

AUDIT REPORT



NATIONWIDE AUDIT ENFORCEMENT CENTER

00-NY-177-0001

MARCH 28, 2000

**OFFICE OF AUDIT
NEW YORK/NEW JERSEY**



Issue Date	March 28, 2000
Audit Case Number	00-NY-177-0001

TO: Edward J. Kraus, Director, Enforcement Center, V

Alexander C. Malloy

FROM: Alexander C. Malloy, District Inspector General for Audit, 2AGA

SUBJECT: Nationwide Audit
Enforcement Center

We performed a nationwide audit of the Enforcement Center to assess the Center's efforts towards achieving the Secretary's strategic objective of restoring the public trust. The audit included reviews at the Enforcement Center's Headquarters and at its Satellite Offices in New York, Chicago, and Fort Worth. The audit determined that unless the U. S. Department of Housing and Urban Development (HUD) is willing to provide the Center with the necessary authority and resources to make prompt decisions when pursuing Enforcement actions, the Center will not achieve its full potential of aggressively pursuing enforcement actions against non-complying entities.

Within 60 days, please furnish this office, for each recommendation in this report, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to this audit.

If you or your staff have questions, please contact William H. Rooney, Assistant District Inspector General for Audit, at (212) 264-8000, extension 3976.

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Executive Summary

We performed a nationwide audit of the Enforcement Center to assess the Center's efforts in achieving the Secretary's strategic objective of restoring the public trust. Specifically, our audit objectives were to evaluate the Center's: (1) referral process from the various entities, (2) policies and procedures, and (3) progress in achieving the elimination of long standing deficiencies in HUD programs. This audit is part of the Inspector General's continuing reviews of HUD's 2020 Management Reform Plan.

HUD driven by twin missions

Under the Secretary's HUD 2020 Management Reform Plan, HUD would be driven by the twin missions of empowering people and protecting the public trust. The Enforcement Center became operational in September 1998, to address this latter mission by dramatically changing the way the Department conducts its enforcement functions. Critical to this mission, the Center was envisioned to be an "autonomous organization" that would "get tough" with program participants that violated statutes, regulations or other HUD requirements. The Center's responsibilities encompassed all HUD programs.

Visions of HUD 2020 Management Reform Plan have not been fully met

While the Enforcement Center has been fully operational for over a year, we found that the visions of the HUD 2020 Management Reform Plan have not been fully met and that the Center's accomplishments to date have been less than dramatic. Nearly all focus has been with multifamily program enforcement within the Office of Housing. The Center had not received any referrals from other program offices. In addition, HUD has not given the Enforcement Center critical delegation authority that is crucial to tougher enforcement actions. Without this authority, the Center's intended independence or autonomy will not be realized. Unless, HUD implements corrective actions, the Enforcement Center will not achieve its full potential of aggressively pursuing enforcement actions against non-complying entities.

Enforcement Center missed its objective of approving plans within 50 days

Because of organizational start up difficulties, particularly with the Center's Contractor, changing instructions and multiple approval requirements, the Enforcement Center significantly missed its objective of approving an enforcement action plan within 50 days.

As of September 30, 1999, the Center had received a total of 483 referrals, but only had 16 approved enforcement

action plans. We included the majority of the approved action plans in our review of 63 referrals and observe that it took an average of 298 days for these plans to be approved. Regarding our review of the referrals without approved action plans, we determined that at September 30, 1999, that they had been at the Center an average of 205 days, without either the concurrence of the Center's Headquarters to return them to the HUBs or approved enforcement action plans.

Enforcement Center has not successfully established a Departmental Tracking System

Furthermore, the Enforcement Center has not successfully established a high priority Departmental Tracking System (DTS) as detailed in the HUD 2020 Management Reform Plan. Consequently, it had to rely on inconsistently designed and unreliable systems developed by its Satellite Offices to meet its Business and Operating Plan objective of tracking and measuring the effectiveness of all HUD enforcement actions.

Corrective actions will be needed if the Enforcement Center is to achieve its objectives and mission. Unless HUD is willing to implement corrective actions, the Enforcement Center will not achieve its full potential of pursuing aggressive enforcement actions against non-complying entities.

Exit Conference

On February 29, 2000, we held an exit conference with Enforcement Center Officials to discuss our draft findings and recommendations. On March 7, 2000, we received a written response to a our draft findings from the Director of the Enforcement Center. The Director was in general agreement with the audit's overall direction and conclusions; however, regarding Finding 1, the Director took exception to our statement that the Center's accomplishments to date have been less than dramatic.

The Director's written response is shown in Appendix A. In addition, we have included a summary of the Director's pertinent comments after each Finding.

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Abbreviations

BOP	Business and Operating Plan
DTS	Departmental Tracking System
HUD	Department of Housing and Urban Development
PFCRA	Program Fraud Civil Remedy Act
REAC	Real Estate Assessment Center
REMS	Real Estate Management System
OIG	Office of Inspector General
CPD	Community Planning and Development
FHEO	Fair Housing and Equal Opportunity
PIH	Public and Indian Housing

Introduction

On June 26, 1997, Secretary Cuomo issued a press release to announce the HUD 2020 Management Reform Plan. The press release stated that HUD will restore the public trust by eliminating waste, fraud and abuse. Improper activities will be monitored, documented and individuals prosecuted. HUD will create an Enforcement Center that will carry out this effort. The Center's duties will include: (1) taking legal action against Public and Indian Housing (PIH) authorities that received a failing grade on their annual assessments; (2) taking actions against HUD assisted housing that fail physical and financial audit inspections; and (3) cracking down on the improper use of grant funds obtained from HUD's Community Planning and Development (CPD) and Fair Housing and Equal Opportunity (FHEO) Offices.

Background

The HUD 2020 Management Reform Plan called for the creation of an Enforcement Center with one objective to restore the public trust. It states that because the enforcement systems clearly need reform, HUD will make significant changes both organizational and programmatic. The new HUD will combine non-civil rights compliance enforcement actions for PIH, CPD, FHEO, and Housing into one new organization, the Enforcement Center. The Enforcement Center's Procedural Guidebook states that with the creation of the Enforcement Center, HUD 2020 Management Reform Plan will dramatically change the way the Department conducts its enforcement activities by consolidating and standardizing various functions. Further, as part of its mission statement, the Enforcement Center will be responsible for taking aggressive enforcement actions on troubled public housing and multifamily housing portfolios.

Greatest breach of trust exists in housing portfolio

The HUD 2020 Management Reform Plan classified the greatest breach of the public trust at HUD as fraud, waste and abuse in HUD's existing portfolio of housing units. The plan stated that HUD will aggressively pursue owners of troubled HUD insured and subsidized properties that do not meet established standards.

Using professional resources under contract, the Enforcement Center will: (1) quickly identify and implement appropriate sanctions based on contractor recommendations; (2) initiate appropriate civil actions in a timely manner; and proceed expeditiously to acquire, foreclose on, and dispose of properties. When a property fails its assessment, it will be forwarded for immediate

Enforcement Center objectives

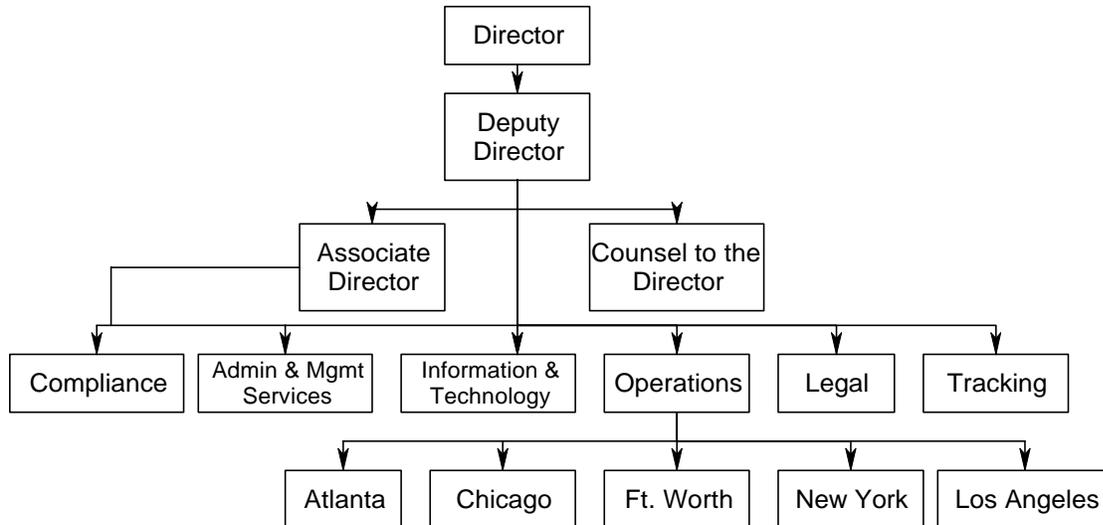
action to recover the property or misspent funds. Enforcement actions may include transfer of physical assets, sanctions, acquisitions, foreclosure, and civil actions.

