

# **STIMULUS OVERSIGHT PANEL**



## **Stimulus Report October 2011**

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New York State Inspector General**

**Galen Kirkland  
Human Rights Commissioner**

**Barry Kluger  
MTA Inspector General**

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## **BACKGROUND**

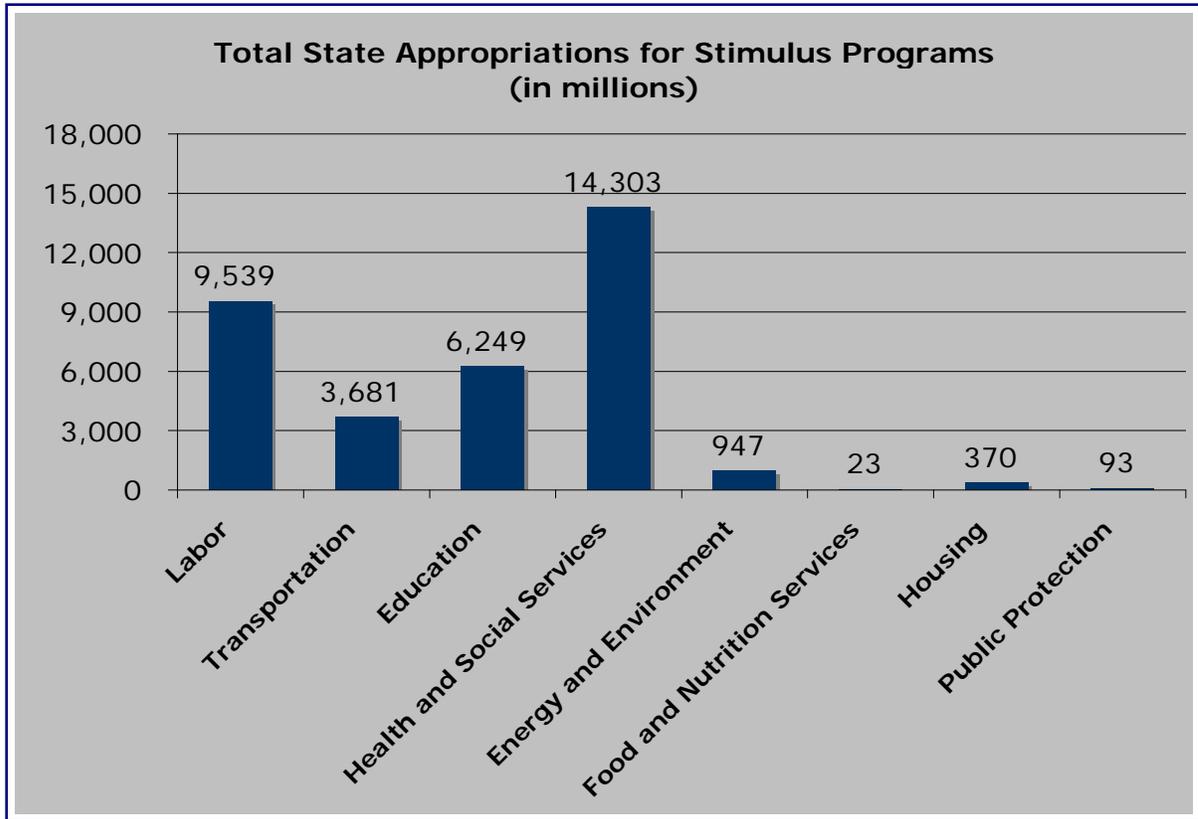
Ellen N. Biben was appointed as Inspector General of the State of New York by Governor Andrew M. Cuomo, taking office on January 1, 2011. Inspector General Biben is the Chair of the Stimulus Oversight Panel.

On January 1, 2011, Governor Cuomo issued Executive Order No. 2, which continued Executive Order No. 31, issued November 25, 2009 by then-Governor David A. Paterson, setting forth the responsibilities, duties and powers of the Stimulus Oversight Panel. The Stimulus Oversight Panel (Panel) is charged with ensuring that the over \$31 billion of federal funds provided to New York State under the American Recovery and Reinvestment Act of 2009 (ARRA) are utilized with transparency and accountability.

