

OFFICE OF INSPECTOR GENERAL  
OFFICE OF EVALUATION



U.S. DEPARTMENT  
OF HOUSING  
AND URBAN  
DEVELOPMENT

## Risk Based Enforcement Could Improve Program Effectiveness

Report Number: 2014-OE-0002  
February 12, 2016  
Washington, DC

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## MEMORANDUM



U.S. DEPARTMENT  
OF HOUSING  
AND URBAN  
DEVELOPMENT

TO: Nani A. Coloretti,  
Deputy Secretary, SD  
Helen Kanovsky  
General Counsel, C

FROM: Kathryn Saylor,  
Assistant Inspector General for Evaluation, GAH

SUBJECT: Effectiveness of the Departmental Enforcement Center  
(2014-OE-0002)

Attached is the report on our evaluation of the Departmental Enforcement Center's effectiveness. We contracted with Zelos, LLC to assist with this project. Zelos performed preliminary research and fieldwork on the project. The contract required that Zelos perform its work in accordance with the Council of Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation, January 2012. Zelos identified several areas in which HUD could improve enforcement effectiveness.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued as a result of our evaluation.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov/>.

If you have any questions, please contact me at (202) 809-3093 or Nikki Tinsley at (443) 822-8285.

# At A Glance

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## Why We Did the Evaluation

Effective monitoring and enforcement can keep properties safe and well managed for the millions who rely on HUD to help provide their housing. This evaluation responds to congressional interest in departmental enforcement practices.

## What We Found

**Strengths:** The Departmental Enforcement Center (DEC), working with the Office of Multifamily Housing Programs (Multifamily) and the Real Estate Assessment Center (REAC), improved housing physical conditions, making them safer for occupants, and improved the financial management of troubled multifamily properties. Although some other program offices had taken steps toward risk-based enforcement, they had not taken full advantage of the benefits demonstrated when programs allow DEC to assess compliance and enforce program requirements. DEC proved that it can remedy poor performance and noncompliance when programs are willing to participate in enforcing program requirements.

**Weaknesses:** When it was created, DEC had independent enforcement authority, but it lost that authority when it moved from the Deputy Secretary's office to the Office of General Counsel (OGC). DEC lost control of funding and staffing levels and contended with inadequate information technology systems and support. Further, managers' reluctance to enforce program requirements limited DEC's effectiveness in most programs. Although program offices were asking for more DEC financial analyses, they did not consistently use enforcement actions to remedy noncompliances. Turnover, retirements, and hiring limitations could leave DEC without enough skilled staff to support future workloads needed to service additional HUD programs.

**Opportunity:** Historically, program managers have not wanted to use enforcement actions. That reluctance increases the risk that program funds will not provide maximum benefits to recipients and allows serious noncompliances to go unchecked. Risk-based monitoring and enforcement offers the opportunity to provide quality, affordable rental housing, improve the quality of life, and build strong, resilient communities.

## What We Recommend

1. HUD should implement the risk-based enforcement approach used by Multifamily in other programs.
2. Leadership should provide DEC with the authority, independence, and resources to address HUD-wide enforcement risks.
3. Program managers should work with DEC to identify flags or triggers for referrals of physical or financial shortcomings by participants and implement protocols for referrals to DEC.

HUD agreed with findings 1 and 3 but disagreed with finding 2, which describes challenges hindering DEC's effectiveness. HUD agreed, at least in part, with the report recommendations and described actions planned to address them.

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## Abbreviations

CPD	Office of Community Planning and Development
DEC	Departmental Enforcement Center
ERM	enterprise risk management
FY	fiscal year
GAO	U.S. Government Accountability Office
HUD	U.S. Department of Housing and Urban Development
iREMS	integrated Real Estate Management System
IT	information technology
MOU	memorandum of understanding
Multifamily	Office of Multifamily Housing Programs
OGC	Office of General Counsel
OIG	Office of Inspector General
PIH	Office of Public and Indian Housing
PHA	public housing agency
REAC	Real Estate Assessment Center

# Background and Objectives

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## Background

The U.S. Department of Housing and Urban Development (HUD) provides affordable housing to approximately 4.5 million low-income families through multifamily and public and Indian housing programs, its largest housing assistance programs. When we include rental assistance to tenants, HUD spends approximately \$37 billion annually on these programs. The Office of Multifamily Housing Programs (Multifamily) insures mortgages for projects and oversees the financial and physical condition of those projects. To ensure that HUD achieves its mission “to create strong, sustainable, inclusive communities and quality affordable homes for all,” HUD must manage the risks associated with providing funds to its program participants. Enforcement is an effective risk management tool.

**HUD 2020 Management Reform Plan**

Reform 3—Create an Enforcement Authority With One Objective: To Restore the Public Trust.

The greatest breach of the public trust at HUD is the waste, fraud, and abuse in HUD’s existing portfolio of millions of housing units.

HUD established the Departmental Enforcement Center (DEC) in 1997 as part of the HUD 2020 reform initiative to combine several different enforcement structures into a single enforcement center. At that time, HUD also established the Real Estate Assessment Center (REAC) to address inconsistencies in physical inspections and standards and evaluate financial reporting across all HUD programs. REAC’s responsibilities include obtaining physical, financial, and management scores for Multifamily and the Office of Public and Indian Housing (PIH), as well as being the central repository for financial statements and physical inspection reports. From 1997 to 2000, both programs reported to HUD’s Deputy Secretary, an indication of their importance to HUD 2020’s success.

HUD 2020 focused enforcement on two activities: (1) addressing the backlog of more than 5,000 multifamily properties that HUD identified as being in poor physical condition or having financial management problems and (2) taking action against PIH public housing agencies (PHA) that received a failing score on their annual physical inspections. In 2001, DEC moved from the Office of Deputy Secretary to the Office of General Counsel (OGC), and REAC moved to PIH.

DEC’s mission is to restore the public trust by protecting residents, improving the quality of housing, and eliminating fraud, waste, and abuse. DEC’s primary goal is to bring owners into full compliance so that there is no compromise in the quality of America’s housing.

## Objectives

The evaluation assessed DEC’s effectiveness. Specifically, our objectives were to

- Connect improvements in the physical and financial condition of multifamily properties to DEC's enforcement efforts.
- Identify the enforcement practices that led to multifamily program improvements and consider the potential for applying the practices to improve other HUD programs.
- Identify opportunities to improve DEC's effectiveness, and
- Determine whether DEC's organizational placement and staffing levels impacted its effectiveness.

Congressional staff, concerned about how enforcement funding was used, requested that the Office of Inspector General (OIG) evaluate enforcement effectiveness. Specifically, it wanted to know whether DEC's move to OGC and reductions in DEC staff affected enforcement effectiveness.

# Finding 1: Enforcement Improved Multifamily Housing

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DEC, Multifamily, and REAC together created an enforcement process that strengthened property condition and management across all multifamily properties, not just the poorly performing ones. Since 1999, multifamily properties have shown sustained improvement in physical condition and financial management. A risk-based, collaborative enforcement approach, including the following actions, contributed to program success:

- Multifamily worked with property owners to ensure safe, decent, and affordable housing as well as sound financial management of the properties.
- REAC inspected and scored properties using uniform physical condition standards. On a scale of 0 to 100, a property with a score below 60 failed. REAC also tracked financial statement submissions and reviewed financial statements for indications of financial noncompliance problems. REAC “flagged” failing inspection scores, late financial filings, and other financial conditions that signaled operational problems and financial risk for Multifamily or DEC action.
- DEC escalated enforcement actions, ranging from issuing violation notices to suspensions, debarments, or both of individual owners or management agents.

Both physical and financial conditions improved as a result of the risk-based approach.

## Enforcement Improved Physical Conditions

In response to enforcement efforts starting in 2000, Multifamily’s property physical inspection scores improved dramatically in the first few years and had steadily reduced unacceptable physical inspection scores to an acceptable level in fiscal year (FY) 2014. DEC and REAC staff did not have data for the early years of their existence but estimated that around half of the approximately 29,000 multifamily properties were in physical or financial trouble.

Initially REAC automatically referred properties that failed an inspection with a score below 60 to DEC for analysis and corrective action. In 2004, Multifamily changed the referral criteria, referring only properties scoring 30 or below to DEC. Multifamily believed it could address properties in the 31 to 59 range as the number of troubled properties decreased.