The objectives of the Enforcement Center relating to multifamily housing as stated in its 1998 Implementation Plan are:

- Reduce HUD's troubled multifamily housing inventory to less than 7 percent of its portfolio through prompt and effective enforcement actions.
- Assist the Office of Housing in restoring the housing stock to decent, safe and sanitary housing by developing appropriate enforcement and recovery strategies which will restore public trust.
- Crack down on owners who have put properties in jeopardy by engaging in waste, fraud, or abuse.
- Increase public trust and confidence in HUD's abilities to ensure that taxpayer dollars appropriated by Congress are properly and effectively used.

Many of HUD's enforcement functions such as debarments, suspension, limited denials of participation, Mortgage Review Board, Program Fraud Civil Remedies, and Civil Money Penalties proceedings previously had been handled by other Offices within HUD. Under the HUD 2020 Management Reform Plan these functions and others would now be part of the Enforcement Center.

The Enforcement Center was to be an autonomous organization within HUD with its Director reporting to the Deputy Secretary. The Enforcement Center's original organizational structure was established as follows:



The Enforcement Center recently changed its organizational structure so that the Satellite Offices now report directly to the Deputy Director and are on line with the other divisions. In short, the Satellite Offices no longer report directly to the Operations Division but report to the Deputy Director.

To accomplish its mission the Enforcement Center's staff ceiling was 205 full time employees and as of December 31, 1999, 153 personnel were employed.

Enforcement Center functions

The Enforcement Center functions include adjudicating single family cases through the Mortgage Review Board, and the imposition of administrative sanctions and enforcement actions related to Credit Watch. However, the major focus of the Enforcement Center's Operation Division particularly during our audit period, was referrals involving HUD's troubled multifamily housing portfolio. The Enforcement Center's Protocol which was signed February 24, 1999, and became effective March 1, 1999, established the relationship between the Office of Housing and the Enforcement Center and the procedures for processing referrals. In addition, per the Office of Housing Protocol, the Enforcement Center was to have four phases of operations.

- Phase One covered the start-up period prior to the Center becoming operational. During this phase, the

Center provided consulting services to the Office Of Housing.

- Phase Two began on September 1, 1998, which is the date the Center became operational and started accepting referrals from the Office of Housing regarding troubled multifamily housing projects.
- Phase Three represents the Real Estate Assessment Center (REAC) referrals of properties with physical inspections scoring 30 points or less. The Office of Housing and the Enforcement Center agreed to a housing protocol effective March 1, 1999, which outlined various responsibilities.
- Phase Four was to commence in the Summer of 1999, which was when REAC was to provide the Center with both physical and financial integrated scores. Although REAC started to submit the results of its physical inspections to the Enforcement Center in early 1999, it did not start to submit the results of its financial analysis to the Enforcement Center until January 2000.

The Enforcement Center developed procedures for processing multifamily referrals. A simplified flow chart of the decision making process at the time of our review follows:

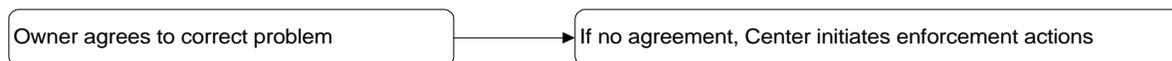
Evaluation Phase 30 Days



Formal Acceptance Phase 20 days



Compliance Phase



The Enforcement Center indicated that it received 483 referrals as of September 30, 1999. The Enforcement Center records listed 261 Phase Two referrals as being

received between September and December. Our analysis, using Audit Command Language (ACL) software, noted that 19 of these Phase II referrals were duplicates, bringing the number to 242. As of September 30, 1999, REAC reported to the Enforcement Center 259 properties with scores under 30. This brought the total number of referrals to 501. The Enforcement Center was unable to reconcile their number of referrals 483 to the 501 noted in our review. Although our analysis indicated that 501 referrals were at the Enforcement Center during our audit we used the Enforcement Center's 483 number.

Scope of Review

The overall objective of our review was to evaluate and assess the Enforcement Center's progress and achievements in restoring the public trust. Specific audit objectives were to determine and evaluate:

- The effectiveness of the referral process.
- The procedures, policies, and processes being utilized to achieve the Enforcement Center's strategic objectives in restoring public trust and eliminating long standing deficiencies.
- The progress to date in achieving the elimination of long standing deficiencies in HUD programs.

At the time of our review the Enforcement Center had not received any referrals from PIH or FHEO. The preponderance of its work load was in multifamily housing portfolio. Therefore, we concentrated our review on multifamily housing referrals. We performed field work at the Center's Headquarters and at three of the five Satellite Offices: New York, Chicago, and Ft. Worth. To accomplish our audit objectives we performed the following audit procedures:

- Obtained and reviewed the Enforcement Center's Implementation Plan, Procedural Guidebook and Protocols.
- Interviewed Enforcement Center's Headquarters staff.

- Judgmentally selected 63 multifamily referrals out of a universe of 483, as of September 30, 1999. We selected 21 at each Satellite Office of New York, Chicago, and Ft. Worth. We examined each case to determine timeliness, appropriateness and reasonable of the procedures and actions take.
- Reviewed the procedures for civil money penalties proceedings.
- Conducted interviews with the Satellite Office Directors, Attorneys, Team Leaders, and Enforcement Analysts.
- Evaluated the contract, task orders and payments regarding the Center's Contractor.
- Interviewed Multifamily HUB Directors.
- Reviewed the plans and procedures for the development of the Departmental Tracking System.

Audit period

We performed our field work from August 1999 through December 1999. The audit covered the period between September 1, 1998 and September 30, 1999. We updated our report to reflect any current actions where applicable. We conducted our audit in accordance with generally accepted government auditing standards.

A copy of this report was sent to the Director of the Enforcement Center.

The Enforcement Center is not Operating as Originally Planned Under the HUD 2020 Management Reform Plan

Under the Secretary’s HUD 2020 Management Reform Plan, HUD is driven by the twin missions of empowering people and protecting the public trust. The Enforcement Center became operational in September 1998, to address this latter mission by dramatically changing the way the Department conducts its enforcement functions. Critical to this mission, the Center was envisioned to be an “autonomous organization” that would “get tough” with program participants that violated statutes, regulations or other HUD requirements. The Center’s responsibilities encompassed all HUD programs.

While the Enforcement Center has been fully operational for over a year, we found that the visions of the HUD 2020 Management Reform Plan have not been fully met and that the Center’s accomplishments to date have been less than dramatic. Nearly all focus has been with multifamily program enforcement within the Office of Housing. The Center had not received any referrals from other program offices. In addition, HUD has not given the Enforcement Center critical delegation authority that is crucial to tougher enforcement actions. Without this authority, the Center’s intended independence or autonomy will not be realized. Unless, HUD implements corrective actions, the Enforcement Center will not achieve its full potential of aggressively pursuing enforcement actions against non-complying entities.

