to the challenge, these transportation projects will have to compete with many other projects in New York City for contractors, workers, and materials—making it even more important to focus on sound project and financial management. Overall, within the next 5 years, more than $20 billion in construction work will likely be underway in all of Lower Manhattan.

OIG's role in Lower Manhattan will be to provide an independent perspective on these projects and the oversight activities of the agencies involved. When our audit work identifies issues, we will alert Federal, state, and local officials—as we have done on many other large transportation projects. When we receive allegations of fraud, we will investigate them and refer cases to the U.S. Attorney. In this regard, our testimony today will focus on the following oversight issues to consider as the reconstruction of Lower Manhattan continues, and key lessons learned that could be applied to other major transportation projects.

• **DOT must ensure active oversight of Lower Manhattan projects until they are completed.** Effective day-to-day oversight of the large, complex transportation projects in Lower Manhattan and across the country is critical to ensuring that projects are completed on time, within budget, safely, and free from waste, fraud, or abuse. FTA has the lead on Lower Manhattan reconstruction and will be challenged by providing sufficient oversight of the projects involved. Accordingly, as part of the Federal commitment, FTA has received nearly $90 million of dedicated funding to do so.

To carry out its oversight responsibilities in Lower Manhattan, FTA has created a special oversight office, the Lower Manhattan Recovery Office. The Lower Manhattan Recovery Office is separate from FTA's New York field office and its sole purpose is to oversee these high priority projects in Lower Manhattan. The Lower Manhattan Recovery Office should employ all of the oversight mechanisms and expertise at its disposal to closely monitor these projects and, most importantly, quickly mitigate problems as they arise. Doing so will help ensure that the projects are delivered in a timely manner and within the federally funded amount.

In overview, it is critical in any future disaster that the Federal agency or agencies in charge of reconstruction receive, as part of the emergency funding, a *sufficient and dedicated amount of funding* to provide oversight.

• **Key lessons learned by our investigators are that Federal, state, and local law enforcement agencies must build coalitions to combat fraud in large transportation projects and take aggressive action against those who defraud the government.** History has shown that substantial infusions of funding into an area for relief and/or reconstruction efforts, such as those related to the September 11, 2001 attacks, increase the risk of fraud. Our special agents have investigated criminal schemes nationwide on large transportation projects like those in New York City, including false claims for materials and labor, product substitution, collusive bidding, money laundering, tax fraud, bribes, schemes involving disadvantaged business enterprises, and, in some instances, payoffs to organized crime.

Since 1999, our New York Office has conducted approximately 31 investigations related to highway and transit construction/infrastructure projects in the New York City Metropolitan area. Since 1999, these cases have produced 42 indictments, 26 convictions, and actual or pending financial recoveries of over $33 million. Our work

[1] Report PT–2006–007, *DOT's 2006 Top Management Challenges, November, 18 2005. The report can be accessed on our website at http://www.oig.dot.gov/item.jsp?id=1701.*

has also resulted in Federal debarments or suspensions of numerous companies. For example, the owners of three family-owned construction firms in the New York Metropolitan area were debarred in 2002 for 3 years by FHWA. Also, following their 2001 guilty pleas they were ordered to forfeit $5 million for their part in a large scam involving payoffs to organized crime.

Our investigative work in New York and across the country offers important lessons learned to help combat schemes like these.

First, build coalitions with other Federal, state, and local law enforcement agencies—as well as program officials—to prevent and detect fraud. Building these coalitions allows law enforcement and investigative agencies, as well as program officials, to leverage resources, share information and expertise, and undertake joint initiatives. This is already underway in Lower Manhattan with the Lower Manhattan Construction Integrity Team (LMCIT), which was an idea suggested by the Lower Manhattan Development Corporation. We were a founding member of this group, which was formally started in 2004 to prevent fraud in Lower Manhattan publicly-funded projects. Members now include a comprehensive range of Federal, state, and local agencies. This group has developed an array of measures for the prevention of fraud, including recommended practices for the process of vetting potential contractors, information sharing, fraud awareness training for contractors? supervisors and managers, employee screening and access control to the World Trade Center site, and use of integrity monitors.

Second, take aggressive action to combat fraudulent activity and have strong policies in place to send a message that defrauding the U.S. Government will not be tolerated. There are many ways to take aggressive action to prevent fraud and protect tax payer dollars. For one, Federal, state, and local program staff should always be alert to possible instances of fraud and use existing mechanisms, such as fraud hotlines, to report suspected fraud early on. Timely reporting of possible fraud is critical so allegations may be promptly investigated. For example, we maintain a hotline that can be accessed at *http://www.oig.dot.gov/Hotline.* Tips specifically related to Lower Manhattan projects can be submitted at *www.LowerManhattan.info.*

It is important that when investigators identify fraud and collect sufficient evidence related to criminal schemes or civil fraud that the U.S. Attorney's Office act upon it. In some instances, they should accept cases for prosecution that may not otherwise meet their prosecutorial threshold (e.g., the dollar amount of the fraudulent activity) as a deterrent to others who might attempt to defraud the government.

Finally, in 2005, Secretary Mineta signed a DOT-wide order strengthening the Department's suspension and debarment policies. Such policies prevent individuals or contractors who have been indicted or convicted of fraud from receiving Federal contracts for a period of time. We believe that such policies are critical to protecting tax payer dollars from irresponsible contractors.

• **A key lesson learned from our auditors is that a set of sound management and oversight tools should be used by Federal, state, and local agencies to ensure that large transportation projects are completed effectively and efficiently.** These tools are fundamental and universally applicable to all federally funded transportation projects. It will be important to rigorously employ them in the reconstruction of Lower Manhattan.

They include ensuring that sound project and financial management practices are in place, preparing reliable cost estimates, carefully managing project schedules to minimize costly delays, implementing more cost-effective engineering alternatives, and recovering overpayments from contractors and promptly resolving construction claims. For example, because the total Federal funding allocated to the various Lower Manhattan projects is currently fixed, it will be even more critical for Federal, state, and local officials to have reliable cost estimates and track them closely.

The Lower Manhattan Recovery Office has adopted a risk management approach to keep costs within estimates. This risk analysis process was applied early in project development to focus on identifying and mitigating project risks and keeping costs within the Federal funding allocated for each project. If higher costs are estimated along the way, FTA requires the grantee to develop a recovery plan to find ways to keep costs within the funding allocations. This is a smart move. Such a cost containment action already occurred on the Fulton Street project, requiring a project-wide cost recovery plan to address such budget issues as remaining real estate acquisition and tenant relocations, a possible re-design of the Transit Center, and environmental requirements for building deconstruction. Unless costs are aggressively controlled, the costs could easily exceed the $4.55 billion currently allocated by the Federal Government, and it is not clear what funding sources would cover those increased costs.

DOT Must Ensure Active Oversight of Lower Manhattan Projects Until They Are Completed

The Federal Government dedicated $4.55 billion to fund large-scale projects to reconstruct and enhance Lower Manhattan's transportation infrastructure. Of this amount, $2.75 billion came from the Federal Emergency Management Agency (FEMA) and $1.8 billion came from FTA. Through an agreement with FEMA, FTA was given lead responsibility for distributing and overseeing the use of the $4.55 billion.

The ongoing projects are the Permanent World Trade Center PATH Terminal, Fulton Street Transit Center, South Ferry Terminal Station, the World Trade Center Vehicle Security Center, and the Route 9A/West Street/Promenade highway project (FHWA also dedicated some funding to this highway project in addition to the portion being funded out of the $4.55 billion and FHWA has oversight responsibilities as well). More information on these projects is provided in the exhibit at the end of my statement.

Of the $4.55 billion, nearly $90 million has been dedicated to FTA's oversight activities. We support this move and believe a dedicated funding stream for Federal agency oversight should be replicated in any funding decisions for future disasters and emergencies.

DOT agencies—whether it is FTA or FHWA—should serve as a key line of defense in protecting tax payer dollars. In 2002, FTA created the Lower Manhattan Recovery Office separate from its New York regional office, which is unique within FTA. The Lower Manhattan Recovery Office is responsible for coordinating DOT resources and working with state and local partners to provide project oversight and technical assistance. We supported the creation of this office at the time and it may be a model to consider should future disasters necessitate massive transportation-related reconstruction.

FTA's Lower Manhattan Recovery Office has hired several contractors to assist in its oversight responsibilities. For example, it hired a financial management oversight contractor (FMOC), which was used at the beginning of the projects to review the financial statements, accounting systems, and internal financial management of grantees. Currently, the FMOC is used on an as-needed basis. It also hired project management oversight contractors (PMOC) who are charged with regularly monitoring major transportation projects and providing feedback to Federal officials should any problems arise. This is an institutionalized approach at FTA. The Lower Manhattan Recovery Office's strategy has been to provide one PMOC to each grantee. For example, there is a PMOC for the New York State Metropolitan Transportation Authority's (MTA) Fulton Street Transit Center and South Ferry Station projects. The PMOC for each project is charged with conducting risk assessments for projects, reviewing cost and schedules, and assessing each grantee's plans for the project. Lower Manhattan Recovery Office staff told us the PMOCs attend grantee meetings and report back to them, conduct on-site reviews several times a week to look at construction materials, and review quality assurance on the project. A key point is that the Office must ensure that it fully analyzes the results of the contractors? reports, take action where appropriate, and exercise its own oversight role in addition to the contractors' work.

A PMOC may also contract with other experts, as needed, to assist in performing certain important duties. For example, the Lower Manhattan Recovery Office determined that its PMOC on the Fulton Street Transit Center did not have expertise to ensure that MTA met the requirements of the Federal Relocation Assistance Act. Accordingly, the Lower Manhattan Recovery Office directed the PMOC to hire an outside consultant to evaluate MTA's relocation program for businesses and residents who are being displaced by construction of the Fulton Street Transit Center.

Key Lessons Learned by Our Investigators are That Federal, State, and Local Law Enforcement Agencies Must Build Coalitions to Combat Fraud in Large Transportation Projects and Take Aggressive Action Against Those Who Defraud the Government

History has shown that substantial infusions of funding into an area for relief and/or reconstruction efforts, such as those related to the September 11, 2001 attacks, increase the risk of fraud. Our special agents have investigated criminal schemes associated with transportation projects across the country, including false claims for materials and labor, product substitution, collusive bidding, money laundering, tax fraud, bribes, schemes involving disadvantaged business enterprises, and, in some instances, payoffs to organized crime.

Since October 2002, our nationwide investigations related to surface transportation projects have resulted in 150 indictments, 91 convictions, $57.64 million in fines, restitutions, and recoveries, and 94 suspensions or debarments. It is important to consider that investigating and collecting sufficient evidence to support pros-

ecution of white collar crimes like these is a labor intensive process that, in some cases, can take years.

The following examples illustrate the types of schemes we have detected on major transportation projects across the country, which investigators, program officials, and even the public should watch for in future projects.

• **Payoffs.** The owners of three family-owned construction firms in the New York Metropolitan area were debarred in 2002 for 3 years by FHWA. Also, following their 2001 guilty pleas they were ordered to forfeit $5 million for their part in a large scam involving payoffs to organized crime. They issued corporate checks to subcontractors as payment for fraudulent invoices. These payments were then returned to them as cash.

• **Product substitution.** Our investigators worked with the Federal Bureau of Investigation (FBI), as well as state and FHWA officials, on a case involving a Connecticut concrete manufacturer that was fined and forced to pay restitution for falsely certifying that concrete catch basins used on a major highway project met contract specifications. The manufacturer pled guilty in 2005 and was fined and forced to pay restitution totaling half a million dollars.

• **Bid-rigging.** Four executives of two Wisconsin contractors, both of their companies, and an employee of a third company were sentenced in 2005 to a combined total of over $3 million in fines and restitution and imprisoned, for a bid-rigging scheme. Competitors unlawfully decided who was to receive which roadway or airport job. They submitted complementary bids to create the false appearance of competition on approximately $100 million in publicly-funded projects.

• **Bribery.** In one of our joint cases in New York City, the co-owner of a prime contractor pled guilty in 2006 to conspiring to bribe an inspector to facilitate approximately $1 million of over-billing on a roadway milling contract. As part of the plea agreement, the defendant and his company agreed not to bid on any Federal, state or city-funded project for a period of 5 years.

• **False Statements.** Several Ohio transportation inspectors were convicted during 2003–2005 for making false statements regarding the quantity and/or quality of bridge-painting work performed by contractors on Federal-aid projects. The inspectors received illegal payments to overlook improprieties, such as the use of inferior paint and failure to properly sandblast or contain lead and hazardous paint waste.

• **Prevailing Wage Fraud.** The largest highway landscaping company in Minnesota, which was the prime contractor on over $4 million in federally funded highway construction projects as well as a subcontractor on numerous others, and its president, were sentenced in 2006 for conspiring to defraud the government by creating and certifying false records that concealed its failure to pay workers at the prevailing wage rate.

• **Disadvantaged Business Enterprise (DBE) Fraud.** A certified DBE firm in New York was found to have been used as a "false front" on about 3 dozen subcontracts valued at approximately $21 million and submitted false certified payrolls. In 2001, the principal of the company pled guilty to conspiracy charges in the case.

Our investigative work in New York and across the country offers important lessons learned to help combat schemes like these.

First, build coalitions with other Federal, state, and local law enforcement agencies—as well as program officials—to prevent and detect fraud. Building broad, interagency coalitions allows law enforcement and investigative agencies, as well as program officials, to share information, leverage expertise and resources, and undertake important joint initiatives. States and localities are the first line of defense against fraud and the Federal law enforcement community should work closely with them. Also, law enforcement should work closely with program officials at all levels of government, who can be the first to detect early indications of fraudulent activity. We are involved in a number of collaborative partnerships across the country and two in the New York City Metropolitan area are worth mentioning as key success stories that could be replicated elsewhere. Accordingly, we have tried to spread the word about these initiatives to other parts of the country.

• For example, we are founding partners in an interagency working group, the Lower Manhattan Construction Integrity Team (LMCIT). It was established in 2004 at the suggestion of the Lower Manhattan Development Corporation to prevent fraud in Lower Manhattan publicly-funded projects. The group has grown and now includes a comprehensive range of oversight agencies. In addition to us, it includes the Lower Manhattan Construction Command Center, the Lower Manhattan Development Corporation, the New York City Department of Investigation, the New York City Business Integrity Commission, the New York State OIG, the New York State Metropolitan Transportation Authority's OIG and Chief Compliance Officer, the OIG of the Port Authority of New York and New Jersey, and the OIGs of the U.S. De-

partments of Labor and Housing and Urban Development (HUD). LMCIT has developed a range of measures for the prevention of fraud, including best practices for the process of vetting potential contractors, information sharing, fraud awareness training for contractors? supervisors and managers, employee screening and access control to the World Trade Center site, and the use of integrity monitors (also referred to as IPSIGs, or Independent Private Sector Inspectors General) to supplement existing oversight resources. LMCIT members also share a joint fraud complaint hotline, which can be accessed at *www.LowerManhattan.info.*

• Further, since 1999, we have been a founding member of the Long Island Federal Construction Fraud Task Force, established by the Office of the U.S. Attorney for the Eastern District of New York. This Task Force was organized to coordinate investigations into fraud and public corruption in the construction industry on Long Island. The Task Force presently consists of prosecutors and agents from our Office of Investigations, the Internal Revenue Service Criminal Investigation Division, Department of Labor OIG, FBI, the Postal Inspection Service, the New York City Department of Investigation, and the OIG of the Port Authority of New York and New Jersey. Of the approximately 22 pending New York City Metropolitan-area construction investigations in our New York Office, more than half are being conducted under the auspices of this Task Force. The impact of the work of the Long Island task force extends beyond the New York City Metropolitan area. The unprecedented success of the Task Force has led to repeated requests that its members participate in speaking engagements, presenting insights, investigative strategies, and techniques to other law enforcement and oversight organizations. To date, members of the Task Force have participated in 14 conferences in 10 states.

