AUDIT OF THE INCOME, EXPENSES, AND DISTRIBUTIONS OF THE OVERLAND NATIONAL LAND FUND LIMITED PARTNERSHIP, MONROVIA, CALIFORNIA

Audit Report No. 00-008
March 20, 2000

OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

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FDIC
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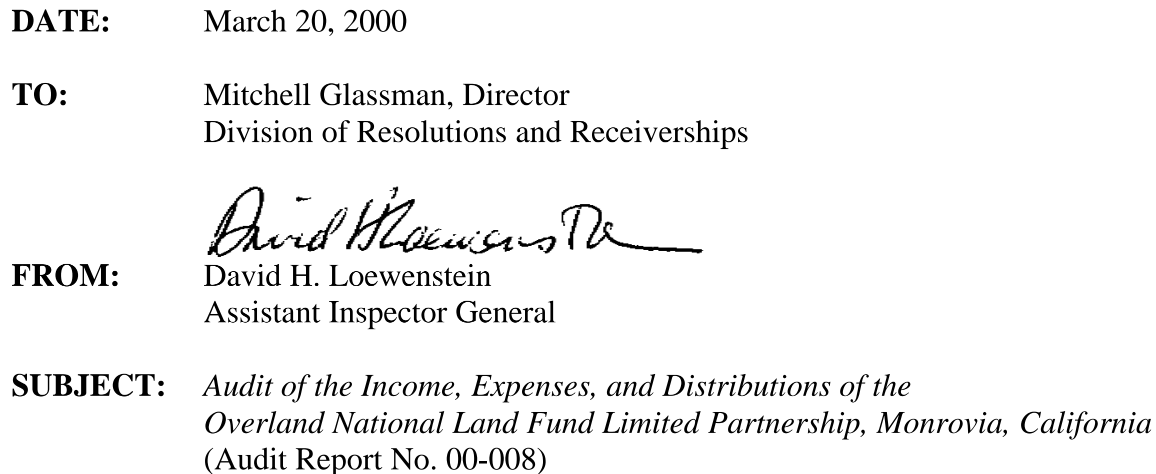

DATE: March 20, 2000

TO: Mitchell Glassman, Director
Division of Resolutions and Receiverships

FROM: David H. Loewenstein
Assistant Inspector General

SUBJECT: *Audit of the Income, Expenses, and Distributions of the Overland National Land Fund Limited Partnership, Monrovia, California* (Audit Report No. 00-008)

The Office of Inspector General (OIG) has completed an audit of the Overland National Land Fund Limited Partnership (Partnership). The Partnership consists of Overland Land Fund II L.P. of Monrovia, California (General Partner), and the Resolution Trust Corporation (RTC,[1] or Limited Partner). The Partnership was created on November 17, 1994 as one of six partnerships established as part of the RTC's Land Fund II sales initiative.[2] The purpose of the Partnership was to maximize the net amounts realized by the Partnership from the orderly disposition of 75 Partnership assets.

The FDIC Division of Resolutions and Receiverships (DRR) Agreement Management Group contacted the OIG to request an audit of the Partnership. DRR officials responsible for the oversight of the Land Fund II initiative wanted assurance that the General Partner was complying with the terms of the limited partnership agreement (Agreement). DRR officials were also concerned about the General Partner's lack of timeliness in submitting periodic financial reports to the FDIC as required by the Agreement.

[1] In accordance with the RTC Completion Act of 1993, the RTC ceased to exist on December 31, 1995. Responsibility for all RTC-related work transferred to the FDIC as of January 1, 1996.

[2] Other Land Fund II-related reports issued by the OIG include report numbers 96-123, 96-125, 96-127, 96-139, 96-154, and 96-167. Report number 96-127, entitled, "*Income, Expenses and Distributions of Overland National Land Fund, LP,*" was an audit of partnership activity from November 1994 through December 1995.

BACKGROUND

The RTC designed the Land Fund II initiative to dispose of performing, non-performing, and sub-performing mortgage land loans and real estate. The RTC developed this initiative to be able to contribute assets to limited partnerships while retaining a partnership interest and benefiting from future sales and collections.

The Land Fund II initiative included real estate and loan collateral concentrated in California, Texas, New Jersey, Virginia, and Florida. The RTC National Sales Center in Washington, D.C., allowed bidders to bid on 15 pools of assets. The RTC formed limited partnerships with the general partners who successfully bid on one or more of the 15 pools of assets. In return for their cash contribution, the general partners received a percentage interest in the partnership while the RTC retained the remaining interest as a limited partner.

The RTC selected Overland Land Fund II L.P. as the General Partner for 5 of the 15 asset pools. In consideration of its cash contributions and marketing effort, the General Partner received a 25 percent interest in future Partnership equity distributions. The RTC retained the remaining 75 percent interest as the Limited Partner for its contribution of loans and real estate. This 25/75 ratio continued until September 1998 when the partners received equity distributions equal to their respective initial contributions. From that point on, the Agreement required the Partnership to allocate equity distributions 50/50 between the partners.