Background

As a result of long standing management deficiencies that made HUD programs vulnerable to waste and fraud, the concept of an Enforcement Center was included in HUD’s 2020 Management Reform Plan. The Plan called for combining compliance enforcement actions for Public and Indian Housing (PIH), Community Planning and Development (CPD), Fair Housing and Equal Opportunity (FHEO) and Housing under the auspices of one entity, the Enforcement Center. This entity would aggressively pursue instances of noncompliance and initiate appropriate sanctions, civil money penalties, property acquisition and foreclosure. At the completion of our field work, there were no instances of PIH, CPD, or FHEO noncompliance actions forwarded to the Enforcement Center. Therefore, the Center spent a majority of its time on HUD’s multifamily housing portfolio.

In 1998, HUD prepared the Enforcement Center Implementation Plan. The plan provides that the

Enforcement Center would be responsible for aggressive enforcement action on troubled housing and public housing portfolios assigned to it for noncompliance of HUD's requirements. The plan also provides that as the enforcement arm of HUD, the Center would be designed to "get tough" with bad owners, landlords, lenders, management agents, recipients, grantees and other participants who are in violation of HUD's program regulations and requirements.

Unfortunately, the vision of the HUD 2020 Management Reform Plan and the creation of the Enforcement Center have not been fully realized. Specific weaknesses found during our audit work are detailed in the following subsections.

Regulatory authority needs to be delegated to the Enforcement Center

Criteria

The Enforcement Center Implementation Plan calls for the Center to be an autonomous organization within HUD. It further provides that as a member of HUD's Principal Staff, the Center's Director will report directly to the Deputy Secretary or designee. Appropriate delegations of authority will pass through the Deputy Secretary to the Center's Director. The proper delegations of authority are necessary to enable the Director and staff to accomplish their mission.

Authority to assess civil money penalties has not been delegated to the Enforcement Center

HUD has not delegated authority to the Enforcement Center

While the Assistant Secretary of Housing delegated the authority to issue suspensions, debarments and limited denials of participation to the Center, the Center has not been delegated the authority to pursue civil money penalties. The HUD Reform Act of 1989¹ provides that the Secretary may impose a civil money penalty on a mortgagor that has five or more living units and has a mortgage insured, or held by HUD. The HUD Reform Act of 1989 identified 12 violations. Some are as follows:

- property transferred without HUD approval;

¹ Public Law 101-235
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- remodeling, adding to, reconstructing the property without HUD approval;
- payments for services, supplies or materials that exceed \$500 and that substantially exceed the amount ordinarily paid for such services;
- failure to provide specific answers to questions asked by HUD representatives regarding income, assets, etc.;
- failure to provide completed annual financial statements timely; and
- failure to maintain the books and accounts of the project in accordance with HUD requirements.

Title 24 Code of Federal Regulations, Part 30 provides for the Secretary to impose a civil money penalty of \$27,500 for each violation.

HUD has not pursued all civil money penalties' violations

HUD's Office of Housing and the Enforcement Center have only pursued civil money penalties related to the late filing of completed annual financial statements, and still require that the requests for civil money penalties be reviewed by the Office of Housing. Specifically, the pre-penalty notices, settlements and complaints must be signed and forwarded to the owner by the Assistant Secretary for Housing. The Enforcement Center does not have the authority to perform these functions because the Assistant Secretary for Housing has not delegated the authority to the Center.

We observed that the Enforcement Center requested the Office of Housing to provide the Center with the authority to impose civil money penalties related to late filings of financial statements. The request remained unapproved at the completion of our field work. We noted that the draft request did not ask for authority to impose civil money penalties for the other violations mentioned in the HUD Reform Act of 1989.

The Office of Housing has not been imposing civil money penalties for other violations; similarly, the Enforcement

Center has not been penalizing owners for other violations. This is important to note because an intent of the HUD Reform Act of 1989, was to act as a deterrent against future violations. In our opinion, not pursuing civil money penalties for all the violations defeats the intent of the Reform Act. More importantly, the Enforcement Center is not using an available enforcement tool.

During our review, we noticed that the Enforcement Center's Satellite Offices requested that civil money penalties be imposed against at least 16 owners. Consequently, these requests were forwarded to the Office of Housing. Each of these requests pertained to late submission of financial statements. In one of these situations, we noticed that there was another violation for which the Enforcement Center could have sought civil money penalties. In essence, the Enforcement Center had the opportunity to impose a substantial penalty on an owner; thus, sending a deterrent message to other violators, but did not take advantage of this opportunity.

Additionally, we noted that the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998² amended the HUD Reform Act of 1989. It essentially added other violations, such as the failure to maintain the project in good repair and condition, which a civil money penalty can be imposed. Also, it added other entities against whom HUD could assess civil money penalties, such as managing agents. This Act required HUD to seek public comments and publish proposed regulations implementing the Act's amendments no later than October 27, 1998; HUD missed this date. If the Enforcement Center is to aggressively pursue enforcement actions, we suggest that HUD and the Center expedite publishing these amendments.

Other functions not delegated

Enforcement Center has not been delegated functions

A memorandum dated November 7, 1997, from the Associate General Counsel, Office of Housing provided a list of functions or authorities that should be delegated to the Enforcement Center. The list includes several items from the Federal Register Notice of Revocation and

² Public Law 105-65
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Redelegation of Authority³ relating to multifamily housing programs. The items included functions, such as executing workout agreements, executing repayment agreements for overpayment of rental subsidies and determining acceptability of financial statements.

Despite the above, the Enforcement Center has not been given the appropriate delegations of authority for the multifamily functions. Since the Center does not have the authority to perform certain multifamily functions, the actions must be reviewed and signed off by the Office of Housing. In our opinion, this process delays the implementation of needed actions and impedes prompt enforcement actions, but more importantly, there is no independence on the part of the Enforcement Center.

Other civil remedy tools not used

PFCRA and double damages remedy not used

There are two other civil remedy enforcement tools available to the Enforcement Center that could be used to deter owners from non-complying with HUD's regulations and requirements: Program Fraud Civil Remedy Act (PFCRA) and HUD Double Damages Suits.

PFCRA established a monetary penalty against any person who makes a false claim or false written statement on or after 1986, to an agency that the person knows or has reason to know, is false, fictitious, or fraudulent. Such a person can be held liable for a penalty of up to \$5,500 per claim or statement. In addition, with respect to the claim, the person may be subjected to an assessment of up to double the amount falsely claimed and paid.

HUD Double Damages Suits allow the Enforcement Center to request the Attorney General to bring an action in a United States district court to recover any assets or income used by a person in violation of a multifamily regulatory agreement. The Attorney General may recover double the value of the assets and income of the project that the court determines to be in violation of the regulatory agreement, plus costs relating to the action, including but not limited to reasonable attorney and auditing fees.

Satellite Offices have not used deterrent tools

During our review we observed that the Satellite Offices generally have not pursued these civil remedies. One reason, as explained in Finding 2, is because of internal problems, which resulted in taking a long time for the Center to decide whether to pursue enforcement actions. Again, for the Center to be fully effective and be a deterring factor, all the available enforcement tools should be used.

Enforcement Center planned enforcement actions can be overruled

Office Of Housing overruled Enforcement Center's decision

Prior to the official start up of the Enforcement Center, the Center provided consulting services to multifamily housing. In essence, the Center was acting as an advisor. During this period, the Center assessed the noncompliance of certain mortgagors in the Cleveland, Ohio area. The Center determined that foreclosure actions and abatement of Section 8 contracts were warranted and initiated the actions. In addition, Enforcement Center personnel made a presentation to a local Assistant United States Attorney regarding appropriate civil actions. We were advised that the Office of Housing did not agree with the decision and withdrew its request from the Enforcement Center to take any enforcement actions. The actions to initiate foreclosure and abatement of Section 8 stopped, including follow up with the Assistant United States Attorney. We were told that the Assistant United States Attorney subsequently had to inquire from HUD as to the reason HUD was not pursuing enforcement action, instead of being officially notified of the decision.

Enforcement Center did not have final decision

The above situation is mentioned to stress that the Enforcement Center does not have the final say regarding enforcement actions. Today, under the existing procedures, if the Office of Housing disagrees with the Center's planned enforcement actions, the Assistant Secretary for Housing and the Director of the Enforcement Center have the opportunity to present their respective views to the Deputy Secretary who will make a final determination in writing. We are not aware of any disagreements since the Enforcement Center has been officially operational. However, we suggest that if a similar situation occurs, all parties, e.g. United States Attorney's Office, OIG, etc.,

should be notified in writing of the Deputy Secretary's decision.