• The importance of building coalitions among Federal, state, and local law enforcement agencies can also be seen in the areas affected by Hurricane Katrina. For example, we and other Federal OIGs are fully integrated into the Hurricane Katrina Fraud Task Force, which was created by the Attorney General of the United States to detect and deter fraud against the U.S. Government in efforts to rebuild the Gulf Coast and provide emergency relief for the residents there. The Task Force has mobilized to bring prosecutions as quickly as possible to send a strong message of deterrence. We are also an active member of a special task force headed by the U.S. Department of Homeland Security OIG that coordinates the Hurricane Katrina-related auditing and investigative activities of the other Federal OIGs.

We believe it is important that our investigative activities in the areas devastated by Hurricane Katrina are coordinated, information is shared, and that we maximize our limited resources. Our agents have conducted approximately 50 fraud awareness briefings for various oversight providers, FHWA, state transportation department staff, and trade association officials as part of our hurricane-related fraud prevention activities.

Second, take aggressive action to combat fraudulent activity and have strong policies in place to send a message that defrauding the U.S. Government will not be tolerated. Recognizing the fraud risks inherent in large-scale construction projects, it is critical that investigative agencies at all levels of government take aggressive action to combat fraud and abuse of government funds.

• In 2005, Secretary Mineta signed a DOT-wide order strengthening the Department's suspension and debarment policies. Such policies prevent individuals or contractors who have been indicted or convicted of fraud from receiving Federal contracts for a period of time. We believe that such policies are critical to protecting tax payer dollars from irresponsible contractors. Secretary Mineta deserves great credit for pushing for these improvements and for focusing on reducing fraud, waste, and abuse in DOT programs. It is important for all Federal agencies to evaluate their suspension and debarment policies and assess what steps can be taken to strengthen them.

• There are other ways to take aggressive action to prevent fraud and protect tax payer dollars. For one, Federal, state, and local program staff should always be alert to possible instances of fraud and utilize existing mechanisms to report suspected fraud early on. Timely reporting of possible fraud is critical so allegations may be investigated by law enforcement officials and, if warranted, they may take prompt action. Such fraud reporting mechanisms include internal agency procedures or fraud hotlines. We believe that program staff and investigators should always maintain an open flow of information. For example, we maintain a waste, fraud, and abuse hotline that can be accessed at *http://www.oig.dot.gov/Hotline.*

• Finally, it is important that when investigators identify fraud and collect sufficient evidence related to criminal schemes or civil fraud that the U.S. Attorney's Office act upon it. For example, in 2003, the United States Attorney in Manhattan announced the arrests of two individuals for devising schemes to fraudulently obtain HUD September 11-related grant funds of $5,316 and $3,750. Even though the

amount of money involved in the fraud was relatively small, actions like these send a message to those considering similar schemes.

In another example, at the direction of the Attorney General, Offices of the U.S. Attorneys have been aggressively prosecuting individuals who engage in Hurricane Katrina-related fraud, for example, through debit cards issued to hurricane victims to pay for recovery costs, even though the individual dollar amounts involved are relatively low. In some cases, it is important for the U.S. Attorney's Office to accept cases for prosecution that may not otherwise meet their prosecutorial threshold (e.g., the dollar amount of the fraudulent activity) as a deterrent to those who might attempt to defraud the government.

A Key Lesson Learned from Our Auditors is That a Set of Sound Management and Oversight Tools Should Be Used by Federal, State, and Local Agencies to Ensure That Large Transportation Projects are Completed Effectively and Efficiently

Based on our years of work auditing major transportation projects across the country, we believe a set of sound management and oversight tools should be considered wherever major construction occurs. These tools are fundamental and universally applicable to all federally funded transportation projects. It will be important to rigorously employ them in the reconstruction of Lower Manhattan.

Prepare reliable cost estimates. In some cases, project approvals may be secured on the strength of cost estimates prepared before the design package is substantially complete and which contain figures that are far too preliminary. In the past, we have found that cost estimates for major projects did not include such routine items as construction management, design, allowances for inflation, or contingency reserves. Great care must be taken to assure that these preliminary cost estimates are understood for what they are, and that they do not serve as the predicate for project approval unless they are thoroughly examined and found to be reliable and complete.

Over the years, we have reported on dramatic increases in the costs of highway and transit projects—in some cases after construction had begun and they had already received significant Federal funding. A recent example of unreliable cost estimating on the highway side is the San Francisco–Oakland Bay Bridge (East Span) project, where costs nearly doubled from $2.6 billion to $5.1 billion. Also, the finance plans for the Project had not been thoroughly reviewed as envisioned by FHWA guidance. On the transit side, we reported in 2001 that the cost estimates for the Seattle Central Light Rail Link Project went from $2.5 billion to $4.1 billion in just 7 months.

Because the Federal funding allocated to the various Lower Manhattan projects is currently fixed, it will be even more critical for Federal, state, and local officials to have reliable cost estimates and track them closely. In addition, these high-priority projects are on a very fast track and in some cases designs have been altered along the way. Thus, it is important to maintain reliable cost estimates and update them as events change. FTA officials told us they are aggressively using a risk management approach to keep costs within estimates and that risk analysis was applied early in project development. If higher costs are estimated along the way, FTA requires the grantee to develop a recovery plan to find ways to keep costs within the funding allocations. Such a cost containment action already occurred on the Fulton Street project, requiring a project-wide cost recovery plan to address such budget issues as remaining real estate acquisition and tenant relocations, a possible re-design of the Transit Center, and environmental requirements for building deconstruction. Unless costs are aggressively controlled, the costs could easily exceed the $4.55 billion currently allocated by the Federal Government, and it is not clear what funding sources would cover those increased costs.

Focus on Project Management and Financial Oversight of Transportation Projects. Early and continuous oversight by Federal agencies of states' project and financial management practices are key to controlling project costs, preventing delays, and reducing the potential for safety and environmental problems. FTA and FHWA have different approaches to overseeing large transportation projects.

Transit Projects. FTA has institutionalized the use of project management oversight contractors (PMOCs) and financial management oversight contractors (FMOCs) to oversee large transit projects and to report to its in-house staff on findings and needed corrective actions. They are third-party contractors who look at FTA-funded projects in accordance with FTA guidance. FMOCs are used to evaluate a grantee's financial condition and its financial capability to construct, operate, and maintain a project. A PMOC is retained by FTA to evaluate a grantee's technical capacity to build, operate, and maintain a project, and to monitor the grantee's implementation of a project. This is essentially a sound approach that can provide early warnings of cost, schedule, and quality problems.

In addition, FTA requires that grantees submit a project management plan. The plan, submitted in support of an application for a full funding grant agreement, demonstrates a grantee's technical capacity to build, operate, and maintain the project, together with the grantee's existing transit system. A project management plan is an evolving document, first prepared during preliminary engineering, which follows a project through final design, construction, and revenue operations.

We have seen both the strengths and the weaknesses of the PMOC program in our work on Puerto Rico's Tren Urbano project in 2000 and 2002. Our May 2000 review of Tren Urbano found that the PMOC had discovered and raised important schedule and construction quality issues. However, during our March 2002 audit we found that Tren Urbano officials consistently reported that the estimated cost of the project was $1.9 billion. We discovered that the estimated costs had actually increased by 10 percent, but the PMOC had accepted Tren Urbano's prior representations without checking them. All of the Lower Manhattan transit projects have a PMOC assigned to them and an FMOC is retained on as-needed basis, which is critically important. FTA should ensure that the PMOCs are aggressively monitoring the projects and that recommendations made by the PMOCs are fully analyzed by the Lower Manhattan Recovery Office and expeditiously addressed.

• **Highway Projects.** Historically, FHWA focused on detailed engineering activities and not on project management and financial oversight. FHWA performed contract-level administration and engineering activities, such as approving contract change orders and deciding on the location and wording of highway signs. Over the past several years, FHWA has taken important steps to change its focus.

As we noted in our DOT 2006 Top Management Challenges report (issued in November 2005), we have seen positive signs that FHWA is committed to improving its oversight of transportation dollars and is implementing new oversight programs. For example, FHWA has established a new Financial Integrity Review and Evaluation program. This program calls for FHWA division offices to perform oversight of state management practices, including assessing management risks, reviewing financial management processes, and spot checking a sample of payments on highway projects to ensure that Federal funds are properly managed. Sustained and effective implementation of this should be a priority for FHWA.

Moreover, Congress also made several important changes in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) that are intended to strengthen FHWA oversight. For example, finance plans are required for projects exceeding $100 million in total cost. Another change is that the $1 billion threshold defining major projects was lowered to $500 million. Such major projects are now required to have project management plans in *addition* to the previously required finance plans. We strongly support these actions.

The purpose of the new project management plan program is to serve as a "roadmap" to help the project delivery team maintain a constant focus toward delivering the major project in an efficient and effective manner by clearly defining the roles, responsibilities, processes, and activities. The project management plan is supposed to be a living document in which revisions will be issued as the project progresses in order to add, modify, or delete provisions that will result in the most effectively managed project. These revisions and updates to the project management plan will occur prior to issuing the environmental decision, prior to authorization of Federal-aid funds for right of way acquisition, and prior to authorization of Federal-aid funds for construction.

Prepare Finance Plans to Identify Cost, Schedule, Funding and Risks to a Project. A finance plan is a management tool that is vital in providing project managers and the public with information on how much a project is expected to cost, when it will be completed, whether adequate funding is committed to the project, and whether there are risks to completing the project on time and within budget. Regularly updated finance plans provide current information about project costs, financing, schedule, and technical issues to enable Congress, the Department, states, project managers, and the public to continually evaluate the progress of a project. Recognizing how significant and critical this basic oversight tool is, in SAFETEA–LU Congress changed FHWA's policy regarding finance plans. Previously, only Major Projects (those over $1 billion at the time) were required to have finance plans. Now, all projects over $100 million will be required to have finance plans. This was a positive move.

While the transit projects under the Lower Manhattan Recovery Office's supervision are not required to have finance plans, the office has implemented construction agreements. According to FTA, these agreements were implemented to help expedite these projects and are analogous to a finance plan. Construction agreements delineate key terms of the projects, including development and recovery plans. The

construction agreement for each project is reviewed frequently and must have: (1) a recovery plan, (2) risk assessment process and, (3) a project reserve.

One of the five projects in Lower Manhattan (Route 9A) is mostly a highway project that is being managed by FHWA—even though it is being partially funded with FTA dollars. FTA and FHWA have entered into two memoranda of agreement laying out the types of oversight that FHWA will be expected to provide, which are different from FHWA's regular oversight mechanisms and more similar to the forms of oversight that would typically be found on an FTA project, including a PMOC on the Route 9A Project, which it normally would not do. FTA's agreement with FHWA stipulates that this project must have a finance plan.

Implement More Cost–Effective Engineering Alternatives. Since 1970, many industries and Government agencies have successfully employed value engineering programs to control costs on major projects. The purpose of these programs is to objectively review all reasonable alternatives during the design phase to find more cost-effective alternatives. For example, FHWA's value engineering program, established in 1997, requires that a study be performed on all Federal-aid National Highway System projects with an estimated cost of $25 million or more and on other projects where using value engineering has a high potential for cost savings.

Some states have been using value engineering effectively. However, our ongoing work on value engineering indicates states could be saving tens of millions of dollars if they would use value engineering studies on more projects and more frequently adopt the recommendations made during studies that are conducted.

FTA also requires value engineering. To its credit, some of the Lower Manhattan Recovery Office-supervised projects have already had such studies performed and the staff told us that recommendations have been implemented. For example, according to Lower Manhattan Recovery Office officials, savings based on accepted value engineering recommendations related to the Fulton Street Transit Center are estimated to be nearly $67 million.

Manage Project Schedules to Minimize Costly Delays. Transportation projects have become larger and more technically complex in the last decade and require coordination of the activities of multiple contractors working in a confined construction area. Accordingly, managing project schedules is a critical function in efforts to minimize cost growth. The key is to maintain a master schedule that ties together the work of all the contractors and identifies and tracks the costs of labor, material, and equipment resources required to complete each task. Master schedules are referred to as integrated, resource-loaded schedules. These schedules can identify and prevent schedule conflicts before they occur and can track progress on individual tasks, allowing early action to prevent or mitigate delays, thereby reducing or preventing cost increases.

Failure to maintain integrated resource-loaded schedules has led to unanticipated project delays and increased costs. For example, in the past we reported that the failure to maintain integrated, resource-loaded schedules led to unanticipated delays and increased costs on the Springfield Interchange Project in Virginia, including $49 million that were added to project costs.

Effectively managing project schedules will be especially important in Lower Manhattan due to the pressing need to get these high-priority projects up and running as quickly as possible and ensure that costs stay within existing Federal allocations. The significance of managing schedules in the case of Lower Manhattan cannot be overstated, as each of these projects is large, complex, has expedited time frames, and will likely require the coordination of numerous contractors and subcontractors all at once. For example, we were informed by FTA that the Permanent World Trade Center PATH Terminal involves four contracts—three relatively small ones and the major construction management/general contractor (CMGC) contract. The CMGC currently has 4 prime contractor firms and at least 10 subcontractors. FTA staff told us they expect the number of subcontractors to grow over time.

Recover Overpayments from Contractors and Promptly Resolve Construction Claims to Control Project Costs. Change orders to contracts are initiated by the project or contractors in response to changes in the project's scope or differing site conditions. However, some change orders are a result of design errors or omissions caused by consultant engineers. Recovery of funds paid on these change orders offers an opportunity to reduce project costs. Maintaining tight control over change orders and promptly resolving outstanding construction claims are key to controlling project costs. Past projects, such as Boston's Central Artery/Tunnel Project, might have been able to significantly reduce costs by aggressively pursuing opportunities to recover costs of design errors or omissions caused by engineering consultants. For example, in 2004 we reported that the Project had 4,805 outstanding claims with a total value of approximately $194 million, of which 11 percent were over 4 years old.

Timely resolution of change orders is important because the longer the issues remain unresolved, the more difficult it becomes for project managers to determine whether the change orders were caused by design errors or omissions. Maintaining supporting documentation is also critical. In the case of Lower Manhattan, project managers should make sure they have a process in place for aggressively pursuing opportunities for cost recovery in a timely fashion to maximize savings. We were informed that the Lower Manhattan Recovery Office has already performed a change order review on the Fulton Street project and plans to pursue cost recovery in the future, where appropriate.

In conclusion, DOT has a critical role in the reconstruction of Lower Manhattan. Over the past several years, the Department has significantly strengthened its oversight of major transportation projects. Now it is critical that all of us at DOT vigorously employ the oversight tools and resources we have at our disposal and apply the lessons we have learned from past projects to get the most for the tax payer dollars that have been invested in the reconstruction of Lower Manhattan.