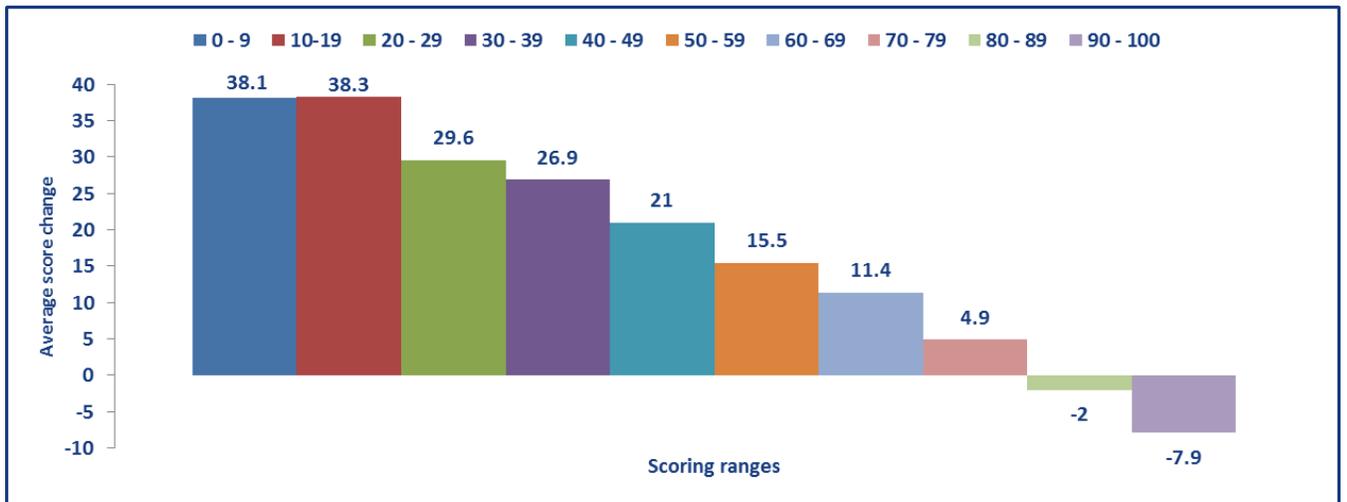
Officials from Multifamily, DEC, and REAC believed that a coordinated response led to improvements. They attributed improvements to three factors described at the end of this section. The improvements were widespread across the multifamily portfolio and beneficial to the lower scoring properties. We verified improvements in three respects:

- Frequency of the improvements: On reinspection, properties that had scored 30 or below increased their scores 91 percent of the time; only 9 percent decreased or remained the same.

- Amount of increases in reinspection scores: Properties that failed with a score of 30 or below increased their scores on the next inspection by an average of 150 percent. DEC had the greatest impact on the properties that scored the lowest.
- Impact on failing properties: Physical inspection scores rose in every scoring increment from 0 to 79. The lower the initial inspection scores, the greater the increase in the follow-on inspection (exhibit 1).

Exhibits 1 and 2 demonstrate physical condition improvements. In the exhibit 1 analysis, we measured improvement by the change from one inspection to the next for all properties with multiple inspections from 2001 to 2014

**Exhibit 1: Physical condition improvements**  
**Average change in later inspection score as a function of initial score**  
**2001 to 2014**



Source: Richard Schehl, mathematical statistician, REAC Physical Assessment Sub-System Division, August 7, 2014. Data analysis was performed by Turner Bond, statistician, OIG Integrated Data Analytics Division.

The improvement in physical property conditions for all scoring categories below 80 indicated that enforcement activities influenced property owners in making needed changes to identified property conditions not meeting standards.

In the exhibit 2 analysis, we compared a 3-year span (2001-2003) to a 4-year span (2010 -2014). We used a 3-year span because REAC inspected physical conditions for properties scoring between 80 and 90 every 2-3 years and inspected properties scoring below 80 every year. Selecting the earliest inspection for each property during the 3-year span and the latest during the 4-year span provides a snapshot of inspection scores for the entire portfolio. These results would have been even more impressive if data had been available from 1999 and 2000, when an estimated 5,000 properties were considered to be failing.

**Exhibit 2: Multifamily portfolio physical condition improvements  
Comparison of an early period (2001-2003) to a recent period (2010-2014)**

Scoring range	Major scoring category	Inspection schedule	Inspections in scoring range (number and percentage)		Result
			FY 2001-2003	FY 2010-2014	
<b>0-30</b>	Failing – automatic referral from REAC	Every year	137 (0.51%)	77 (0.28%)	Reduction in failing properties
<b>31-59</b>	Failing – Multifamily intervenes or refers to DEC  (Before 2004, REAC referred these properties to DEC as “elective referrals.”)	Every year	1,793 (6.68%)	1,112 (4.02%)	Reduction in failing properties
<b>60-79</b>	Passing – Multifamily monitors improvements	Every year	6,482 (24.14%)	4,486 (16.21%)	Many high-performing properties moved to the next higher category
<b>80-100</b>	Passing – highest scoring range	Every 2-3 years	18,435 (68.6%)	21,998 (79.49%)	Increase in highest performing properties

Total properties in each sample period (unduplicated) 26,850 27,674.

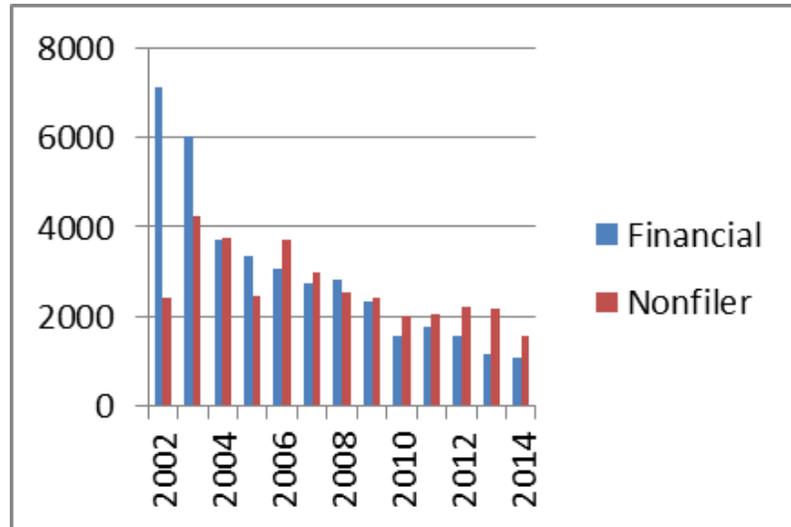
## **DEC Improved Financial Management and Reporting**

In 1998, HUD reported to the U. S. Government Accountability Office (GAO) that there were approximately 5,400 “troubled multifamily properties.” For our analysis, neither DEC nor REAC could provide complete data from its early years to establish a reliable baseline on financial reporting compliance. However, senior officials from Multifamily stated that before 1998, fewer than half of multifamily property owners provided financial reports in a timely manner and serious financial problems were widespread.

The collaboration among Multifamily, REAC, and DEC has resulted in great improvements in financial management and financial reporting. Referrals to DEC decreased for both financial

management problems and failure to submit timely financial reports in response to DEC enforcement (exhibit 3).

**Exhibit 3: Reduction in referrals due to improved owner compliance**



(Note: From 2010 to 2014, changes in the referral criteria impacted an undetermined proportion of the decreases.)

## Enforcement Center's Success Factors Identified

Program managers attributed improvements in the physical condition and financial management of the multifamily portfolio and compliance with financial reporting requirements to the following factors:

- DEC, Multifamily, and REAC signed memorandums of understanding (MOUs)<sup>1</sup> that included responsibilities and procedures for oversight, monitoring, and enforcement functions.
- Risk-based assessment protocols linked oversight and enforcement to physical and financial conditions. DEC, Multifamily, and REAC periodically evaluated and improved the procedures, responding to stakeholders' concerns, and monitored trends in the multifamily portfolio.
- Staff received training.
- Leadership had authority to assign staff and balance workloads.
- Outreach, education, and collaboration helped owners and the industry understand standards and requirements.

<sup>1</sup> DEC's authority to enforce program requirements was established in MOUs with most housing programs in 1998; several of the MOUs have been updated since then.

- Outreach convinced the industry and owners that DEC was there to help them and that they would be treated fairly and professionally.
- DEC and Multifamily used a range of escalating enforcement actions to address noncompliance and substandard performance. They developed protocols and authorities to escalate enforcement as an incentive to change behavior and improve results.
- DEC implemented a process to remove significantly noncompliant owners through limited denial of participation, suspension, and debarment.

Appendix A includes the sequential activities Multifamily, REAC, and DEC performed to improve multifamily properties' physical and financial conditions. Appendix B shows the model we developed that captures the multifamily enforcement approach.

## **HUD's Response to Draft Report and OIG's Evaluation**

OGC agreed that DEC, working with other HUD components, had improved multifamily physical and financial conditions. OGC commented on the success of the enforcement program in addressing Program Civil Remedies Act cases by working with OIG and the U.S. Department of Justice to achieve significant settlements.

OIG's Evaluation. OIG agrees that OGC has been successful in addressing referrals from OIG. Finding 2 includes a chart showing a substantial number of suspension and debarment referrals from OIG. DEC is limited in its ability to initiate compliance reviews in programs other than multifamily housing, and program offices make few referrals. If DEC had authority to initiate reviews in other programs, HUD could expect increases in program compliance as well as increases in suspension and debarment referrals.

# Finding 2: Challenges Hindered DEC's Effectiveness

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DEC did not have the authority to monitor failing participants or require enforcement in any program offices except Multifamily. Program oversight and enforcement functions were stovepiped in HUD program offices. Significantly, in those instances in which field offices requested that DEC monitor, DEC did not have authority to report the need for corrective actions to anyone but high-level officials in the program office. Except for Multifamily, program offices retained full control of enforcement referrals and decisions, thereby reducing DEC's enforcement role to enforcement by request, and DEC became a service organization. One REAC official believed DEC would be more effective if it reported to the Chief Operating Officer. When program offices chose to disregard DEC's recommended enforcement actions, DEC could not appeal these decisions.

## Reduced Authority and Independence Limited DEC's Enforcement

DEC was limited in what it could review and what enforcement actions it could take because of HUD's stovepiped approach to oversight and enforcement. In the 2002 HUD 2020 hearings, GAO testified that moving DEC and REAC out of the Deputy Secretary's office was a matter to be watched. GAO's position was that the organizational placement did not matter so long as results were not affected.

