



*The City of New York  
Office of the Comptroller  
Bureau of Management Audit*

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**Follow-up Audit Report on the Enforcement of the  
Housing Maintenance Code by the Department of Housing  
Preservation and Development**

**MH01-176F**

*June 27, 2002*

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**SUMMARY OF FINDINGS AND CONCLUSIONS**

This is a follow-up audit to determine whether the Department of Housing Preservation and Development (HPD) has implemented the recommendations made in an earlier audit report, *Audit Report on the New York City Department of Housing Preservation and Development's Enforcement of the Housing Maintenance Code* (Audit # MJ95-098A, issued June 30, 1995). The earlier audit examined performance indicators published in the Mayor's Management Report (MMR) and investigated whether a statistical sample of violations issued by HPD for immediately hazardous conditions had been corrected. In this current audit, we discuss the recommendations made in the previous audit report as well as the implementation status of those recommendations.

The earlier report noted that neither HPD nor the public knew whether HPD was effectively enforcing the Housing Maintenance Code (Housing Code). That report concluded that HPD should assess its effectiveness by measuring how often violations were corrected, instead of only measuring performance in terms of activities, such as calls received, inspections performed, violations issued, etc. The report also noted that the collection of such information was not useful if HPD did not know whether the activities led to a desirable outcome, i.e. the correction of violations. This report also concluded that HPD lacked both the resources to initiate litigation and the authority to penalize building owners who disregarded the Housing Maintenance Code.

The previous report made six recommendations to HPD. This follow-up audit determined that two of the six recommendations were implemented and four were partially implemented. The six recommendations and their current implementation status follow.

HPD should:

1. Develop appropriate reinspection processes and performance indicators geared toward showing whether violations have been corrected, and whether these violations were corrected by the landlords or by HPD. To accomplish this, HPD should conduct reinspections of all Class C violations and a representative sample of Class A and Class B violations. **PARTIALLY IMPLEMENTED**

2. Make these types of performance indicators public and include them in the Mayor's Management Report. The public and public officials would then have meaningful indicators to rely on when making decisions regarding Housing Code enforcement policy and budget allocations. **PARTIALLY IMPLEMENTED**
3. Change its goal and objectives in the MMR, and redefine them more in terms of getting violations corrected, rather than in terms of merely enforcing compliance. HPD should work with the Mayor's Office of Operations to accomplish this. **PARTIALLY IMPLEMENTED**
4. Continue to seek State legislation enabling it to adjudicate NOVs (Notices of Violations) and issue and docket penalties for uncorrected violations without having to obtain judgments in the Housing Part of the Civil Court. To accomplish this, HPD should use the results of this report to convince legislators that HPD needs greater enforcement authority to effectively achieve owner compliance with the Housing Maintenance Code. **IMPLEMENTED**
5. Inform tenants of their right to take landlords to Housing Court when their landlords fail to correct the violations. Specifically, HPD should develop a printed flyer or booklet that would be handed out to tenants when inspections are performed. **IMPLEMENTED**
6. Reinspect a sample of correction certifications and initiate litigation to penalize those landlords who submit false statements to HPD claiming they have corrected the violations. Such litigation should be publicized so those owners are informed that they cannot submit false certifications with impunity. **PARTIALLY IMPLEMENTED**

To address weaknesses on these issues that still exist, we recommend that HPD:

1. Continue to enhance its performance indicators in the MMR by separating the indicators for violations issued in the current fiscal year from indicators for violations issued in previous years and still pending. The indicators should be broken down by class of violation, and reports should describe whether the corrections were made by the owner or by HPD.
2. Include all Class C violations in the verified correction rate it reports, and clearly identify any statistics for subsets of Class C violations.
3. Continue to seek State legislation enabling it to adjudicate NOVs (Notices of Violations) and to issue and docket penalties for uncorrected violations without having to obtain judgments in the Housing Part of the Civil Court.
4. Increase its efforts to prosecute false certification cases to penalize those landlords who submit false statements to HPD claiming that they have corrected the violations.
5. Include on its web site as well as in newspapers and various community publications the names of building owners fined by the courts for false certification of corrections, and identify the buildings and violations in those cases.

6. Continue to seek approval from the City Council to increase the civil penalties for owners falsely certifying the correction of violations.

## **HPD Response**

The matters covered in this report were discussed with officials from HPD during and at the conclusion of this audit. A preliminary draft report was sent to HPD officials and discussed at an exit conference on May 28, 2002. On May 29, 2002, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD on June 14, 2002.

HPD agreed with three of this audit's six recommendations (#3, #4, and #6). It disagreed with the audit's finding regarding the need to distinguish in the MMR between current versus previous year performance indicators for violations, but agreed to take the corresponding recommendation (#1) under advisement.

Regarding the recommendation (#2) that HPD include all Class C violations in its MMR correction rate indicator, HPD stated that it has changed the indicator to "ensure that at least 95% of emergency conditions (Class C violations) in private dwellings, requiring repairs, are either verified by the tenant as corrected, or corrective action is initiated by the Department." While HPD's action increases its performance goal, it does not address the recommendation because the indicator that HPD will report upon (Class C "emergency" violations) will not include all Class C violations and will therefore be misleading.