In December 1994, the RTC retained Aldridge, Eastman, and Waltch (AEW) to assist in DRR's oversight responsibilities and to protect the Limited Partner's interest in the Land Fund II partnerships for the life of the partnerships. Generally, AEW's duties included monitoring the actions of the General Partner and ensuring that the General Partner complied with the Agreement. This monitoring included reviewing financial information, budgets, business plans, and progress reports prepared by the General Partner. AEW's contract required that it notify DRR of any actions needed to enforce the Limited Partner's rights under the Agreement.

OBJECTIVES, SCOPE, AND METHODOLOGY

We performed an audit of the Partnership for the period of January 1, 1996 through March 31, 1999. Our objectives were to determine whether the General Partner (1) properly reported and adequately supported Partnership income, expenses, and equity distributions and (2) could enhance the timeliness of its reporting to the Limited Partner.

We interviewed key personnel from DRR and AEW to obtain an understanding of how they monitor the interests of the Limited Partner. We consulted with the FDIC Legal Division to obtain legal interpretations of the Agreement. We also requested the assistance of the FDIC Division of Finance (DOF) so that we could compare equity distributions reported by the Partnership to FDIC records. We interviewed key personnel of the General Partner to obtain an understanding of Partnership operations. We reviewed the documentation to support Partnership transactions. We also tested the

General Partner's reconciliations of the Partnership's cash accounts per the general ledger to the bank for the entire audit period.

To determine whether the General Partner accurately reported income, we reviewed the supporting documentation, such as settlement statements and proceeds checks, pertaining to the sales of 10 sampled assets. We traced the gross sales proceeds per the settlement statement to the general ledger and traced the net sales proceeds to the deposits recorded on the general ledger. We verified the mathematical accuracy of the settlement statements and further examined any unusual items.

To determine whether the General Partner charged the Partnership for allowable and adequately supported expenses, we judgmentally selected a sample of expenses that we deemed to be vulnerable to noncompliance. Our sample expenses were charged to 10 sampled assets. Five of these 10 assets were included in our sample because DRR and AEW requested specifically that we review the expenses charged to these assets. We selected the remaining five assets for our sample because of the large dollar amount of expenses charged to the Partnership for these assets. For each expense charged, we compared the purpose of the expense to section 5.03 of the Agreement to determine whether the expense was allowable. We also determined whether invoices or other acceptable forms of evidence supported the section 5.03 expenses.

For fees paid to certain contractors (e.g., developers, consultants, project supervisors) the General Partner did not always produce invoices to support the payments. In cases where such support was missing, we reviewed the contracts between the General Partner and the contractors. Although we did not audit the contractors' compliance with such contracts, we determined whether the amounts charged and the services provided were allowable and adequately supported by the contract.

We also tested transactions to determine whether the General Partner charged the Partnership for any prohibited affiliate transactions. To accomplish this task, we identified the names of the General Partner's employees, the primary vendors used by the Partnership, and the General Partner's investors. We obtained the public records of the businesses owned by the General Partner, vendors and investors. With this information, we analyzed the business relationships between the parties to determine whether there were commonalities.

We also tested the accuracy of the monthly calculations for the non-accountable expense allowance (5.02 expenses) charged to the Partnership during our audit period. Section 5.02 of the Agreement allowed the General Partner to receive a monthly non-accountable expense allowance from Partnership funds. The purpose of the allowance was to help the General Partner offset the costs of performing its General Partner duties. The calculation of the allowance was based on a formula using the values of Partnership assets still owned by the Partnership at the end of each month. We tested whether the General Partner used the proper asset disposition dates in the calculations and verified the accuracy of the calculations.

To review equity distributions, we tested whether the General Partner's records supported the cash distributed to DOF and to the Partnership's cash accounts. We also determined whether the General Partner distributed the cash on a timely basis. We verified the mathematical accuracy of the

distributions and tested whether the partners' interest ratio properly transitioned from 25/75 to 50/50 in September 1998. Table 1 summarizes the income, expense, and distribution amounts reviewed.

Table 1: Income, Expense, and Distribution Amounts Reviewed

	Total Amounts ($)	Amounts Reviewed ($)	Percent Reviewed (%)
Income	61,430,632	42,708,361	70
5.03 Expenses	53,681,628	7,390,962	14
5.02 Expenses	645,497	645,497	100
Equity Distributions	30,124,024	30,124,024	100

Note: Income and expenses are for the period of January 1, 1996 through March 31, 1999. Distribution amounts are from March 1, 1996 through March 31, 1999.