Since DEC's realignment with OGC, its effectiveness had been limited primarily to accomplishments in Multifamily. DEC lacked the authority to address significant failings in other HUD programs independently. In response to an earlier OIG audit (2004) regarding DEC's authority, OGC opined that DEC's mission had changed and that DEC was never intended to provide all departmental enforcement activities. OGC stated that DEC's work had evolved over the years to meet the HUD Secretary's priorities and the President's Management Agenda. OGC issued a revised mission statement in 2004 for the Deputy Secretary to approve. The mission statement clarified that DEC's authority was restricted to what was defined in the current MOUs.

MOUs prevented DEC from enforcing program requirements without program office approval. DEC was not able to appeal to the Deputy Secretary in cases in which disagreements persisted with program officials. The Office of Community Planning and Development's (CPD) MOU was the most explicit, compared with MOUs with other program offices. It stated:

“ ... CPD will retain final authority to exercise-or not exercise-any remedy or enforcement action, including those that may be proposed by the DEC. The DEC will not comment or distribute any information relating to a CPD request for assistance or a referral to a third party unless authorized to do so by CPD.”

Program leaders in CPD acknowledged that they needed to do more monitoring but said they lacked the staff, systems, and skills to effectively implement more analysis and monitoring. PIH also expressed the need to conduct more risk-based monitoring. However, programs other than those of Multifamily have no automatic referral mechanisms so referrals are based on DEC establishing small pilot programs or seeking referrals based on working relationships with field staff.

## Voluntary Enforcement Meant Little Enforcement

The Federal Register description of DEC, written by the HUD 2020 reformers, stated the following about the DEC initiative:

“HUD’s workforce has not been given a clear mission, but rather schizophrenic mandates: On the one hand, to provide assistance to communities and help them meet their needs; while on the other, to police the actions of those same communities... -The Department's [HUD] culture lacks the work ethic and ability to make stewardship of public funds a priority”... “In the past, employees were too often charged to do both [provide assistance and enforce program requirements] at the same time. After the scandals in the 1980s, all emphasis was on monitoring and enforcing regulations. At other times, the emphasis was to help the grantee do whatever it wanted. Too often, employees were asked to be facilitators as well as monitors. These charges were inconsistent and often contradictory.”

DEC staff told us that when DEC was under the Deputy Secretary, there were no contradictory roles to balance. Being under OGC, it was felt that OGC saw program offices as its clients and deferred to its judgment on use of enforcement. While there were instances in which programs implemented some “risk management” initiatives, HUD had not implemented a HUD-wide approach to addressing noncompliance risks. This lack of risk management limited requests for DEC services. Exhibit 4 shows the relative gap between Multifamily requests for enforcement services and requests from other program offices, while also considering the number of program participants.

**Exhibit 4: Program office referrals to DEC**

Program participants	Approximate number	Number of referrals				
		FY 2010	FY 2011	FY2012	FY2013	FY 2014
Multifamily properties	29,000	3,795	3,942	3,865	3,411	2,731
Public housing agencies	2,600	0	22	42	9	9
Federal Indian tribes	800	0	0	4	0	0
CDBG grantees	1,200	1	2	4	2	2
FHA lenders	4,800	0	0	0	0	0

(Note: Most referrals requests from PIH and CPD were for limited financial analysis and not referrals for enforcement.)

Program field offices that requested DEC services did so largely because of personal relationships and trust between DEC and some field office managers. A DEC field director said that there continued to be resistance to letting DEC into program business. DEC managers and program officials reported that program offices did not use DEC services because program staff members lacked trust in DEC, as it was “tantamount to calling in the lawyers” and they did not know what DEC could do to help them improve program performance.

PIH officials told us they had not used a consistent, risk-based approach to enforcement for a number of reasons: a desire to maintain regional discretion to enforce housing regulations, the inadequacy of the type and strength of existing agreements between HUD and PHAs, and political considerations. PIH believed that because its clients are quasi-governmental offices with limited funding, enforcement actions might not be as productive with a PHA as with multifamily properties. Further, PIH thought there was not much interest at HUD in pursuing financial sanctions against PHAs.

Even when DEC built trust with program offices, program managers often would not relinquish oversight control to DEC. None of the program offices, except Multifamily, made data-driven, automatic referrals to DEC. PIH had done extensive work to develop a risk-based approach to monitoring and had implemented some pilot programs with DEC, but there were no automatic referrals. DEC’s role had been primarily helping with financial analysis, but few enforcement actions had resulted. The approach PIH was taking was to provide technical support and give PHAs time to correct problems. However, there did not appear to be much effort to use sanctions even in unmanageable cases. Some DEC field directors reported that cases they sent to headquarters CPD and PIH with recommendations to address noncompliance were not acted upon by headquarters program officials. The Inspector General received several reports from regional staff members, who had requested DEC reviews, but after DEC’s analysis and recommendation, the escalation was stopped by headquarters program offices.

Suspension and debarment are among the final enforcement actions when HUD identifies a serious breach by an individual or group of individuals. Serious property-level failures can lead to default on a mortgage or foreclosure on a property. However, other than OIG, few program offices referred cases to DEC for suspension and debarment actions as shown in exhibits 5 and 6.

**Exhibit 5: Referrals to DEC for suspension of participants during 2014**

2014 suspensions	Referral source							Total
	OGC	Single Family*	PIH	CPD	Outside agencies	DEC	HUD OIG	
Single family	0	0	N/A	N/A	18	9	145	172
Multifamily	0	0	N/A	N/A	N/A	6	15	21
Public housing	1	N/A	2	N/A	N/A	2	61	66
Community planning and development	0	N/A	N/A	1	N/A	0	26	27
Fair housing	2	N/A	N/A	N/A	N/A	0	0	2
Totals	3	0	2	1	18	17	247	288

\* Refers to the Office of Single Family Housing

**Exhibit 6: Referrals to DEC for debarment of participants during 2014**

2014 debarments	Referral source							Total
	OGC	Single Family	PIH	CPD	Outside agencies	DEC	HUD OIG	
Single family	2	24	N/A	N/A	0	1	89	116
Multifamily	0	N/A	N/A	N/A	3	0	13	16
Public housing	0	N/A	1	N/A	N/A	8	46	55
Community planning and development	0	N/A	N/A	0	N/A	0	15	15
Fair housing	0	N/A	N/A	N/A	0	0	0	0
Totals	2	24	1	0	3	9	163	202

N/A means that the referral source office would not be responsible for making referrals on that program area.

According to DEC managers, program officials said that managing documentation for a suspension or debarment case was too burdensome and in some cases, the legal review and concurrence process was excessively slow, although it varied by region. Some field directors said that they gave up on the enforcement action because of legal delays. Headquarters attorneys were unaware of delays at the field office level. An OGC attorney said that too much enforcement would cause participants to leave the programs.

### **Limited Staff Could Impact Expanding Enforcement Beyond Multifamily**

HUD 2020 envisioned that DEC would become HUD’s principal enforcement center. With the DEC move to OGC from the Deputy Secretary’s office in October 2001, DEC lost direct control over administrative and legal staffing that had previously directly supported DEC operations. DEC also lost direct control over its information technology (IT) budget. In past years, DEC leaders conducted outreach efforts to programs and regional offices to expand enforcement. They provided enforcement-related training, conducted special reviews, and developed new agreements to encourage program referrals. In response, programs requested assistance in

conducting financial analyses. However, limits on DEC resources resulted in lost opportunities to improve program effectiveness and strengthen conditions that discouraged waste, fraud, and abuse.

Since the move to OGC, DEC staff levels had decreased from 218 in 2004 to 99 in 2014. DEC satellite office directors said they were typically unable to replace departing staff members with similarly skilled employees and they anticipated additional staffing challenges due to upcoming retirements and attrition. DEC had been able to cope because Multifamily referrals had decreased due to DEC's enforcement success in improving housing and its ability to shift workload among its field offices. However, the projected demand for DEC services is expected to increase due to an ongoing reorganization and reduction in Multifamily offices and anticipated increases in requests for financial analysis by PIH and CPD.

DEC had been unable to extend comprehensive enforcement activities to all program offices, which had reduced its effectiveness. PIH officials told us that they started a 2014 PIH-DEC pilot program, which included 44 high-risk PHAs, and would like to extend the pilot to 500 medium- and high-risk PHAs. CPD requested that DEC provide financial expertise over the last few years but had not used DEC enough to enforce CPD requirements. Both PIH and CPD stated that they would like to develop a more robust, systematic approach to risk assessment as discussed in finding 3. DEC leaders stated that they would need additional staff to perform financial analysis and enforcement if they were to expand current efforts with PIH and CPD.

## **DEC Had Limited Access and Control Over Legal Support**

When DEC was established, it operated as an independent program, which had dedicated legal support within its staff, and it was able to establish priorities to manage enforcement issues as they arose. When DEC was realigned with OGC, 23 attorneys were transferred to OGC headquarters positions, and 18 were transferred to OGC regional and field offices. One OGC division supported DEC headquarters, while another OGC division, or program field office, supported DEC satellite offices. The priorities for the attorneys were dependent on OGC headquarters or field office decisions. Program officials told us that one reason they did not leverage DEC for enforcement assistance was that programs experienced lengthy delays due to DEC's limited legal support.