Regarding the recommendation that HPD include on its web site the names of building owners who have falsely certified corrections of building violations (#5), HPD stated that it "already provides online a record of violations for every building that it has inspected. That includes the name of the owner and the violations that have been falsely certified."

The full text of HPD's comments is included as an addendum to this report.

# INTRODUCTION

## Background

The Department of Housing Preservation and Development (HPD) is responsible for enforcing the New York State Multiple Dwelling Law and the New York City Housing Maintenance Code. HPD housing inspectors visit privately owned multiple residences to investigate tenant complaints. When inspectors find conditions that violate these State and City housing regulations, they issue Notices of Violations (NOV) to the owners of the buildings. The Housing Code classifies violations as Class A (non-hazardous), Class B (hazardous), or Class C (immediately hazardous). An emergency condition, such as an inadequate supply of heat or hot water, is a Class C violation and must be corrected within 24 hours.

The HPD enforcement process begins when a tenant calls in a housing complaint to the HPD Central Complaint Bureau (CCB), which operates a hotline 24 hours a day, seven days a week. CCB operators enter the complaint on the HPD computer system and forward it through the system to the inspectors at the appropriate HPD Borough Code Enforcement Office and to the CCB Callback Unit. The CCB Callback Unit calls the owner of the building in question and informs him or her about the complaint and its nature. The unit also calls the tenants of the building to determine whether the reported condition still exists. If the condition has not been resolved, the tenant is asked to state a time when someone will be home to allow an inspector from the HPD Borough Code Enforcement Office to perform an inspection of the condition. Based on this call, an inspection is scheduled. HPD reported in the Mayor's Management Report that in Fiscal Year 2001, the CCB received 302,871 calls. Fifty-seven percent of these calls were from tenants complaining that the owners were not providing adequate heat or hot water. The remaining 43 percent were complaints about inadequate maintenance and repair, including peeling lead paint, rodent infestation, and broken plumbing fixtures.

When an inspector finds a condition that violates the Housing Code, an NOV is issued. The NOV is recorded in the HPD database and is mailed to the owner. The NOV directs an owner to correct the violation(s) by a specified Correction Date and to certify the correction of the violation by returning an attached certification form by the specified Certification Date. The NOV also states that the owner is subject to penalties if the violations are not corrected and certified by the owner as corrected by the specified date. Additional penalties are also prescribed for false correction certifications.

Under the City Administrative Code, HPD must initiate litigation in the Housing Part of the Civil Court (Housing Court) to enforce penalties against owners who do not correct and certify the correction of a violation. If an owner fails to make the necessary repairs in an emergency condition, the Emergency Services Bureau (ESB) of HPD's Division of Maintenance may do so; the owner is billed for the cost through the Department of Finance. Tenants may also initiate litigation if the problem has not been corrected.

Inspectors from the HPD Borough Code Enforcement Offices also reinspect previously issued violations for various reasons. For instance, HPD may reinspect a violation certified as corrected by the owner to verify that the violation has, in fact, been corrected; or owners may request a reinspection under the HPD Dismissal Request Program.

HPD reported that in Fiscal Year 2001 it attempted 262,765 inspections (118,708 of which were in response to emergency calls); completed 204,919 inspections; issued 322,270 violations during inspections; and reinspected 403,591 violations.

## **Objectives, Scope, and Methodology**

The objective of this follow-up audit was to determine whether HPD implemented the six recommendations made in the previous audit report. The scope of this follow-up audit was Fiscal Years 2000 and 2001.

To accomplish our objective, we:

- Interviewed HPD officials to determine the agency's organizational structure, the job responsibilities of the Code Enforcement Inspectors and CCB operators, and to obtain an understanding of the current Housing Code enforcement process. We also interviewed the Associate Commissioner for the Division of Enforcement Services, the Special Counsel, and the Director of Operations at CCB.
- Compared HPD's MMR indicators for Fiscal Years 1994 through 2001 to determine whether changes were made to the indicators since the prior audit.
- Analyzed data from HPD's database of violations issued in Fiscal Year 2001 to determine whether meaningful statistics relating to the correction of Housing Code violations could be obtained on a yearly basis.
- Reviewed documents regarding the status of legislation authorizing a change to the Housing Code that would enable HPD to adjudicate violations issued by its inspectors.
- Reviewed brochures distributed by HPD inspectors to tenants after inspections and reviewed information on the HPD web site that is available to assist tenants who have complaints.
- Analyzed reinspection data for violations that were certified as corrected by owners from Fiscal Years 1998 through 2001.

This audit was conducted in accordance with General Accepted Government Auditing Standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the City Comptroller's audit responsibilities as set forth in Chapter 5, § 93, of the New York City Charter.

## **HPD Response**

The matters covered in this report were discussed with officials from HPD during and at the conclusion of this audit. A preliminary draft report was sent to HPD officials and discussed at an exit

conference on May 28, 2002. On May 29, 2002, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD on June 14, 2002.