Source: Audited Annual Financial Statements for the periods ending December 31, 1996, December 31, 1997, December 1998, and the unaudited financial statements for the quarter period ending March 31, 1999. In addition, amounts reviewed were taken from OIG analysis of data provided by the General Partner for income, expenses, and equity distributions.

Regarding DRR's concern over the General Partner's lack of timeliness in submitting required reports, we consulted with the General Partner, DRR, and AEW; analyzed the content of the reports; and assessed the value provided to DRR resulting from these reports.

The audit did not encompass a review of the General Partner's internal controls over Partnership transactions because we concluded that we could meet the audit objectives more efficiently by conducting substantive tests. We performed the audit fieldwork at the General Partner's offices in Monrovia, California, and at FDIC offices in Washington, D.C. We performed the audit from May 20, 1999 through October 6, 1999 and in accordance with generally accepted government auditing standards.

RESULTS OF AUDIT

Overall, the General Partner properly reported and adequately supported Partnership income, expenses, and distributions. However, we identified instances where the General Partner charged $302,025 of unallowable or unsupported transactions to the Partnership. Of this amount, the FDIC's share is $151,012, of which $102,212 is unsupported. We also identified ways that the General Partner could streamline its reporting process to enhance the timeliness of the preparation and delivery of the required reports to the FDIC.

GENERAL PARTNER CHARGED UNALLOWABLE AND UNSUPPORTED TRANSACTIONS TO THE PARTNERSHIP

The General Partner charged $97,600 in unallowable transactions and $204,425 in unsupported transactions, totaling $302,025 to the Partnership. The FDIC's share of these transactions is

$151,012, or 50 percent. A discussion of the eight separate categories on which we based our recommendations follows.

General Partner Could Not Always Support Payments to Contractors

The General Partner could not always support amounts it charged to the Partnership for payments to contractors. Additionally, the General Partner had a contract in place with one contractor to provide services for a specified period but continued to pay the contractor after the contract term had expired. Consequently, we were unable to determine the propriety of the General Partner's expenditure of $189,192 of Partnership funds.

We tested a sample of payments to contractors totaling $5,137,110 charged to 10 sampled assets during the audit period. The General Partner did not always require the contractors to submit invoices for these contracted services. Instead, the General Partner paid the contractors on a scheduled fixed fee basis without invoices. Therefore, in cases where invoices did not exist, we reviewed the actual contracts between the General Partner and the contractors. Our review consisted of: (1) reviewing the contracts to determine the extent of the work required, (2) ensuring that all parties signed the contract, (3) determining whether the purpose of the expense was consistent with the contracted services, (4) comparing the timing of the payments to the contractors with the contract period, and (5) reconciling the amount and frequency of payments to the terms of the contract. It was not our intention to determine whether the contractor had satisfied all of the terms of the contract.

For three assets, we found instances of unsupported payments to contractors. In the first instance, the Partnership contracted with various individuals to provide "homeowners association services" for a real estate development asset. However, the General Partner never created a formal contract with the individuals to specify the scope of work required or the payment terms. Therefore, because there was no documentation to describe the required services or the basis for payment, we could not determine whether the services or the payments, totaling $169,230, were valid Partnership expenses.

The General Partner also did not provide a contract to support consulting services totaling $9,500 for another development asset. We could not determine the specific nature of the consulting services provided without a contract. This $9,500 was charged to a general accounting code entitled, "Other Consultants." Therefore, we consider these costs to be unsupported.

Finally, the General Partner continued to pay a contractor after his contract term had expired. The General Partner hired a construction consultant to provide services from May 16,1997 through May 16, 1998 for a housing development asset. The General Partner paid $10,462 to the contractor after the contract expired. There was no modification to extend the contract. The General Partner did not have any other supporting documentation to justify the need for the extended services under this contract. As such, we consider these additional costs to be unsupported. If the General Partner cannot demonstrate that the Partnership received services of value for items properly reimbursable under section 5.03 of the Agreement for these unsupported expenses, then the General Partner should refund these expenses to the Partnership.

Affiliated Transaction

The General Partner charged the Partnership $31,550 for fees for services that were provided by an affiliated party. According to the Agreement, affiliated transactions are prohibited unless they are paid at actual cost, and not on a fee basis. This vendor was an affiliated party because he was employed by the General Partner's subsidiary and was being paid as a contractor at the same time. According to the General Partner's payroll records, the subsidiary hired him in July 1998. The contractor/employee provided erosion control services in November 1998 for two Partnership assets. When we brought this matter to the General Partner's attention, the General Partner agreed that these charges were inappropriate and agreed to reimburse $31,550 to the Partnership. However, as of the end of our fieldwork, the General Partner had not yet made this reimbursement.