Conflicting objectives between DEC and programs caused delays or inaction when officials did not agree on when or whether to pursue potential cases. A 2010 OIG audit report on suspensions and debarments<sup>2</sup> stated that processing delays placed "HUD and other Federal agencies at risk of awarding contracts, grants, and other subsidies to unethical, dishonest, and irresponsible parties." DEC and program leaders told us that delays in the legal decision-making processes had, at times, resulted in the best enforcement options no longer being available. Senior program officials told us that enforcement delays meant that some cases could not be pursued because the

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<sup>2</sup> HUD's Departmental Enforcement Center's Compliance Division, Evaluation of Suspension and Debarment Referrals, Report Number IED-11-001R, November 4, 2010

party suspected of fraud or mismanagement was no longer “presently responsible” for funds (a HUD policy criterion for legal action).

## **DEC Reported Inadequate IT Support**

DEC managers said OGC did not provide adequate IT funding. DEC used a SharePoint site to track its cases as a temporary solution until the Multifamily Real Estate Management Tracking System is completed. However, SharePoint was not designed for large-scale data management and analysis, and many problems resulted, including

- DEC had limited IT support available to keep the system operational and experienced system outages that impeded its work.
- The multifamily system could not export data to SharePoint for data analysis. DEC staff had to analyze individual case files to identify issues and develop enforcement approaches.
- Information was more transaction based, which limited DEC’s capacity to identify trends and what factors were related to each other. The multifamily system stored data in text fields so data summaries had to be obtained manually.

## **Multifamily Reorganization Could Impact DEC’s Workload**

By 2016, Multifamily plans to realign its headquarters and field office structure, reducing office locations from 54 to 17 and redefining jobs and roles to distribute workloads, including enforcement, more evenly across the organization. The Multifamily transformation plan included reassignment, relocation, or retirement of an undetermined number of employees, all while it experienced increased work volume and complexity. Both Multifamily and DEC managers expressed concerns about the availability of skilled staff to perform program work, especially financial analysis. Managers anticipated that the shortage of skilled staff would place additional demands on DEC to provide financial analysis expertise to support multifamily program oversight.

## **HUD’s Response to Draft Report and OIG’s Evaluation**

OGC disagreed with OIG’s conclusions on DEC weaknesses, saying DEC was established primarily to address multifamily cases. OGC pointed out that DEC works with other offices by performing limited “snapshot” reviews. OGC agreed that the MOUs between DEC and program offices are overly restrictive but said the MOUs are not required for aggressive enforcement action because OGC can take action or refer disagreements to the Deputy Secretary. With regard to independence and DEC’s location limiting its ability to enforce, OGC disagreed, saying DEC’s location within OGC is not limiting, enforcement in HUD is discretionary, and OGC can take enforcement action when necessary.

With regard to staffing, OGC disagreed, saying DEC was not impacted because OGC had achieved efficiencies by consolidating functions, reductions were consistent with reductions throughout HUD, and DEC referrals had dropped by 50 percent. OGC believes DEC has

sufficient staffing to continue to work as a troubleshooter by performing snapshot reviews. OGC agreed that legal support should be timely but disagreed that legal support provided to DEC was insufficient or untimely. OGC was not aware of the situation when it took 12-18 months to take an enforcement action. With regard to IT support, OGC said the report was inaccurate. DEC uses both the integrated Real Estate Management System (iREMS) and SharePoint to track workload and said that DEC is working toward having one data entry system. OGC agreed that the current assignment process is limited and both iREMS and SharePoint lack the capacity to meet DEC's data analytics needs. OGC provided information on planned capabilities of a new HUD Enforcement Management System, the first release of which was planned for mid-October 2015.

OIG's Evaluation. Contrary to OGC's assertion, HUD 2020 did envision a DEC enforcement presence beyond Multifamily. The HUD management reform plan stated, "It is expected that, in the future the Enforcement Center will take on expanded responsibility for much of the other enforcement activity now carried out by offices elsewhere in HUD."

DEC snapshot reviews are limited in scope to mainly financial analysis. DEC lacks authority to address the issues uncovered during these reviews. OIG believes DEC could increase its effectiveness with broader enforcement authority and independence, which would allow it to take enforcement action when necessary to bring about program compliance. While enforcement may be discretionary, HUD should hold recipients of HUD funds accountable to comply with program requirements. DEC enforcement efforts outside of Multifamily should not be limited to snapshot financial reviews performed at the request of program offices. The HUD management reform plan stated that program offices had a conflicting role in getting funds to and spent by participants versus holding them accountable. OGC may have a similar conflict as it protects its program clients should DEC recommend enforcement against its program participants.

When performing our evaluation of DEC staffing and IT and legal support, we relied on information gathered during discussions with DEC, Multifamily, REAC, and program office staff. We attempted to learn more about the situation causing the 12-18 month delay, but the PIH official we talked with could not provide additional information so we removed the example from the report. We revised the report to acknowledge the weakness in iREMS. While the new enforcement management system may resolve some problems, officials told us it will not provide the data analytics they need to identify and address program compliance problems.

# Finding 3: HUD Has Opportunity to Establish ERM

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## OMB Encourages ERM

OMB plans to issue an updated Circular A-123<sup>1</sup> to encourage departments and agencies to implement enterprise risk management (ERM) in support of mission accomplishment. ERM is a holistic approach to risk management, which HUD has not formally addressed. As discussed in finding 2, program managers were not consistent in enforcing program requirements, and HUD had not developed consistent risk assessment and enforcement across program lines. This inconsistency meant that some program participants violated program rules, which resulted in lower housing quality or provided incorrect benefits to program participants at the expense of taxpayers. ERM would improve controls over critical risks, support allocation of resources, and reduce financial management problems and failures. Together those benefits would lead to increased program participants benefits. The enforcement approach used to improve multifamily properties integrates components of ERM concepts and principles.

HUD 2020 created a single HUD-wide enforcement authority because programs did not enforce program requirements. Congressional hearings in 1998 and 2002 focused on weaknesses in HUD management and housing program oversight, and GAO placed HUD on its high risk list. GAO and HUD OIG have often reported on inadequate oversight of HUD programs. While improvements in the multifamily housing portfolio could be linked to risk-based enforcement, other HUD programs limited DEC's ability to enforce program requirements. As a result, those programs continued to support troubled properties, leaving participants in substandard housing or providing funding to grantees that mismanaged HUD funds. Because enforcement was not consistently implemented among all HUD programs, a multifamily owner was more likely to be disciplined for failing to correct property issues than participants in other HUD programs.

HUD had not implemented the enterprise-wide approach to enforcement envisioned in HUD 2020. While program offices understood and, at times, implemented risk-based concepts in their oversight, they had not ceded control of enforcement decisions. Enforcement continued to be controlled within program offices.

## DEC Was Working With PIH

DEC was in the early stages of working with PIH to institute a risk-based approach to PHA oversight. Program staff described a positive partnership between PIH and DEC over the past 3 years. DEC provided assistance in two areas. First, it provided technical assistance by training PHA boards of commissioners. Second, it began a pilot program with PIH and performed financial analyses on 44 troubled PHAs. If this pilot proved successful, PIH wanted DEC to perform financial analyses on more than 500 high- and moderate-risk PHAs. PIH had worked closely with REAC to develop a National Risk Assessment Tool to evaluate risks to PHAs. A

PIH risk officer said that the Office of Field Operations had been more “regional” in the past but had been trying for about 18 months to do risk assessment that was uniform and nationwide. This undertaking was being performed concurrently with the PIH effort and was an attempt to predict which PHAs might be in trouble before they are classified as troubled. The risk officer noted that DEC had not had a lot of involvement but that it needed to be involved and conduct enforcement activities in a risk management framework HUD-wide.

## **DEC Was Working With CPD**

CPD seldom requested enforcement assistance because it was hesitant to call in an “outsider” (DEC) to do its job. A CPD program official said that CPD had recently revised the MOU with DEC to obtain technical assistance on the HOME Investment Partnerships Program. HOME funds housing and rental assistance for low income families. CPD revised the MOU to revitalize an enforcement role for DEC and clarify the working relationship for the field offices. As noted in finding 2, the current CPD MOU was explicit in limiting DEC’s assistance. CPD requested that DEC perform financial analyses of a few HOME grants.

## **Conclusion**

HUD had not realized the consolidated enforcement authority envisioned in HUD 2020. With its move to OGC, DEC lost its independence; intended HUD-wide enforcement authority; and control over resources, staff levels, legal support, and technology. Still, DEC, working with Multifamily and REAC, implemented a risk-based approach to enforcement that improved both the physical and financial condition of multifamily properties. Other program offices continued to manage programs but failed to fully enforce program requirements. HUD could take a large step toward improving program results by embracing ERM and taking a HUD-wide approach to enforcement.

## **HUD’s Response to Draft Report and OIG’s Evaluation**

OGC agreed that more can be done to incorporate enforcement into the agency’s ERM process and said DEC is working with the Chief Financial Officer to incorporate its activities into the process. OGC said DEC meets all three of the Green Book categories of fraud control activities, operating within the spectrums of response and detection and assisting program staff to implement change with the prevention spectrum.

OIG Evaluation. OIG believes it is appropriate for DEC to work with the Chief Financial Officer to incorporate its activities into the agency’s ERM process. With regard to the Green Book comment, OIG assumes OGC is referring to a draft OMB Circular A-123 that soon will be issued and incorporate the GAO Framework for Managing Fraud Risks in Federal Programs. HUD and the Office of the Chief Financial Officer have not issued guidance on creating and managing risk and fraud profiles. Further, limits on DEC’s enforcement authority, along with staffing and resource limitations, prevent DEC from providing a comprehensive, consistent agency-wide assessment of risks and enforcement envisioned by ERM.