We recognize that this situation occurred while the Center was providing consulting service to the Office of Housing; and if it occurs today, the Enforcement Center's Director can argue the Center's position before the Deputy Secretary. However, in our opinion, damage occurred to HUD's efforts to "get tough" with owners in the Cleveland, Ohio area. Specifically, HUD received a significant amount of bad publicity from the local newspaper, which reported that an owner was paid \$1.78 million to walk away from three run down, subsidized housing projects. The newspaper went on to say "HUD's get tough policy was tough only on the public purse."

Enforcement Center has not been able to hire qualified personnel

HUD limited the number of external hires

At the time of our review, the Enforcement Center had a staff of 153 employees despite a Full Time Employees (FTE) ceiling of 205. The Center had been unable to fill all of its required positions because HUD had limited the number of external hires throughout the Department. We were advised that at least 25 of the unfilled positions were for critical disciplines including attorneys and financial analysts. Directors of the Enforcement Center's Satellite Offices advised us that the shortage of critical personnel was a significant impediment to accomplishing their objectives. In December 1999, Enforcement Center officials informed us that they received approval for 43 outside hires that included 8 attorneys and 10 financial analysts.

Enforcement Center staff inexperienced

Apart from the above, Satellite Offices had to accept substantial numbers of inexperienced and untrained personnel who were displaced by HUD's recent reorganizations. For example, 9 of the 20 employees in one Satellite Office were displaced from the former HUD single family function. Because the staff lacked multifamily experience, the time spent training and supervising the staff affected the Office's ability to perform functions in a timely manner. The problem was exacerbated by the policy that required the Assistant Secretary of Housing's approval

before any housing employee could be released to other offices within HUD. In September, the Enforcement Center had selected eight HUD multifamily employees for positions, but only received approvals to transfer six of the employees.

HUD's personnel policies have prevented the Enforcement Center from hiring a trained and experienced staff. This obviously resulted in delays in pursuing the Center's goals and mission.

Policies of other entities affected timely enforcement actions

The Enforcement Center Implementation Plan provides that HUD program offices will not have any supervisory control over the Center, but will act as partners in implementing necessary enforcement processes to resolve outstanding enforcement issues. The concept requires a total team effort on the part of all HUD Offices to ensure that the Center has a clear mandate, as well as the necessary flexibility and independence to perform its mission.

HUD policies have affected enforcement actions

Nonetheless, we were advised that there were instances where HUD Offices established policies that weakened enforcement procedures at the Center; thus, preventing the Center from taking timely aggressive action. For example, the Office of Housing established a policy whereby only one annual inspection for each multifamily project could take place. This resulted in instances where the Real Estate Assessment Center (REAC) performed an inspection which precluded the Center from conducting another inspection. This policy impacted the Center's ability to evaluate the current physical condition of properties. In addition, the Center's staff experienced problems with REAC policies. For example, REAC did not inspect vacant units and did not conduct re-inspections.

In December 1999, the Enforcement Center, Office of Housing and REAC agreed that the Center and its Contractor could inspect units regardless of whether a previous inspection had been performed. Also, it was agreed that the REAC would inspect vacant units and conduct re-inspections. While the agreements may resolve

the inspection problems, because they were not made timely, the previous policies affected the Center's efforts to aggressively pursue enforcement actions.

Community Builders' duties had to be clarified

Community Builders have overstepped their roles in enforcement actions

Coordination problems existed between the Center and Community Builders. Both the Enforcement Center's staff and HUB Directors had instances where the Community Builders became involved with the enforcement process without consulting with the Center and/or the HUB. Thus, the Center encountered delays in resolving the cases. The Center provided us with a draft copy of a memorandum clarifying the Community Builder role in the enforcement process. The memorandum explains areas where the Community Builders have misinterpreted and overstepped their roles in dealing with multifamily projects under review by the Center.

HUB Directors have mixed opinions on effectiveness of Enforcement Center

Opinions of HUB Directors varied

We visited three Enforcement Center Satellite Offices during our audit. As part of our audit, we interviewed five HUB Directors that were within the jurisdiction of the Satellite Offices to obtain their opinions on the effectiveness of the Center. We found that their opinions varied. One Director stated that a good working relationship exists with the Center and perceives no problems regarding authority or jurisdiction. Another believes that the Center has slowed enforcement actions and has not been making timely or decisive decisions. Another believes that the Center concept is good, but does not believe that the Enforcement Center is functioning properly because there is a lack of multifamily experience. While the Center and HUD has acknowledged the need to forge an effective working relationship, more work needs to be done.

Controls are needed to ensure that agreed upon enforcement action plans are followed

Center was to be fully responsible for assigned properties

The Implementation Plan provides that the Center will be fully responsible for properties assigned to it and will have

the lead in conducting necessary due diligence in consultation with the multifamily HUBs. In addition, the Center has the responsibility for developing an enforcement action plan, any corrective actions by HUD and the owners, and a timetable for completion of all actions. The Center will also initiate any applicable sanctions. Under the supervision of the Enforcement Center, the HUB will then administer the plan and work closely with the Center's staff and report on the owners' progress.

However, the protocol between HUD's Office of Housing and the Center provides that when an owner agrees to an action plan, the property will be returned to the multifamily HUB for implementation and monitoring until completion. The Center will have no further role regarding the project, unless the owner fails to comply with the plan. If the owner fails to carry out the plan, the program office must transfer the case back to the Center for appropriate action.

Enforcement Center lacks controls to ensure actions are implemented

Despite the intent of the Implementation Plan to make the Center responsible for all properties assigned to it, once an owner agrees to take corrective action the property is returned to the HUB, and the Center has no controls to ensure that the planned corrective actions were implemented and monitored by the HUB. We found that once the property is returned to the HUB, the HUB is not required to report to the Center the status of the plan. Consequently, the Center can not be certain that the plan is being implemented in a timely or correct manner. We believe that this weakness resulted from a contradiction between the Office of Housing protocol and the Implementation Plan.

While the protocol between the Office of Housing and the Center delegated the responsibility to administer the plan to the HUBs, it is essential that the Center ensures that the proper corrective actions are taken. The Center needs a system to ensure that HUBs are implementing action plans properly and promptly. The system should establish time frames for the HUBs to report the status of the action plans. In our opinion, this information is necessary to ensure that timely and appropriate actions are taken against owners who do not comply with HUD's requirements; otherwise, it is business as usual.

HUB loan servicing activities are being performed by the Enforcement Center

Enforcement Center time is spent as loan servicer of last resort

The HUD 2020 Management Reform Plan envisioned the Enforcement Center as an entity performing legal and enforcement related functions. Instead, a disproportionate amount of its time is spent being a loan servicer of last resort, performing HUB servicing activities and ensuring that there is an adequate administrative record prior to taking enforcement actions.

During our review of Enforcement's Center Satellite Offices, we found that in several cases the HUBs had not provided effective monitoring and loan servicing of troubled projects. The HUBs had not taken appropriate and prompt actions to correct problems and had not maintained adequate records. We found instances where project files from the HUBs were incomplete and lacked documentation. Specifically, missing were regulatory agreements, Housing Assistant Payment contracts and/or other key documents. Also, we noted cases where the HUBs had not taken the appropriate actions or took incorrect actions when dealing with non-complying project owners.

The above weaknesses have not only resulted in an incomplete and inaccurate administrative record, but in some instances resulted in depriving the Center of legal recourse to take action against the offending owners. As a result, the Center's staff spent a large portion of their efforts attending to servicing activities such as documenting the administrative record that should have been performed by the HUBs.

Corrective actions are needed

We believe that the deficiencies and weaknesses discussed in this finding need to be promptly addressed if the Enforcement Center is to achieve its primary objective of restoring the public trust in HUD programs. The corrective actions will have to ensure that the Center has the authority to perform its mission and that essential coordination and communication improvements are made between other HUD entities and the Center. Unless the required corrective actions are implemented, consideration should be given to returning the enforcement function to the previous HUD enforcement structure.