Unallowable Non-Accountable Expenses Charged to Partnership

The General Partner overcharged the Partnership $31,186 for its non-accountable expense allowance (5.02 expenses). The overcharges occurred because the General Partner made calculation errors and misapplied the Agreement's provisions relating to the appropriate use of the allowance. We recalculated the amount of 5.02 expenses that the General Partner was entitled to receive and compared this amount to what the General Partner received through March 31, 1999. We determined that the General Partner received $31,186 more than it was entitled to for 5.02 expenses.

According to the Agreement, the General Partner was to receive a non-accountable expense allowance based on the value of assets actually owned by the Partnership at the end of each month. Therefore, as the General Partner sold Partnership assets, the amount of the allowance that the General Partner was entitled to receive would decrease because the values of the sold assets were removed from the calculation. Furthermore, section 5.02 of the Agreement specifies that the purpose of the allowance is to offset costs that the General Partner incurs as it performs its overall Partnership management duties. According to the FDIC Legal Division, the allowance was not intended to be a fee for services, but rather a limited reimbursement for the General Partner's expenses.

The General Partner erroneously kept two assets in the calculation for one month longer than it should have. The assets were removed from the calculation during the month following the sale instead of the month of the sale. Additionally, the General Partner did not remove the full value of one asset from the calculation and continued to make this error every month until September 1998 when it discovered its error. The General Partner agreed that it had removed the two assets 1 month later than it should have and agreed to reimburse the Partnership for those 5.02 expenses. For the other asset, although the General Partner realized that it mistakenly removed too low a value from the calculation, it had not reimbursed the Partnership as of the end of our fieldwork. Instead, the General Partner accrued (but did not charge the Partnership) its monthly allowances until the accrual offset the amount of its earlier error. Once the amount of the error is offset, the General Partner intends to begin charging 5.02 expenses to the Partnership again.

We identified another error in the General Partner's calculation of 5.02 expenses regarding two assets. The General Partner did not agree with our view. In both cases, the General Partner did not remove the assets (both were housing developments) from the calculation at the end of the month in which the assets were sold. According to the General Partner, it believed that it was entitled to receive a reimbursement because it was legally obligated to provide 1-year warranties on both housing developments. However, section 5.02 of the Agreement states that only assets owned by the Partnership are to be factored into the calculation of the non-accountable expense allowance. Therefore, the General Partner misapplied this provision by including sold assets in its calculations.

Regarding these two housing development assets, the General Partner included one in its calculation each month from October 1996 through September 1997. The other asset sold in November 1998 and the General Partner continued to include this asset in the monthly calculation as of March 31, 1999 (the end of our audit period). The General Partner stated its intention to continue to include the full value of this sold asset in its calculation of the non-accountable expense allowance for the remainder of the warranty period, which is through November 1999.

Unsupported Sale Below Appraised Value

The General Partner sold a parcel of land to a charitable organization and took a tax deduction for the difference between the appraised value and the sales price. As the FDIC is exempt from tax, it could not share in the tax benefit realized by the General Partner. The General Partner could not produce adequate documentation to support that its decision to sell the property for a price 25 percent lower than the appraised value was in the best interests of the Partnership. As such, we were unable to determine if the General Partner breached its fiduciary duty to the Partnership by selling the asset and unilaterally realizing a tax benefit.

The Promenade Square asset (number 6503) was approximately 8.3 acres of vacant land located in Pembroke Pines, Florida. In July 1997, the General Partner sold this property to a church for $800,000. The difference between the appraised amount of $1,060,000 and the gross sales price was $260,000. According to the General Partner's accounting manager, its independent accountants advised the General Partner to deduct the $260,000 on the Partnership tax return as a charitable deduction.

We reviewed the Partnership's tax return as well as the General Partner's and Limited Partner's tax returns for the year ending December 31, 1997 and verified the amounts deducted resulting from this sale of land. The General Partner prepared all tax returns for the Partnership. We confirmed that the General Partner deducted $260,000 on the Partnership tax return. We also verified that the General Partner deducted $58,284 on its tax return and deducted the remaining $201,716 on the Limited Partner's tax return. Therefore, the General Partner realized a tax benefit that offset a portion of its loss generated from the discounted sale of the Partnership's asset. However, this sale did not result in a realized tax benefit to the Limited Partner because the FDIC is exempt from paying taxes.

We attempted to review the General Partner's marketing history of this property to determine if there were failed attempts to sell the property for the appraised value because the price was too high. We also attempted to review documentation from the third-party real estate broker that might have suggested that the appraised value was too high. Correspondingly, the General Partner produced evidence of a buyer's intention to purchase the property in February 1997 for $1,050,000 subject to zoning approval. The zoning authorities rejected the buyer's request for reasons other than price, and the sale fell through. The General Partner also showed us two marketing reports submitted by its third-party broker for June 1995 and July 1995 which suggested that the sales price should be dropped from $1.8 million to a range of $1,327,500 and $1,180,000. The General Partner did not produce any more recent marketing reports from its third-party broker.