# Recommendations

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**Deputy Secretary**—To strengthen HUD-wide enforcement that supports HUD’s broader risk management efforts, we recommend that the Deputy Secretary

- 1. Implement an enterprise-wide approach to enforcement** using risk management concepts similar to those shown in the multifamily enforcement model.
- 2. Strengthen DEC’s authority to enforce program requirements.** Program offices should be directed to incorporate risk management procedures, to include risk-based, data-driven referrals to DEC, and implement a process that allows DEC to recommend enforcement actions independently. The Deputy Secretary or designee should be the final arbiter when disagreements arise.
- 3. Provide DEC with the authority and resources necessary to implement a HUD-wide enforcement program.**
- 4. Direct program offices and REAC to collaborate with DEC** to research the types of data that would provide clear indications of financial and physical performance failures appropriate for use in data-driven referrals to DEC from each program office.

**General Counsel**—To address operational challenges that impede DEC’s capacity to support HUD programs, we recommend that the General Council

- 5. Provide resources and support to DEC to strengthen enforcement across HUD programs.**
- 6. Develop a strategy for addressing additional enforcement workload.**

**Deputy Assistant Secretary for Multifamily Housing**—We recommend that the Deputy Assistant Secretary

- 7. Evaluate the impact of Multifamily’s reorganization on enforcement**, including (1) monitoring the impact of changes to the risk assessment process, (2) making changes to MOUs, (3) documenting procedural changes and how those changes affect DEC and REAC collaboration, (4) improving data tracking and data sharing with DEC and REAC on improvement and enforcement actions taken and associated results, and (5) ensuring that Multifamily has the capacity to maintain the improvements it has achieved in recent years.

**Principal Deputy Assistant Secretary for Public and Indian Housing**—To support potential expanded data gathering for program offices, we recommend that the Principal Deputy Assistant Secretary

8. **Direct REAC to work with DEC and program offices** to identify and develop strategies for collecting data needed to support its National Risk Assessment Tool and ERM to include major program participant risks.

## **HUD's Response to Draft Recommendations and OIG's Evaluation**

In general, OGC responded that it disagrees that DEC could be more effective if it had more authority and independence. OGC contends that DEC is effective in taking enforcement actions, does not believe DEC's current placement restricts its ability to take enforcement actions, and disagrees that DEC needs additional resources or support. OGC stated that the Deputy Secretary directed the General Counsel to review the MOUs between DEC and program offices to strengthen them or find alternative methods for DEC to receive assignments and that DEC is participating in a task force led by the Chief Financial Officer to strengthen the agency's risk management system. OGC agreed to research ways to develop data-driven indicators for making referrals to DEC and to evaluate the impact of Multifamily's transformation in its relationship with DEC.

OIG met with the General Counsel on December 9, 2015, to discuss the findings, recommendations, and the OGC response. At that meeting, OIG explained it used the term "enforcement" in the report in a broader context than OGC had interpreted it. OIG referred to enforcement as an escalating range of activities, including risk identification, monitoring, analysis, and working with participants to modify behaviors and bring them into compliance. OGC thought OIG referred to enforcement as suspending or debarring a program participant, the final step in the escalating enforcement process. At the conclusion of the meeting, in general, OGC agreed with the recommendations to the extent that the recommendations of the two task force reviews find that they are able to implement them within existing authorities.

# Scope and Methodology

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Our evaluation focused on the multifamily housing program and DEC's risk management and enforcement activities. To a limited degree, we also reviewed DEC's working relationship with PIH. We interviewed headquarters staff from DEC, Multifamily, REAC, OGC, PIH, OIG (the Offices of Audit and Investigation), and CPD as well as field staff in Multifamily and DEC.

We analyzed data from REAC's Physical Assessment Sub-System and Financial Assessment Sub-System, the Enforcement Center Program Compliance Integration System, and Multifamily's iREMS. We reviewed prior audit and evaluation reports as well as other relevant draft and published documents. Our study was limited in content and scope by the information the programs could provide. DEC, REAC, and Multifamily could not provide all requested data due to system limitations (either the data were not collected, older data were considered to not be comparable to more current data, or the data could not be easily extracted).

We reviewed data from FY 2000 through October 2014. We analyzed data and completed charting and statistical calculations. When necessary, we discussed inconsistent data with program staff. We did not subject data to independent verification and validation.

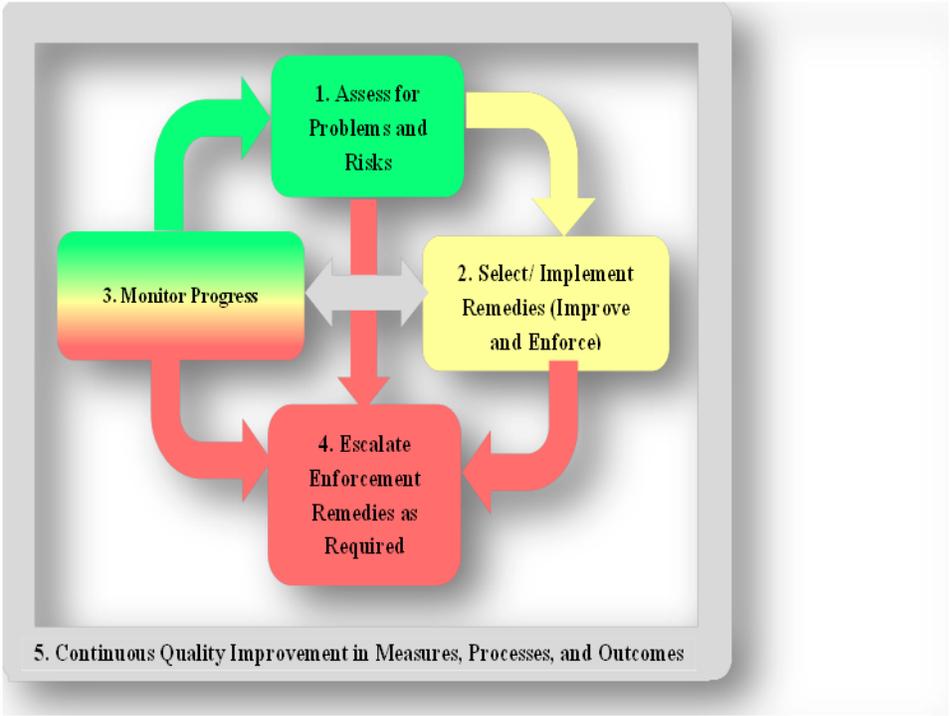
We conducted fieldwork from July 3 to November 14, 2014. We generally performed work in accordance with the Council of Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation, January 2012.

# Appendixes

## Appendix A Multifamily Property Enforcement Activities

Component	REAC and Multifamily activities	DEC
1. Assess for problems and risks	REAC inspects properties and refers failing properties to DEC or Multifamily.	
<b>2. Select and implement remedies (improve and enforce)</b>	<b>Multifamily or DEC selects responses and remedies based on the nature and severity of the violation or condition.</b>	<p><b>DEC analyst</b></p> <p><b>Reviews and updates HUD file.</b></p> <p><b>Confirms property owner awareness of violation.</b></p> <p><b>Identifies mitigating circumstances.</b></p> <p><b>Determines whether there were inspection violations and status of correction.</b></p> <p><b>Attempts to obtain a corrective action plan with owner.</b></p>
3. Monitor progress	Multifamily or REAC determines compliance and improvement and closes the case or refers to DEC for enforcement.	DEC analyst monitors compliance.
4. Escalate enforcement remedies as required	Multifamily or DEC escalates enforcement.	<p>If owner fails or refuses to make repairs, DEC analyst prepares civil penalty documents for supervisory review and legal filing.</p> <p>If owner fails to pay penalty and remedy noncompliance, Regional attorney requests that U.S. Department of Justice file with court to enforce judgment.</p> <p>If owner still refuses, DEC takes additional enforcement action, which may include</p> <ul style="list-style-type: none"> <li>a) Abating the Section 8 subsidy;</li> <li>b) Suspension, debarment, or both of the principals;</li> <li>c) Declaring a technical default on the mortgage; or</li> <li>d) Foreclosing on the project.</li> </ul>
5. Evaluate and improve processes	Multifamily, REAC, or DEC evaluates and adjusts measures, triggers, and processes.	

**Appendix B Multifamily Enforcement Model**



## Appendix C Full Departmental Response to the Draft Report



GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

October 16, 2015

MEMORANDUM FOR: Kathryn Saylor, Assistant Inspector General for Office of Evaluations, GAH

FROM: Helen R. Kanovsky, General Counsel, C 

SUBJECT: Draft Report "Effectiveness of the Departmental Enforcement Center," 2014-OE-0002

Thank you for the opportunity to respond to the HUD Office of Inspector General's ("OIG") Evaluation of the Departmental Enforcement Center. On August 1, 2015, the OIG issued its draft report and provided HUD with an opportunity to comment on the findings and/or recommendations contained in the report. HUD was also encouraged to provide alternate resolutions to the issues identified in the report. This serves as the Department's response to the draft report.

### I. INTRODUCTION

HUD established the Departmental Enforcement Center ("DEC") in 1997 with the primary goal of addressing multifamily enforcement. As OIG observes in its draft report, the DEC has succeeded in that mission. The OIG found that the DEC, working with other components of HUD, had improved the physical and financial conditions of multifamily housing properties, which made them safer for occupants and safeguarded taxpayers' interests. We agree, and submit that the DEC has made substantial contributions to the improvement of HUD's multifamily housing portfolio.