With the signing of Executive Order No. 2 by Governor Cuomo, the Panel was continued to further its charge of “the prevention and detection of waste, fraud, abuse and mismanagement of ARRA funds, the promotion of transparency and openness,” and the “distribut[ion] [of ARRA funds] in an equitable, fair and non-discriminatory manner.”

Chair Biben led an initial meeting of the Panel under the new Executive Order on February 3, 2011. Attending were Panel members New York State Division of Human Rights Commissioner Galen Kirkland, Metropolitan Transportation Authority Inspector General Barry Kluger, and then New York State Medicaid Inspector General James Sheehan. This meeting included the Panel’s “Working Group,” comprised of employees of each Panel member’s office, specifically executive staff, senior attorneys, investigators and auditors possessing specialized knowledge of construction, contracts, health care fraud and human rights issues to determine the focus of their work for the coming year.

An analysis of New York State’s receipt of ARRA funds was undertaken by Chair Biben to assess where the majority of the money had been allocated. The chart below identifies four programs that constitute the bulk of the state’s appropriation of stimulus monies: labor, transportation, education, and health and social services. After a presentation by Chair Biben, the Panel agreed that those four program areas would be the primary focus of the Working Group in 2011.



**SUMMARY**

This report covers the continued efforts of the Oversight Panel to monitor spending of the more than \$31 billion in federal stimulus funds spread out across New York State in such areas as transportation and infrastructure, human services, labor and education, among others.

All of New York’s ARRA funds have been allocated to specific projects and programs with portions subject to additional oversight and auditing measures by respective agencies. The Panel’s work, while monitoring direct spending on various initiatives, also includes reviews of audits performed on ARRA-related spending. At the same time, Chair Biben and the Panel continue to work with local, state and federal law enforcement partners on various ARRA-related investigations.

The following outlines much of the work undertaken by the Panel over the past year, some of the specific findings, and some prospective initiatives to continue its charge of assuring accountability and transparency with regard to the state’s spending of ARRA funds.

## **THE WORKING GROUP**

The Working Group has met on a regular basis, chaired by First Deputy Inspector General Catherine E. Leahy-Scott, and initiated plans for providing further oversight in the four areas noted above. Additionally, the Working Group has investigated allegations of wrongdoing related to the state's ARRA funds received through the Stimulus Complaint hotline;<sup>1</sup> has met with state ARRA recipients; and has undertaken various proactive initiatives.

### ***A. Labor***

In order to address the Panel's focus on labor programs in receipt of ARRA funds, the Working Group met with representatives from the New York State Department of Labor (DOL) to discuss the Workforce Investment Act (WIA). WIA programs are funded by ARRA and implemented by DOL. WIA programs seek to coordinate and improve employment, training, literacy, and vocational rehabilitation as well as increase employment, retention, and earnings of participants. As a result, these programs improve the quality of the workforce, reduce welfare dependency, and enhance productivity and competitiveness. DOL stated that there are 33 local workforce areas throughout New York State. Most workforce areas have expended WIA funds on training. DOL implemented a two-phase audit of these local workforce areas. The first phase commenced in April 2009 completed 22 audits. The second phase, which commenced January 2010 and is ongoing, seeks to complete eight additional audits, including the New York City area, the area in New York State with the greatest proportion of ARRA funding. Weaknesses identified as a result of the audits conducted by DOL include procurement issues, back-up documentation, and monitoring of subcontractors. DOL established corrective action plans for the affected local workforce areas. The Inspector General will assist DOL, when requested, with the second phase of the audits, continue to monitor the WIA programs receiving ARRA funds, and ensure adherence to corrective plans.