However, the General Partner showed us a letter from the pastor of a church requesting that the General Partner reduce the sales price of the property to $800,000 so that the church could afford to purchase it. The letter also suggested that the difference between the appraised value and the sales price could be a tax write-off to the General Partner. This letter ultimately resulted in the sale of the property to the church for $800,000 in July 1997. Again, we saw no justification in the General Partner's records to support the significant drop in the sales price from the February 1997 offered price of $1,050,000 to the ultimate sales price five months later of $800,000.

The purpose of the Partnership is to maximize the net amounts realized by the Partnership from the orderly disposition of Partnership assets. The General Partner could not demonstrate that the decision to sell this asset for $800,000 was in the best interest of the Partnership and/or maximized the net amount due to the Partnership. Therefore, we believe that it would be equitable for the General Partner to share its tax savings with the Partnership so that the Limited Partner can share in the economic gain. Using a 28 percent tax rate, the tax benefit amount would be $16,320 ($58,284 x 28 percent).

Other Miscellaneous Partnership Costs Were Not Adequately Supported

The General Partner did not produce adequate supporting documentation for $15,233 of other miscellaneous Partnership expenses. Of this amount, $9,188 related to expenses for which the General Partner could not produce any supporting documentation. These included such expenses as project supervision, petty cash, legal fees, and certified mail charges. The remaining $6,045 related to legal fees where the invoices that the General Partner provided did not have adequate detail to explain the nature of the expense and the cost basis for the charges. We therefore question amounts paid where invoices contained only vague description of services provided. Appendix I contains tables showing the relevant detail of these unsupported expenses.

Three Duplicate Payments

We identified three instances of duplicate payments made in error by the General Partner. In two of the instances, the General Partner made payments based on originals of invoices and then made a second payment based on copies of the invoices. In the other instance, the vendor billed the General Partner twice for the same service and the General Partner did not detect this error. When we brought these matters to the General Partner's attention, the General Partner agreed to reimburse the Partnership for the duplicate payments totaling $7,198. Appendix II contains a table with details of these duplicate payments.

Excessive Fees Paid to Contractors

The General Partner paid excessive fees to two contractors totaling $6,346. In the first instance, the General Partner contracted with a project supervisor to provide services for an asset for fees not to exceed $30,000. However, payments to this project supervisor totaled $35,004, or $5,004 more than the contract had authorized. When we brought this matter to the General Partner's attention, the General Partner agreed to reimburse the Partnership for the $5,004.

In the second instance, the General Partner paid a real estate broker excessive commissions for the sale of a unit in the Redhawk development asset. The General Partner was supposed to pay the broker a 3 percent commission on the gross sales price of the unit. The unit sold for a gross sales price of $149,270; therefore, the 3 percent commission should have equaled $4,478. However, the General Partner paid the broker $5,820 in sales commission at the closing of the sale on November 1, 1997, or $1,342 above the 3 percent limit. When we brought this matter to the General Partner's attention, the General Partner agreed to reimburse the Partnership for the $1,342.

Unallowable Charitable Contribution Charged to Partnership

The General Partner made a $5,000 contribution to a political fund raising campaign for a county supervisor in July 1998. This county supervisor's jurisdiction included the location of one of the Partnership assets, as well as another piece of property owned directly by the General Partner. According to the General Partner's president, this county supervisor was involved in meetings with other city officials to resolve environmental issues regarding the Partnership asset. Therefore, the General Partner wanted to show its support by attending the fundraiser.

Section 5.03 of the Agreement delineates what types of expenses may be charged directly to the assets of the Partnership. A political contribution of this nature is not one of the enumerated allowable expenses and does not resemble the kinds of expenses enumerated in section 5.03. Instead, the General Partner should have paid for this contribution from its own funds. To the extent that it was a proper Partnership expense at all, it would be among the items covered by the General Partner's non-accountable expense allowance. Based on discussions with the OIG, the General Partner agreed to reimburse $5,000 to the Partnership.

Recommendations

As discussed in the eight findings above, the General Partner charged $302,025 of unallowable or unsupported expenses to the Partnership. We believe that DRR management should disallow these expenses.

Specifically, we recommend that the Assistant Director, Agreement Management Group, DRR:

(1) Disallow the $189,192 of unsupported contracting fees. (Questioned costs of $94,596 represent the FDIC's share of these expenses.)

(2) Disallow $31,550 for inappropriate affiliate transactions. (Questioned costs of $15,775 represent the FDIC's share of these expenses.)

(3) Disallow $31,186 of unallowable non-accountable fees charged to the Partnership. (Questioned costs of $15,593 represent the FDIC's share of these expenses.)