Auditee Comments

The Director of the Enforcement Center generally agreed with our conclusions and stated that the Center has already addressed most of the recommendations through its own internal assessment. However, the Director disagreed with our assessment that accomplishments to date have been less than dramatic. The Director responded to the Findings stating that as of February 1, 2000, the Center has recovered over \$22 million, taken action on 43 percent of multifamily referrals and accomplished other actions relating to the Mortgage Review Board.

In addition, the Director disagrees with our statement that unless the required actions are implemented consideration should be given to returning the enforcement function to the previous HUD structure. The Director stated that the Enforcement Center has had a significant and positive impact on how HUD conducts its enforcement process.

With regard to the Cleveland matter the Director states that during this time, the Center was not in operation and the Center was only in an advisory position.

In addition, the Director stated that our comment that the Center could not perform another inspection after REAC conducted an inspection is misleading. The Center is now conducting regular evaluations and the Center's Contractor has been trained and certified by REAC.

Further, the Enforcement Center Director stated that the inability to maintain a complete and accurate property administrative record is the responsibility of the HUBs not a Center issue.

Finally, the Director suggested that we rewrite our recommendation 1A to read that the Center be given separate hiring authority and separate funding.

OIG Evaluation of
Auditee Comments

Our review of the \$22 million in recoveries indicated that \$8.4 million pertained to Mortgagee Review Board actions. Because the Mortgagee Review Board was an on going HUD function that was transferred to the Enforcement Center, we

did not include Mortgagee Review Board activities as part of our review. In addition, we observed that \$4.2 million of the \$22 million claimed as recoveries by the Center was tentative at March 14, 2000, and as such should not have been included as a recovery by the Enforcement Center. More importantly, although the Enforcement Center is assisting in the negotiation of the potential settlement, the civil action against the entity was initiated before the Enforcement Center became operational. Likewise, the majority of the remaining balance of the \$22 million claimed as recoveries by the Enforcement Center pertained to six entities. Again, although there was Enforcement Center involvement, the civil actions against five of these entities commenced before the Center became operational.

Furthermore, it should be noted that the OIG played a major role in four of the five settlements (Blackstone Realty \$1,800,000, Linden Realty \$664,000, Shelby Jean Kaplan \$300,000, and Sharlo Apartments \$85,000). In fact, these cases were initiated by the OIG as far back as 1995. For example, Linden Realty, was ordered by the Courts in late 1995 to pay \$1,081,000 to the involved project. This was almost three years before the Enforcement Center became operational. Likewise, in the Blackstone Realty case, individuals were indicted in November 1997, almost a year before the Enforcement Center became operational. Thus, as indicated by the dates the Enforcement Center had no involvement in the initial actions taken in these cases. However, when it came time to negotiate civil settlements, the Assistant United States Attorneys included the Enforcement Center Attorneys in the negotiations with the entities. In most cases, the Enforcement Center Attorneys had worked in HUD's Office of General Counsel prior to their assignment to the Enforcement Center. In short, if the Enforcement Center had not become operational, the Office of General Counsel would have participated in the negotiations of the settlements. Thus, these settlements would have occurred without the creation of the Enforcement Center.

Regarding the Director's statement that the Center has taken action on 43 percent of the multifamily referrals, again, as we mentioned in the Finding, as of September 30, 1999, we observed that the Center had approved enforcement action

plans for only 16 of the 483 multifamily referrals or 3 percent.

Regarding our statement that unless actions are implemented, consideration should be given to returning enforcement function to the previous structure, we made this statement because the Center has not been provided the regulatory authority and management resources necessary to achieve its over all objective of restoring the public trust. If HUD does not provide the Center with the necessary tools, we believe it will not achieve its full potential of aggressively pursuing enforcement actions against non-complying entities.

Regarding the Cleveland matter, we mentioned this issue to show that the Enforcement Center's decisions can be over ruled. Specifically, the Enforcement Center does not have the final say regarding enforcement actions.

During our reviews at the Satellite Offices it was apparent that the staff believed that they were impeded by the restricted inspection policy.

Because the ability of the Center to take timely enforcement action is greatly depended on the HUBs taking appropriate actions and maintaining adequate administrative records, it is imperative that the Enforcement Center work with the HUB Directors to ensure that complete and accurate administrative records are maintained for each project.

Regarding the rewrite of our recommendation, in our opinion, we believe that the Center should address the need for separate hiring authority with the Deputy Secretary.

Recommendations

We recommend that the Director of the Enforcement Center in coordination with the Deputy Secretary should:

- 1A. Ensure that the Enforcement Center is delegated the proper authority to perform its mission and be given the proper amount of resources so that it can achieve its primary objective of restoring the public trust in HUD programs.

- 1B. Ensure that the Enforcement Center imposes civil money penalties for all the violations allowed per legislation.
- 1C. Expedite the publishing of the proposed regulation implementing the amendments mentioned in the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998.
- 1D. Ensure that all parties are notified in writing, particularly if an Assistant United States Attorney is involved, of all decisions by the Deputy Secretary, when there is a disagreement with a planned enforcement action.
- 1E. Ensure that all available civil remedy tools, such as PFCRA and HUD Double Damage Suits are pursued.
- 1F. Ensure that the Enforcement Center is allowed to hire qualified staff necessary to carry out its mission.
- 1G. Improve the coordination between the Enforcement Center and HUBs to ensure an effective working relationship.
- 1H. Improve controls related to the implementation of enforcement action plans. Specifically, provide a reporting system that will permit the Enforcement Center to monitor the HUBs progress in implementing action plans and the owners compliance with the terms of the plans.
- 1I. Work with the HUBs to ensure that they implement actions that will improve the quality of loan servicing to include effective monitoring and proper maintenance of records.

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The Enforcement Center is not Making Prompt Decisions When Pursuing Enforcement Actions

The Enforcement Center is not making prompt decisions when pursuing enforcement actions. It is the Enforcement Center's objective to have an enforcement action plan approved by the Center's Headquarters within 50 days of receiving a referral. The Center significantly missed its timeliness objective because of organizational start up difficulties, changing instructions, and multiple approval requirements. Specifically, as of September 30, 1999, there were 483 referrals throughout the Center but only 16 had approved enforcement action plans. We included a majority of the approved enforcement action plans in our sample of 63 referrals and observed that it took an average of 298 days for these plans to be approved. Regarding the remaining referrals in our sample, we noted that at September 30, 1999, they had been at the Enforcement Center an average of 205 days, without either the concurrence of the Center's Headquarters to return them to the HUBs or an approved enforcement action plan.

We noted instances where the Center's Satellite Offices initiated enforcement actions before obtaining approval of action plans from the Center's Headquarters. But, in most instances, the Satellite Offices await approval of action plans before initiating enforcement actions. We recognize that the Enforcement Center has made progress in approving action plans since our cut off date of September 30, 1999; however, the Center must reduce its approval time in order to achieve timely and effective enforcement actions against entities and project owners.

Enforcement action decisions must be made within a reasonable time frame

Completed enforcement actions can often be time consuming. For example, the actual foreclosure on a property and the movement of tenants from the property to another location can take a long time. Consequently, it is imperative that if the Enforcement Center decides to seek an enforcement action, the decision and an appropriate plan be made within a reasonable time frame.

The Enforcement Center's 1998, Implementation Plan provides that the Center would be responsible for managing the day-to-day recovery and enforcement strategies for multifamily troubled properties. The Center would carry out its mission using general contractors who would perform due diligence, workouts, and other actions to effect enforcement actions against property owners, Contract Administrators and/or to recover troubled properties. The Center's staff would work with the Center's attorneys in processing legal documents and be the principal point of

Enforcement Center's
goals and objectives

contact regarding all enforcement actions taken against troubled projects.

In accordance with the Implementation Plan, the goals and objectives of the Enforcement Center are to:

- Reduce HUD's troubled housing inventory to less than 7 percent of its portfolio through prompt and effective enforcement actions.
- Assist the Office of Housing in restoring the housing stock to decent, safe and sanitary housing by developing appropriate enforcement and recovery strategies, which will restore public trust.
- Crack down on owners who have put properties in jeopardy by engaging in waste, fraud, or abuse.
- Increase public trust and confidence in HUD's abilities to ensure that taxpayer dollars appropriated by Congress are properly and effectively used.