Nevertheless, the OIG determined, among other things, that the DEC has become less effective since moving from the Deputy Secretary's Office to the Office of General Counsel ("OGC"). We believe this conclusion is incorrect, and is not supported by the available facts. To the contrary, the DEC has increased its effectiveness and breadth of operations, branching out into Public and Indian Housing ("PIH") and Community, Planning and Development ("CPD") reviews, while continuing to focus on its core mission in multifamily housing.<sup>1</sup> OGC has provided leadership and, in spite of government-wide budget cuts, has made necessary resources available to the DEC in order to ensure its long-term success in assuring the highest standards of ethics, management and accountability.

Moreover, OGC enforcement, of which the DEC's achievements are but one facet, has been unparalleled. According to a GAO report, HUD accounted for almost half the grants and

<sup>1</sup> In 2010, OGC energized the DEC by selecting a new dynamic leader with proven managerial skills. OGC also changed the direction of the DEC by focusing its resources on assisting PIH and CPD in troubleshooting problems.

[www.hud.gov](http://www.hud.gov)

[espanol.hud.gov](http://espanol.hud.gov)

assistance-related suspension and debarment cases across the entire federal government.<sup>2</sup> Likewise, the GAO found that HUD OGC was responsible for the referral to the Department of Justice of almost 96% of the Program Fraud Civil Remedies Act cases undertaken by any agency.<sup>3</sup> Significantly, HUD OGC working with the OIG and DOJ has recovered approximately \$4 billion for the FHA fund over the past five years, in addition to working on the landmark \$25 billion National Mortgage Servicing Settlement. OGC staff has also received awards from various United States Attorneys' offices for their work in achieving these outstanding and record breaking settlements. As these facts indicate, OGC's enforcement record under the General Counsel's leadership is extremely robust.

## **II. FINDINGS**

### **A. Finding 2 (DEC Effectiveness)**

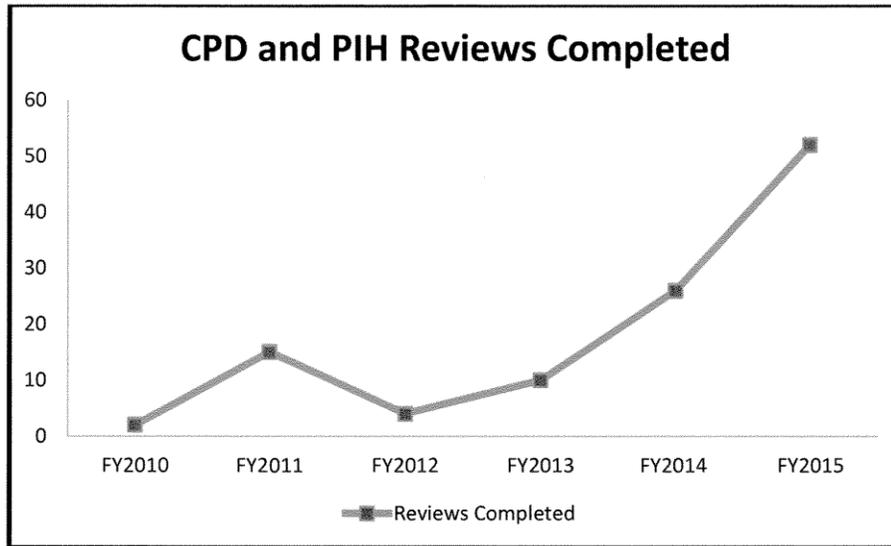
In general, we disagree with the report's conclusions concerning the weaknesses of the DEC. We believe those conclusions are based on a misunderstanding of the scope of the DEC's role, and the role played by OGC as a whole in achieving enforcement in HUD programs. The draft report states that since the DEC's realignment to OGC, its effectiveness has been limited to multifamily housing. We disagree with that contention, as it relies upon the notion that the DEC was conducting enforcement in more program areas prior to its consolidation with OGC. When the DEC was established by Secretary Andrew Cuomo, its primary purpose was to use "a variety of legal and programmatic tools to enforce quality standards in properties built under the aegis of one of HUD's Multifamily Assisted Housing programs."<sup>4</sup> *New Standards for a New Century*, p. 6 <http://archives.hud.gov/news/2000/fullrep.pdf>. As HUD stated in response to OIG's 2014 draft audit of the DEC, "the primary aim was for the DEC to handle multifamily housing cases."

However, in this Administration under OGC leadership, the DEC has expanded its role. The DEC currently plays a vital role for the Agency by providing oversight on behalf of the Assistant Secretaries for Housing, CPD and PIH, as well as the General Counsel and the Deputy Secretary. The DEC is routinely called upon to review and identify problems within a program area. It accomplishes this task through limited reviews or "Snapshots" of programs or entities. Since 2010, the DEC has undertaken 109 Snapshot reviews, the vast majority of which have taken place in Fiscal Years 2014 and 2015, representing nearly exponential growth in this new category not encompassed by the draft report:

<sup>2</sup> Government Accountability Office, *Suspension and Debarment: Some Agency Programs Need Greater Attention and Governmentwide Oversight Could Be Improved*, GAO-11-739 at 8 (Aug. 2011).

<sup>3</sup> Government Accountability Office, *Program Fraud Civil Remedies Act: Observations on Implementation*, GAO-12-275R (Jan. 27, 2012).

<sup>4</sup> It may be helpful to note that when the DEC was created, the Office of Troubled Agency Recovery was established to address quality standards in the public housing program (PIH). PIH reviews were not contemplated as a substantial part of the DEC's workload when it was created.



Additionally, the DEC is also tasked with troubleshooting problems internal to the Agency. The draft report does not accurately reflect the range of activities that the DEC currently undertakes or the recent expansion of its role.

More generally, the draft report fails to appreciate the difference between the DEC's review functions and the enforcement actions for which it is responsible. The DEC is limited in the enforcement actions that it can independently pursue. The DEC can and does bring administrative sanctions, including suspensions and debarments, in all program areas. In addition, the DEC can initiate civil money penalties against participants in the FHA program, including both the single family and multifamily programs. Other than these limited enforcement options, however, the DEC lacks further statutory and regulatory authority to enforce requirements in other program areas.

It is also important to note the overall structure of HUD's enforcement regime. As observed above, outside of the suspension and debarment context for which the DEC is dependent upon referrals, the DEC undertakes a review function within the Agency and either provides results to program offices or refers matters to OGC attorneys for litigation. To the extent that the OIG is critical of the role the DEC plays in areas other than multifamily housing, the fact is that the DEC simply does not have, and has never had, the authority to bring such cases. That does not mean, however, that the Agency is ignoring enforcement in these areas. To the contrary, HUD is quite proactive and aggressive in pursuing fraud within all programs administered by the Agency, including PIH and CPD.<sup>5</sup>

<sup>5</sup> The Office of Program Enforcement ("OPE") within the Office of General Counsel litigates fraud cases pursuant to the Program Fraud Civil Remedies Act ("PFCRA"). For example, OPE has brought PFCRA cases against PIH Executive Directors, Board members, and landlords and tenants of assisted housing. The OPE is currently seeking DOJ approval to bring a fraud suit against a housing authority for making false claims regarding its level of funding. In addition, the OPE has brought numerous fraud cases against participants in the CPD program, including contractors, architects, inspectors and subgrantees.

Within the context of these considerations, we believe you will appreciate the vital and effective role the DEC plays within HUD's overall enforcement regime. Nonetheless, we will address each of the specific criticisms in turn below.

#### Memoranda of Understanding

The draft report states that Memoranda of Understanding ("MOUs") between the DEC and program offices limited the DEC's ability to enforce program requirements because the DEC needed program office approval. The draft report singles out the MOU between CPD and the DEC as an example of where the DEC lacks authority to exercise enforcement authority absent CPD's permission, and notes that under the MOU, the DEC has agreed not to comment or distribute any information relating to a CPD referral to a third party unless authorized by CPD. In addition, the DEC has agreed not to elevate disagreements to the Deputy Secretary.

We acknowledge that the MOUs between the DEC and program offices, in particular the CPD MOU, are overly restrictive. This is an issue that we will revisit in an attempt to modify or eliminate the MOUs. Nevertheless, we do not agree that the MOUs prevent the Department from taking aggressive enforcement action when needed. First, the DEC reports to the General Counsel. The General Counsel is not a signatory to the MOU nor is she bound by the terms of the MOU. If the General Counsel believes that enforcement is warranted, she has the power to direct either the DEC or OPE to take such action<sup>6</sup> to eliminate disagreements between program officials and OGC, or to refer matters to the Deputy Secretary for resolution. In fact, the General Counsel has referred matters to the Deputy Secretary for resolution in the past, including matters concerning CPD. Second, as discussed elsewhere, the DEC has limited enforcement authority with respect to CPD. The DEC has no independent enforcement authority with respect to CPD.<sup>7</sup> However, the Director of the DEC is the debarring official for the Department, and concurrence from program officials, including CPD's, is not required in order for the debarring official to exercise that authority.

We appreciate the OIG's observations regarding MOUs and will address them fully. However, we also believe that in view of the DEC's powers and limitations, as well as the overall enforcement structure within OGC, the significance of this issue is limited.