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Regarding the recommendation (#2) that HPD include all Class C violations in its MMR correction rate indicator, HPD stated that it has changed the indicator to "ensure that at least 95% of emergency conditions (Class C violations) in private dwellings, requiring repairs, are either verified by the tenant as corrected, or corrective action is initiated by the Department." While HPD's action increases its performance goal, it does not address the recommendation because the indicator that HPD will report upon (Class C "emergency" violations) will not include all Class C violations and will therefore be misleading.

Regarding the recommendation that HPD include on its web site the names of building owners who have falsely certified corrections of building violations (#5), HPD stated that it "already provides online a record of violations for every building that it has inspected. That includes the name of the owner and the violations that have been falsely certified."

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**OFFICE OF THE COMPTROLLER  
NEW YORK CITY**

**DATE FILED: June 27, 2002**

## RESULTS OF THIS FOLLOW-UP AUDIT

**PREVIOUS FINDING:** “HPD Does Not Know Whether It Is Effectively Enforcing the Housing Code”

“In enforcing housing quality standards, HPD’s primary goal should be to get building owners to correct Housing Code violations. However, we found that HPD does not have any method or measurement process to determine whether it is achieving such a goal. HPD measures and reports activities—such as the number of complaints received, the number of inspections performed, and the number of violations issued in a given time period—but these indicators, while they reflect principal code enforcement activities, do not indicate the outcome of these activities.”

“Second, violations that are removed from the inventory in a given year may not be the same violations issued in that year. . . . Our review of HPD’s inventory of violations contained in HPD’s violation database indicates that of 298,000 violations issued during Fiscal Year 1994, 229,362 violations (77 percent) were still outstanding at the end of the fiscal year. Thus, for ‘violations removed’ to have any real meaning, HPD would first have to define how many came from the current fiscal year’s inventory, and how many came from previous years.”

**Previous Recommendation #1:** HPD should “develop appropriate reinspection processes and performance indicators geared toward showing whether violations have been corrected, and whether these violations were corrected by the landlords or by HPD. To accomplish this, HPD should conduct reinspections of all Class C violations and a representative sample of Class A and Class B violations.”

**Previous Recommendation #2:** HPD should “make these types of performance indicators public and include them in The Mayor’s Management Report. The public and public officials would then have meaningful indicators to rely on when making decisions regarding Housing Code enforcement policy and budget allocations.”

**Previous HPD Response:** HPD stated, “When heat violations are included. . . fully 92 percent of emergency conditions are corrected, either through Emergency Repair by HPD or by the owner. Without an appropriate adjudicative mechanism, . . . reinspections would drain inspection resources from emergency complaints and fail to accomplish higher compliance.” HPD further stated that it would “continue to meet with the Mayor’s Office of Operations to review the effectiveness of its MMR indicators.”

**Previous Auditor Comments:** We determined that only 57 percent of the sampled immediately hazardous violations, all of which were referred to HPD’s Emergency Services

Bureau, were corrected. Unless HPD implements this recommendation and develops appropriate performance indicators, it will not know what its code enforcement efforts are actually accomplishing. We continue to urge HPD to consider the importance of developing meaningful indicators that reveal the outcome of HPD's code enforcement efforts—whether violations are corrected—rather than just the quantity of violations issued or inspections performed.

**Current Status: PARTIALLY IMPLEMENTED**

HPD added a new indicator to the MMR that reports the number of violations it removed through inspections. According to the Associate Commissioner for the Division of Enforcement Services, this new indicator “shows violations which were corrected or which were cancelled during the course of an inspection.” HPD has also added other new indicators to the MMR. One indicator is the number of Class C violations issued each year, including a breakdown of emergency complaint inspections. These new indicators, as well as others, are illustrated on the following page.

**TABLE I**  
*Mayor's Management Report HPD Performance Indicators for  
 Fiscal Year 1995 Compared with Indicators for Fiscal Year 1996 or Later*

Fiscal Year 1995	Fiscal Year 1996 or Later
<ul style="list-style-type: none"> <li>• Violations Issued During Inspection</li> </ul>	<ul style="list-style-type: none"> <li>• Violations Issued During Inspection</li> <li>• Class C Violations Issued</li> </ul>
<ul style="list-style-type: none"> <li>• Percent of Heat Complaints Resolved</li> </ul>	<ul style="list-style-type: none"> <li>• Heat/Hot Water Complaints Requiring Inspection</li> <li>• (Heat/Hot Water) Complaints Resolved Prior to Completed Inspections</li> <li>• Heat/Hot Water Inspections Completed</li> </ul>
	<ul style="list-style-type: none"> <li>• Total Emergency Complaint Inspections Attempted</li> <li>• Total Emergency Complaint Inspections Completed</li> </ul>
<ul style="list-style-type: none"> <li>• Total Violations Removed</li> </ul>	<ul style="list-style-type: none"> <li>• Total Violations Removed               <ul style="list-style-type: none"> <li>• Violations Deemed Corrected (Not Inspected)                    (According to the Associate Commissioner for the Division of Enforcement Services, this category applies when an owner certifies that the violation was corrected on a certification form and when HPD did not return for a reinspection within 70 days.)</li> <li>• Violations Administratively Removed                    (According to the Associate Commissioner for the Division of Enforcement Services the majority of violations that are administratively removed are removed based on a statement from another HPD program area indicating that through an HPD supported rehabilitation, the violations have been addressed.)</li> <li>• Violations Removed by Inspection                    (According to the Associate Commissioner for the Division of Enforcement Services, this includes violations that were corrected or that were cancelled during the course of an inspection.)</li> </ul> </li> </ul>