In addition, according to the Implementation Plan and the protocol between the Office of Housing and the Center, there were to be four phases.

- Phase One covered the start-up period prior to the Center becoming operational. During this phase, the Center provided consulting services to the Office of Housing.
- Phase Two began on September 1, 1998, which is the date the Center became operational and started accepting referrals from the Office of Housing regarding troubled multifamily housing projects.
- Phase Three represented the Real Estate Assessment Center (REAC) referrals of properties with physical inspections scores of 30 points or less. The Office of Housing and the Enforcement Center agreed to a housing protocol effective March 1, 1999, which outlined various responsibilities.

- Phase Four was to commence in the Summer of 1999, which was when REAC was to provide the Center with both physical and financial integrated scores. Although REAC started to submit the results of its physical inspections to the Enforcement Center in early 1999, it did not start submitting the results of its financial analysis to the Enforcement Center until January 2000.

Scope of our review

We performed field work at the Enforcement Center's Headquarters and at three of the five Satellite Offices: New York, Chicago, and Ft. Worth. We judgmentally selected 63 referrals: 21 from each Satellite Office. We selected 30 referrals that were Phase Two and 33 that were Phase Three. For one of the Phase Two referrals, the Center immediately returned it to the HUB, because HUD did not have a financial interest in the property. As a result, we did not include this referral as part of our timeliness calculation. In addition, as part of our sample we included 11 referrals that had enforcement action plans approved by the Center's Headquarters.

The Center's Procedural Guidebook explains the decision making process that is to be used to seek enforcement actions. Although there are two separate phases, the first is the evaluation phase. During this phase a Center's Satellite Office decides to either accept a referral for enforcement actions or return it to the HUB. This decision is to be made within 30 days. Once the Satellite Office decides to accept a referral, the process moves to the formal acceptance phase, and the Satellite Office has 20 days to develop an enforcement action plan that must be approved by the Enforcement Center's Headquarters. In short, if the Center decides to seek enforcement actions, the objective is to have an approved enforcement action plan within 50 days.

It took an average of 267 days for plans to be approved

As of September 30, 1999, there were 483 referrals throughout the Center; however, only 16 had enforcement action plans approved by the Center's Headquarters. As part of our review, we included 11 approved action plans in our sample of 63 referrals, and observed that it took an average of 298 days for the plans to be approved.⁴ Pertaining to the remaining referrals in our sample, we

⁴ In addition, our sample included one referral that the Center's Headquarters gave approval to return to the HUB. From receipt of the referral to receipt of the approval it took 57 days.

determined that at September 30, 1999, they had been at the Satellite Offices from 86 to 387 days, resulting in an average of 205 days without either the concurrence of the Center's Headquarters to return the referrals to the HUB or an approved action plan.

We noted instances where the Center's Satellite Offices initiated enforcement actions before obtaining approval of action plans from the Center's Headquarters. But, in most instances, the Satellite Offices await approval of action plans before initiating enforcement actions.

Satellite Office personnel advised us that the 50 day goal is unrealistic because meeting the goal involves the reliance on outside factors that are not under the control of the Enforcement Center. For example, the Center must rely upon the HUBs to provide the files in a timely manner and a Contractor must promptly copy the files.

Some of the problems that prevented the Enforcement Center from making timely decisions are as follows:

Organizational start up difficulties

Contractor could not complete tasks

The Enforcement Center hired a Contractor to provide copies of the HUB files within 10 working days. The Contractor was not always able to complete this task within the established time period. In some instances, the Contractor was either overwhelmed or the HUBs did not provide all the necessary documents to the Contractor. As such, the Satellite Offices' personnel had to either hire another contractor to copy the files, perform the task themselves, or wait until the original Contractor completed the task. Nonetheless, this added time to the decision making process.

Also, the Contractor was required to provide an initial report to the Satellite Office upon completion of the initial file review and site visit. This report was to be a comprehensive evaluation of the project including a statement of the problems, deficiencies identified in the files, a site visit report, and information about the ownership. The Contractor was having trouble completing the number of reports that it was asked to provide. As a result, most initial reports were late, and in some instances

the initial report had to be scaled down to a report that focused only on the items identified during the site visit. Ultimately, the Contractor was placed on probation because it did not meet the terms of the contract.

Changing instructions

Changing instructions
delayed the process

Originally, it was planned that the Contractor was to enter the results of its review into the Real Estate Management System (REMS). It is our understanding that this never occurred. The results of our review disclosed that the Contractor identified necessary changes that were to be entered in the REMS and that Enforcement Center personnel had to confer with the Office of Housing to ascertain whether the changes were made.

Initially, Satellite Offices were required to use and have the Contractor prepare a report on every referral. During our audit, we were told that this procedure changed. The new procedure gives the Satellite Directors the prerogative to decide whether the Contractor should be utilized. We agree with this decision, since the old procedure required a report from the Contractor for every referral, which added unnecessary time to the decision making process.

Our interviews with Satellite Office personnel indicated that changes to the format of the action plans by the Center's Headquarters delayed preparation of the action plans. Accordingly, one Satellite Office in our review had its personnel rewrite its plans to conform to format changes required by Headquarters; thus, adding time to the decision making process.

Multiple approval requirements

Several levels of approval
needed

The approval process for planned enforcement actions is both time consuming and tedious. For example, an enforcement action plan may require approval from as many as ten individuals including the Director of the Enforcement Center located in Headquarters. In our opinion, the extensive approval process affects the implementation of any planned enforcement actions, especially, if one individual fails to concur in a timely manner. More significantly, the current process requires

that the chain of concurrence be repeated if any individual requires changes.

In addition to the above, the process used to return multifamily referrals back to the HUB is time consuming. Currently, to return a referral there must be concurrence from the Satellite Office personnel, the HUB Director, and the Enforcement Center's Operations Division Director. Satellite Directors believe that only their concurrence and the HUB Directors' concurrence should be necessary. This should reduce the amount of time needed for this decision.

Conclusion

In our opinion, we believe that the Enforcement Center's decision making process to either seek enforcement actions or to return the referrals to HUBs has not produced timely results as discussed in this Finding. If the Enforcement Center is to meet its objective of aggressively pursuing instances of noncompliance with HUD requirements, its decision making process must allow for the evaluation of all referrals in a timely manner, and that planned enforcement actions be implemented within reasonable time frames.

Auditee Comments

The Enforcement Center Director agreed that the Contractor had been on probation in the past but that the Contractor's performance is now acceptable. The Director agreed with our recommendation 2A and believe that for most cases an average of 60 days is more realistic. Further, the Director stated that the Center continues to review its concurrence process with the objective of delegating authority down to the lowest possible level.

Recommendations

We recommend that the Enforcement Center:

- 2A. Review its procedural guidelines and determine if its time frame for obtaining an approved enforcement action plan within a 50 day period is achievable. If not, an achievable time frame should be established.
- 2B. Take the necessary steps to ensure that Satellite Offices meet the time frame to either return the

referrals to the HUBs or develop enforcement action plans.

- 2C. Perform an evaluation of its concurrence approval process and its impact on the timeliness of enforcement actions.
- 2D. Consider giving the Satellite Directors the authority to execute the enforcement action plans without the required approval from the Enforcement Center's Headquarters. In this regard, the Center's Headquarters should perform quality control reviews of the plans, and if necessary, provide appropriate training to correct any noted problems.

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Enforcement Center's Tracking Systems Lack Reliability

The Enforcement Center has not successfully established a high priority centralized Departmental Tracking System (DTS) as detailed in the HUD 2020 Management Reform Plan. Consequently, the Center had to rely on inconsistently designed and unreliable systems developed by its Satellite Offices to meet its Business and Operating Plan (BOP) objective of tracking and measuring the effectiveness of all HUD enforcement actions. As a result, there is little assurance that enforcement actions are accurately tracked and that the actions are monitored for effectiveness. We attribute the Center's inability to establish an effective tracking system to questionable performance by system development Contractors and questionable controls over the design of its Satellite Offices systems, as well as reductions in operating budgets.