This concludes our prepared remarks. We would be happy to answer any questions you may have.

Exhibit: High Priority Projects Funded with the $4.55 Billion the Federal Government Dedicated to Lower Manhattan Reconstruction

Project and Description	Project Sponsor & Federal Oversight Responsibility	Baseline Cost Estimate & Funding Sources	Baseline Schedule for Completion
Permanent World Trade Center PATH Terminal. This project will serve the PATH subway system, and includes pedestrian connections to the Fulton Street Transit Center to the east and to the World Financial Center and the World Financial Center Ferry Terminal under Route 9A (West Street) to the west. Additional scope of this project includes the retaining walls at the World Trade Center site, and the security hardening of the transportation facilities..	Port Authority of New York & New Jersey. FTA oversees it through the Lower Manhattan Recovery Office.	Cost: $2.2 billion ($1.92 billion in Federal funding and $300 million in PANYNJ insurance money).	2011
Fulton Street Transit Center. This project is a multi-level complex of stations to serve 12 different subway lines and over 275,000 daily commuter trips. The existing maze of narrow ramps, stairs and platforms will be transformed, allowing for easier transfers, better access from street level, and will have a direct link to the new PATH Terminal and the World Trade Center site..	New York State Metropolitan Transportation Authority.. FTA oversees it through the Lower Manhattan Recovery Office.	$847 million (All Federal funding).	2010
South Ferry Terminal Station. This project will replace the functionally obsolete station under Battery Park that serves Staten Island Ferry riders. The project will convert the single track, 5-car loop station into a 2-track, 10-car, stub end two-platform terminal with new access for disabled riders and better connections to the renovated Staten Island ferry terminal and the R and W subway lines..	New York State Metropolitan Transportation Authority.. FTA oversees it through the Lower Manhattan Recovery Office.	$420 million (All Federal Funding).	2008

Exhibit: High Priority Projects Funded with the $4.55 Billion the Federal Government Dedicated to Lower Manhattan Reconstruction—Continued

Project and Description	Project Sponsor & Federal Oversight Responsibility	Baseline Cost Estimate & Funding Sources	Baseline Schedule for Completion
Route 9A Promenade South/ West Side. This project will rebuild the major north-south arterial roadway in Lower Manhattan between Chambers Street and Battery Place, with the southern end of the project known as Promenade South. The eastern sidewalk will be widened where feasible to improve accessibility, provide street trees, and add aesthetic enhancements. On the west side, along the new Promenade and adjacent to Battery Park City, a series of unique urban spaces are envisioned and are being developed for varied uses..	New York State Department of Transportation.. FTA's Lower Manhattan Recovery Office and FHWA share oversight responsibilities through memoranda of agreement.	$352 million (All Federal Funding).	2009 [Note: a small section of this project has been substantially completed.]
World Trade Center Vehicle Security Center. This project is a vehicle security-screening center for the World Trade Center site. The security center will screen all vehicles for security threats and will be a vital component to the World Trade Center Master Plan..	New York State Metropolitan Transportation Authority.. FTA oversees it through the Lower Manhattan Recovery Office.	$478 million (All Federal funding).	2010

Mr. ROGERS. Thank you, Mr. Zinser.

The Chair now recognizes Mr. Ron Calvosa, Director of Fraud Prevention for the Lower Manhattan Construction Command Center, for your opening statement. Welcome.

STATEMENT OF RON CALVOSA

Mr. CALVOSA. Thank you.

Chairman Rogers, Ranking Member Meek, Chairman King, members of the subcommittee, thank you for the opportunity to testify today on behalf of the Lower Manhattan Construction Command Center and its executive director, Charles Maikish. I am here to discuss the fraud prevention measures being instituted around construction activities in lower Manhattan, including many projects funded by federal grants.

On November 22, 2004, New York Governor George Pataki and New York City Mayor Bloomberg issued executive orders establishing the command center as a central point of control for all large construction projects. As mandated by the governor and the mayor, the command center is charged with the coordination and oversight of construction projects in lower Manhattan south of Canal Street from the Hudson to the East River.

The command center has also been given responsibility for overall fraud prevention regarding construction projects under its jurisdiction. There is $9.99 billion worth of construction work in progress or ready to commence within a three-block radius of the World Trade Center site. Within the next 5 years, more than $20

billion in construction work will be under way in all of lower Manhattan south of Canal Street.

The current fraud prevention program is comprised of the following six measures. First, in order to fulfill the responsibility of fraud prevention, the executive orders mandate that the command center work with the lower Manhattan construction integrity team, or LMCIT. LMCIT is a group of inspectors general with oversight responsibility for agencies performing work in lower Manhattan, or whose agencies fund projects in lower Manhattan. This unique group of federal, state and local investigative offices work collaboratively to ensure that measures are taken to prevent, detect and eliminate fraud across the various agencies and projects.

Second, the executive orders direct the command center to receive allegations of corruption or criminal activity through the creation of a fraud prevention hotline, which has been established along with an online complaint forum on the command center's Web site. The command center has also developed a campaign to publicize the hotline.

Third, the command center, along with members of LMCIT, including the offices of inspectors general for the United States Department of Transportation, the Port Authority of New York and New Jersey, and the State of New York, developed a fraud prevention training module for presentation to contractors and consultants, supervisory and managerial employees, about prohibited conduct.

Fourth involves the vetting of contractors. The various agencies awarding lower Manhattan construction contracts have primary responsibility for ensuring that business entities and their principals have the necessary integrity to receive public works contracts. The command center developed a list of best practices for conducting an integrity review and recommended that the contracting agencies perform these checks. In addition, the command center also recommended an enhanced level of review for lower Manhattan projects as to the threshold trigger for conducting an integrity review.

Moreover, the command center recommended that information sharing done among LMCIT members become part of the overall standard vetting process by having LMCIT members search their internal databases for any derogatory information on proposed contractors or subcontractors. Each member is able to provide non-confidential information about ongoing or closed investigations for the LMCIT members.

Fifth, with an acute awareness of the need for security at lower Manhattan construction sites, especially the World Trade Center site, a concern about the possible infiltration of organized crime onto construction projects, and an overall concern regarding the backgrounds of construction workers, the command center has worked with the inspector general's office for the Port Authority of New York and New Jersey and organized labor to determine the feasibility of conducting background checks on contractor employees. A protocol has been developed and is being implemented.

Sixth, integrity monitors. Also known as independent private sector inspectors general or IPSIGs, have proven to be a valuable tool for preventing fraud. Integrity monitors will be an important com-

ponent of the overall fraud prevention program for lower Manhattan. Integrity monitors are already being utilized on some of lower Manhattan's construction projects and there are plans to expand their use on other projects. My colleague Michael Nestor of the Port Authority inspector general's office will provide more details about this topic next.

The steps indicated above are an outline and a beginning for the lower Manhattan fraud prevention program. The program will be elastic, adapting itself to address specific areas and needs. Future initiatives are under development. These include the development of a master database of all contractors and subcontractors, consultants and sub-consultants working on construction projects in lower Manhattan, and the development of a standardized contract language to address fraud prevention concerns.

The ultimate goal is not only to have lower Manhattan rebuilt, but to have it rebuilt with integrity.

This concludes my testimony. I would be glad to answer any questions that you have.

[The statement of Mr. Calvosa follows:]

PREPARED STATEMENT OF RONALD P. CALVOSA

Chairman Rogers, Ranking Member Meek, and Members of the Subcommittee:

I. INTRODUCTION

Thank you for the opportunity to testify today on behalf of the Lower Manhattan Construction Command Center and its Executive Director Charles J. Maikish. (Biographies of Charles J. Maikish and Ronald P. Calvosa are attached as Exhibit 1). I am here to discuss the Fraud Prevention measures being instituted around the construction activities involved in the rebuilding of Lower Manhattan. There are many projects ongoing or planned for Lower Manhattan, some involving grants of federal funds. It is essential that the work proceed with the utmost integrity.

II. SUMMARY

The Lower Manhattan Construction Command Center has been given responsibility for overall fraud prevention regarding construction projects under its jurisdiction. It has already formulated a plan and is implementing that plan in an effort to eliminate the opportunity for wrongdoing.

There are six measures comprising the current fraud prevention program. These are:

(1)Lower Manhattan Construction Integrity Team
(2)Fraud Prevention Hotline
(3)Fraud Awareness Training
(4)Vetting of contractors
(5)Contractor Employee Screening and Access Control
(6)Integrity Monitors

The fraud prevention program will be discussed in detail including the steps that have been taken thus far and will conclude with future steps that are planned. First I would like to provide this subcommittee with a description of the Lower Manhattan Construction Command Center.

III. LOWER MANHATTAN CONSTRUCTION COMMAND CENTER

On November 22, 2004, concerned about the potential impacts of the large amount of construction projects underway or planned for the constricted area of Lower Manhattan during the reconstruction after the September 11 attack, New York Governor George Pataki and New York City Mayor Michael Bloomberg issued Executive Orders No. 133 and 53, respectively. They established a central point of control for all large construction projects—the Lower Manhattan Construction Command Center ("LMCCC"). The purpose of the LMCCC, as stated in the Executive Orders, is to ". . .coordinate between all construction located in Lower Manhattan [including] all construction projects beginning from 2004 to 2010 valued at over $25 million . . . work requiring governmental action or permit, and construction requiring work directly in City or State streets or highways." (The Executive Orders are attached as Exhibit 2).

As mandated by the Governor and the Mayor, the LMCCC is charged with the coordination and oversight of construction projects in Lower Manhattan south of Canal Street from the Hudson to the East River. It will bring together private developers, public agencies and authorities, utilities, businesses and resident representatives in one physical location. The LMCCC and its Executive Director will provide a forum for expeditious and consistent decision-making on disputes among agencies, a key element to ensure a successful rebuilding. Simply put, the mission of the LMCCC is to facilitate, mitigate and communicate.

Significantly, the Executive Orders directed the LMCCC to perform a fraud prevention function and to employ a Fraud Prevention Director.

IV. SCOPE OF PROJECTS

There is $9.99 billion in construction work in progress or ready to commence within a three block radius of the World Trade Center site. Within the next five years, more than $20 billion in construction work will be underway in all of Lower Manhattan, south of Canal Street.

This translates into a need for in excess of two million cubic yards of concrete; more than 200,000 concrete trucks; and a projected daily construction workforce of 6,500 for the next three to five years.

Projects south of Canal Street in Lower Manhattan include the rebuilding of the World Trade Center Site with the erection of the Freedom Tower and three other towers. In addition, a new Port Authority of New York & New Jersey PATH Transportation Hub will be built on that site, as well as, the Memorial and Museum. A Performing Arts Center will also be constructed on the site.

Other projects in the area include the deconstruction of 130 Liberty Street, (the former Deutsche Bank building), and the construction of a fifth tower and vehicle security center in its place. In addition, work being done with Federal Transit Administration ("FTA") funds includes the creation of a new Fulton Street Transit Center and a new South Ferry Subway Station. Federal Highway Administration funding is being used to develop Route 9A. Moreover, various street reconstruction projects are either underway or scheduled to commence. These projects are the responsibility of a number of agencies including the Port Authority of New York & New Jersey; the Lower Manhattan Development Corporation; the Metropolitan Transportation Authority; the New York State Department of Transportation; and the New York City Departments of Transportation and Design & Construction.

In addition to public projects, there are numerous private development projects in the area, as well. (A map of planned and ongoing Lower Manhattan projects is attached as Exhibit 3).

V. THE FRAUD PREVENTION PROGRAM

1. *Lower Manhattan Construction Integrity Team*

In order to fulfill the responsibility of fraud prevention, the Executive Orders mandate that the LMCCC work with the various Inspectors General that comprise the Lower Manhattan Construction Integrity Team ("LMCIT").

In early 2004, a group of Inspectors General with oversight responsibility for agencies performing work in Lower Manhattan, or whose agencies issue funds for projects in Lower Manhattan gathered together at the invitation of the Vice President of Investigations for the Lower Manhattan Development Corporation ("LMDC"), to form LMCIT. The group was formed in mutual recognition of the inherent risks and heightened opportunities for fraud against the projects of all the affected agencies. There was also mutual recognition to jointly explore what could be done cooperatively for the benefit of all the programs. In addition, the group assisted LMDC in developing fraud prevention measures for LMDC's programs.

With the advent of construction, LMCIT has become more focused in its mission to work collaboratively toward its goal of preventing fraud across the various agencies and projects. In my capacity as LMCCC's Fraud Prevention Director, I chair the LMCIT meetings and coordinate its fraud prevention efforts.

LMCIT is comprised of the Office of Inspector General for the State of New York; the New York City Department of Investigation; the Offices of Inspectors General for the Port Authority of New York & New Jersey; the Metropolitan Transportation Authority; the United States Department of Transportation; and the United States Department of Housing and Urban Development. Additionally, the Lower Manhattan Development Corporation's Investigations Unit is also a represented on LMCIT, as well as the New York City Business Integrity Commission, the Office of Inspector General for the United States Department of Labor and the Chief Compliance Officer for the Metropolitan Transportation Authority.

LMCIT serves as the backbone for the Fraud Prevention Program. This unique group of federal, state and local investigative offices is relied upon to ensure that measures are taken to prevent, detect and eliminate fraud.

2. *Fraud Prevention Hotline*

The Executive Orders directed LMCCC to receive allegations of corruption or criminal activity by or on behalf of any agency employee, public official, contractor employee, agent, subcontractor, vendor, or labor official through the establishment of a Lower Manhattan Fraud Prevention Hotline.

A contract, funded by the FTA, was awarded to an Integrity Hotline service provider, to work with LMCCC in establishing a complaint hotline for the receipt of telephone complaints from a variety of sources, including construction workers and members of the public.

The Hotline service provider receives calls, records and transmits complaints to LMCCC. In addition, a database of complaints is accessible to LMCCC through the Internet. Incoming complaints are reviewed and referred to the appropriate Inspector General's office having jurisdiction over the matter.

The Hotline serves as a cornerstone for the Fraud Prevention Program, providing a ready outlet for complainants to provide information about potential wrongdoing.

Once the Hotline was created, LMCCC began a campaign to publicize the existence of the Hotline. Posters were created and placed at various jobsites in Lower Manhattan. (A copy of the Hotline Poster is attached as Exhibit 4). In addition, a full page advertisement (back cover) for the Hotline was recently placed in neighborhood newspaper's annual community handbook.

In addition, the Hotline number has been placed on the back of identification/access cards for workers on one of the Lower Manhattan projects.

To further enhance the opportunity to report alleged fraudulent activity, an online complaint form was launched on LMCCC's website, www.LowerManhattan.info. This form provides the opportunity to make a report via the web. The complaint form can also be printed and mailed to LMCCC.

Whether the complaint is made via the Hotline, the Internet, or by mail, a complainant may choose to be anonymous, or to supply their contact information. In all instances, maintaining confidentiality is paramount.

In the near future, additional steps will be taken to publicize the Hotline and web-based complaint form.

3. *Fraud Awareness Training*

LMCCC along with members of LMCIT, including the Offices of Inspectors General for the United States Department of Transportation; the Port Authority of New York & New Jersey; and State of New York, developed a fraud prevention training module for presentation to contractors and their employees.