However, HPD still does not report how many of its activities for the year are related to violations issued in the current year and how many are related to violations issued in the prior year that remain on the database; nor does HPD break down the violations issued or reinspected by class type. Moreover, the indicators still do not report whether violations were corrected by the owner or by HPD. Without such indicators, HPD cannot and does not provide the public a comprehensive presentation of its effectiveness in enforcing the Housing Code.

Regarding reinspections, HPD conducts reinspections for the following: 1) to verify the accuracy of a limited sample of owner certifications; 2) to respond to litigation-related requests from HPD attorneys; 3) to respond to requests by owners for an expedited reinspection (requiring a \$300 fee) to

clear outstanding violations quickly, 4) to respond to requests made by other agencies or by the courts because of a tenant-initiated action, and 5) to verify corrections made by HPD emergency repairs for cases in which HPD cannot reach the affected tenant by telephone to verify the correction.

Although HPD still does not reinspect all Class C violations as recommended in the previous report, the reinspection indicators show that HPD has increased its number of reinspections from 275,905 reinspections in Fiscal Year 1996 to 403,591 in Fiscal Year 2001—a 46 percent increase. These reinspections are important, as they provide direct verification that a violation has or has not been corrected.

Moreover, since Fiscal Year 1996, instead of reporting removed violations as one total number, HPD now breaks down the reasons for removal into three categories. The most important category is “violations removed by inspection” that includes violations that HPD inspected and determined either to have been corrected or cancelled during the course of an inspection. Violations may be cancelled if the violation is an exact duplicate of a previously issued violation or if a violation is incorrectly written (i.e., no location is indicated on the violation). In Fiscal Year 2001, 71 percent of the violations removed from the HPD database were removed as a result of an HPD inspection.

Despite the above improvements, HPD still does not give a total picture of its success in enforcing the Housing Code. For instance, HPD does not identify how many violations were reinspected and how many violations were removed, grouped by the fiscal year the violations were issued. Violations from previous years that remain on the database are reported for the current fiscal year, thereby making it impossible to determine how long the violations have been outstanding.

To better reflect HPD effectiveness in enforcing the Housing Code in a given year, HPD’s indicators should report the reinspection and removal of violations issued for the current fiscal year separately from indicators for all previous years and broken down by class of violation. Table II, following, shows a comparison of the indicators currently used by HPD and indicators that would separate Housing Code enforcement activities into violations issued in the current year and violations issued in previous years.

**TABLE II**  
Comparison of Current HPD Indicators and Needed Indicators

<b>CURRENTLY REPORTED HPD INDICATORS</b>	<b>INDICATORS HPD DOES NOT REPORT</b>
Violations Issued During Inspection (in the current fiscal year)	Pending Violations Issued in Prior Years, by Fiscal Year
	Pending Class A Violations Issued in Prior Fiscal Years , by Fiscal Year
	Pending Class B Violations Issued in Prior Fiscal Years, by Fiscal Year
	Pending Class C Violations Issued in Prior Fiscal Years, by Fiscal Year
“C” Violations Issued (in the current FY)	“A” Violations Issued in the current Fiscal Year
	“B” Violations Issued in the current Fiscal Year
Violations Reinspected (includes all violations issued in current and prior fiscal years)	Violations Reinspected of Those Issued in Current Fiscal Year – breakdown “A,” “B,” and “C”
	Violations Reinspected of Those Issued in Prior Fiscal Years– breakdown “A,” “B,” and “C”
Total Violations Removed (includes all violations issued in current and prior fiscal years)	Violations Removed of Those Issued in Current Fiscal Year – breakdown “A,” “B,” and “C”
	Violations Removed of Those Issued in Prior Fiscal Years – breakdown “A,” “B,” and “C”
Violations Deemed Corrected (Not Inspected) (includes current and prior fiscal years)	Violations Deemed Corrected of Those Issued in Current Fiscal Year – breakdown “A,” “B,” and “C”
	Violations Deemed Corrected of Those Issued in Prior Fiscal Years – breakdown “A,” “B,” and “C”
Violations Administratively Removed (includes current and prior fiscal years)	Violations Administratively Removed of Those Issued in Current Fiscal Year – breakdown “A,” “B,” and “C”
	Violations Administratively Removed of Those Issued in Prior Fiscal Years – breakdown “A,” “B,” and “C”
Violations Removed by Inspection (includes current and prior fiscal years)	Violations Removed by Inspection of Those Issued in Current Fiscal Year – breakdown “A,” “B,” and “C”
	Violations Removed by Inspection of Those Issued in Prior Fiscal Years – breakdown “A,” “B,” and “C”

Breaking down the indicators into violations issued in the current year as well as issued in prior years would provide a much clearer measure of HPD’s overall effectiveness of its Housing Code enforcement.