### ***B. Transportation***

The Working Group also met with the United States Department of Transportation Inspector General Special Agent-in-Charge, whose geographical jurisdiction includes New York State. Efforts were discussed to prevent and detect labor racketeering, minority/women-owned business enterprise fraud, and prevailing wage abuse, among other issues. As this endeavor is ongoing and involves confidential

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<sup>1</sup> Allegations of alleged corruption, fraud, criminal activity, conflicts of interest, abuse or discrimination should be sent directly to the Office of the Inspector General. Complaints can be made by phone (1-800-DO-RIGHT or 1-800-367-4448), e-mail [inspector.general@ig.state.ny.us](mailto:inspector.general@ig.state.ny.us), or by written letter to: State Inspector General, Empire State Plaza, Agency Building 2, 16th Floor, Albany, New York 12223. Complaints can also be completed through the State Inspector General's Web site: <http://www.ig.state.ny.us/complaints/fileComplaint.html>.

investigations into certain programmatic areas and entities that received ARRA funds, a more detailed description of these efforts is not appropriate at this time.

The Metropolitan Transportation Authority Inspector General (MTA IG) made a presentation to the Working Group relative to construction fraud. The presentation educated the Working Group regarding common types of fraud such as bid rigging, collusion, false claims, disadvantaged-business fraud, and prevailing wage violations.

### ***C. Education***

The Working Group, in an effort to address ARRA funding for education, met with representatives of the United States Department of Education Inspector General's Office (USDOE IG). The USDOE IG informed the Working Group it is conducting an audit of New York State Education Department programs funded by ARRA. Technology funding, school improvement grants, and school construction contracts were discussed. The Working Group will review the USDOE IG's audit results, when available, and conduct follow-up investigations as necessary.

### ***D. Health and Social Services***

The Working Group met with staff of the New York State Department of Health (DOH) to review ARRA funding received by DOH. DOH described six program areas which receive said funding including Medicaid, Drinking Water, Immunizations, Early Intervention, WIC, and State Primary Care programs. DOH described methods of accountability of these programs and the employment of outside monitors for programmatic oversight. The agency identified vulnerable areas. DOH is conducting audits of these programs and will share the results with the Working Group.

### ***E. New York State Agencies in Receipt of ARRA Funds***

The Working Group has met to examine the use of ARRA funds by all recipient New York State agencies, and has coordinated with other state and federal law enforcement entities responsible for the oversight of ARRA funds. As of December 31, 2010, the Working Group conducted meetings with 24 state ARRA recipients and other relevant oversight agencies. The Working Group identified 10 additional state agencies that had received stimulus funds and since January 1, 2011 has sought to meet with each agency. The following chart lists the completed meetings as of December 31, 2010, and those agencies that the Working Group planned to meet with in 2011.

<b>Completed Meetings:</b>	<b>Remaining Agencies:</b>
Division of Housing & Community Renewal	Department of Agriculture & Markets
NYS Education Department	Office of Alcoholism & Substance Abuse Services
Department of Health	Council on the Arts
Metropolitan Transportation Authority	City University of New York
Department of Transportation	Department of Correctional Services
Office of Temporary & Disability Assistance	Office of General Services
Department of Environmental Conservation	Office of Mental Health
Environmental Facilities Corporation	Division of Military and Naval Affairs
NYS Energy Research & Development Authority	Office for People with Developmental Disabilities
State University of New York	Office of Victim Services
Department of Labor	
Department of State	
Office of Children & Families	
Department of Homeland Security	
Higher Education Services Corp.	
Division of Criminal Justice Services	
Department of Parks	
State Office for the Aging	
Public Service Commission	
NYS Police	
NYC Comptroller's Office	
U.S. General Accountability Office	
Federal Inspectors' General & U.S. Attorney (SDNY & EDNY)	
U.S. Department of Energy	
<b>24</b>	<b>10</b>

As planned, the Working Group met with officials from the state Department of Agriculture and Markets, Council on the Arts, Office of Victim Services, Division of Military and Naval Affairs (DMNA), Department of Correctional Services (now the Department of Corrections and Community Supervision, or DOCCS), Office of General Services (OGS), Department of Health (DOH), and the City University of New York (CUNY). Each agency provided an overview of its use of ARRA funds and the internal controls in place to prevent fraud. It was determined that meetings with representatives of the Office of Alcohol and Substance Abuse Services, Office of Mental Health, or Office for People With Developmental Disabilities were not necessary as these agencies did not receive ARRA funds or stimulus funding was provided to their programs through another agency.