The training was modeled after training typically given in the New York area to government employees in agencies involved in the contracting process. While common in the public sector, this sort of training heretofore had rarely been provided to contractor staff. Similar to the training given to public agency employees, this training is to provide information about prohibited conduct. For example, contractor employees are told what penalties they face if they offer or give bribes or gratuities to public employees. In addition, they are told that submitting false documents, failure to pay the correct wages, or engaging in other fraudulent activity can result in criminal charges, civil action, and administrative sanctions. The administrative sanctions (e.g., being placed on an ineligible or suspended bidders list) can have serious detrimental effects on a business entity's ability to receive future publicly funded contracts.

The target audience for this training is contractor employees in managerial or supervisory positions. The training has been rolled out and additional training sessions are being scheduled. A record is kept of all those receiving the training.

4. *Vetting of Contractors*

The various agencies awarding Lower Manhattan construction contracts have primary responsibility for ensuring that business entities and their principals have the necessary integrity to receive public works contracts. In an attempt to attain a uniform standard for conducting an integrity review, LMCCC surveyed each contracting agency to determine what steps were being taken as part of their integrity review of contractors. The survey results indicated that most agencies were performing similar checks. LMCCC reviewed the results and developed a list of best practices for conducting a rigorous integrity review. LMCCC recommended that the contracting agencies perform these checks uniformly.

Moreover, LMCCC also recommended an enhanced level of review for Lower Manhattan projects, far exceeding the requirements and practices of the contracting agencies as to the threshold trigger for conducting an integrity review. These recommendations included performing checks on multiple-tiered subcontractors, as well as general contractors and first-tier subcontractors.

In addition, LMCCC recommended that information sharing done among LMCIT members become part of the overall standard vetting process. LMCCC recommended that the vetting process include a search by LMCIT members of their internal databases for any derogatory information on proposed contractors/subcontractors. This part of the check is very valuable as each member is able to provide non-confidential information about ongoing or closed investigations to other LMCIT members in order to assist contracting agencies in their decision making process.

LMCCC serves as the facilitator for vetting amongst LMCIT members. Requests for name checks are received, logged, disseminated and tracked to completion. LMCCC communicates the results of the name checks to the requestor. To date, LMCCC has facilitated name check requests on a total of nearly 350 business entities and individuals.

5. *Contractor Employee Screening and Access Control*

With an acute awareness for the need for security at Lower Manhattan construction sites, especially the World Trade Center site; a concern about the possible infiltration of organized crime onto construction projects; and an overall concern regarding the backgrounds of construction workers, LMCCC has worked with the Inspector General's Office for the Port Authority of New York & New Jersey, and organized labor, to determine the feasibility of conducting background checks on contractor employees. A plan was developed and with comments and suggestions of LMCIT members a protocol was developed.

In order to be granted access to the construction sites, employees will have to submit to background screening that will include a cross check against the terrorist watch-list. In addition, criminal record searches will be conducted to determine if a prospective worker has a criminal conviction or outstanding criminal charge in the key areas such as organized crime, theft, and violence. Workers who clear these checks will be issued an access card.

Initially the program will be implemented at the World Trade Center site, but we are hopeful that we will be able to extend the program to other construction projects in Lower Manhattan.

6. *Integrity Monitors*

Integrity Monitors, also known as Independent Private Sector Inspectors General or "IPSIGs", have proven to be a valuable tool for preventing fraud. They serve as a supplement to contracting agencies' existing safeguards, such as, auditing provided by both internal and external auditors. They also supplement existing investigative resources of an Inspector General's office. Integrity Monitors provide a multi-disciplined approach to the oversight of construction projects. They typically bring together legal, audit/accounting, investigative, engineering and environmental expertise. Integrity Monitors will be an important component of the overall Fraud Prevention Program for Lower Manhattan.

Integrity Monitors are generally used for two specific purposes. They can be utilized to address an integrity issue pertaining to a specific business entity. They can also be utilized to ensure the integrity of a particular project. We will see the use of Integrity Monitors in both of these ways with regard to Lower Manhattan construction projects.

LMCCC is uniquely positioned to coordinate the activities of Integrity Monitors in Lower Manhattan. Working with the Inspectors General, or other officials overseeing the work of the Integrity Monitors, the LMCCC's Fraud Prevention Director will be made aware of particular problems or areas of concern that may be develop, or be uncovered, regarding a particular individual, business entity or project. Working with LMCIT, LMCCC will be able to communicate the issues to other members in the group that may have similar issues. The goal, of course, is to prevent problems or address them should they be detected.

Integrity Monitors are already being utilized on some Lower Manhattan construction projects and there are plans to expand their use on other projects. At present, there is an Integrity Monitor overseeing the deconstruction work on the Lower Manhattan Development Corporation's 130 Liberty Street project. The Metropolitan Transportation Authority has a compliance monitor in place regarding its contracts for the construction of the Fulton Street Transit Center and South Ferry Subway Station. In addition, the Port Authority of New York & New Jersey is in the process of hiring an Integrity Monitor to oversee the construction of the new PATH Transportation Hub and other Port Authority projects.

IV. CONCLUSION

The steps indicated above are an outline and a beginning for the Lower Manhattan Fraud Prevention Program. The Program will be elastic, adapting itself to address specific areas and needs. Future initiatives are under development. These in-

clude the development of a master database of all contractors, subcontractors, consultants and subconsultants working on construction projects in Lower Manhattan, and the development of standardized contract language to address fraud prevention concerns.

The ultimate goal is not only to have Lower Manhattan rebuilt, but to have it rebuilt with integrity.

This concludes my testimony. I would be glad to answer any questions that you have.

Mr. ROGERS. Thank you, Mr. Calvosa, for your statement.

The Chair now recognizes Mr. Michael Nestor, Director of the Office of Investigations of the Port Authority of New York and New Jersey Office of Inspector General.

Welcome, Mr. Nestor. We look forward to your statement.

STATEMENT OF MICHAEL NESTOR

Mr. NESTOR. Thank you.

Chairman Rogers, Ranking Member Meek and Congressman King, thank you for the opportunity to testify today before the subcommittee on behalf of the Port Authority of New York and New Jersey, and its Office of Inspector General. I am here to discuss my office's role in fraud prevention and detection related to the funds expended by the Port Authority following the 9/11 disaster, as well as the rebuilding that has already commenced at the World Trade Center site.

As you know, the Port Authority owns the World Trade Center site and had occupied approximately 20 floors in the north tower of the Trade Center, with my office situated on the 77th floor. When the first plane hit the north tower on 9/11, I was with some of my staff in our office just a few floors below impact. Having been able to evacuate minutes prior to the building's collapse, the Office of Inspector General was extremely fortunate not to have lost any staff. However, as you know, the Port Authority lost 37 police officers and 38 civilian employees.

I will describe for you a few investigations that the OIG conducted in which we found individuals, including Port Authority employees, who took advantage of the disaster. I will also explain the steps we are taking to prevent fraud during the multi-billion dollar rebuilding on the World Trade Center site over the next number of years.

Acting on information we received just a few weeks following the terrorist attack, the OIG conducted an investigation that determined that 23 employees fraudulently received a total of $32,980 of benefits from both the American Red Cross and Safe Horizons by misrepresenting that they lost their jobs due to the disaster. All employees were arrested and pled guilty to criminal larceny charges and either resigned or were terminated from employment with the Port Authority.

In December 2004, 17 men and three companies were indicted on racketeering charges for defrauding the Port Authority involving asbestos abatement contract work. One aspect of the indictment involved the contract covering the maintenance and cleaning of World Trade Center artifacts after the attacks. The indictment charged a company for stealing $104,000 from the Port Authority on that contract through the inclusion of ghost employees on the payrolls. This scheme was carried out with the assistance of a cor-

rupt Port Authority contract employee assigned to oversee this project on behalf of the Port Authority.

This contract employee was also charge in this indictment for removing samples of known asbestos, contaminated materials from a different job site that the subject company was working on, and substituting these samples for negative samples he had taken from the World Trade Center artifacts, so that the company's Port Authority contract and his ability to receive further bribe payments from the company would be extended. This employee pleaded guilty to both schemes. The case against the company is still pending.

In August 2002, the OIG commenced a joint investigation with the United States Attorney for the Southern District of New York and the inspector general for the Department of Homeland Security into an allegation that New York Waterways, a New Jersey-based ferry provider, fraudulently billed the Port Authority and FEMA for ferry service provided following 9/11 as the result of damage to the Port Authority Trans–Hudson, PATH, system.

As this is an ongoing investigation, I can't comment any further on it. However, Mr. Chairman, upon completion of the investigation, which should be shortly, I will report back to the subcommittee, as I believe the results will be of interest to you.

Equally important are our efforts to prevent and deter fraud following a disaster and during the rebuilding and recovery from a disaster. We are taking a proactive approach with the new World Trade Center HUB project, and that is get involved early-on. As you have heard from Mr. Calvosa, we are working closely together on a fraud prevention program which includes an integrity awareness program which the OIG was the first to begin presenting to contractors at the World Trade Center site.

Our partnership with other inspectors general, vetting of contractors, background screening of contractor employees, and access control on which the Port Authority has taken the lead at the site, and the use of integrity monitors. So as not to repeat the details of each that you have already heard from Mr. Calvosa, I would like to concentrate my remaining time on the use of integrity monitors.

Due to the enormous amount of money being spent on the rebuilding of the World Trade Center site, the Port Authority has determined that additional measures and resources are required to assist the Port Authority and the OIG in its fraud prevention efforts. Integrity monitors were successfully used at Ground Zero after the 9/11 attack during the cleanup to oversee the four construction managers. They were instrumental in minimizing and deterring fraud during that effort. We are now in the final stages of selecting an integrity monitor for the new $2.2 billion World Trade Center Transportation HUB project.

We are considering the use of monitors for additional projects on the site. The integrity monitor will assist with the review of existing procedures for fraud and corruption risks, recommend and assist in implementing procedures designed to mitigate those risks identified, conduct forensic reviews of payment requisitions, and provide investigative services as necessary and directed by my office in such areas as labor racketeering, compliance with state and federal labor laws, worker safety, environmental plans and procedures.

In conclusion, the above investigations and fraud prevention measures exhibit the Port Authority's commitment to accomplishing its goals and rebuilding the World Trade Center site with the utmost of integrity.

Thank you for the opportunity to present my testimony before your subcommittee. I would be happy to answer any questions.

[The statement of Mr. Nestor follows:]

PREPARED STATEMENT OF MICHAEL NESTOR

Chairman Rogers, Ranking Member Meek, and Members of the Subcommittee:

I. INTRODUCTION

Thank you for the opportunity to testify today before the Subcommittee on behalf of The Port Authority of New York & New Jersey ("Port Authority") and its Inspector General Robert E. Van Etten. I am here to discuss my office's role in fraud prevention and detection related to the funds expended by the Port Authority following the 9/11 disaster, as well as during the rebuilding that will take place, and has already commenced, at the World Trade Center Site.

II. SUMMARY

As you know, the Port Authority owns the World Trade Center Site and had occupied approximately twenty floors in the North Tower of the Trade Center, with my office situated on the 77th floor. When the first plane hit the North Tower on 9/11, I was with some of my staff in our office, just a few floors below impact. Having been able to evacuate minutes prior to the building collapse, the Office of Inspector General ("OIG") was extremely fortunate not to have lost any staff; however, as you know, the Port Authority lost thirty-seven (37) police officers and thirty-eight (38) civilian employees.

The OIG quickly found itself a new home and continued to fulfill our mission in detecting and preventing fraud, as we have been doing for the Port Authority since its establishment in 1992. With more vigor, purpose, and conviction we turned our attention to ensure that no one, and in particular any Port Authority employee or anyone doing business with the Port Authority, would take advantage of such a tragedy to enrich themselves.

I will describe for you a few investigations that the OIG conducted in which we found, unfortunately, individuals, including Port Authority employees, who took advantage of the disaster to enrich themselves. I will also explain the steps we are taking to prevent fraud during the multi-billion dollar rebuilding of the World Trade Center Site over the next number of years.

III. POST 9/11 FRAUD INVESTIGATIONS

A. Financial Assistance Claims Fraud by Port Authority Employees

Acting on information we received from a Port Authority employee just a few weeks following the terrorist attack, the OIG commenced an investigation into allegations that a number of Port Authority employees filed claims of unemployment as the result of the 9/11 terrorist attacks with the American Red Cross. In fact, all Port Authority employees received their uninterrupted full salaries after 9/11, and were clearly not eligible to receive unemployment benefits due to the disaster.

Our investigation determined that twenty-three (23) employees fraudulently applied for benefits to both the American Red Cross and Safe Horizons by misrepresenting that they lost their jobs due to the disaster. As a result, they fraudulently received monetary aid from the American Red Cross and Safe Horizons for a total fraud of $32,980.

All twenty-three (23) employees were arrested and plead guilty to criminal larceny charges and either resigned or were terminated from their employment with the Port Authority.

B. Fraud Against the Port Authority and FEMA by New York Waterway

In August 2002, the OIG commenced a joint investigation with the United States Attorney for the Southern District of New York and the Inspector General for the Department of Homeland Security, into an allegation that NY Waterway, a New Jersey based ferry service provider, fraudulently billed the Port Authority and FEMA for ferry service provided following 9/11 as the result of damage to the Port Authority Trans–Hudson ("PATH") system.

As this is an ongoing investigation, I cannot comment any further on it. However, Mr. Chairman, upon completion of the investigation, which should be shortly, I will report back to the Subcommittee as I believe the results will be of interest to you.

C. Over-Billing Fraud by Contractor Responsible for the Maintenance and Cleaning of the World Trade Center Artifacts After the Attacks

In December 2004, Inspector General Robert E. Van Etten and Manhattan District Attorney Robert Morgenthau announced the indictment of seventeen (17) men and three companies on racketeering charges for defrauding the Port Authority and other public agencies involving asbestos abatement contract work. One aspect of the indictment involved a contract award covering the maintenance and cleaning of World Trade Center artifacts after the attacks. These artifacts, which consisted of, among other things, pieces of structural steel, crushed police and fire vehicles, and the antenna from One World Trade Center, were stored at JFK's Hangar 17.

The indictment charged a company for stealing money from the Port Authority on that contract through the inclusion of ghost employees on the payrolls. Normally, there were two to three ghost employees a day for the duration of the job, which lasted from February 2002 until February 2004. The amount stolen through the ghost employee scheme was more than $104,000. This scheme was carried out with the assistance of a corrupt Port Authority contract employee assigned to oversee this project on behalf of the Port Authority.

This contract employee was also charged in this indictment for removing samples of known asbestos contaminated materials from a different jobsite that the subject company was working on and substituting those samples for negative samples he had taken from the World Trade Center artifacts at Hangar 17, so that the company's Port Authority contract and his ability to receive further bribe payments from the company, would be extended.

This contract employee plead guilty to both schemes. The first in which he received $100 per day for allowing the ghost employees to be placed on the payroll; and the second where he switched contaminated asbestos samples. The case is still pending against the company.

This is another example of individuals taking advantage of disasters to enrich themselves, and why the Inspector General community must be vigilant in our pursuit of frauds following disasters.