## **Recommendation:**

1. HPD should continue to enhance its performance indicators in the MMR by separating the indicators for violations issued in the current fiscal year from indicators for violations issued in previous years and still pending. The indicators should be broken down by class of violation, and reports should describe whether the corrections were made by the owner or by HPD.

**HPD Response:** “HPD is not in agreement with the Auditors’ finding that identifying Code Enforcement activities by the fiscal year that a violation was issued would demonstrate its effectiveness of enforcing the Housing Maintenance Code. Internally HPD tracks violations issued, reinspected and removed by class. We also internally track whether HPD or the owner corrects violations. HPD will take the Auditors’ recommendation under advisement and continue to work with the Mayor’s Office of Operations to review our MMR indicators and whether they effectively reflect the performance of the unit in meeting its targets and goals.”

**Auditor Comments:** HPD’s response is confusing because the agency disagrees with the finding, but states that it will take the corresponding recommendation under advisement. Only through disaggregating data for approximately three million violations on its database according to current and previous years can HPD recognize and appropriately address longstanding, pending violations. The large number of violations on the HPD database is unlikely to change because each year HPD issues about the same number of violations that it removes. We contend that by not separating in the MMR indicator the violations issued in the current fiscal year from those issued in previous years and still pending, HPD will continue to report an incomplete, and even misleading, measure of effectiveness.

## **PREVIOUS FINDING:**

The previous audit found that the HPD goal stated in the MMR was the enforcement of housing standards instead of the correction of violations.

“The goal, as currently worded, implies that HPD’s mission is to ‘enforce’ laws or regulations, i.e., to identify violations and then take appropriate measures (i.e., issue notices of violation). Given such a perception, it is to be expected that the more important goal—that of actually getting Housing Code violations corrected—would remain unaddressed and, therefore, not be measured.”

**Previous Recommendation #3:** HPD should “change its goal and objectives in the MMR, and redefine them more in terms of getting violations corrected, rather than in terms of merely enforcing compliance. HPD should work with the Mayor’s Office of Operations to accomplish this.”

## **Previous HPD Response:**

HPD stated that “even without an administrative tribunal

to adjudicate all violations, Code Enforcement has a 92 percent correction rate when heat violations are included. . . . The mission of violation correction has been clearly allocated to the Housing Litigation [Division] in the MMR.”

**Previous Auditor Comment:** “We concluded that 43 percent of the violations in our sample were not corrected an average of one year after the violations were identified by HPD inspectors. None of HPD’s MMR indicators currently describe the number or percent of violations corrected each year.”

**Current Status:** PARTIALLY IMPLEMENTED

In Fiscal Year 1996 HPD added a new objective to the MMR which currently states “ensure that a minimum of 70% of emergency conditions (Class C violations) in private dwellings are either verified as corrected by owners or corrected by the Department.” HPD reported in the MMR for Fiscal Year 2001 that it had “verified the correction of 74 percent of emergency conditions.”

While these actions are an improvement, they do not meet the intent of the previous audit’s recommendation #3 because of a problem with HPD’s MMR objective. The objective implies that the verified correction rate includes all Class C violations, when in fact it does not. HPD defines Class C violations as immediately hazardous conditions. However, according to the Associate Commissioner for the Division of Enforcement Services, “emergency conditions” are a subset of “immediately hazardous” conditions (Class C violations.) We requested, but HPD would not identify, the population of violations considered as “emergency conditions” that were used to compute the reported rate of 74 percent. Thus, while the 74 percent verified correction rate may be for “emergency conditions,” it misleads the reader because it seems to, but does not, address all immediately hazardous conditions (Class C violations.)

## **Recommendation**

2. HPD should include all Class C violations in the verified correction rate it reports, and clearly identify any statistics for subsets of Class C violations.

**HPD Response:** “It should be noted that the MMR indicator referenced in the report has been changed for FY’02 to read: HPD will ‘ensure that at least 95% of emergency conditions (Class C violations) in private dwellings, requiring repairs, are either verified by the tenant as corrected, or corrective action is initiated by the Department.’

“Approximately 79% of C class violations issued in FY’01 were classified as emergency repair generating violations. Therefore, of this 79%, HPD ensured that at least 95% were either verified as corrected or initiated corrective action. The remaining class C violations issued, 21% (15,333) are classified as non-emergency repair generating violations. These violations include [use of] double cylinder locks and [the lack of] a sign posted in the building lobby for information on access to the boiler room. Inspectors are required to observe for these

conditions each time they enter a building, therefore the 15,333 violations undoubtedly include duplicates. Of the 21%, HPD attempts reinspection upon receipt of an owner's notification that the violation has been corrected (self certifications, dismissal request, and voluntary repair agreements)."