During these meetings, the Working Group established the following:

- The Department of Agriculture and Markets' expenditure of ARRA funds was limited and totaled less than \$15,000. These funds went to fish hatcheries that applied for monetary relief for certain documented losses sustained in previous years. The remaining unspent allocated funds of approximately \$49,000 were returned to the federal government.
- The Office of Victim Services used its ARRA money to supplement existing funds used to compensate crime victims through two established programs: Victim Compensation and Victim Assistance. As of December

2010, the Office of Victim Services reported that it had disbursed approximately \$2.7 million to crime victims through its Victim Compensation program and another \$1.79 million to various not-for-profit agencies that assist crime victims through its Victim Assistance program.

- DOCCS is using over \$5 million in ARRA funds that it received through a grant from the Division of Criminal Justice Services to provide “digital literacy” programs in 40 prisons, which is expected to provide computer training more relevant to the current job market to inmates. Additionally, DOCCS has allocated nearly \$800,000 toward enhancing its education programs for offenders who are less than 21 years of age with developmental or learning disabilities through the purchase of instructional hardware and software, as well as additional staff development.
- OGS received approximately \$4.9 million in ARRA funds which were utilized for the Emergency Food Assistance Programs (EFAP). ARRA provided additional funding to this existing program which made assistance available to a greater target population in need. OGS conducted an audit and identified irregularities relative to reporting and documentation requirements. The Inspector General is conducting an investigation of these irregularities and will report findings upon completion.
- CUNY received \$13.73 million in 2010 and \$32 million in 2011 which was utilized for education stabilization funds and government services funds benefiting six community colleges. Receipt of ARRA funds enabled CUNY to reduce the rate of tuition increases implemented in 2010. Funds were also utilized to support the cost of instruction provided by part-time faculty. CUNY reported that 636 part-time faculty remained employed as a result of ARRA funds. CUNY established an internal financial management system to account separately for the use of ARRA funds. It also conducted an audit which found proper controls in place over ARRA fund expenditures.
- DMNA has allocated over \$7 million towards seven capital projects, including three at Camp Smith. The Inspector General conducted random site visits to monitor these capital projects, as discussed in detail below.
- The New York State Council on the Arts awarded almost \$400,000 in grants to 28 arts or cultural organizations across the state to preserve specific positions that were threatened due to the economic downturn. The Inspector General conducted a random site visit to verify expenditures as represented by the Council, also as discussed below.

#### ***F. New York State Internal Control and Fraud Prevention Working Group***

The Working Group met with representatives of the New York State Internal Control and Fraud Prevention Working Group. This group was established in April 2009 to provide state agencies with help in meeting the ARRA requirements and to provide information to improve agencies' internal controls. The Internal Control and Fraud Prevention Working Group is currently working toward compiling best practices and "lessons learned" from staff within state agencies responsible for internal controls and oversight of stimulus expenditures. The Working Group is assisting the Internal Control and Fraud Prevention Working Group in this endeavor.

#### **THE NEW YORK STATE INSPECTOR GENERAL**

The New York State Inspector General continues to host regularly scheduled working group meetings, prepares the agenda, schedules participants, and serves as the investigative body of New York State designated to receive complaints regarding the misuse of ARRA funds. When the Inspector General receives complaints, the germane issues are shared with the Working Group. Currently, the Inspector General is conducting a number of complex investigations involving the misuse of stimulus funds. Several of these investigations are being conducted cooperatively with local, state and federal prosecutorial and investigative agencies.

The State Inspector General has expended considerable resources in reviewing weatherization grants administered by the New York State Division of Housing and Community Renewal (DHCR). DHCR distributed these funds through a network of 66 community action groups throughout the state. The Inspector General's office initiated a fraud awareness training program to better inform employees of these community action groups participating in the Weatherization Assistance Program (WAP) in the detection and prevention of fraud in regard to ARRA funds. To date, the Inspector General has provided fraud awareness training to 1,120 individuals in all 66 community action groups. This training has resulted in an increase in the number of complaints received by the Inspector General pertaining to WAP. Investigations have been described in previous reports. The Inspector General continues to monitor and investigate matters in this area. Investigations are ongoing and details will be provided in future reports.