We need to be proactive and creative when devising investigative ideas following disasters. This must be accomplished prior to a disaster so that investigative plans are already in place and ready to be implemented immediately after a disaster. Whether they are computer-matching programs to monitor the issuance of financial benefits, specialized programs to monitor contracts that are being awarded, or the review of payment requisitions for services, materials and goods—planning is critical to successfully detecting fraud and could be most helpful in deterring it as well.

IV. FRAUD PREVENTION PROGRAM FOR THE REBUILDING OF THE WORLD TRADE CENTER SITE

Equally important are our efforts to prevent and deter fraud following a disaster and during the rebuilding and recovery from a disaster. We are taking a proactive approach with the new World Trade Center Transportation HUB project, and that is to get involved early on. We believe strongly in our preventive role and that we should be at the table with the agency in such an important and costly project in developing fraud prevention programs and controls. We have found that the agency welcomes our "real time" input and advice when developing policies, procedures, and strategies as opposed to waiting until those developed fail and we come in afterwards and play the "I got you" game. Not here. Although we have formed a strong working relationship with the agency on this project, we feel that we have not compromised our independent role as the IG. We have found them to be most supportive of the recommendations and suggestions we make.

There will be a number of levels of oversight, and of a different variety, provided to the project by: the United States Department of Transportation's Federal Transit Administration; the Port Authority's Project Management staff; the Port Authority's hired Construction Manager; as well as the Port Authority's Internal Audit Department. The Audit Department, which is a component of the Inspector General's Office, will be auditing certain components of the project. Nevertheless, the Port Authority desired a comprehensive fraud prevention program for a project of this size and cost.

Our current fraud prevention program, which is fluid so that we can continue to enhance it, includes: an Integrity Awareness Program; a partnership with other Inspectors General and the Fraud Prevention Director at the Lower Manhattan Construction Command Center; vetting of contractors; background screening of contract

employees and access control; and the use of Integrity Monitors. I will discuss each of these in more detail.

A. The Integrity Awareness Program

As the result of prior corruption investigations and prosecutions that the OIG conducted, and placing a high value on the preventive side of our mission, we have doubled our efforts in educating Port Authority employees on what their ethical obligations are as public employees and officials. Therefore, approximately two years ago, we rolled out a new Integrity Awareness Program that all Port Authority employees must attend. The Program includes a presentation that reviews for employees their responsibility to abide by the Port Authority's Ethical Standards and the consequences of their failure to do so. The Program explains the three primary reasons why people make bad decisions: financial pressure, rationalization and opportunity; emphasizes implications of these decisions: financial loss, embarrassment, incarceration and their responsibilities to the Port, co-workers and themselves. The Program explains, in laymen's terms, Internal Controls and why they are important. The objective is early prevention, diagnoses and resolution, thereby avoiding a potential loss of the Port's most valuable asset—its employees.

This Program has been modified so that it is geared to construction contractors as well. In May, we began to present this program to the Construction Manager and General Contractor for the Port Authority's New World Trade Center Transportation HUB. The presentation is being given to all supervisory staff from the field superintendent to the highest level individual on the project from each company. All contractors, including all lower-tiered subcontractors working on all Port Authority World Trade Center projects, will have to attend this presentation. The Port Authority contractors are the first to receive any such training at the Site.

B. Lower Manhattan Construction Integrity Team

The OIG has been a member of a group of Inspectors General that have oversight responsibility for agencies performing work in Lower Manhattan or who are funding projects in Lower Manhattan. This group, referred to as the Lower Manhattan Construction Integrity Team, formed in early 2004 in recognition of the risks posed by the huge amount of money that was going to be spent on the rebuilding program in Lower Manhattan, and the Inspectors General desire to get ahead of the curve in attempting to prevent fraud. The Fraud Prevention Director of the Lower Manhattan Construction Command Center, who is here today also to testify before the Subcommittee, chairs the Lower Manhattan Construction Integrity Team. We have worked extremely close with the Director in each of the areas of the Fraud Prevention Program that both he and I will describe today.

The Lower Manhattan Construction Command Center coordinates a Fraud Prevention Hotline for Lower Manhattan Construction Projects on behalf of the Lower Manhattan Construction Integrity Team; therefore, the Port Authority takes advantage of that hotline. Any fraud complaint that the Hotline receives pertaining to any Port Authority project at the World Trade Center Site is forwarded to my office for investigation. While the OIG has its own Fraud Hotline, we support Lower Manhattan Construction Command Center's efforts in having one Fraud Hotline for all Lower Manhattan construction projects to make it easier for the public to know where to call with complaints.

C. Vetting of Contractors

In order to ensure that the Port Authority is contracting to do business at the World Trade Center Site only with responsible entities, or persons possessing the requisite honesty and integrity, the Port Authority and OIG are conducting integrity reviews of all contractors and subcontractors, including lower-tiered subcontractors receiving awards over a particular dollar threshold. To assist in the vetting, the IG community is consulted, coordinating these checks through the Lower Manhattan Construction Integrity Team to determine if there is any derogatory information that can be shared with the agency.

D. Contractor Employee Screening and Access Control

In an effort to tighten security at the World Trade Center Site, both to restrict access to those individuals that have criminal and/or terrorist related backgrounds unfavorable to the interests of the Port Authority, we have commenced performing screening on contractor employees seeking access to the Site. After passing the background screening process, personnel will go through a one-hour prerequisite training class on World Trade Center Site Rules and Regulations. The training class will be held on Site and will emphasize Site security and safety. After passing a test, personnel will be issued a new World Trace Center ID card providing them access to the Site.

I would just like to comment, without going into details for security reasons, that security at the Site during the construction phase will be extremely tight. The Port Authority has been working with the Senior Advisor to the Governor for Counter–Terrorism, James Kallstrom, and security consultants to ensure that all the necessary and appropriate precautions are taken.

E. Use of Integrity Monitors

Due to the enormous amount of money being spent in the rebuilding of the World Trade Center Site, the Port Authority has determined that additional measures are required to assist the OIG in its fraud prevention efforts.

Integrity Monitors are independent organizations that bring together various disciplines of expertise such as legal; auditing/accounting; investigative; engineering; environmental; and others. They have been used in New York City for the last ten plus years for contractors with integrity issues that were awarded contracts but required additional oversight.

Integrity Monitors were successfully used at Ground Zero during the cleanup to oversee the four Construction Managers. They were instrumental in minimizing and deterring fraud during that effort.

The Port Authority has also begun to use them successfully over the last year. We have used them a number of times where contractors with pending integrity matters (for example: pending investigations, indictments, etc.) were required to accept the services of an Integrity Monitor to be awarded the contract. The Monitor would be selected by the Port Authority, report to the OIG, but be paid for by the contractor.

Based upon our positive experience with the Monitors, and the positive results at Ground Zero during the cleanup, the Port Authority has decided to utilize them to assist the OIG in its efforts to prevent and detect fraud during the rebuilding at the World Trade Center Site.

The Integrity Monitor will:

- Conduct a review of all existing procedures and processes for fraud, corruption, cost abuse, safety, and environmental risks;
- Recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review;
- Conduct forensic reviews of payment requisitions and supporting documentation, payments, change-orders; and
- Provide investigative services, as necessary and directed by my office, including: conduct in-field investigations and on-site monitoring of construction work; investigate and evaluate construction contractor use of the labor, compliance with collective bargaining agreements, and compliance with state and federal labor laws; review and monitor worker safety and environmental plans and procedures; compliance with M/WBE requirements and goals; and conduct investigations into illegal conduct by Port Authority contractor staff, and others.

We are in the final stages of selecting an Integrity Monitor for the new $2.2 billion World Trade Center Transportation HUB Project. There might be additional projects at the Site that we will require a Monitor as well.

V. CONCLUSION

The above investigations and fraud prevention measures exhibit the Port Authority's commitment to accomplishing its goals in rebuilding the World Trade Center Site with the utmost of integrity. We owe it to the citizens of New York City, the Metropolitan Region, the United States, and those that lost their lives on 9/11.

Thank you for the opportunity to present my testimony before your Subcommittee. This ends my testimony.

I would be happy to answer any questions.

Mr. ROGERS. I thank you, Mr. Nestor.

We will next have a few questions. I would like to start off.

Mr. Zinser, in your comments you talked about the need to be able to recover funds, overpayments, and other types of funds. Do you require, or were their bond requirements that would enable you to be able to reach back and capture those funds, if in fact they were due? How would you extract that money from some companies that may, as you know, just disappear?

Mr. ZINSER. Yes, Bernard may be able to help with that also, but normally what happens, there are bonds that are required, but

there is also a retainage, a certain percentage of retainage that the government holds back on these contracts.

Mr. ROGERS. That is usually 10 percent. Do you think that is sufficient in contracts like these?

Mr. ZINSER. I think our experience so far is that that is pretty much a good figure, but one of the things that the reviews of finance plans ought to do is identify whether or not retainage and contingencies are adequate given the current status of the project.

Mr. ROGERS. Okay. Mr. Cohen, did you have some thoughts on that?

Mr. COHEN. All I would add is that a lot of it also has to do with the way in which the project builders write their contracts with their contractors and with their designers. It is hard to go after a designer for making errors if you haven't already built into the contract language that says you will go after them for that kind of a problem.

So I think it is both what Mr. Zinser talked about, but it also has to do with making sure that the agencies put some teeth into the contracts with their own vendors to make sure that they have the contractual ability to do that.

Mr. ROGERS. Based on your experience, is that kind of "teeth," as you put it, in the language of these contracts already?

Mr. COHEN. I think there is a ways to go to sharpen the teeth a little bit. I think that my experience has been that very often the language is not all that clear and very often it is an issue that kind of just never gets the attention that it needs to have. I think it is worth looking at that.

Mr. ROGERS. You know, it seems to me that that recommendation is kind of an administrative recommendation. That doesn't really require a policy change from the Federal government. Maybe I am wrong, but as you know, this Committee has been holding these hearings and conducting these interviews and investigations for the last several months in the hopes of putting together a report that is going to have a series of recommendations in it.

As far as policy changes—things that you would recommend that we look at changing about our Federal policy when it comes to these type events and the aftermath—what, if anything, would you recommend that we seriously consider as a policy change?

Mr. COHEN. I think that certainly one of the lessons learned from our experience in New York is, and this may be more administrative than policy, is really thinking through the way in which we do oversight of projects and really being smart about the kinds of issues that projects typically encounter, and tailoring the oversight to the risks that are inherent in the particular projects, whether they are in New York or California or Florida, and really looking at the real world of what it takes to get projects built, and trying to make sure that the way in which we are doing oversight really pays attention to those kinds of issues.

We are trying to be very vigilant in lower Manhattan about making sure that we are really looking at projects before the problems arise, trying to anticipate the risks, trying to see what can be done to avoid or mitigate those risks, and not wait until it has become such a problem that it becomes very difficult to solve.

Mr. ROGERS. Mr. Zinser, did you have a comment?

Mr. ZINSER. Yes, Mr. Chairman. I think what comes to my mind are really two things. One I mentioned in my remarks, is some way to mandate that disaster funding include money set aside for oversight activities, some percentage. FTA's program right now, they are allowed to take a 1 percent drawdown for oversight activities from any full-funding grant agreement or program activity like that. So that would be one thing.

The other thing I think the committee could consider is these projects are so massive and extend out for so many years that I think the committee should consider extending a statute of limitations on offenses, either the ability to go after the contractors for cost recovery efforts or even for criminal penalties.

Mr. ROGERS. When you talk about this oversight, these boots-on-the-ground, are you referring to the same concept Mr. Nestor was describing as far as integrity monitors? Are we talking about the same thing?

Mr. ZINSER. Yes, sir. I think that is all in the same concept.

Mr. ROGERS. Okay. My time is up. The Chair recognizes the Ranking Member, Mr. Meek, for any questions he may have.

Mr. MEEK. Thank you, Mr. Chairman.

I would like to thank the witnesses for coming before us and the testimony that you have given.

Mr. Zinser, I just want to go right back to many of the projects that you have going on in the lower Manhattan area. Do you have a tip-line of folks who call with fraud? I guess that across the board here. And how does that work and how have you advertised individuals, everyday Joes and Sues, to call in when they think they see fraud taking place or they know something, but they just don't know who to call? Has that been an effective measure in helping you prosecute and go after fraud?

Mr. ZINSER. Sir, at the Department of Transportation, we have a fraud hotline that we advertise for all of DOT and all of our programs, and that is both the phone, email, and a Web site. It is my understanding that the command center, Mr. Calvosa's operation, has set up a similar hotline. I think it is only less than a year in operation or a few months in operation. I have also been told that they have taken steps to advertise it, but I would probably need to defer to him to give you the details of that.

Mr. MEEK. Yes, sir?

Mr. CALVOSA. Congressman, we have established a hotline as required by executive orders. It was established back in December of 2005. It cover all lower Manhattan construction projects. We have taken steps to advertise that hotline by creating posters and posting them at the job sites. We have also placed stickers on the back of identification access cards, giving the workers the phone number. We placed an advertisement on the back of a downtown Manhattan summer publication, the Community Handbook, a full-page advertisement of the hotline poster.

So we have taken steps and the plan is for the command center to receive those allegations that may come in and refer them to the appropriate inspector general office handling the project.

Mr. MEEK. We had a couple of earlier panels, and maybe you had an opportunity to see the one we had at 10 a.m., or be a part of that. And when we finish with our report, hopefully all of you will

get a copy of it. I know the chairman will let you know that our record will be open for a number of days as it relates to recommendations.

I know many times, especially in the quote-unquote "law enforcement community," or "we are watching you community," after an event it is just not natural and it is kind of an inside little secret there, it is not natural for law enforcement agencies to share information on a normal basis. I am not saying you don't have the will or the desire to do so, but it is just not a natural thing.

We find between maybe now going on the fourth panel or fifth panel, communications seems to be the tie-in here. One policymaker said we can't legislate morals and character; we can't legislate folks to meet all at the same coffee keg or whatever, or hot water keg or what have you. But we can encourage the kind of communications on some of these cases.

I know some of you work together on a task force looking at fraud, how can we get to the bottom of it. But anything towards those lines will help us as we try to put forth policy to encourage things to happen, like we are trying to do in the area of the 9/11 report, first responders, intelligence agencies, talking to one another. We have tried to do a lot of that here in Washington.

On this fraud end, it is one of the most frustrating pieces, well, part of this committee oversight management, and for integration management. It is one of the most difficult parts, because we hear a lot about what has already happened, and what has happened. And when I look at the statistics here, of all of your testimony and the notes from your testimony, you all are going after the bad guys and gals, but somebody got away. I am thinking a majority, it is almost like speeders. When I was a trooper, I stopped five people doing 80 miles per hour, and at least 30 of them got by.

I am saying that somewhere in here, someone has gotten away with something and we haven't been able to get that individual due to the fact when you have an event, one of you mentioned, when you have an event, folks are going to come and they are going to try to take advantage of it.

Of that universe that is out there, is it an issue of staffing when it comes down to it? Because as we look at the federal agencies that are here, your budgets run based on your projection of the need of your office at that time. An event takes place, then nine times out of ten you take folks off of other priorities and projects and you try to deal with that. That is the immediate fire.