Background

The Enforcement Center, as established by HUD's 2020 Management Reform Plan, has the primary responsibility for restoring and maintaining the public trust.

As specified in the Enforcement Center Implementation Plan, the Enforcement Center's organizational structure is composed of six functional divisions that report to the Office of the Director. Two of the six divisions, the Tracking Division and the Information and Technology Division, have the primary responsibility for information systems and tracking of HUD's enforcement actions.

The Tracking Division is responsible for collecting, tracking, monitoring and reporting on all enforcement actions throughout HUD. The tracking function requires the Division to work with program offices in Headquarters and in the field to develop the types of information to be collected for each program area. The Tracking Division is also responsible for preparing enforcement performance reports for the Secretary, the Center's Director and others upon request. Furthermore, the Tracking Division interacts closely with the Center's Information and Technology Division and Operations Division regarding quality control responsibilities, including: (a) timeliness of actions, (b) consistency of application, (c) monitoring field actions, and, (d) performing other activities to verify the quality and effectiveness of the Center's enforcement efforts.

The Information and Technology Division is responsible for: (a) developing and maintaining information systems for the Center; (b) interfacing with HUD's financial, information and program systems to ensure that data required by the Center is accurate, current, accessible and reliable; (c) production of reports; and (d) coordination with users in other parts of HUD.

Criteria

The Enforcement Center's Business and Operating Plan, as revised January 22, 1999, describes an overall objective of restoring the public trust. There are four specific objectives in the BOP including Objective 4, which requires the Enforcement Center to: Track all enforcement actions by the Department and measure the effectiveness of actions taken. As a measure for Objective 4 the BOP provides, in part, that the Center will collect, track, and report on all enforcement actions throughout HUD and that enforcement performance reports will be generated and provided to the Secretary, Center Director and others as necessary. In this regard, the protocol, effective March 1, 1999, between the Office of Housing and the Center states that the Secretary has given the Enforcement Center the responsibility to track all enforcement actions throughout HUD.

Departmental Tracking System is not operational

The development of a new DTS is considered a high priority and integral part of the HUD's 2020 Management Reform Plan. A draft memorandum dated May 4, 1999 from the Director of the Enforcement Center to the Acting Assistant Secretary for Administration, indicated that in May 1998, a team of contractors were tasked to develop a centralized automated database system. The system would provide the Center a means to collect data, track, and report on all of HUD's enforcement actions. However, the memorandum emphasized the Enforcement Center Director's concerns regarding proposed budget cuts and the slow pace towards developing the system.

Implementation dates not attained

The Enforcement Center's plans on the development of the DTS involved two main phases of production. Because of various problems and constraints encountered during development, DTS target dates for implementation could not be met. Initially, the DTS was scheduled to be fully operational by May 1999. However, a revised target date for full implementation was extended 17 months to October 2000. Despite efforts to develop a DTS since May 1998, the

Enforcement Center could not provide a meaningful report from the system’s database at the time of our December 1999 site visit.

The primary reasons the DTS has not been fully developed into a useful resource are as follows:

a. Deficient Contractor Performance

Contractor staffing constraints

Although under contract since May 1998, the Contractors assigned to develop the DTS did not meet critical deadlines. Moreover, the Contractors did not provide sufficient staff or have an adequate system design in place to assure that the DTS would produce the information necessary to perform the Center’s duties.

b. Unreliable Data Sources

HUD information systems impeded development

HUD’s history of poorly designed information systems proved to be a problem in the development of DTS. In addition, the compatibility of the HUD systems with the DTS impeded progress in developing the system. For example, the DTS was unable to obtain data transfers from HUD’s Real Estate Management System⁵ (REMS) with an acceptable degree of accuracy.

c. Budget Constraints

Budget cuts

HUD budget cuts proved to be an obstacle in completing the DTS. For example, the Fiscal Year 2000 budget allocation to the Center for non-salary expenses was 52 percent less than the budget allocated in the 1999 Fiscal Year.

Until the constraints identified above are actively addressed the Enforcement Center will continue to encounter obstacles in implementing a useful DTS within the time frames prescribed. Consequently, it is unlikely that those BOP goals, relying in part on a functional DTS, will be met.

⁵ A system that serves as the Office of Housing’s centralized data base for maintaining and tracking multifamily property information.

Tracking systems are inconsistent

Since an effective DTS has not been developed, the Enforcement Center's Satellite Offices have created independent systems to track the status of case referrals and enforcement actions. Site visits to three Satellite Offices revealed that, although similar, the design and format of the tracking systems were inconsistent and varied by location. Moreover, tracking reports provided for our review, showed instances of incorrect data that were not detected through established internal control procedures. For example, at one Satellite Office a schedule of cases where enforcement action plans were completed, was provided. However, upon review, it was determined that the information on the schedule provided was inaccurate and did not include five cases which had action plans.

Furthermore, for 20 of the 63 projects included in our sample, Headquarters and/or Satellite Office schedules showed that the dates when the referrals were received at the Enforcement Center differed from, or could not be verified to, corresponding data contained in HUD's REMS database.

Nine of the projects in our sample had enforcement action plans that were signed but not dated. For all nine, Satellite Office officials could not verify the effective date of action plan implementation. As such, tracking timeliness of corrective actions has been impaired.

Controls were not established

Apart from the above, the Enforcement Center's compliance tracking systems did not adequately detect the statute of limitation expiration dates. For example, we observed that a referral was submitted to the Enforcement Center that requested the Center to process a Program Fraud Civil Remedy Act (PFCRA) claim against an entity; however, the statute of limitations expired and a claim was not processed. We believe that if the Center had had an adequate tracking system, it may have noticed that the statute was expiring and followed up on the claim. We were advised that the Center has developed a computerized system to track the various statute of limitation dates, to prevent a reoccurrence of this situation.

None of the three Satellite Offices visited or Headquarters could provide an accounting of contractor costs incurred by project. This not only increases the possibility of incurring

costs for duplicate billings, but detracts from an effective overall case tracking analysis by ignoring cost-benefit considerations.

Inconsistent reporting formats and erroneous data increase the risk that tracking information reported by Satellite Offices will be compiled incorrectly and that reports provided to and relied on by the Secretary will be inaccurate.

The Enforcement Center currently operates in an environment vulnerable to both internal and external constraints. As a result, its ability to adequately control and track HUD's enforcement actions has been impaired. To achieve the goals stated in its BOP, and to achieve the primary objective of restoring the public trust, the Enforcement Center must make a concerted effort to hastily and comprehensively address the issues raised herein and implement corrective actions to eliminate all tracking system deficiencies that currently exist.

Auditee Comments

The Enforcement Center Director agreed with our assessment that the Departmental Tracking System has not been implemented timely due to inadequate and non-dedicated funding. Further, the Director stated that the Center now has a system to address the problem of accounting for Contractor costs.

Recommendations

We recommend that the Enforcement Center:

- 3A. Re-evaluate the viability of developing a HUD wide system to track enforcement actions, and either: (1) provide adequate resources for the development of a functional DTS including resources needed to modify and update other HUD automated systems that provide critical data; or (2) discontinue funding the development of a new system and explore other avenues to address its tracking needs.

- 3B. Implement controls that require consistent and accurate reporting of tracking data for all of its Satellite Offices until tracking of enforcement actions is automated and centralized.

Management Controls

In planning and performing our audit, we obtained an understanding of the management controls that were relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in the broadest sense, include the plan of organization, methods and procedures adopted by management to ensure its goals are met. Management controls include the processes for planning, organizing, directing and controlling program operations. They include the systems for measuring, reporting and monitoring program performance.

Relevant Management Controls

Relevant Management Controls

We determined the following management controls were relevant to our audit objective:

- Program operations - Policies and procedures established for processing multifamily housing referrals.
- Validity and Reliability of Data - Administrative controls to ensure the validity and reliability of the Departmental Tracking System and independent systems to track status of referrals.
- Compliance with Laws and Regulations - Procedures for ensuring that necessary delegation of authority have been given to the Enforcement Center
- Safeguarding Resources - Policies and procedure for administrating civil money penalties proceedings.