As a result of the oversight authority and jurisdiction inherent in the Governor's Executive Order and presentations made by agencies in receipt of ARRA funds, the Inspector General conducted further investigations into agencies which expended such funds to ensure they are consistent with representations made to the Working Group as well as comply with the mandates of ARRA. The results of those investigations are as follows:

### ***A. Inspection of DMNA's Camp Smith Construction Projects***

On March 17, 2011, the Working Group met with the New York State Division of Military and Naval Affairs (DMNA) to discuss its receipt, distribution and oversight of stimulus funds provided pursuant to ARRA. Attending this meeting from DMNA were Robert A. Martin, Director of Management and Budget; Jennifer Winters, Senior Internal Control and Audit Specialist; and Kathy Phillips, Facilities and Engineering Resources Management Officer. Additionally, since the Office of General Services (OGS) is involved in the contract process and payment of funds on behalf of DMNA, representatives from OGS were present as well. They included Carl Ruppert, Contract Management Specialist; John D. Lewycky, Director of Contract Administration; and Pierre L. Alric, Jr., Contract Payment Audit Group Manager.

The Inspector General conducted a site visit at Camp Smith in Cortlandt Manor, New York, to inspect work that had been performed pursuant to several ARRA contracts totaling approximately \$5.5 million. Additionally, the Inspector General interviewed representatives of DMNA and OGS who oversaw the project at Camp Smith. These included Colonel Mark Warnecke, Camp Smith Post Director, and Major David Palmieri, U.S. Army National Guard Installation Manager. Investigators also spoke with Vincent Tuttle and John Husted of the OGS Design and Construction Group, and Kareem Ghobrial and David LeTour, OGS consultants. ARRA funds were utilized on three projects at Camp Smith:

1. Replacement of a retaining wall and roadway rehabilitation of Camp Smith Road;
2. Barracks renovations in Building 504; and
3. Barracks renovations in Building 505.

Camp Smith Road contains approximately 1,000 feet of inclined blacktop roadway which serves as the only ingress and egress to the Camp from State Route 6. Due to the roadway's incline and elevation, it is supported by a retaining wall along much of its length. The previous retaining wall had been failing over the past several years. As a result, Camp Smith Road began to crack and separate, presenting a risk of total roadway failure. Additionally, the original roadway was not built to accommodate the larger and heavier military vehicles currently in use, which may have contributed to the roadway's failure.

In July 2009, Hirani Construction Management (Hirani) of Jericho, New York, was awarded an approximately \$1.6 million contract (Contract 43337C) to replace the wall and rehabilitate the roadway. Hirani's bid of \$1,587,690 was initially not the lowest; however, the two lower bidders, both from Westchester County, were either disqualified or voluntarily removed themselves from the process. Hirani performed some work itself and used subcontractors and certified Minority/Women-owned Business Enterprise (M/WBE) subcontractors in an attempt to complete the project.

*Camp Smith Road and retaining wall depicted in March 2011.*



The Inspector General examined certified payrolls submitted by subcontractors for payment for work performed. OGS and DMNA advised that they were satisfied with the work and their dealings with Hirani and subcontractors. One subcontractor, Chesterfield Associates, reported a payment issue with Hirani for work it claimed was performed; however, the Inspector General was informed the matter was resolved to the satisfaction of OGS. As of the date of the Inspector General's onsite inspection, all work had been completed on the project, as seen in the above photographs.

The other projects inspected by the Inspector General involved the rehabilitation of Camp Smith's Buildings 504 and 505, both of which contain military barracks. For each renovation project four separate contracts were awarded: Building 504 Contracts 43936C, 43936H, 43936P, and 43936E; and Building 505 Contracts 43935C, 43935H, 43935P, and 43935E. The contracts were delineated by type of work to be performed:

- Construction
- Electrical
- Heating, Ventilation, & Air Conditioning (HVAC)
- Plumbing

For the purpose of this report, Building 504 and 505 are identical. The buildings are two-story military barracks with kitchens built several decades ago. The contracts called for an updating of kitchen and eating areas, installation of centralized air-conditioning and heating systems (HVAC), installation of an exterior insulation finishing system (EFIS), and the installation of gutters and drainage systems on both buildings.

Although there were two distinct competitive bidding processes for the Building 504 and Building 505 projects, contracts for each building were ultimately awarded to the same contractors. During the onsite inspection, the Inspector General found that the work was substantially completed.