**Auditor Comment:** The Fiscal Year 2002 objective still fails to address the recommendation because it does not include all Class C violations and does not clearly identify subsets of the Class C violations upon which it is reporting. By definition, Class C violations are immediately hazardous conditions which, under the Housing Code, must be corrected within 24 hours from the date of notification. The fact that these violations include such infractions as the use of double cylinder locks or the lack of a sign about access to the boiler room may demonstrate that HPD needs to create additional strategies to correct these types of violations. In any case, these types of violations are all Class C and therefore should be reported in the MMR.

**PREVIOUS FINDING:** The City's Administrative Code specifies that owners are subject to certain penalties when the owners do not correct violations. However, HPD does not have the authority to collect these penalties without litigation. To enforce penalties, HPD must obtain judgments against the owners in Housing Court. Because HPD does not have the legal staff to take landlords to court for every NOV issued, it has difficulty penalizing landlords for not correcting violations. For many years, HPD has unsuccessfully sought State legislation that would enable it to adjudicate NOVs in the same way that the City's Parking Violation Bureau adjudicates parking violations. Such legislation would allow HPD to impose, docket, and enforce civil penalties for violations without requiring it to go to Housing Court to obtain a judgment. Tenants can also force landlords to comply with the Housing Code by bringing actions against the landlords in Housing Court.

**Previous Recommendation #4:** HPD should "continue to seek State legislation enabling it to adjudicate NOVs and issue and docket penalties for uncorrected violations without having to obtain judgments in the Housing Part of the Civil Court. To accomplish this, HPD should use the results of this report to convince legislators that HPD needs greater enforcement authority to effectively achieve owner compliance with the Housing Maintenance Code."

**Previous HPD Response:** HPD stated that it agreed and that it supported the bill pending in the legislature at that time to create the administrative tribunal.

**Current Status:** IMPLEMENTED

According to HPD officials, over the years it has requested the authority to adjudicate NOVs from the State legislature. HPD legal staff reported that two separate bills have been submitted to the State legislature to amend the Multiple Dwelling Law, the Multiple Residence Law, and the City

Administrative Code. These bills, if passed, would authorize administrative imposition of civil penalties in the enforcement of State and local housing maintenance laws. Most recently, on January 9, 2002, this legislation was referred to the Housing Committee of the New York State Assembly.

In the past, the State legislature has failed to pass similar legislation and HPD violations continue to be enforceable only in Housing Court. However, according to the Associate Commissioner for the Division of Enforcement Services, HPD has received limited authority from the Department of Buildings to issue Environmental Control Board violations on that agency's behalf for cases of illegal occupancy. Without adjudication power, HPD continues to be severely limited in effectively enforcing the Housing Code.

### **Recommendation**

3. HPD should continue to seek State legislation enabling it to adjudicate NOV's (Notices of Violations) and to issue and docket penalties for uncorrected violations without having to obtain judgments in the Housing Part of the Civil Court.

***HPD Response:*** "HPD will continue to seek and support legislation allowing enforcement of the Housing Maintenance Code by administrative processes."

**PREVIOUS FINDING:** “HPD Should Inform Tenants of Their Rights in Getting Violations Corrected”

“When we visited residences . . . most tenants did not know that they could initiate, on their own, actions in Housing Court to obtain a judge’s order to repair the conditions that resulted in the violations. In addition, most of the tenants did not know about HPD’s Emergency Repair Program.”

**Previous Recommendation #5:** HPD should “inform tenants of their right to take their landlords to Housing Court when their landlords fail to correct violations. Specifically, HPD should develop a printed flyer or booklet that would be handed out to tenants when inspections are performed.”

**Previous HPD Response:** HPD stated that it “will consider this recommendation as part of a tenant verification notice mailed to tenants reporting non-emergency conditions. When Premisys [a new computer system] is operational we anticipate the issuance of such notices will be simplified.”

**Previous Auditor Comments:** “Our recommendation is feasible at the present time, and it is independent of the installation of a new computer system. All tenants with uncorrected housing code violations, especially those living in immediately hazardous conditions, should be made aware of their legal rights when landlords ignore the violations that HPD inspectors identify. We see no reason why HPD should delay in designing and distributing this relatively inexpensive, simple, and potentially effective mechanism.”

**Current Status:** IMPLEMENTED

Since the previous audit, HPD has developed two new brochures that are routinely distributed to tenants when inspections are performed. The first brochure,<sup>1</sup> written in both English and Spanish, informs the tenant that an inspector visited the apartment. The brochure briefly summarizes the inspector’s report, including a description of violations. The brochure also informs the tenant of his or her right to initiate a tenant action against the building owner in Housing Court if the owner does not correct the violation. The second brochure,<sup>2</sup> also written in both English and Spanish, describes some of the most common health and safety violations and contains other pertinent information regarding these violations.