We assessed all of the relevant control identified above. The scope of our assessment is identified in the Introduction Section of this report and in the respective Findings.

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing and controlling program operations will meet an organization's objectives.

Based on our review, we believe that significant weaknesses exists in the following management controls.

These weaknesses are described in the Findings Section of this report.

- Enforcement Center did not make prompt decisions when pursuing enforcement actions, Finding 2 (Program Operations).
- Enforcement Center did not implement adequate systems for tracking referral status, Finding 3 (Validity and Reliability of Data).
- Enforcement Center has not been given the proper delegation of authority. As a result, the Enforcement Center has not pursued the assessment of civil money penalties in all cases where it was applicable, Finding 1(Compliance with Laws and Regulations), (Safeguarding Resources).

Follow Up On Prior Audits

This was the first OIG audit of Enforcement Center.

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Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20407-0050

Departmental Enforcement Center

March 7, 2000

MEMORANDUM FOR: Susan M. Gaffney, Inspector General, G
FROM: *Edward J. Kraus*
Edward J. Kraus, Director, Departmental Enforcement
Center, V

SUBJECT: Internal Audit of the Departmental Enforcement Center

This is in response to the Office of Inspector General's draft findings of the internal audit of the Departmental Enforcement Center (DEC). We expect that your final report will reflect our comments and concerns.

Overview:

As we review your draft findings, we are in general agreement with your overall direction and conclusions. As you know, we have already addressed most of your recommendations through our own internal assessment, prior to the issuance of this draft report.

Specifically, the internal assessment refined the process of handling referrals, affected the organizational structure and personnel changes, improved communications within the DEC, and provided training.

While we were declared operational in September, 1998, many of the pieces of our organization, namely, protocols, staff, training, budgets, referral processes, were not in place. Thankfully, we have made remarkable progress in the short period of time that we have been in existence.

We take strong exception with your overall assessment in Finding One that "accomplishments to date have been less than dramatic." While we still have a long way to go, within the 17 months of our operation (as of February 1, 2000), we have recovered over \$22 million through civil judgments and administrative proceedings, we have analyzed and taken action on 252 or 43% of our Multifamily referrals; cleared up the Mortgagee Review Board (MRB) backlog that existed prior to formation of the DEC, took 781 administrative actions (12% more than the previous year), avoided \$11 million in losses (the amount of loss that would have incurred, had the MRB not taken action), reduced the review time

03/07/2000

of 30 day monitoring letters from two months to two weeks, and reached out to CPD and PIH to obtain referrals.

These achievements do not include the tangible but not always measurable benefit in the improvement of the lives of the residents and the properties in which they live. Nor does it reflect dollars that owners have invested to fix up properties to escape or avoid the DEC. Since your review, the DEC has begun taking FASS (Financial Assessment Subsystem) referrals based on 1998 Annual Financial Statements. We fully expect recoveries to increase.

Additionally, we disagree with your recommendation that, "unless the required actions are implemented, consideration should be given to returning the enforcement function to the previous HUD enforcement structure." If you assess our achievements and progress in comparison to what existed before creation of the DEC, there is little doubt that the DEC has had a significant and positive impact on how the Department conducts its business and what the industry can expect in terms of aggressive enforcement. It is clearly no longer "business as usual." As a result, recipients of HUD resources have changed their attitudes from that of non-compliance to responsiveness. Clearly, the Department has changed fundamentally the way it conducts enforcement by consolidating and elevating these functions into a single focused organization. In addition, OMB's assessment concluded that the Enforcement Center model is one that should be duplicated by other Federal agencies with similar functions.

We believe based on major actions that we have already taken to date, that the appropriate course of action is not to retreat to a structure that we know did not work, but to improve on a structure that is already showing promise.

Based upon our exit interview, it is clear that the Office of Inspector General endorses the DEC concept; but is concerned that it will succeed only if the DEC gets the resources and support it needs. It is also clear that the Office of the Inspector General and the DEC must work together in a close partnership if the mission of the DEC is to be accomplished.

FINDING 1:**THE ENFORCEMENT CENTER IS NOT OPERATING AS ORIGINALLY PLANNED
UNDER THE HUD 2020 MANAGEMENT REFORM PLAN**

Response: The following are specific comments related to the specifics of Finding 1 by way of clarification and/or amplification.

1. We have only now begun to receive referrals from PIH. It should be noted that the TARC has a one-year window to turn around troubled properties before they are referred to the DEC.
2. In addition to Multifamily referrals, we are working Single Family cases through the Mortgagee Review Board, the imposition of Administrative sanctions, and as a result of Credit Watch, an ambitious program that monitors, and as appropriate, takes enforcement action against single family lenders with out-of-pattern default rates and claims.
3. By way of amplification, we have also asked Housing for delegation to sign 30-day Mortgagee Review Board letters. The FHA Commissioner has agreed to this expedited procedure and the delegation is in the clearance process.
4. With regard to the Cleveland matter on page 6, we need to underscore the fact that during this time the DEC was not operational and we were only in a position to advise Multifamily.
5. The Section on page 8 indicating that the DEC could not perform another inspection after REAC conducted one, is misleading. To clarify, the only "inspection" that we cannot perform at that juncture is another REAC type inspection. We are now conducting regular evaluations using our own contract staff. Our contractor has been trained and certified by REAC and is capable of performing an in-depth evaluation, including review of Exigent Health and Safety (EHS) citations. In addition REAC has made available its own QA staff, to conduct follow up inspections, and is available to do "On demand" inspections as needed.
6. The draft memorandum, referred to on the top of page 9, clarifying the Enforcement Center's relationships with Community Builders has been signed.
7. On page 10, you indicate that the DEC has not, but should monitor action plan implementation. The Secretary has

recently made clear that the DEC should have a responsibility for monitoring to ensure compliance. While we have always accepted responsibility for monitoring, we have now clarified the roles and responsibilities for monitoring with Multi-Family Housing. The Real Estate Management System, (REMS) version 4.0, to be released in the coming months, will enable us to monitor Action Plans remotely. We are coordinating with Housing and REAC to conduct regular follow ups to ensure that owners are complying with terms of Settlement Agreements and Management Improvement and Operations (MIO) plans on those properties that have been referred to the DEC and are subject to a DEC Action Plan. Subsequent annual REAC inspections will also confirm compliance.

8. Page 11 speaks to a HUB Multi-Family Housing, not a DEC issue, namely, inability to maintain a complete and accurate administrative record for the property. The DEC is obligated marshal and to correct, when possible, the administrative record before taking any enforcement action.
9. Suggest a rewrite of Recommendation IA on page 12 to read: "Ensure that the Enforcement Center is delegated the proper authority to perform its mission and be given the proper autonomy of resources including separate hiring authority and separate FHA funding (to include funding for DEC IT projects) so that it can achieve its primary objective of restoring the public trust in HUD programs."

FINDING 2:

THE ENFORCEMENT CENTER IS NOT MAKING PROMPT DECISIONS WHEN PURSUING ENFORCEMENT ACTIONS.

10. Amplification of status of Contractor: on the top of page 19, the finding indicates that Contractor has been on probation. While that was true in the past, Contractor's performance is now acceptable and we are referring cases on a routine basis.
11. We agree with Recommendation 2A. and believe, based on our most recent successes, that for most cases an average of 60 days from receipt to plan, is more realistic. Clearly, some cases will require more extensive investigation that will take more time.

12. Related to Recommendations 2C. and 2D., we continue to review our concurrence approval processes with the objective of delegating authority as quickly as we can down to the lowest level possible. The speed of this delegation will be directly proportional to the quality and consistency of enforcement activity.

FINDING 3:

ENFORCEMENT CENTER'S TRACKING SYSTEMS LACK RELIABILITY.

13. We agree with your assessment that the DEC has not been able to implement the Departmental Tracking System timely due to inadequate and non-dedicated funding.

14. As an update to the section on the bottom of page 26, that addresses the problem accounting for contractor costs, the DEC now has such a system.

CC: Kathryn M. Kuhl-Inclan
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