The Inspector General confirmed the installation of new air conditioning units, as depicted above.

The Inspector General conducted a more detailed investigation relative to the DMNA Buildings 504 and 505 contracts which included interviews of witnesses and reviews of numerous documents. Notably, the Inspector General found that several addenda were made to the initial contract and several change orders placed for modifications to work, materials and labor. These were in addition to contingency funds set aside for both buildings. For example, a \$133,230 subcontract was awarded to paint ceilings and walls in the barracks of both buildings. Neither OGS nor the DMNA officials could identify who requested the additional painting work performed, nor could they explain why it was not part of the original bid. An investigation into this matter as well as other issues identified during the Inspector General's review of the three Camp Smith ARRA-funded projects is continuing.

### ***B. Council on the Arts***

On March 3, 2011, the Working Group met with the Council on the Arts to discuss its receipt, distribution and oversight of stimulus funds under ARRA. Attending this meeting were the Council's Executive Director Heather Hitchens, Deputy Director of Programs Megan White, and Public and Governmental Affairs Associate Matthew Jackson.

The Council was awarded a total of \$399,900 by the National Endowment for the Arts to administer stimulus funds in New York State. According to the Council, these funds were to be used exclusively for the preservation of positions in cultural organizations that were threatened due to the economic downturn. A total of 384 applications for funding were received by the Council. Each application was initially reviewed and evaluated by Council staff on June 15, 2009, with 60 applications forwarded to a Council Peer Review Panel for further evaluation. The Peer Review Panel

met on June 23-24, 2009, and recommended 28 applications for grant awards. On June 30, 2009, the Council's Governing Council voted to accept the recommendations of the Peer Review Panel, and 28 cultural organizations were approved to receive stimulus grants ranging from \$10,000 to \$20,000.

The Inspector General conducted a review of the Council oversight process, and selected a grant recipient at random, the Lower Manhattan Cultural Council, for further review. The Lower Manhattan Cultural Council was awarded a grant to preserve the full-time status of a Program Manager in the Council's Artists Residencies Program. As part of its review, the Inspector General examined documentation provided by the Council with respect to its oversight process and also conducted a site visit to the Lower Manhattan Cultural Council.

The Inspector General's review, which included meeting with Council on the Arts executive staff, examining voluminous documents, conducting an onsite visit and review of a grant recipient selected at random, found no deficiencies in the Council's management and oversight of its ARRA funds.

### **OFFICE OF THE MEDICAID INSPECTOR GENERAL**

The New York Office of the Medicaid Inspector General (OMIG) identifies and investigates fraud, waste and abuse in the New York State's Medicaid program. OMIG's Division of Medicaid Investigations (DMI) works to protect the integrity of the Medicaid program by preventing instances of improper Medicaid payments before they are made, and also by recovering inappropriate payments made to providers.

Pursuant to ARRA, the U.S. Department of Housing and Urban Development (HUD) was authorized to dedicate funds for Homelessness Prevention and Rapid Re-Housing Programs (HPRP), including: short term or medium term rental assistance, housing relocation and stabilization services, mediation, credit counseling, utility payments, moving costs assistance, case management or other activities for homeless prevention for persons who have become homeless or who are at risk for losing their housing. HPRP is administered through the New York State Office of Temporary and Disability Assistance (OTDA) which oversees family and single shelters for the homeless operated by local social services districts and not-for-profit organizations. Contracts awarded under this program are 100% ARRA funded.

During the last quarter of OMIG's participation in the Stimulus Oversight Panel, OMIG conducted an extensive review of OTDA HPRP contract number C020892 in the amount of \$900,000.00, with a contract term of October 1, 2009 through July 31, 2011, granted to Medicaid provider Project Hospitality, Incorporated (PHI). PHI is a not-for-profit community-based agency, located primarily on Staten Island and provides housing related services. The primary focus of the review was on the systems and internal controls set up by PHI to identify and account for the ARRA funds allocated in the contract. In addition, the review would determine if the proper reports were being filed on a timely basis with the appropriate state and federal authorities.