(4) Disallow $16,320 that resulted from the General Partner's tax benefit. (Questioned costs of $8,160 represent the FDIC's share of the unreported income.)

(5) Disallow $15,233 for unsupported Partnership expenses. (Questioned costs of $7,616 represent the FDIC's share of these expenses.)

(6) Disallow $7,198 for duplicate expenses. (Questioned costs of $3,599 represent the FDIC's share of these expenses.)

(7) Disallow $6,346 for fees in excess of contractually authorized amounts. (Questioned costs of $3,173 represent the FDIC's share of this expense.)

(8) Disallow $5,000 for the unallowable charitable contribution. (Questioned costs of $2,500 represent the FDIC's share of this expense.)

Opportunities Exist to Enhance Timeliness of Reporting

During our audit period, the General Partner did not submit its financial reports to the Limited Partner in accordance with the various timeframes established in the Agreement. This lack of timeliness hampered DRR's efforts to prepare updated and accurate management reports on the status of the Partnership for FDIC senior management.

According to the General Partner, the delay in reporting was not intentional, but rather the result of a small reporting staff with many pressing responsibilities. Originally, the General Partner's vice president was responsible for preparing the reporting packages to the FDIC. However, this vice president was appointed the president of Overland Homes, a subsidiary of the General Partner in August 1998. In November 1998, the responsibility for reporting transferred to the

General Partner's accounting manager. According to the accounting manager, because of other higher priorities (i.e., payroll, accounts payable, accounts receivable, reconciliations), some reporting deadlines were missed. Even before this transfer of responsibility, the General Partner missed reporting deadlines for other reasons. For instance, the vice president stated that late audited financial statements delayed his cash flow projections, further delaying his reports to the FDIC.

Additionally, DRR officials stated that the General Partner had included more detail in its financial reports than other General Partners of Land Fund transactions did. We questioned DRR's use of the financial reports actually received from the General Partner and learned that this detail was not necessary for DRR to prepare its reports to FDIC management. The accounting manager stated that the General Partner's investors required this detailed reporting at first, but she was not sure whether the investors were still interested in receiving the same level of detail. Nevertheless, we reviewed the reporting packages submitted to DRR and discussed their content with DRR and AEW officials responsible for reviewing the reports and reporting to FDIC senior management. Together, we worked out a revised reporting arrangement that was mutually agreeable to all parties. The General Partner believes that the revised reporting requirements will enable them to provide the reports with pertinent information to DRR in a more timely manner.

The following changed reporting requirements were the result of our discussions. Any of the reporting requirements promulgated by the Agreement and/or DRR that were previously in effect, but are not listed below, remain unchanged.

(1) Overland will submit the Consolidated Cash Flow sheets semiannually (as of June 30 and December 31) instead of quarterly.

(2) Overland will submit Individual Cash Flow sheets **for the remaining assets only** semiannually (as of June 30 and December 31).

(3) Overland should no longer submit the 1-page summaries (Tabs 6 and 7) because they are not useful to DRR. These tabs include the Actual v. Projected Cash Flows on Closing (Tab 6) and the Original Budget to revised Budget Variance and Real-time Cash Flow Variance Report – Actual Compared to Original Report (Tab 7).

(4) Overland should provide updated Business Plans **for the remaining assets** annually (as of December 31).

RECOMMENDATION

In the interest of providing more timely and useful reports to the Limited Partner, we recommend that the Assistant Director, Agreement Management Group, DRR:

(9) Implement the revised reporting requirements and reach an agreement with the General Partner as to when the reports are to be delivered to DRR (30 days after the "as of" date).

CORPORATION COMMENTS AND OIG EVALUATION

On March 13, 2000, the Deputy Director, Asset Management Branch, DRR, provided a written response to the draft report. The response is presented in Appendix III of this report.

The Deputy Director, Asset Management Branch, DRR, agreed to disallow $302,025 in questioned costs and agreed to take appropriate action on our other non-monetary recommendation. DRR stated that it would issue a demand letter seeking reimbursement of $97,600 to the Partnership (of which the FDIC's share equals $48,800) for unallowable expenses charged to the Partnership. In addition, DRR will demand that the General Partner produce acceptable documentation to satisfy the unsupported costs in this report, or in lieu thereof, the reimbursement of $204,425 to the Partnership (of which the FDIC's share is $102,212). With respect to the reporting requirements, DRR will seek agreement with Overland to revise the reporting requirements as recommended in this report.

The Corporation's response to the draft report provided the elements necessary for management decisions on the report's recommendations. Therefore, no further response to this report is necessary. Appendix IV presents management's proposed action on our recommendations and shows that there is a management decision for each recommendation in this report.

Based on our audit work, the OIG will report the FDIC's share of questioned costs, totaling $151,012 (of which $102,212 is unsupported), in its *Semiannual Report to the Congress*.