HPD also distributes a third brochure developed by the Department of Health to tenants when inspections are performed. This brochure, *A Guide to New York City Local Law 38 of 1999, Keeping Your Home Safe from Lead-Based Paint Hazards*, provides the tenant with information on

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<sup>1</sup> Brochure No. OHO IS 11/00: includes blank spaces and boxes for the inspectors to indicate to the tenant any conditions requiring emergency repairs, found during that inspection.

<sup>2</sup> Brochure No. OHP Info- 2/01

protecting children from lead poisoning as a result of their exposure to lead-based paint. The brochure includes a summary of tenant rights and obligations and of landlord responsibilities under the law.

To ensure that the appropriate brochures are distributed to the tenants, HPD officials told us that when supervising inspectors conduct field audits they ask tenants whether they have received copies of the brochures. In addition, the brochures are mentioned on the HPD web site's new online building information display. The web site states that "after an inspection, tenants receive two brochures outlining their rights and responsibilities and the most common health and safety violations. These brochures help tenants understand their rights and responsibilities and encourage them to work with the City in bringing buildings up to code."

**PREVIOUS FINDING:** "When Owners Correct Violations, 39 Percent Do Not Notify HPD; When They Do Notify HPD, 27 Percent Are False"

"We found that the certification process, which provides owners with a mechanism for removing violations from HPD records when the owners correct the violations, is not effective. Under the certification process, owners can complete the preprinted form attached to all NOV's and send it to HPD by the specified 'Correction Date' certifying that they have corrected the violation. Unless HPD reinspects the violation within 70 days of receipt of this correction certification, the violation is deemed corrected and HPD removes the violation from its inventory of outstanding violations. While HPD inspectors have found instances of false certifications, HPD has never initiated litigation against an owner for falsely certifying the correction of a violation."

**Previous Recommendation #6:** HPD should "reinspect a sample of correction certifications and initiate litigation to penalize those landlords who submit false statements to HPD claiming they have corrected the violations. Such litigation should be publicized so those owners are informed that they cannot submit false certifications with impunity."

**Previous HPD Response:** HPD stated that "under current law, owners face only a \$250 additional penalty for falsely certifying that a condition had been corrected and that, compared to the thousands of dollars in penalties faced for non-correction, the false certification penalty carries very little weight. HPD has unsuccessfully sought increases in the penalty from the City Council."

**Previous Auditor Comment:** "Until penalties are imposed on landlords for false certifications, landlords have great incentive to misrepresent the correction of violations, and HPD will continue to inaccurately report in the MMR that it 'removes' a large percentage of the violations it identifies each year giving the public and elected officials a false sense of what

HPD's code enforcement efforts are actually accomplishing.”

**Current Status:      PARTIALLY IMPLEMENTED**

HPD currently reinspects a relatively large sample of owner correction certifications to determine whether the conditions have been corrected as the owner certifies. In Fiscal Year 2001, HPD reinspected 43.7 percent of the violations certified as corrected by owners. This is a major improvement in relation to the estimated reinspection rate of 10 percent that was reported in a 1995 joint investigation by the Comptroller's Office and New York State Senator Franz S. Leichter.<sup>3</sup> In addition, HPD has initiated litigation against some owners for falsely certifying the correction of violations, also an improvement. As reported in the previous audit, HPD had “never initiated litigation against an owner for falsely certifying the correction of a violation.” However, the number of false certification prosecution cases is still very small. Also, HPD now publicizes open violations, by building, on its web site, but it does not publicize litigation against owners who submit false certifications.

Based on data for Fiscal Years 1998 through 2001 we received from the Associate Commissioner for the Division of Enforcement Services, HPD inspectors found that more than 28 percent of the owners' correction certifications were false each year. However, the HPD Housing Litigation Division prosecuted a very small number of these owners. Table III, following, illustrates the percentage of owner certified corrections found to be false based on HPD reinspections and the small number of cases, which included false certifications, that were prosecuted by HPD, compared to the estimated data reported in the 1995 joint investigation.

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<sup>3</sup> These data are from a 1995 joint investigation by New York City Comptroller's Office and New York State Senator Franz S. Leichter. This investigation of HPD's owner correction certification records was separate from the previous audit report.

**TABLE III**

Number of False Certifications Found through Reinspections and  
Number of Cases Subsequently Prosecuted  
Fiscal Years 1994 and 1998–2001

Fiscal Year	Number of Violations Certified as Corrected by Landlords	Number of Violations Reinspected by HPD	Percentage of Reinspections Attempted of Certified Violations	False Certifications as a Percentage of Violations Reinspected	Number of False Certifications (calculated from percentages)	Cases Involving False Certifications Prosecuted by HPD (Each case usually includes multiple false certifications.)
1994 <sup>(a)</sup>	100,000	10,000	10%	40%	40,000	0
1998	72,682	48,770	67.1%	34.1%	16,631	53 cases
1999	97,182	63,850	65.7%	32.6%	20,815	68 cases
2000	93,035	45,816	49.2%	31.1%	14,249	92 cases
2001	106,815	46,650	43.7%	28.0%	13,062	139 cases

(a) Data from 1995 joint investigation.