***A. Project Hospitality, Incorporated - Fiscal Review***

PHI finance personnel were contacted at their corporate headquarters and they provided the following documentation: ARRA contract, Request for Proposals (RFP), quarterly reports required by ARRA, payment vouchers, general ledger detail, bank statements, budget documents, client rosters and client requisition files. Finance personnel advised that PHI funds or administers 40 different programs. Each different program is assigned a fund code which allows PHI to track expenditures of individual funds throughout the general ledger chart of accounts. Payments are never made directly to clients. Instead, they are made to landlords, real estate companies, utility providers or other entities providing housing services for the client. This system was tested by randomly tracing payments made on behalf of clients from the general ledger detail to the bank statements and the related requisition documents on file. No discrepancies were noted.

***B. Project Hospitality, Incorporated - Homelessness Prevention and Rapid Re-Housing Programs - \$65,000.00 Loan***

All contracts that are let using ARRA funds must include a “Stimulus Rider” (Rider A) which sets forth in part the following specific vendor obligations:

1. The vendor will post any jobs created as a result of stimulus funding through the New York State Department of Labor (DOL).
2. The vendor will maintain detailed records of their expenditure of ARRA funds and submit reports as requested by the State of New York.
3. The vendor is responsible for holding all sub grantees to the above reporting requirements.
4. The vendor needs to identify in the signed contract all of their funding sources.

On January 13, 2011, the PHI HPRP fund required a \$65,000.00 loan from PHI’s own General Operating Fund. PHI fiscal staff explained that PHI is only allowed to bill OTDA quarterly to recoup HPRP ARRA expenses; therefore, they need to use the loan as a cash float until the contract term ends on July 31, 2011 and they are fully reimbursed by OTDA. If PHI is unable to repay the \$65,000.00 loan to General Operating Fund, this liability could be considered an unidentified source of funds and be in violation of obligation number 4 of the Stimulus Rider.

PHI was aware that they could only bill OTDA for ARRA expenses on a quarterly basis and therefore, should have prepared a more realistic twenty-two month budget for the term of the contract. PHI may benefit in the future by preparing shorter term budgets for internal purposes.

### ***C. Project Hospitality, Inc. - Program Review***

In addition to the fiscal review, PHI program personnel were contacted at a PHI client walk in center where client program files are maintained. This review focused on several key HUD mandates for the HPRP including client eligibility and assessment, housing habitability standards, client quarterly performance reports and reporting of client level data in the local Continuum of Care Homeless Management Information System (HMIS). Twelve clients selected at random during the fiscal review were also selected for program testing. Client files were pulled by program staff and reviewed in detail by OMIG. For the most part, files appeared to be complete, with checklists setting forth required documentation such as identification and income verification documents, intake/assessment forms, progress notes, habitability standards documents, necessary certifications, program status forms and correspondence related to individual client issues. Program staff advised that client level data is uploaded into the HMIS on a quarterly basis. A copy of the fourth quarter, 2010 report was provided for review.

### ***D. Project Hospitality, Inc. - Patient Program File Review***

PHI created and maintained client program files in individual binders. Within each binder were the client's records from intake to program completion. Of the twelve client program files that were reviewed at the time of the audit only one yielded further clarification. As per the rules and regulations of the program, clients are required to check in with their Case Manager on a weekly to bi-weekly basis. Clients are also expected to supply PHI with current paystubs and employment information. The Case Manager's notes for this particular client showed that the individual was continually non-compliant with providing paystubs and with maintaining contact with PHI personnel. As per the notes, the Case Manager escalated the situation by sending several letters of warning and a letter terminating the client from the program due to non-compliance. This termination letter coincided with the end of this client's lease term. Due to this, the client was given a "successful completion" of the PHI program. Program staff advised that Case Managers prefer to use positive terminology when referring to clients, regardless of any negative issues. Program staff further stated that the termination process was not complete by the end of the lease term which allowed PHI to mark this particular client down as successfully completing the program.

OMIG will determine the impact, if any, of the reimbursement of ARRA funds for clients who do not successfully complete the program during the lease term.