APPENDIX I

TABLE I.1: UNSUPPORTED COSTS

ASSET	PAYMENT DATE	TOTAL UNSUPPORTED COSTS	DESCRIPTION
Beverly Court	02/03/98	$109	No invoice for telegram expense
Beverly Court	07/08/97	632	No invoice for project supervision
Beverly Court	05/16/97	2,979	No invoice for legal fees
Beverly Court	02/04/97	690	No invoice for hostess salary
Beverly Court	01/14/97	3,000	No support for petty cash
Victoria Woods	11/5/96	1,085	No invoice for certified mail charges
Medici Inv. Co.	04/16/96	693	No invoice for legal fees
Total		**$9,188**	

Source: OIG analysis of Partnership expenses

Table I.2: INADEQUATELY SUPPORTED LEGAL INVOICES

ASSET	INVOICE DATE	INVOICE AMOUNT	UNSUPPORTED COSTS
San Marcos	12/1/98	$11,706	$2,471
Beverly Court	1/1/98	713	572
Beverly Court	9/1/97	2,129	1,752
Beverly Court	6/3/96	1,250	1,250
Total		**$15,798**	**$6,045**

Source: OIG analysis of Partnership expenses

Table II.1: DUPLICATE PAYMENTS

ASSET	DATE/CHECK NUMBER – 1ST PAYMENT	DATE/CHECK NUMBER – 2ND PAYMENT	AMOUNT OF DUPLICATE PAYMENT	DESCRIPTION
ONLF Midvale LLC	6/28/96 10025	7/18/96 103	$1,083	July 1996 Advertising Retainer Fee + tax
ONLF Midvale LLC	5/22/96 10015	6/28/96 10025	2,567	First and Last Month's Advertising Retainer + Prorated June 1996 retainer
Victoria Woods	9/10/96 1154	10/21/96 1644	3,548	Prorated Retainer Fee for October 1, 1996 through October 22, 1996
Total			**$7,198**	

Source: OIG analysis of Partnership expenses

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Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429
Division of Resolutions and Receiverships

March 13, 2000

TO: David H. Loewenstein, Assistant Inspector General
Office of Audits
Office of Inspector General

FROM: Gail Patelunas, Deputy Director
Asset Management Branch

SUBJECT: OIG Draft Audit Report # 99-701 Entitled
Overland National Land Fund Limited Partnership

On February 11, 2000, the Office of Inspector General ("OIG") issued its draft report on the results of an audit of income, expenses, and distributions of the Overland National Land Fund Limited Partnership, Monrovia, California, in which the FDIC has a limited partnership interest. As noted in the report, OIG selected this partnership for review in response to DRR's request for an audit of various partnerships. The report concludes that, except as noted below, the general partner properly reported and adequately supported partnership income, expenses and distributions.

Following are Management's responses to OIG's recommendations:

(1) *Disallow $189,192 of unsupported contracting fees. (Questioned costs of $94,596 represents FDIC's share of these expenses.):*

Management concurs with OIG's position that the General Partner should be able to demonstrate that the Partnership received services of value for items properly reimbursable under section 5.03 of the Agreement. In the absence of such support, the General Partner should refund these expenses to the Partnership. Management will demand that the General Partner provide documentation to support these expenses. In the absence of acceptable documentation, Management will demand that the General Partner reimburse the partnership $189,192 or the portion of these expenses lacking valid support.

(2) *Disallow $31,550 for inappropriate affiliate transactions. (Questioned costs of $15,775 represents the FDIC's share of these expenses.):*

Management concurs with OIG's finding that the General Partner should reimburse the partnership for affiliated transactions which do not comply with the requirements of section 5.03 of the partnership agreement. Management will demand that the General Partner reimburse the partnership $31,550 because the expenses were incurred on a fee basis rather than "at cost".

(3) Disallow $31,186 of unallowable non-accountable fees charged to the Partnership. (Questioned costs of $15,593 represent FDIC's share of these expenses.):

Management concurs with the OIG's finding and will demand that the General Partner reimburse the Partnership $31,186 for overcharges to the non-accountable expense allowance (Section 5.02) due to calculation errors and misapplication of the Agreement's provisions relating to the appropriate use of the allowance.

(4) Disallow $16,320 that resulted from the General Partner's tax benefit. (Questioned costs of $8,160 represent the FDIC's share of the unreported income.):

Management agrees in principle with the OIG's position that it would be more equitable for the General Partner to share its tax savings with the Partnership that resulted from the tax deduction it took given the lack of documentation to support whether the sale maximized value to the partnership. Although FDIC as Limited Partner also received a deduction on its return equal to its distribution percentage at the time, FDIC did not realize any true benefit from the deduction since it pays no taxes. Management will demand the General Partner reimburse the partnership $16,320 for the projected benefit it alone realized according to OIG's calculations, such amount to be greater or less depending upon the actual benefit realized by the General Partner.