Someone mentioned something about the 1 percent or expanding the statute of limitations. I think that is an excellent idea. I posed that question yesterday as it relates to some federal folks that might have had something to do with misleading information. The statute of limitations on that should be extended and it is a natural thing and we should do it.

But as it relates to the staffing issue, we are going through this now with the Department of Homeland Security and with the inspector general's office trying to do on the ground in the Gulf right now. They are sending a task force down, but I know they rob Peter to pay Paul to do that.

Any recommendations on how that could happen, when you do have an event you know you have to monitor? We know you are

going to have to put a temporary team there, but to replace that team or make that team permanent as it relates to the projects that we are talking about, you mentioned several years. I mean, it is going to take several years to rebuild.

Do you have a plan or recommendations on how we can do that in a meaningful way, and to be able to justify the expansion of government? That is a big debate right now. Government is getting bigger. There are a number of folks in Congress that would like to see it smaller, but in this case it is protecting the taxpayers' money. I don't see them as bureaucrats. I seem them as protecting the taxpayers' money when it comes down to this kind of oversight.

Mr. ZINSER. Sir, let me try to address that.

I think one tool that has been talked about here, Mr. Nestor talked about it, and hopefully this doesn't sound like heresy, but I think that the idea of independent private sector IGs is a good idea. You can use cash to go out and retain their services. They don't become permanent employees. FTA's process is similar to that, with these project management oversight contractors who are third-party engineer or consultant-types.

The key, though, is that the government people then have to oversee what those folks are doing, and they have to take responsibility. They have to read their reports. They have to understand their reports. They have to take action on their recommendations. In that way, the federal government, in our case, can leverage resources without really building up the federal staff level, so to speak.

Mr. MEEK. Okay, thank you.

Mr. COHEN. Could I just add thing? That is, at least in the case of our office, the staffing for our office was provided for in that percentage of administrative oversight that was embedded in the appropriations legislation. So we are not, as you say, robbing Peter to pay Paul in this particular instance. This is a dedicated office in lower Manhattan only focusing on the lower Manhattan projects, not focusing on the rest of FTA business and not depending, in New York at least, on other FTA staff who have other commitments.

So I don't know that it is model that you can apply across the board to every situation, but certainly we had an extraordinary situation in New York in 2001, and we have an unusual situation in that these are 100 percent federally funded projects. So I think it was deemed back in 2002 prudent to establish an office like this, to make sure that the federal investment was being protected, and to make sure that other elements of the FTA program were not paying a price for the attention that was being paid to the lower Manhattan projects.

Mr. MEEK. Thank you, Mr. Chairman.

Mr. ROGERS. The gentleman's time has expired.

The Chair now recognizes the Chairman of the Full Committee, Mr. King of New York, for any questions he may have.

Mr. KING. Thank you, Chairman Rogers.

I want to thank all the witnesses for their testimony today. Mr. Nestor, through you, I would like to acknowledge the tremendous sacrifice made by the Port Authority on September 11. It was 37 police officers, 38 civilians. Neil Levin was a personal friend of

mine, and I guess a legend in the police department. Captain Cathy Meyers was a neighbor of mine. We still talk about her in the neighborhood.

Let me just ask the four of you really, collectively. We are talking about $10 billion in construction works in progress, a total of $20 billion over the next several years, in really a very confined area, an extraordinary amount of construction work. We can understand if there are problems at first, you know, after September 11, what went on as far as organized crime or corruption.

But do you feel now that, do all of you feel that you have your programs in place to absolutely minimize corruption? Is there anything you need from us? And also along those lines, with all of the multitude of government and private agencies that have some involvement here, do you feel there is sufficient cooperation?

Mr. NESTOR. If I may, I would like to answer that question. We have our plans in effect now with the other agencies. However, there is something I feel that Congress can do for us, and that is to legislate the fact that we can fingerprint the people going into the site. As of now, we haven't got the authority to fingerprint anybody working in the sensitive areas, such as like at the airports, JFK, LaGuardia or Newark. Anybody who wants to work at that airport has to be fingerprinted and run through a criminal history check. We can't do that. We don't have that authority. I think that is something that would be very, very helpful for us to have.

Mr. KING. Would you have to get that from Congress? Or would that be New Jersey and New York?

Mr. NESTOR. It would have to be legislated through Congress. I believe it is legislated through Congress for the airports.

Mr. KING. It is? Okay. It is certainly something worth considering, because again I would think it is as much of a threat at the World Trade Center as far as employees as you would have at the airport.

Mr. NESTOR. Right.

Mr. KING. I think it is certainly worth considering.

Any other?

Mr. ZINSER. Yes, sir. I actually do think that the relationships that have been established and the systems that have been set up and the organizations in place are fairly promising in terms of being able to both try to prevent fraud, and once we find allegations of fraud, I think the communication channels are open sufficiently where we will be able to come together to investigate those allegations. So I think it is pretty promising.

Mr. CALVOSA. I think with the federal, state and local offices we have put together, whose agencies are running the projects, who are funding the projects, we have tried to cover the base basically in putting a team together to put measures in place such as the hotline and the training and the use of integrity monitors, as I addressed previously, that this is really the way to put best efforts together and the best measures to prevent fraud on all these projects.

Mr. KING. On the transportation money, approximately how much of it has been spent so far?

Mr. COHEN. We have, of the $4.55 billion, obligated to projects just a little over $4 billion of the $4.55 billion. And that is for the

Fulton project, the South Ferry project, the PATH project, the WTC Security Center that I mentioned in my testimony, and the rebuilding of Route 9A West Street. We anticipate that we will be making a grant to the Federal Highway Administration of an additional $200 million in the very near future to pay for the balance of the Route 9A project, so that will take us to about $4.2 billion.

The rest of that money right now we are holding in reserve. There is actually some reserve built into some of the project budgets of the projects I just mentioned. We have added some additional funds into reserve based on our risk assessments and based on what we think it is going to cost to complete these projects.

We believe that it is probably going to cost more to complete these projects than the current budgets would indicate. We believe that it is probably going to take longer to complete these projects than their current schedule would indicate. That is based on the independent analysis, risk analysis that we have done. So we want to make sure that the resources are there because these were one-time appropriations, and to my knowledge there is no more money after the $4.55 billion is exhausted.

Mr. ZINSER. Sir, I think, just to answer your question, I think about $600 million has actually been spent so far. That is my understanding.

Mr. KING. Are there any trends or patterns showing themselves that cause concern?

Mr. ZINSER. Unfortunately, I can't tell you that because we haven't done that analysis yet.

Mr. KING. Fine, okay. One final question, how much of the transportation work—future work—is contingent upon the project itself at Ground Zero getting started and/or being completed? You know, the reconstruction of the towers.

Mr. COHEN. Yes. We have had extensive discussion with the Port Authority and with the governor's office about making sure that the PATH project proceeds. It is almost fully designed. It is a very complicated site. There is a lot of interdependence between the projects, and there has been a tremendous amount of work done to look at design issues and to look at cost-sharing issues. But we have sent a very clear message to the state of New York that says we want to see the transportation projects move forward. We have to get that transportation system rebuilt if it is going to support all the rest of the economic development that is going on, or that is planned to go on.

So I am pretty confident that the Port Authority has a green light to build their project, even though there is still some issues to be worked out with some of the surrounding projects.

Mr. KING. Thank you, Mr. Chairman.

Mr. ROGERS. Thank you.

Mr. Zinser made reference to something that was a common theme to what we have heard from earlier panels, particularly one from early this morning that had to do with the District Attorney's office in Manhattan. That is that in these post-disaster environments, there is a surge of need that is extraordinary and not necessarily going to be a permanent need. We were talking this morning in terms of the need to prosecute people who take advantage

of these circumstances criminally, things that you were referring to, Mr. Nestor.

But once you have prosecuted that surge of cases, the demand of that office is going to come back down to normal levels of work. In thinking about that principle you made reference to a little while ago, that you may just be able to contract some of these inspectors or integrity officers from outside.

Mr. Zinser has told us his thoughts that that is a practical option. I am curious from the rest of you. Do you think it is a practical option for us to make contingency plans that in the event of a disaster—whether it is manmade or any other kind of disaster—that we will fund third-party resources—whether it is prosecutorial resources, engineering resources, audit resources—and that would be useful as opposed to a burden?

I will start with Mr. Nestor, and then I would like to hear from the rest of you, please.

Mr. NESTOR. I think it is vital that anytime federal money goes out that a monitor be in place from the very beginning. I don't think we would be having discussions on some of the cases that I have discussed if there were a monitor to begin with. I think it is vital. I don't know if you should have a cap or some amount that goes out, but I believe that you would have a monitor monitoring everything. But the monitor also has to report to the appropriate inspector general who will decide where the prosecution goes, or if there is a prosecution.

Mr. ROGERS. So the fact that the monitor is a private resource, in your view, as long as they are being supervised by an inspector general who comes under the auspices of the public entity, is not a problem, practical problem.

Mr. NESTOR. Not a problem. I think it is a strong tool. In fact, we are almost ready to award a monitorship to the $2.2 billion PATH project now, who will report directly to us. And anytime they see anything that they don't feel is right in any way, shape or direction, they will report to us, and then we will launch appropriate investigations that would be necessary.

Mr. ROGERS. What of the others? Mr. Calvosa?

Mr. CALVOSA. I would have to echo the same statements, Mr. Chairman. The subcommittee heard the success story, I believe yesterday, of the Department of Investigation's use of integrity monitors at Ground Zero after the 9/11 attacks. I was part of that operation. I was a member of the Department of Investigation at the time. They are vital in supplementing the staff of the various investigative offices that could be involved, and also the contracting agencies own staff, whether they have internal auditors or external auditors.

Integrity monitors bring together various disciplines, including legal, investigative, auditing, accounting, other expertise such as possibly engineering, environmental. They could bring these various disciplines together to assist that agency.

I have to echo the prior comments also, that they must report in to an agency of government, whether it be an inspector general's office primarily, for oversight; that they do their work and are allowed to do their work, but that they receive themselves strict oversight and direction as far as where they should be looking,

what activities they should be taking, and working together with their contracting agency itself to develop an overall plan for fraud prevention initially, then beyond that, investigative work out in the field, auditing work looking at books and records, and bringing it all together.

Mr. ROGERS. Mr. Cohen?

Mr. COHEN. Well, let me say that the FTA, of course, is not a law enforcement agency. It is not an investigative agency. We are a grant-making agency. Our primary interest is in investing federal dollars into good transit projects and making sure they are built on time and on-budget. We obviously have an interest in making sure that all of those resources go toward what they are supposed to be paying for.

So toward that end, I would say that the notion of integrity monitor, and there are probably other examples of this, is an insurance policy for us. It is a way of making sure that a much larger federal investment into brick and mortar and rail is getting the payoff that it is supposed to be getting.

So I think that the community of people who know about this stuff a lot more than I do have a lot of confidence in this. We have indicated that we think this would be an appropriate and eligible use of our grant funds should someone ask us to provide the funding for that.

Mr. ROGERS. Our Committee has been looking, and the Ranking Member and I are both from the coast, and we have to deal with the hurricane season every year. It is a reality for us that we know it is going to happen. We don't know how big it is going to be, but we are going to have them every year. Post–Katrina and–Rita, we have looked at the possibility of doing some pre-event bidding and selecting vendors who will provide transportation, debris removal, all those things in advance with pre-negotiated prices.

I offer that reference just to say, do you think that it is viable not only for the Federal government to say we are going to make monies available, but to work in concert with local entities to ask that you have prearranged, or that we prearrange, which entities would be eligible, so that we don't go out looking for folks to be integrity monitors after the attack on whatever city; that we have people regionally or whatever.

Is it practical to set up those kind of assets ahead of time, to know who is qualified to do this kind of integrity monitoring, to pre-negotiate bids and to keep those renewed every year? Hopefully, you never need them, but if you do, you have boots on the ground early. Because one of the things that we learned yesterday in one of our hearings was that one of the few shining stars of FEMA in post–9/11 was their debris removal efforts, and that was in large part because of the city administration's leadership.

They were familiar with organized crime in their efforts to try to get in on contracts. Because of that experience and the fact that they knew how to keep it from happening, we were able to see that debris removed in less than half the time than was initially projected and under half the cost, because they had boots on the ground—as you made reference earlier—people who knew what to look for and basically interfered with some unscrupulous individuals getting their teeth into that.

So I am just trying to think if there is a way that we can do that in other areas as well, and it seems like this is an area ripe for opportunity. I am pleased to hear that you all think that using third-party individuals, who are not necessarily under the Federal umbrella and who would only be temporary, is a practical solution.

With that, I will cease discussion and turn to my Ranking Member for any further questions he may have.

The gentleman from New York, do you have any additional questions?

Mr. KING. Actually, just a statement.

I want to again thank you for your testimony. All of us have a lot invested in this to make sure that it works—people from New York and people around the country. There is such an enormous amount of money and such a tragic loss of life on September 11. So for many reasons, it is important that all these projects go forward with as little corruption as possible, with as much integrity as possible.

We know that you are going to do your jobs. So I would just ask that if any of you or any of your agencies or departments feel you do need additional assistance from us, if you do need additional weapons or tools, to come to us and ask. This Committee in a bipartisan way is committed to making sure that these projects go forward in the right way and the most efficient way and most effective way and the most honest way.

So I am just saying, whether it is Republicans or Democrats on this Committee, whether it is the Subcommittee or the full Committee, for you to know that all of us are asking you to come forward after the hearings are over or whenever, as long as these projects are around, to let us know what we can do to help you. And also, if you have any thoughts as far as other tragedies that may be occurring around the country where you feel there are lessons learned from Ground Zero that can be applied there, please let us know.

Again, I thank you for your testimony, and I thank you for all the work you have done.

I yield back, Mr. Chairman.

Mr. ROGERS. I thank the Chairman.

I would remind you all that the record will be left open for 10 days. Members may have additional questions that they would like to submit to you. If you do have additional questions provided to you, if you would respond to those in writing for the record, that would be helpful.

Chairman King is absolutely correct. It may be a few days from now, a few weeks from now, and you just have an idea that, you know, this would be a great thing to help us in the future, if you would reach out and let us know. This is the Management and Oversight Subcommittee, and we are continuously working on these kinds of things to try to make sure we improve and we are better prepared as a Nation, so we would love to hear from you. You are a valuable resource, and we thank you for your time.

With that, the Committee is adjourned.

[Whereupon, at 3:07 p.m., the subcommittee was adjourned.]

APPENDIX

HON. RICHARD SKINNER RESPONSES TO HON. MIKE ROGERS QUESTIONS

JULY 12, 2007, PART I

The Port Authority of New York/New Jersey (Port Authority) issued five FEMA-funded contracts—three of which were not competitively bid—to a private company called New York Waterway to operate ferries between New Jersey and New York as an alternative to PATH rail lines damaged in the attacks. FEMA authorized at least $29.8 million for these contracts. NY Waterways has recently agreed to a $1.2 million settlement of civil fraud charges.

Question 1.: What steps did FEMA take to monitor those funds once they were disbursed?

Answer: With regard to New York Waterways, the investigation was conducted by the Office of Inspector General for the Port Authority of New York and New Jersey and prosecuted by the United States Attorney's Office (USAO) for the Southern District of New York. We respectfully request that questions relating to the New York Waterways investigation be directed to either the Port Authority OIG or the USAO's office.