#### Independence

The draft report concludes that "voluntary enforcement meant little enforcement." The report cites unnamed DEC staff who stated that when the DEC was under the Deputy Secretary there were no contradictory roles to balance. The statements seem to suggest that there are contradictory roles to balance now that the DEC is within OGC because some OGC offices work with program offices, and as a result, OGC defers judgment on whether to pursue enforcement to the program offices.

We do not understand the OIG's finding in this regard. To begin with, all enforcement at

<sup>6</sup> The Secretary has delegated to the General Counsel authority to direct all litigation of the Department and to issue suspensions, debarments and limited denials of participation. 76 Fed. Reg. 42462 (July 18, 2011).

<sup>7</sup> The same is true for PIH.

HUD is discretionary. Unlike certain federal agencies, there are no statutory or regulatory requirements that mandate enforcement actions at HUD.<sup>8</sup> If the DEC recommends bringing an enforcement action and the program office disagrees, as a matter of course, the General Counsel can either decide the matter or elevate it to the Deputy Secretary. The mere fact that the DEC is in OGC has absolutely no impact on the DEC's ability to make referrals to OGC for enforcement, and does not prevent it from initiating suspension or debarment actions when it deems them appropriate. Moreover, as stated above, OGC as a whole has a substantial record of enforcement. We are hard-pressed to appreciate either the alleged existence of a lack of enforcement or the alleged existence of institutional impediments to enforcement that differ in any way based on the DEC's placement on HUD's organizational chart.

In view of OGC's overall enforcement record, as well as the DEC's evident successes, we believe the suggestion that the DEC lacks independence or is otherwise limited by its role within OGC is misguided. We do not believe that unsubstantiated recollections should be given any credence; rather we believe that OGC's and the DEC's readily ascertainable record of achievement amply demonstrates a contrary conclusion, that the DEC, working with support from attorneys in OGC, has been and will continue to be a success under the leadership of the General Counsel.

### Staffing

The draft report states that "[l]imited staff could impact expanding enforcement beyond multifamily" and that since the move from the Deputy Secretary to OGC, DEC staff levels had decreased from 218 in 2004 to 99 in 2014. We believe that the staffing levels described in the draft report are inaccurate and misleading.<sup>9</sup>

As a result of the realignment of the DEC to OGC, the Department was able to find

<sup>8</sup> See, e.g., 5 U.S.C. § 8902a(b) (requiring the Office of Personnel Management to impose mandatory debarment of any provider that has been convicted of a criminal offense relating to fraud, corruption, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care service or supply); 10 U.S.C. § 983(a) (requiring the Department of Defense to impose mandatory debarment of institutions of higher learning that have policies or practices prohibiting military recruiting on campus); 21 U.S.C. § 306(a) (requiring the Secretary of the Food and Drug Administration to debar any person, other than an individual, that has been convicted of a felony under Federal law for conduct relating to the development or approval of any abbreviated drug application; also requiring debarment of individuals who have been convicted of enumerated felonies); 42 U.S.C. § 1320a-7(a) (requiring that the Secretary of the Department of Health and Human Services exclude from participation in all Federal health care programs, individuals and entities who are convicted of several, enumerated criminal offenses, including Medicare or Medicaid fraud); 12 C.F.R. § 308.603(a) (requiring the Federal Deposit Insurance Corporation to impose automatic debarment of public accountants or firms that have been barred from practicing before the SEC, Board of Governors, OCC or Office of Thrift Supervision); 22 C.F.R. § 127.7(b) (requiring the Department of State to refuse to issue licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in section 38(g)(1) of the Arms Export Control Act).

<sup>9</sup> The draft report does not cite the support for the DEC staffing levels. We have confirmed that these numbers are inconsistent with existing records. In 2002, OGC and the DEC were consolidated, resulting in approximately 218 DEC employees joining OGC. Of this number, approximately 149 were what we today think of as DEC staff in the Satellite Offices and DEC headquarters. The 218 DEC employees at the time of the consolidation included approximately 50 attorneys and paralegals that joined the Offices of Regional Counsel (23) or the Office of Program Enforcement (27). These attorneys and paralegals continued to provide legal support to the DEC. Additionally, as a result of the consolidation, the DEC's 13 Administrative and Management Division staff and six (6) Information Technology Division employees were absorbed in OGC's Office of Operations. (Currently, OGC has five less employees servicing both the DEC and OGC on administrative and technology issues.)

significant administrative efficiencies by consolidating legal, administrative and IT functions for the DEC and OGC without impacting the ability of either office to carry out its mission. All of the Department's GS-905 attorneys report to the General Counsel with the exception of the handful of attorneys working in OCFO. These attorneys are available to provide the DEC a full range of legal services. As a result of the realignment, the DEC's 13 Administrative and Management Division staff and six (6) Information and Technology Division employees were absorbed in OGC's Office of Operations. Currently, OGC has seven (7) employees in the Administration Management and HR Division and seven (7) employees in the Field Management and IT Division servicing both OGC and the DEC.

According to OGC records, the DEC had 125 staff positions in Fiscal Year 2004, and 103 staff positions in Fiscal Year 2014, much of which represented greater operating efficiencies achieved through the consolidation of functions, as demonstrated above. This decrease (17.6%) is similar to the decrease in staffing experienced by the Department as a whole during the same time period. Records from the Office of the Chief Financial Officer reveal that the Department experienced substantial staffing cuts, decreasing by approximately 15% between Fiscal Year 2004 and Fiscal Year 2014. Some of the information the OIG relies on with respect to the DEC in its early years likely included functions and staff which have been moved. In addition to the program attorneys, training and IT staff, and budget and administrative staff, the Mortgagee Review Board and its staff were originally housed in the DEC. Both the staff and function of the MRB were moved to Housing many years ago.

Part of the measure of the DEC's success has been its workload reduction. Both because it has forced "bad actors" out of FHA multifamily houses and because its actions have created a strong deterrence for non-compliance, the DEC has experienced a 50% decrease in referrals from 2008 to 2014. The DEC's referral workload decreased during this time period. In 2008, the DEC received 6360 referrals. In 2014, based on a change of protocols with the Office of Multifamily Housing, the DEC received 3152 referrals, a 50.4% decrease. Based upon significant budgetary constraints, and the decrease in referrals, we believe that the DEC has sufficient staffing to handle multifamily referrals based on current protocols, as well as continuing in its role as a troubleshooter for the Agency, including its Snapshot reviews for both CPD and PIH.

#### Legal Support

The Draft Report also addresses the fact that the DEC no longer has attorneys within its own organizational structure, a change that occurred almost 13 years ago. At that time, HUD determined that all of the attorney's within the different organizations of the Agency needed to be under the control and supervision of the General Counsel. This does not mean that the DEC is any less effective because it receives legal support from OGC, as opposed to having its own attorneys. In fact, the DEC is also under the supervision and control of the General Counsel. The General Counsel has assigned both headquarters and field attorneys to work with the DEC. These attorneys provide a full range of legal services to the DEC, including litigating referrals from the DEC. For example, if the DEC is tasked with reviewing the operations of a troubled housing authority and finds persuasive or egregious violations that warrant a take-over of the agency, the DEC will report that finding to the General Counsel and program officials. If the General Counsel determines that legal or enforcement action is appropriate, the General Counsel will call upon her legal resources to

implement the enforcement action.<sup>10</sup>

In what appears to be a related concern, the OIG also made references to legal delays being an impediment to timely enforcement. We agree that legal support needs to be timely. We disagree, however, with the premise that the DEC does not receive timely legal support. At headquarters, from 2012 through 2014, the OPE reviewed 1360 cases for legal sufficiency. The OPE took on average a total of 11 days to review each case.

The draft review contains a statement from a PIH official “that it took 12 to 18 months to take enforcement action on a PHA due to delays with legal support.” We are unaware which matter this might be, and believe the assertion is implausible for several reasons. First, the DEC has no enforcement authority to sanction a PHA. At most, it can impose a suspension/debarment action with respect to individuals employed at a PHA. As stated above, the reviews for legal sufficiency on suspensions and debarments are timely. Second, the DEC can recommend a takeover of a PHA. This occurred on one occasion, and the legal support was immediate. Third, the DEC can refer matters back to the program offices, which does not require legal support. Based on these facts, we believe the assertion in the draft report is mistaken.

#### Inadequate IT Support

The OIG draft report inaccurately describes the DEC’s IT resources. Currently, the DEC uses both the integrated Real Estate Management System (iREMS) and SharePoint to track its workload. As such, some cases are assigned in iREMS (for multifamily housing and nursing home/assisted living matters) and are also assigned with an import of data into the DEC Activities Report in Sharepoint. Other matters, such as Snapshot reviews for Public and Indian Housing or Community Planning and Development, have only been entered into the DEC’s Activities Report in Sharepoint. The DEC is working towards having only one system of data entry.

Contrary to the second bullet on page 12 of the draft report, the DEC’s SharePoint system has imported data from iREMS to create work assignments and fill data fields in letters and other documents. The DEC’s SharePoint system creates standardized letters and provides a repository for uploaded documents, such as settlement agreements, notices and letters that have been issued, that are available to staff throughout the country. This is especially important as the DEC has become more geographically dispersed, with work being assigned based on capacity across traditional geographic jurisdictional lines.

The current assignment process, however, is limited, as the DEC is not able to triage quickly financial referrals received on multifamily housing or health care facilities projects. Neither the iREMS assignment process nor the DEC’s current SharePoint assignment process has the capacity to easily determine the bases for a financial referral that comes to the DEC via REAC. In such cases, the DEC must individually review the financial statement to determine the REAC analyst’s flags and comments to properly assess the complexity of the assignment to then assign staff.