## **METROPOLITAN TRANSPORTATION AUTHORITY INSPECTOR GENERAL**

The MTA Inspector General's Office has continued to attend construction kickoff meetings on all ARRA projects. As previously reported, one of the purposes of those meetings is to tell contractors, in the presence of MTA staff, that making a false statement on a DBE Progress Report or certified payroll is a serious crime. Contractors are also advised that the MTA IG is working closely with the U.S. Department of

Transportation Office of Inspector General to detect DBE fraud and that contractor's reports and change orders are scrutinized.

The MTA IG Construction Fraud Unit has also continued its construction-site inspection program. MTA IG staff members appear unannounced at job sites to ensure compliance with legal and contractual obligations, including appropriate materials, safety obligations, prevailing wage compliance, use of identified subcontractors and site security. MTA IG investigators also interview workers on the site to determine the identity of their employers, whether they are being paid the prevailing wage and whether they have the proper identification and track training cards. Investigators further examine materials to determine the name of the companies they are shipped in order to ensure that the proper contractors are, in fact, performing the work.

As of this report, the MTA IG Construction Fraud Unit has attended 27 Progress Meetings and conducted four site inspections on ARRA jobs the first quarter of 2011.

### **THE NEW YORK STATE DIVISION OF HUMAN RIGHTS**

The Division of Human Rights (DHR) continued to make progress with its long-discussed data tracking program, as reported in the Stimulus Panel's previous Quarterly Reports. In early April 2011, the Department of Transportation (DOT) provided the state's Chief Information Officer/Office for Technology (CIO/OFT) with more than 4,000 records for contractor and subcontractor employees that will allow DHR to measure whether employment goals and civil rights compliance regarding race, gender, ethnicity and other protected classes of stimulus-funded employees are being achieved.

The findings of this data analysis will allow DHR to execute more fully the mandate under the Governor's Executive Order No. 31, paragraph six, to serve as the civil rights monitoring unit for expenditure of ARRA funds.

As previously described, this final review of DOT data currently underway — which represents some \$1.1 billion in federal funds or three percent of the total sent to New York — will permit us to finalize and distribute templates to all 26 state agencies that received ARRA grants. Those agencies will utilize the reporting system, with minimal expenditure of resources, to demonstrate their measure of compliance with the civil rights mandates of the Executive Order as well as the state Human Rights Law, Title VII of the federal Civil Rights Act, and other regulations outlawing discrimination in employment against members of protected classes. Without this innovative computer program, the 26 agencies may have been forced by federal regulators to undertake more difficult actions to demonstrate compliance.

As CIO/OFT works through the final revisions of the computer program, DHR plans to systematically add other agency data, starting with ARRA recipient agencies that have more sophisticated computer contractor records and manage larger construction projects. With this data, the DHR believes that the usefulness of this program will be recognized by other agencies and full reports will be available in the coming months.

The system will report, for specific projects and contracts, information about employees in classes protected from discrimination and prevailing wages paid to these workers. Both the funding agency and DHR can monitor compliance with the civil rights laws by comparing employment of workers in protected classes with goals applicable under specific funding grants, and by comparing workforce information to labor availability in the geographic area or other appropriate labor pools. Variances identified by these comparisons will be investigated for possible discrimination or non-compliance with civil rights laws. Both the funding agency and DHR will be able to map data about contracts, grants and employment so that they can determine whether communities are receiving the benefits of public expenditures on a non-discriminatory basis. Although initially designed for stimulus-funded projects and contracts, this system can be used by all state agencies that contract or fund projects resulting in employment.

The computer program will also be expanded to provide an essential component of mapping work to determine whether spending was properly directed to the most economically challenged areas in the state, as contemplated under ARRA. As a monitoring tool for compliance and an element of planning for and awarding public contracts, the program will be the most progressive in the nation.

This system will be a significant contribution to recently announced state initiatives to expand M/WBE programs and monitoring. This system goes beyond classification of contractors and drills down to the employee level. This is important for a number of reasons. First, it furthers the goals of equal opportunity to all not just contractors but also workers. Second, as an anti-fraud device it will also assist in identifying suspect M/WBE contractors (“straw companies”) by providing measurements of the workforce. If an M/WBE contractor has a non-diverse work force, they are probably worth some scrutiny as to whether they are legitimate.