(5) Disallow $15,233 for unsupported Partnership expenses. (Questioned costs of $7,616 represent the FDIC's share of these expenses.):

Management concurs with the OIG position and will demand the General Partner provide documentation to support the expenditures in question. In the absence of acceptable documentation, Management will demand that the General Partner reimburse the partnership $15,233 or the portion of those expenses lacking valid support.

(6) Disallow $7,198 for duplicate expenses. (Questioned costs of $3,599 represent FDIC's share of these expenses.):

Management concurs with the OIG's finding and will demand the General Partner reimburse the partnership $7,198 resulting from the duplication of expenses.

(7) Disallow $6,346 for fees in excess of contractually authorized amounts. (Questioned costs of $3,173 represents the FDIC's share of these expenses.):

Management concurs with the OIG's finding and will demand the General Partner reimburse the partnership $6,346 resulting from payments in excess of the applicable contract's allowable expenditure.

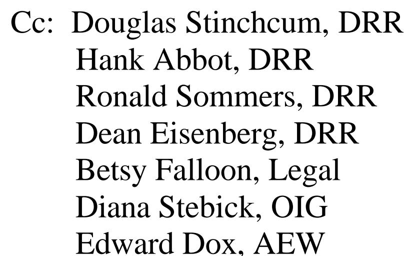
(8) Disallow $5,000 for the unallowable charitable contribution. (Questioned costs of $2,500 represents the FDIC's share of this expense.):

Management concurs with the OIG's finding and will demand that the General Partner reimburse the partnership $5,000 for the contribution made by the General Partner.

(9) *Implement the revised reporting requirements and reach an agreement with the General Partner as to when the reports are to be delivered to DRR (30 days after the "as of" date).*

Management has had discussions with the General Partner over revision of the partnership's reporting requirements. It agrees with OIG's recommendations and will seek the General Partner's agreement to revise the reporting requirements to reflect the OIG's recommendations as well as any other changes it believes will better reflect its needs.

Within 45 days after issuance of the audit report, Management will send to Overland Land Fund II (the General Partner) a demand letter seeking reimbursement of $97,600 to the partnership (of which FDIC's share equals $48,800) for unallowable expenses charged to the partnership. In addition, Management will demand documentation acceptable to FDIC to satisfy the unsupported expenditures noted by OIG or in lieu thereof, the reimbursement of $204,425 to the partnership (of which the FDIC's share is $102,212.50). With respect to the reporting requirements, FDIC will seek agreement with the GP to revise the reporting requirements as recommended in the report.



Cc: Douglas Stinchcum, DRR DS
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MANAGEMENT RESPONSES TO RECOMMENDATIONS

The Inspector General Act of 1978, as amended, requires the OIG to report the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC's responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management's response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid. Second, the OIG must determine that management's descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management's written response to our report.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
1	Disallow the $189,192 of unsupported contracting fees. (Questioned costs of $94,596 represent the FDIC's share of these expenses.)	45 days from final report	Demand letter	$189,192 in disallowed costs	Yes
2	Disallow $31,550 for inappropriate affiliate transactions. (Questioned costs of $15,775 represent the FDIC's share of these expenses.)	45 days from final report	Demand letter	$31,550 in disallowed costs	Yes
3	Disallow $31,186 of unallowable non-accountable fees charged to the Partnership. (Questioned costs of $15,593 represent the FDIC's share of these expenses.)	45 days from final report	Demand letter	$31,186 in disallowed costs	Yes
4	Disallow $16,320 that resulted from the General Partner's tax benefit. (Questioned costs of $8,160 represent the FDIC's share of the unreported income.)	45 days from final report	Demand letter	$16,320 in disallowed costs	Yes
5	Disallow $15,233 for unsupported Partnership expenses. (Questioned costs of $7,616 represent the FDIC's share of these expenses.)	45 days from final report	Demand letter	$15,233 in disallowed costs	Yes
6	Disallow $7,198 for duplicate expenses. (Questioned costs of $3,599 represent the FDIC's share of these expenses.)	45 days from final report	Demand letter	$7,198 in disallowed costs	Yes
7	Disallow $6,346 for fees in excess of contractually authorized amounts. (Questioned costs of $3,173 represent the FDIC's share of this expense.)	45 days from final report	Demand letter	$6,346 in disallowed costs	Yes

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
8	Disallow $5,000 for the unallowable charitable contribution. (Questioned costs of $2,500 represent the FDIC's share of this expense.)	45 days from final report	Demand letter	$5,000 in disallowed costs	Yes
9	Implement the revised reporting requirements and reach an agreement with the General Partner as to when the reports are to be delivered to DRR (30 days after the "as of" date).	45 days from final report	Management's response to the draft report	None	Yes