The Department recognizes that SharePoint is not an appropriate long-term platform for the

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<sup>10</sup> For example, OGC responded to a DEC review of the Lafayette Housing Authority by taking immediate action to declare the authority in default and take possession of the housing authority.

DEC's enforcement and tracking systems for several reasons: IT patches facilitated by OCIO have broken the DEC systems, caused a break in service, and forced the Department to use limited IT funding to get the systems back up and running; and SharePoint is not intended to be used as a data storage center. In December 2015, HUD will be moving from a Sybase environment to an Oracle platform and the current connections between the iREMS data and the DEC's SharePoint systems will not be reliable.

The Department recognizes the need for more robust IT support for the DEC. The Department is consolidating six enforcement-related legacy systems into a more integrated system going forward. As part of that movement, the DEC's three systems will move into the HUD Enforcement Management System (HEMS), which is rolling out in phases. The first phase has focused on the Office of Fair Housing, but the coming phases will address the DEC's needs and retire three DEC legacy systems, including OGC DECMS – Multifamily Physical, Financial, and non-File Cases; OGC ECIS – Non-compliant Business Partners and OGC ECPCIS – Suspension, Debarments, and Limited Denials of Participation.

The first release of the HUD Enforcement Management System (HEMS) is currently scheduled for October 19, 2015 to include DECMS reporting functionality. HEMS provides several benefits that are an improvement from SharePoint. The new system will: provide a secure, direct link to iREMS that is easily customizable to meet future data needs; provide a shared database in an integrated Oracle environment for enforcement activities for participating Program offices; pool resources allowing HEMS to configure and maintain a cutting edge system environment compliant with OCIO's goals and direction; and maximize re-use of code that ultimately reduces development cost and time. Additionally, the HEMS approach is not limited to a single business process or single set of data elements, which will provide further flexibility to address future needs.

HEMS will provide the DEC with the ability to upload data from iREMS, REAC's physical inspection reports, and HUD's locator database. Additionally, all DEC employees have been provided licenses to use LawManager which was rolled out to all of OGC in March 2015. LawManager is a legal case workload management system that is replacing an expensive, custom legacy system built in the early 1990s. LawManager is a modern COTS application used by other federal agencies (DOJ, Labor) and private law firms that is hosted on a FedRAMP-certified cloud.

#### B. Finding 3 (Enterprise Risk Management)

The OIG faults HUD for not implementing an agency-wide approach to addressing noncompliance risks. While we believe that HUD has made great strides in this area, most significantly in multifamily housing, we agree that more can be done. We look forward to working with the program areas to formalize "risk management" strategies that can be applied to PIH and CPD.

The DEC is working with the Chief Financial Officer to incorporate the DEC's activities into the agency's ERM process. The DEC is well-suited to be an integral participant in the ERM process because the DEC meets all of the three "Interdependent and Mutually Reinforcing Categories of Fraud Control Activities," as set forth in the Green Book:

- Operates within the spectrum of “Response” with its Suspension and Debarment Program;
- Operates within the spectrum of “Detection” with its Snapshot oversight reviews, financial assessments and late filer programs; and
- Assists program staff to implement identified changes and functions within the third spectrum of “Prevention.”

### **III. RECOMMENDATIONS**

#### **Deputy Secretary**

To strengthen HUD-wide enforcement that supports HUD’s broader risk management concepts, the OIG recommends that the Deputy Secretary:

1. Implement an enterprise-wide approach to enforce using risk management concepts similar to those shown in the multifamily enforcement model.

**RESPONSE:** The Department is working to strengthen HUD’s risk management agency-wide. The Deputy Secretary has asked the CFO to chair a working group to design the agency’s risk management system and the DEC is part of that working group. The working group is currently using the FHA risk management model as a guide to develop the agency-wide program. HUD is not yet in a position to determine whether it is possible to create a risk management enforcement model for the entire agency based upon the multifamily enforcement model. To the extent that HUD is able to incorporate the multifamily model in the system, management will endeavor to do so.

2. Strengthen DEC’s authority to enforce program requirements. Program offices should be directed to incorporate risk management procedures, to include risk-based data-driven referrals to DEC, and implement a process that allows DEC to recommend enforcement actions independently. The Deputy Secretary or designee should be the final arbiter when disagreements arise.

**RESPONSE:** The Deputy Secretary has directed the General Counsel to conduct a review of the MOUs between the DEC and the program offices. She has asked her to evaluate these MOUs and make recommendations concerning strengthening the MOUs or developing an alternative method for the DEC to receive assignments. The Department, however, does not view the current state of affairs as restricting HUD’s ability to take aggressive enforcement action when appropriate.

3. Provide DEC with the authority and resources necessary to implement a department-wide enforcement program.

**RESPONSE:** As to authority, please see response above. Under OGC leadership, the DEC has continued to expand its mandate to implement a Department-wide strategy to ensure the integrity of HUD programs. The DEC is providing significant levels of enforcement, oversight and compliance services to CPD and PIH while continuing to serve the Office of Housing. DEC personnel are training HUD program staff on identifying deficiencies in audited financial statements. Based on current appropriations levels and the decrease in DEC referral workload, we do not anticipate an

increase in DEC's staffing levels. DEC training and travel needs are fully met. Significant IT resources are being directed to the DEC to retire its legacy systems and provide it with more robust and flexible systems to meet its needs.

4. Direct program offices and REAC to collaborate with DEC to research the types of data that would provide clear indications of financial and physical performance failures appropriate for use in data-driven referral to DEC from each program office.

**RESPONSE:** We agree with this recommendation and have already put into place automatic tools to enhance DEC capabilities. HEMS will provide the DEC with the ability to upload data from iREMS, REAC's physical inspection reports, and HUD's locator database. The Department will continue to look for ways to use data to target enforcement actions. The DEC and REAC have started monthly collaboration meetings to review REAC data. OCFO is chairing a working group, with DEC participation, to look for ways to mine existing data to identify and expose risk.

#### **General Counsel**

To address operational challenges that impede DEC's capacity to support HUD programs, the OIG recommends the General Counsel:

5. Provide resources and support to DEC to strengthen enforcement across HUD programs.

**RESPONSE:** We agree with this recommendation and (within budget constraints) have and will continue to provide resources and support to the DEC to strengthen its role across HUD programs. With respect to resources, OGC provides the DEC with training and travel resources. In the last four fiscal years, the DEC has had the resources to provide in-house program technical training to its staff and leadership team. Annually, the DEC has received designated funding for fees and tuition training, access to funding to attend fraud conferences and licenses to WestLegalEdOnline for its employees. OGC provides travel funds to support DEC activities. The DEC has been able to backfill all of its leadership positions as vacancies occur and, as the rest of the Department and OGC, some, but not all of its attrited vacancies. In addition to these resources, the General Counsel personally provides leadership, supervision and support to DEC activities.

6. Develop a strategy for addressing additional enforcement workload.

**RESPONSE:** The DEC has developed a strategy for addressing the enforcement workload, including the development of the Snapshot program to conduct limited reviews to identify potentially larger problems. As the DEC's referral workload has decreased, DEC staff has been redeployed to take on additional oversight and compliance activities on behalf of PIH and to some extent for CPD. The DEC has provided extensive training to its staff to address the new enforcement workload and the Snapshot program. Although the entire Department and the DEC face staffing challenges, the Department is actively engaged in an effort to improve the DEC's IT support for enforcement activities.

legal or enforcement system is appropriate for certain activities that are performed by

### **Deputy Assistant Secretary**

The OIG recommends the Deputy Assistant Secretary:

7. Evaluate the impact of the multifamily reorganization on enforcement including (1) monitoring the impact of changes to the risk assessment process, (2) making changes to MOUs, (3) documenting procedural changes and how those changes affect DEC and REAC collaboration, (4) improving data tracking and data sharing with DEC and REAC on improvement [sic] and enforcement actions taken and associated results, and (5) ensuring that multifamily has the capacity to maintain the improvements it has achieved in recent years.

**RESPONSE:** We will review the arrest protocols with the office of Multifamily Housing. As the draft report notes, the DEC and the Office of Multifamily Housing have a proven track record with respect to collaborating on enforcement matters. We will, however, evaluate the impact of the Multifamily Housing Transformation on its relationship with the DEC and enforcement in general. If we determine that changes are necessary, we will take the appropriate steps.

### **Principal Deputy Assistant Secretary for Public and Indian Housing**

To support potential expanded data gathering for program offices, the OIG recommends the Principal Deputy Assistant Secretary:

8. Direct REAC to work with DEC and program offices to identify and develop strategies for collecting data needed to support its National Risk Management tool and Enterprise Risk Management to include major program participant risks.

**RESPONSE:** Agree. This has already been implemented. REAC and the DEC have initiated monthly meetings to help identify and develop strategies to support the risk management program within the agency.

### **IV. CONCLUSION**

The Department agrees with some of the findings in the report and does not agree with others. As recognized by GAO and the Department of Justice, HUD is engaged in robust enforcement, and the DEC is an integral part of those efforts. We appreciate the working relationship between OGC and OIG and our joint commitment to the integrity of HUD programs.



U.S. DEPARTMENT OF  
HOUSING AND URBAN  
DEVELOPMENT  
OFFICE OF EVALUATION

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