Question 2: What can FEMA do to better track funds it disburses to state and local agencies to ensure that the funds are used properly?

Answer: There is no simple answer to this question. FEMA has been deficient in grants management for many years. Grants management is one of the major management challenges that the IG has repeatedly identified for FEMA, and much of our audit work is focused on identifying problems and helping FEMA improve its grants management. FEMA has been making progress, but much remains to be done. The states have to be a major player in monitoring how state components and local governments spend FEMA grant funds. Also, FEMA's regional offices must perform more oversight. They must require more accurate progress reports from grant recipients and monitor them more closely. Helping FEMA accounting for disaster recovery grants will be a major function of the new DHS OIG Office of Disaster Assistance Oversight.

Many of the problems that occurred in the administration and management of Federal assistance funding after 9/11, re-occurred after Hurricanes Katrina and Rita.

- **In your view, has FEMA adequately attempted to address these issues?**

Answer: A major problem with FEMA's implementation of its individual assistance program after 9/11 was that FEMA reduced its managerial controls over the program. For example, FEMA did not conduct home inspections to ensure that applicants actually owned air conditioners prior to reimbursing them for repairs and replacement. FEMA also provided advanced payments for air quality items rather than requiring receipts prior to reimbursing applicants. Similar weaknesses occurred in FEMA's individual assistance program implementation after Katrina. In April, we reported that FEMA's controls were either not implemented or ineffective in preventing overpayments *(Reimbursement for Other Needs Assistance Items, GC–HQ–06–34).* That report covered generators, vacuum cleaners, air quality items, and chainsaws. For some items, FEMA's payment processing system defaulted to a maximum allowable amount, and applicants were reimbursed that amount even though they actually paid less for the item. FEMA reimbursed applicants for approximately 106,000 generators using an automatic disbursement process that, in most cases, paid a fixed amount rather than the amount the applicants actually paid for the generators.

FEMA has generally agreed with our recommendations, for both our 9/11 work and our Katrina work, to improve managerial controls over its individual assistance program. We are aware that FEMA is working toward improving the program, but we have not yet evaluated its progress. We are conducting a review in fiscal year

2007 of "Fraud Vulnerability of FEMA's Individual Assistance Program." Upon completing that review, we will be able to more accurately assess FEMA's progress in improving the program.

FEMA officials admitted to the FEMA OIG that FEMA may have dispensed 9/11 assistance to people who received assistance for the same goods or services from charities. After 9/11, the Office of Inspector General and the GAO recommended that FEMA work more closely with other government agencies and charities to better coordinate responses to future disasters. Yet a GAO report last month (June, 2006) found disagreements between FEMA and the Red Cross regarding roles and responsibilities.

Question 1: Did FEMA take steps to implement the recommendations of your office after 9/11 to "coordinate relationships with those organizations through protocols such as Memorandums of Understanding to alleviate the potential for duplicating benefits?"

Response: Yes, improvements have been made since the September 11, 2001, attacks. The Coordinated Assistance Network was established through a memorandum of understanding in 2003 and was first piloted during the 2004 hurricane season in Florida. The following organizations signed this document: American Red Cross, Salvation Army, Alliance of Information and Referral systems, United Way of America, United Services Group, National Voluntary Organizations Active in Disaster, and Safe Horizon. The goal of the Coordinated Assistance Network is to afford more efficient and effective service coordination among voluntary, as well as governmental, agencies during disaster events. It was designed as a communication mechanism for services providers and to identify any gaps or redundancies in services. The network allowed registered organizations to access information on available services and to share information on the levels of services delivered to individuals, families, or households. It also allowed disaster victims to explain their needs and register only once, as registration afforded disaster victims a registration with all service providers on the network. In response to the 2005 hurricanes in the Gulf Coast region, five organizations were using the network and 81,817 clients records were in the system as of September 30, 2005.

Question 2: If so, why did we see these same problems in the response to Hurricanes Katrina and Rita?

Response: Under the National Response Plan (NRP), FEMA is designated as the coordinator for Emergency Support Function (ESF)–6, Mass Care, Housing, and Human Services. Both it and the American Red Cross (ARC) are primary agencies—the ARC for mass care functions and FEMA for housing and human services functions.[1] Both support governmental and nongovernmental efforts to address non-medical needs of individuals and families affected by an Incident of National Significance or other disaster event.[2]

Identifying the number and location of evacuees, as well as the need for shelters, was initially difficult for FEMA in its ESF–6 role. As Hurricane Katrina was the first activation of ESF–6 under the NRP, the roles and responsibilities that had been more defined under the Federal Response Plan for the mass care function, were not yet clearly defined or established under the NRP. Both FEMA and the ARC must work together, along with other governmental and nongovernmental organizations within the ESF–6 structure, to define the expectations each has for its role and area of responsibility. For example, a senior ARC official told us it is responsible for the coordination and reporting only of ARC mass care operations. FEMA, on the other hand, said it was relying heavily on the ARC to coordinate mass care operations and reporting that was inclusive of other ESF–6 support agencies. Establishing a working group, in coordination and consultation with all ESF–6 primary and support agencies, to serve as a forum to resolve coordination issues

[1] All other voluntary organizations are positioned under the National Voluntary Organizations Active in Disaster as support agencies. Other ESF–6 support agencies include: the Departments of Agriculture, Defense, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, Transportation, Treasury, Veterans Affairs, General Services Administration, Office of Personnel Management, Small Business Administration, Social Security Administration, U.S. Postal Service, and Corporation for National and Community Service.

[2] Mass care includes activities to provide sheltering, feeding, and emergency first aid; housing addresses both shorter and longer-term needs of displaced disaster victims; and human services covers a range of programs, such as crisis counseling, benefit processing for FEMA's Individuals and Households Program, disaster unemployment, and identifies support for persons with special needs.

experienced during Hurricane Katrina is prudent and would assist in defining roles and realizing expectations.

In our March 2006 report, *A Performance Review of FEMA's Disaster Management Activities in Response to Hurricane Katrina—OIG–06–32, we recommend that FEMA establish an ESF–6 working group to define the explicit roles and responsibilities for each agency, develop standard operating procedures, and implement a concept of operations plan for response activities that address all levels of disasters.*

In response to our recommendation, we were informed that an ESF–6 working group was established in February 2006 and meets monthly. The group is led by FEMA and includes the ESF–6 primary and support agencies. Several ESF–6 improvement initiatives are currently underway, including developing roles and responsibilities, standard operating procedures, and a concept of operations as suggested in our recommendation. FEMA said progress has also been made in the ESF–6 areas of staffing, training and exercises, logistics support planning, finalizing the FEMA–ARC Memorandum of Understanding, and improving the Disaster Welfare Inquiry system. Further, an ESF–6 Mass Care Policy Seminar was held in late June 2006 to further solidify policies and operating concepts. Participants included FEMA, ARC, other principal non-governmental organizations, applicable other federal agencies, and several Department of Homeland Security representatives.

We will continue to monitor the implementation of these initiatives to determine whether FEMA's actions are sufficient to effectively resolve our recommendation.

MR. DAVID J. VAROLI RESPONSES TO HON. MIKE ROGERS QUESTIONS

JULY 12, 2007, PART I

Question 1: In your view, were FEMA's standards sufficient to ensure that the potential for fraud was minimized?

Response: The City of New York has developed a system of governing agencies, staffed with professionals, with expertise in design and construction, public works contracting, investigation, police, fire, sanitation, and traffic enforcement, to name just a few. The terrorist attacks of September 11, 2001, were unlike anything the City and our nation had ever witnessed. Similarly, the aftermath created by these attacks was a new phenomenon for the City and FEMA. Prior to that fateful day, FEMA's experience and expertise was in responding to floods, hurricanes, tornadoes, and other nature-based calamities and disasters. FEMA did not have any experience with a domestic war and the devastation that follows a man-made attack. Notwithstanding, FEMA did have established guidelines and principles as to how a basic debris clean-up job may be contracted and paid for. Due to the unique nature of this incident, both in its size and impact, the City consulted daily with FEMA representatives in New York, and where appropriate, sought guidance, assistance, and, in certain cases, exemptions, from headquarters in Washington, D.C. with regards to these guidelines and policies. Moreover, the City quickly did its homework and evaluated prior natural disasters and how FEMA compensated and audited other municipalities' contracting practices.

The City, on its own initiative, but in consultation with FEMA, instituted a number of fraud prevention practices during the clean-up of the debris. Some of these fraud prevention practices were instituted early on and others evolved as the clean-up of the debris continued non-stop, seven days a week, 24 hours a day. These fraud prevention initiatives included, among other things, the:

- hiring of independent private inspector generals or the ″monitors″ for each of the four construction managers and all of the subcontractors in their quadrant;
- installation and use of global positioning systems in trucks carting debris off of the site;
- installation and use of employee card swiping machines to track the arrival and departure times of the contractors' and their employees;
- installation of a 24-hour integrity telephone where anyone could call in and leave an anonymous tip that there may be some fraud-like activity taking place; and
- hiring of KPMG to assist engineering audit officer and his team by providing professional staff and expertise in creating contracting and audit protocols for what items would be reimbursable and what paperwork would be required before a payment could be issued. The expenditure of public funds, whether the funding source is from the federal, state or City government, is a serious matter to the City. To address this issue, the City has established a system of procurement and ethic rules to safeguard the integrity of the procurement system and protect against corruption, waste, fraud, and abuse. In addition, the City has an agency dedicated to finding and preventing fraud in the awarding and administering of City contracts -the De-

partment of Investigation. Moreover, the City has a system of internal, but independent, inspector generals, who are placed at each agency. Further, the City has experience working with independent inspector generals that have been retained by contractors who seek to be deemed a responsible vendor.

Question 2: Was the hiring of KPMG by the Department of Design and Construction (DDC) at the direction of FEMA or was this a DDC initiative?

Response: The City had in place a contract with KPMG to provide audit-related professional services. The City issued a task order against this pre-established contract and hired KPMG to provide professional services to engineering audit officer and his team. This was a City initiative. However, the City consulted with FEMA to ensure that the costs incurred by KPMG would be reimbursed by FEMA and would withstand an audit by FEMA.

SUBMITTED BY BETTINA DAMIANI, JULY 13, 2006, PART II

ANALYSIS OF THE LIBERTY BOND PROGRAM

Liberty Bonds: Background

The allocation of $8 billion in triple tax-exempt Liberty Bonds ($1.6 billion for the creation of residential rental housing and the remainder for the development of commercial development) has primarily benefited the real estate industry, with the vast majority of bonds being used to finance high-end office space and luxury housing.

The Congressional design of the Liberty Bond program enabled New York City and State officials to exclusively subsidize large real estate projects while neglecting the city's affordable housing crisis and the capital needs of growing, industrial businesses and commercial developments outside of Manhattan.

Procedural Issues Relating to Liberty Bonds

- The complexity of distributing resources through *four different* public authorities diluted the public's ability to participate.

The New York City Industrial Development Agency, the New York City Housing Development Corporation, the New York State Liberty Development Corporation and Housing Finance Agency were charged with allocating the Liberty Bonds. Fortunately, the 1986 Tax Equity and Fiscal Responsibility Act (TEFRA) requires a hearing prior to the allocation of private activity bonds. However, each authority differed in its practices regarding public hearing announcements and access to materials.

Tracking these disparate hearings and procedures was difficult because public hearing notices were posted in different publications and places, dates, and times of hearings meetings varied, with the exception of the New York City Industrial Development Agency. For example:

March 2003: The New York State Housing Finance Agency refused to provide GJNY with copies of materials prior to a hearing on the allocation of Liberty Bonds. Instead, our Research Analyst was forced to hand-copy materials while being closely watched by an HFA staff member.

May 2003: Public testimony was given by several groups at the New York City Housing Development Corporation regarding the allocation of Liberty Bonds to build a luxury apartment. Board members approved the project having never witnessed the testimony—since they don't attend the hearings—and having never even been given copies of the testimony.

Commercial Use of Liberty Bonds ($6.4 billion)

- Congress restricted the use of Liberty Bonds to commercial real estate projects mostly located in the Liberty Zone;
- For the $2 billion in bonds that could be used outside the Liberty Zone, projects must include at least 100,000 square feet of commercial space.

While this tax-exempt financing tool could have served to diversify the city's larger economy by supporting smaller, growing businesses, nearly all of the commercial Liberty Bonds have been used to finance high-end office space for the most profitable companies in the world.

For instance, $1.65 billion in Liberty Bonds were allocated to build a new headquarters for Sachs in Lower Manhattan, where the company has been located for the past 13 6 years. With profits of $10.10 billion last quarter, clearly wasn't hinging its decision to remain downtown on 1 related financing. What the company lacked—and needed to make a sound location decision—was a clear understanding of the rebuilding process from public officials.

Not until considered a move to Midtown did the Governor address valid security concerns of a proposed tunnel under the site of the new building. After resolving

the security issue by canceling the tunnel plan, received an increase of $650 million from the originally proposed $1 billion in Liberty Bonds for a subsidy package $1.65 billion in tax-exempt bonds, $25 million in 9/11 Community Development Block Grants, and up to $150 million in city and state tax breaks.

On the other hand the nearby low-income, immigrant neighborhood of Chinatown incurred severe economic harm from the attacks, especially in terms of the garment industry. Yet the Liberty Zone—the area where the majority of the Liberty Bonds must be spent-was drawn through the center of Chinatown. If bonds were allocated based on need, and more projects were eligible, a broader group of firms might have benefited.

Restricting the majority of the bonds to Lower Manhattan also discouraged the use of resources to pursue the laudable policy of promoting growth within business districts outside of Manhattan, which would have been an appropriate measure considering the widespread economic impacts of the attacks and the possibility that back-office space would move outside New York City after the attacks.

Congress did allow for $2 billion of Liberty Bonds to be used outside the Liberty Zone and in fact, Good Jobs New York supported the use of $114 million in bonds for the developer Forest City Ratner to build an office tower in Downtown Brooklyn.

At the same time, however, Congress' stipulation that projects outside the zone must include at least 100,000 square feet of commercial space may have encouraged local authorities to subsidize projects least in need of public financing. For instance, $650 million in Liberty Bonds were awarded to Bank of America to locate to one of the most desirable blocks in one of the premier business districts in the world—Midtown Manhattan.

Residential Use of Liberty Bonds ($1.6 billion)

- Normally, the Federal government requires housing projects financed with federally tax-exempt bonds to set aside 20 percent of the units for affordable housing for a minimum of 15 years. This statute did not apply to Liberty Bonds.

The vast majority of housing units built with Liberty Bonds are market rate and unaffordable to New Yorkers. Nearly all of the units rent at market rates ranging from studios for $2,062 per month to three-bedrooms for $6,267 per month. The projects subsidized by the New York Housing Finance Agency set aside only 5% of the units in each building for non-market rates—this is different than affordable—as these units are targeted to households that earn approximately $94,200 per year with rents ranging from for a studio to for a three-bedroom.

These apartments are out of reach to the vast majority of New Yorkers, whose median household income is $38,293. This includes New York City police officers, firefighters, teachers, rescue and recovery personnel who are rightfully totted as the heroes of 9/11 but are deliberately excluded from a rebuilt Lower Manhattan.

