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July 13, 2006

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

9/11 Federal Assistance to New York:
Lessons Learned in Fraud Detection, Prevention, and Control

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.

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.

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 industry 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]

<u>Inequitable Resource Distribution</u>

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.

<u>Congress and the CDBG Program: What Went Wrong?</u>

While Good Jobs New York acknowledges that Congress intended to provide New York with flexible and streamlined rebuilding programs, it did not have to be at the expense of public input and the equitable distribution of resources.

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—has been 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 business 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, the number of grants allocated to groups associated with board members gives an 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 where the important decisions were truly being made.

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 - now called Colors - the group wound up smaller than they would have been and the restaurant is not where they would have liked to locate it. Instead it opened in Greenwich Village, where it may do fine, but there's not the synergy of this group helping the rebuilding effort and the rebuilding effort helping them.

Unfortunately, even a program established to help small businesses—Small Business Recovery Grants—mostly benefited 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.[10] 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 LMDC grants allocated demonstrate that the agency has been largely unresponsive to these demands.

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 several months 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.[11]

A particular point of contention is the unfilled promise of using 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[12]. 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 adequate, 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;;
- 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. However, it would not be an understatement to say that the allocation of $8 billion in Private Activity Bonds – aka Liberty Bonds—has primarily benefited the real estate industry.

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[13]. A Goldman spokesperson had said that the company would only look to build its new headquarters in Manhattan[14] – 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 resolving the security issue by 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.[15]

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. [16]

Liberty Bonds-Residential Use

- 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.[17]

These apartments are out of reach to the vast majority of New Yorkers whose median household income is $38,293.[18] 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.[19]

Lower Manhattan has become the most desirable place to live in New York City, though skyrocketing rents have rendered it unaffordable.[20] In fact, the approximately 350 units set aside for moderate income tenants are mostly studios and one-bedrooms.

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 moderate-income New Yorkers to the periphery of our city.[21] 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

Who is allocating 9/11 resources?

NEW YORK STATE

* Empire State Development Corporation – The ESDC is state economic development authority that designed the business recovery and assistance to individuals programs. ESDC allocated the first $700,000 of CDBG grants.

* Lower Manhattan Development Corporation – LMDC is a subsidiary of the ESDC created after 9/11 to direct the rebuilding of Lower Manhattan and allocate $2 billion of which approximately $250,000 remains.

*Liberty Development Corporation - LDC is also subsidiary of the Empire State Development Corporation. The LDC allocates the state's portion of commercial Liberty Bonds.

*New York State Housing Finance Agency - HFA allocates the state's portion of the residential Liberty Bonds.

NEW YORK CITY:

* New York City Industrial Development Agency - The IDA allocates the city's portion of the commercial Liberty Bonds.

* New York City Housing Development Corporation - HDC allocates the city's portion of the housing Liberty Bonds.

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.

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.

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.[22]

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.

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[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.

[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.

[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.

[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] See http://www.listeningtothecity.org/.

[11] http://search.renewnyc.com/content/pdfs/Neighborhood_Workshop_Summary_Report_1-20-04.pdf

[12] LMDC press release, June 16, 2005.

[13] Over $3 billion of Liberty Bonds has been reserved for the World Trade Center site.

[14] Matthew Schuerman and Tom McGeveran, The View From 7: As Tower Tops, Goldman Sacks, *New York Observer*, April 11, 2005.

[15] Additional details at http://www.goodjobsny.org/GS_news.htm

[16] Details of the Bank of New York subsidy are available on GJNY database of deals, http://www.goodjobsny.org/deals.htm

[17] Liberty Bond Housing Coalition statement: http://www.goodjobsny.org/rec_sign_on.htm.

[18] According to the 2000 U.S. Census.

[19] Liberty Bond Housing Coalition statement: http://www.goodjobsny.org/rec_sign_on.htm.

[20] David Dunlap, Liberty Bonds' Yield: a New Downtown, *The New York Times*, May 30, 2004.

[21] New York City Housing Development Corporation press release, July 17, 2003.

[22] Governor Pataki press release, July 29, 2004.