The small non-market rent set-aside and the high income requirement make these proposals a major departure from the long-standing "80/20" affordable housing program of the New York State Housing Finance Agency (NYSHFA), the agency that allocated the state's portion of the Liberty Bonds. The 80/20 program, which meets the Federal Tax Code requirements for housing financed with federally tax-exempt bonds, sets 20% of the units aside for households making at most, half the NYC Area Median Income. In contrast, the Liberty Bond program sets aside units for households earning 50% more than the New York City Area Median Income.

Unlike the state, the New York City Housing Development Corporation (HDC) did not set aside 5% of the units at a non-market rate. Instead, HDC charged a 3% developers fee on the bond application that would then be used for developing affordable housing in other areas of the city.

While Mayor Bloomberg certainly deserves credit for thinking outside the box and generating new revenues for affordable housing, it is unfair to relegate low and income New Yorkers to the periphery of our city. Catering to developments and landlords by creating only luxury housing with Liberty Bonds has exacerbated the gentrification pressures on Chinatown and the Lower East Side, and contributed to the overall unaffordability of Tribeca and the Financial District.

Recommendations

Understanding that in light of the fact the Liberty Bond program could set a standard for the allocation of Federal in future disasters—Liberty Bonds were often suggested as a rebuilding tool for the hurricane tom Gulf Coast region—GJNY offers the following reflections for how the program could have been improved:

- The Liberty Bonds set aside for housing projects should have created a significant percentage of new, truly affordable rental units;
- Large commercial projects which received Liberty Bonds should have been required to create or retain quality jobs that pay a living wage as a condition to ensure employees don't have to rely on public services such as food stamps or

Medicaid. Why give a company the advantage of a subsidy without ensuring that the resulting jobs pay a decent wage with full-time hours and health care?

• The Liberty Bond program should have been directed toward smaller projects in Lower Manhattan and in other parts of the city that needed access to tax-exempt financing. Many growing businesses (before and after 9/11) have the potential for growth yet struggle with New York City's hyper competitive real estate market.

• Leaders should take into consideration the fact that the attacks affected the region's economy and businesses in all five boroughs. For example the borough of Queens is home to New York City's two airports. Smaller businesses and their employees that support the airline industry were negatively impacted. Liberty Bonds could have been used as part of a comprehensive strategy for recovery—and long term improvement—of all types of businesses throughout the city.

JULY 13, 2007, PART II

MR. ERIC M. THORSON RESPONSES TO HON. MIKE ROGERS QUESTIONS

Supplemental question:

HON. MIKE ROGERS. "You indicated the only lenders that could issue STAR loans were those in pre-approved 'Preferred Lenders Program.' This allowed designated lenders to process SBA-guaranteed loans with reduced oversight.

What types of sanctions are there for preferred lenders who improperly issued STAR loans to businesses that were not affected by 9/11? Have any sanctions been issued?"

Response: Let me clarify that the STAR Loan Program was available to all lenders participating in all components of the Section 7(a) program, not only lenders in the Preferred Lenders Program (PLP). As set forth in our audit report on the STAR Loan Program, SBA exercised virtually no oversight of lenders making STAR loans because the Agency did not review whether lenders were making valid determinations that borrowers were eligible for STAR loans.

SBA has various sanctions for lenders that fail to comply with requirements for participation in the Section 7(a) Program. These include: (1) upon loan default, a complete or partial denial of a lender's request for payment of a loan guarantee; (2) termination of a lender's right to participate in a component of the Section 7(a) program (for example, suspending a lender from the PLP); or (3) termination of a lender's right to participate in the Section 7(a) program altogether.

The Agency responded to our STAR loan audit report by advising that it did not object to our recommendation which included denial of a STAR loan guarantee if a loan defaults and the lender failed to adequately document borrower eligibility. SBA, however, is still finalizing criteria for evaluating the adequacy of STAR loan justifications and have requested additional information from the lender to support the STAR determination. Therefore, to date, there have been no partial or full denials based on inadequate STAR justifications. Further, we are not aware of any instance where the Agency has issued a sanction against a lender either for failing to document borrower eligibility or for inadequately documenting eligibility.

MR. MICHAEL NESTOR RESPONSES TO HON. MIKE ROGERS QUESTIONS

JULY 13, 2007, PART III

Question 1: Does the Port Authority Inspector General monitor the appropriateness of sole source contracts such as that issued to Waterways?

Response: The Inspector General does not formally monitor all sole source contracts awarded by the Port Authority.

What does that review entail? Our Audit Department, which is part of the Inspector General's Office, performs procurement audits, which include examining the propriety of the type of procurement they are auditing, which include sole source procurements. The Audit Department also reviews on a monthly basis, all items on the Commissioner's Board agenda, and if a sole source is included, there is some discussion about that item.

Question 2: Would you please describe your office's Ethic's and Integrity Training program?

The Integrity Awareness Program includes a power point presentation that reviews for employees their responsibility to abide by the Port Authority's Ethical Standards and the consequences of their failure to do so. A review of the some of

the common violations is discussed, for example, gratuities, bribery, and conflicts of interest.

The Program explains. the three primary reasons why people make bad decisions: financial pressure, rationalization and opportunity; emphasizes implications of these decisions: financial loss, embarrassment, incarceration and failure to meet their responsibilities to the Port, co-workers and themselves.

The Program explains, in laymen's terms, Internal Controls and why they are important. The objective is early prevention, diagnosis and resolution, thereby avoiding a potential loss of the Port's most valuable asset: its employees.

a. Have you seen a decrease in employee violations since this training was initiated?

We have seen a decrease in employee violations in one particular area of the agency, toll collectors. We have concentrated our efforts in this area over the last few years making a number of arrests for stealing. The number of violations has decreased dramatically. We attribute that decrease to the deterrent effect that the arrests have offered, the awareness training provided, as well as increased oversight by management.

Has the number of investigations decreased since its implementation?

In fact we've seen the number of investigations increase because the trainings have prompted a number of the employees that attended the training to contact the office with information of wrongdoing.

b. In your written you advised the Committee that Ethics and Integrity training is being provided to contractors in addition to Port Authority employees.

Is this training mandated by Port Authority or is it voluntary?

While the training is not mandated by the contract between the Port Authority and the contractors, each contractor has readily cooperated by attending it, and it is anticipated that all future contractors awarded contracts will attend without objection.

MR. TODD J. ZINSER RESPONSES TO HON. MIKE ROGERS QUESTIONS

JULY 13, 2006

This is in response to the questions attached to your August 17, 2006 letter regarding our July 13, 2006 testimony, *Lower Manhattan Reconstruction: Lessons Learned from Large Transportation Projects.*

As reported in our testimony, we are now stepping up our oversight of all 5 Lower Manhattan recovery projects:

- The Route 9A/West Street Project,
- The Permanent World Trade Center PATH Terminal,
- The Fulton Street Transit Center,
- The South Ferry Terminal Station, and
- The World Trade Center Vehicle Security Center.

Specifically, on August 28, 2006, we announced a new effort to perform major project monitoring for all of these Lower Manhattan recovery projects. The primary objectives of this effort will be to assess (1) the status of each project, including costs, funding, schedules, and management and (2) any risks that may adversely impact their completion. As part of the monitoring effort, the team will look at issues related to the Lower Manhattan Recovery Office’s oversight of these projects, including coordination between FTA and FHWA on the Route 9A/West Street Project, and the activities of the project management oversight contractors that are assigned to each project.

Our responses to your two questions follow.

Question 1: Do the roles and responsibilities of FTA and FHWA for the Route 9A Project complicate your oversight procedures?

To date, the dual responsibilities of the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) have not hindered our ability to review the Route 9A/West Street project. As we discussed in our written statement, a portion ($287 million) of the $4.55 billion in Lower Manhattan recovery funds that FTA is overseeing is dedicated to the Route 9A/West Street Project, along with $65 million in FHWA emergency relief funds. Accordingly, FTA and FHWA share oversight. Federal oversight for the other 4 projects that are being funded with the $4.55 billion is being provided solely by FTA, so coordination between FTA and FHWA is not an issue with these projects. FTA created the Lower Manhattan Recovery Office, which is separate from FTA's New York field office, to oversee use of the $4.55 billion.

FTA and FHWA executed two Memoranda of Agreement (MOA) regarding the Route 9A/West Street Project in the last two years to provide for the transfer of funds and to outline the oversight responsibilities of each agency for each segment. The MOAs clearly distinguish the roles of FTA and FHWA to ensure the projects are completed on-time and within budget.

As the agency responsible for overall stewardship of the $4.55 billion, FTA negotiated the MOAs for FHWA to perform additional oversight that FHWA normally would not do. For example, FTA assigned a project management oversight contractor to the Route 9A/West Street Project, which is standard for larger FTA projects but is not typical on FHWA projects. The project management oversight contractor is charged with regularly monitoring the project and providing feedback to Federal officials should any problems arise.

Question 2: What recommendations would you make to enhance fraud prevention and detection?

As we stated in our testimony, the Department should do all that it can to ensure that the taxpayers get the most from the Federal funding being invested and that these projects are free of fraud. These high-priority projects will require vigilant oversight by the Department, state and local governments, and transit agencies. In addition to the recommendations in our written statement, we would like to make a few other key points.

Dedicated Funding for Oversight in Emergency Relief Legislation

We recommend that future emergency relief legislation specify that a portion of the funding be dedicated to audit or other oversight. As we discussed in our July 2006 statement, history has shown that substantial infusions of funding into an area for relief and/or reconstruction efforts, such as those related to the September 11, 2001 attacks, increase the risk of fraud. Therefore, it is our view that in any future disaster, the Federal agencies in charge of reconstruction should receive a sufficient and dedicated amount to provide oversight.

Of the $4.55 billion in FTA funding dedicated to the Lower Manhattan reconstruction, nearly $90 million has been dedicated to oversight activities, a move that we support. To carry out its oversight responsibilities in Lower Manhattan, FTA has created a special oversight office, the Lower Manhattan Recovery Office. The Lower Manhattan Recovery Office is separate from FTA's New York field office, reporting directly to the Administrator, and its sole purpose is to oversee these high priority projects in Lower Manhattan. The Lower Manhattan Recovery Office should employ all of the oversight mechanisms and expertise at its disposal to closely monitor these projects and, most importantly, quickly mitigate problems as they arise. Doing so will help ensure that the projects are delivered in a timely manner and within the federally funded amount.

Authorization of the Use of Independent Private Sector Inspectors General (IPSIGs)

We believe that future emergency relief legislation should authorize agencies to use IPSIGs to supplement their existing oversight capabilities as necessary. IPSIGs are monitors with legal, auditing, investigative, and loss prevention skills that are employed by a government entity to ensure compliance with relevant laws, regulations, and contracts. They can help to deter, prevent, uncover, and report unethical or illegal conduct.

As reported in our July 2006 statement, the New York State Metropolitan Transportation Authority and the Port Authority of New York and New Jersey either have IPSIGs in place, or are in the process or hiring IPSIGs, to act as compliance monitors for their respective Lower Manhattan Reconstruction projects. More importantly, the Lower Manhattan Recovery Office must ensure that its staff receives, reviews, and acts upon the findings of any IPSIGs for all of the Lower Manhattan projects. To be effective, it is critical that the Federal agencies and grantees seriously consider issues raised by IPSIGs and, if warranted, take action to address these issues.

Strengthening of Contracting Practices in Emergency Contracts

Our Hurricane Katrina-related audit work[1] has led to several recommendations for strengthening of emergency-related contracts. We believe that some of these recommendations have government-wide applicability, and that legislation mandating

[1] Report Number AV–2006–032, "Internal Controls Over the Emergency Disaster Relief Transportation Services Contract," January 20, 2006; Report Number AV–2006–051, Internal Controls Over Payments for Emergency Disaster Relief Transportation Services," Jun 30, 2006; and Report Number MH–2006–065, "Audit of the Mississippi Department of Transportation's Award of Selected Hurricane Katrina Emergency Repair Contracts," September 6, 2006.

the issuance of guidance applicable to all federal disaster relief would be appropriate. Some effective practices include the following.

- Establish pre-negotiated emergency repair contracts with multiple contractors to ensure quick responses and fair and reasonable pricing prior to the emergency.
- Prioritize emergency repair contracts to strongly encourage states to first use expedited, competitively-bid awards; use negotiated, cost-plus contract awards when competition is not feasible; and use high-risk lump-sum contract awards only under extreme emergency circumstances.
- Require contractors to provide appropriate support for non-competitive price proposals, such as cost and pricing data to support proposals for lump-sum contracts, and advise states to conduct cost/price analysis before award.
- Set baseline fair and reasonable prices prior to emergencies, using such methods as market surveys.
- Provide alternative methods for computing equipment usage rates in negotiated, cost-plus contracts when standard industry information, such as the Rental Rate Blue Book, is not available.
- Require a contract statement of the right to limit Federal participation when contract prices are determined not to be fair and reasonable.
- To receive payment, ensure that a contractor’s invoices show precisely what goods and services it provided and that these invoices are reconciled with documentation prepared by government personnel at field locations that clearly show what good and services were actually received.

Ensuring proper use of Federal dollars in an emergency situation is critical. To accomplish this objective, one possibility is for Congress to require a contract provision for independent audits in emergency situations. Specifically, Congress could require independent audits of (1) incurred costs on cost-plus contracts; (2) contractor justification for subcontractor selection in competitive subcontract awards; (3) support for verbal quotes over $100,000; and (4) cost and pricing data, and the evaluation of the data, in lump-sum awards. These audits could be conducted by the Defense Contract Audit Agency (DCAA), which has been particularly effective at providing standardized contract audit services to Defense Department components and other Federal agencies, including the Department of Transportation (DOT). In the past, DOT's decision to engage DCAA has been a sound business approach for protecting the Federal Government's interests.

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August 31, 2006

Chairman Mike Rogers
Subcommittee on Management, Integration and Oversight
One Hundred Ninth Congress
U.S. House of Representatives
Committee on Homeland Security
H2-176 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Rogers:

I am writing in reference to your inquiry of August 17, 2006, regarding government agencies with vague or lax regulations after 9/11. While the New York County District Attorney's Office is unaware of any other such government program, we would like to clarify our position with respect to FEMA's Air Quality Control Program.

New York residents with air conditioners damaged by dust or debris as a result of the World Trade Center attack were able to apply for assistance in the replacement of air conditioners through a program funded by FEMA and administered by the New York State Department of Labor. It was designed to help eligible residents affected by the attack to cover the costs of necessary expenses.

The program was broad in its inception and eligibility requirements. There was no specific requirement that applicants supply proof that an air conditioner was damaged, or even that an applicant owned one. Applicants were not asked to provide any documentation to support their claim, nor were inspections required prior to the replacement of an air conditioner.

After a careful review of the allegations in the cases referred to us, the New York County District Attorney's Office declined to prosecute these cases due to the fact that the parameters of the program were very broad and so little was required of the applicant. As mentioned in the testimony before the committee on 7/13/06, the District Attorney's Office would be in a better position to investigate and prosecute a fraudulent claim if supporting documentation was required to be submitted by the applicant at the outset, and if there were clearly defined guidelines regarding eligibility for the program.

Sincerely,

Leroy Frazer, Jr.
Assistant District Attorney
Chief, Special Prosecutions Bureau

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