As the above table shows, the HPD Housing Litigation Division has prosecuted an increasing, but still very small number of false certification cases, in relation to the number of false certifications found each year. Housing Litigation officials stated that because there are too many violations and false certifications, the Housing Litigation staff does not have the resources to prosecute false certification violations.

In addition, the civil penalty for false certification is still a maximum of \$250 because HPD has been unsuccessful in obtaining City Council approval for an increase. HPD has sought an increase in the penalty to \$1,000. Moreover, according to Housing Litigation officials, Housing Court would be overwhelmed if all false certifications were prosecuted. Nevertheless this small number of cases prosecuted by the Housing Litigation Division sends a message to owners that it is likely they will not be penalized if they generate a false certification.

In spite of the small number of false certification cases prosecuted, publicizing each litigated case would at least notify the public that HPD is seeking penalties more often. HPD has a new feature on its web site that allows the public to view open violations on its database, by building. The web site could note those buildings and name the owners who were fined by the courts for false certification of corrections. This might give the owners further incentive not to submit false certifications.

**Recommendations**

HPD should:

4. Increase its efforts to prosecute false certification cases to penalize those landlords who submit false statements to HPD claiming that they have corrected the violations.

**HPD Response:** “HPD will continue litigation of false certification cases as appropriate. HPD will maintain an appropriate balance among all of its types of litigation.”

5. Include on its web site as well as in newspapers and various community publications the names of building owners fined by the courts for false certification of corrections, and identify the buildings and violations in those cases.

**HPD Response:** “HPD already provides online a record of violations for every building that it has inspected. That includes the name of the owner and the violations that have been falsely certified.”

**Auditor Comment:** The web site includes the name of the owner and all violations that are still open. However, it does not identify those owners whose violations are open because they were found to have falsely certified corrections of violations. In addition, HPD did not address the part of the recommendation that suggests publishing names of those building owners in newspapers and community publications. Such publicity could be a further deterrent to false certification.

6. Continue to seek approval from the City Council to increase the civil penalties for owners falsely certifying the correction of violations.

**HPD Response:** “HPD will continue to seek increases in false certification penalties.”



City of New York  
DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT  
100 GOLD STREET, NEW YORK, N.Y. 10038

JERILYN PERINE  
Commissioner

June 11, 2002

Mr. Roger D. Liwer  
Assistant Comptroller of Audit  
Office of the New York City Comptroller  
1 Centre Street, Room 1100 North  
New York, New York 10007-2341

Re: Follow-up Audit of HPD's Enforcement of the  
Housing Maintenance Code – Audit Number: MH01-0176F

Dear Mr. Liwer:

The following represents the Department of Housing Preservation and Development's audit response to the recommendations contained in your follow-up audit of the Enforcement of the Housing Maintenance Code.

If you have any additional questions, please call Assistant Commissioner Bernard Schwarz at (212) 863-6610.

Thank you.

Sincerely,

Jerilyn Perine



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AUDIT RESPONSE  
 NEW YORK CITY COMPTROLLERS AUDIT  
 NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
 FOLLOW-UP AUDIT OF THE ENFORCEMENT OF THE HOUSING MAINTENANCE CODE  
 REPORT MH01-176F

<u>Finding</u>	<u>Recommendation 1.</u>	<u>Response 1.</u>
<p>HPD does not know whether it is effectively enforcing the Housing Code</p>	<p>HPD should continue to enhance its performance indicators in the MMR by separating the indicators for violations issued in the current fiscal year from indicators for violations issued in previous years and still pending. The indicators should be broken down by class of violation, and reports should include whether the corrections were made by the owner or by HPD.</p>	<p>HPD is not in agreement with the Auditors finding that identifying Code Enforcement activities by the fiscal year that a violation was issued would demonstrate its effectiveness of enforcing the Housing Maintenance Code. Internally HPD tracks violations issued, reinspected and removed by class. We also internally track whether HPD or the owner corrects violations.</p> <p>HPD will take the Auditors recommendation under advisement and continue to work with the Mayor's Office of Operations to review our MMR indicators and whether they effectively reflect the performance of the unit in meeting its targets and goals.</p>



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Finding

The HPD goal stated in the MMR was the enforcement of housing standards instead of the correction of violations.

Recommendation 2.

HPD should include all Class C violations in the verified correction rate it reports, and clearly identify any statistics for subsets of Class C violations.

Response 2.

It should be noted that the MMR indicator referenced in the report has been changed for FY '02 to read: HPD will "ensure that at least 95% of emergency conditions (Class C violations) in private dwellings, requiring repairs, are either verified by the tenant as corrected, or corrective action is initiated by the Department."

Approximately 79% of C class violations issued in FY '01 were classified as emergency repair generating violations. Therefore, of this 79%, HPD ensured that at least 95% were either verified as corrected or initiated corrective action. The remaining class C violations issued, 21% (15,333) are classified as non-emergency repair generating violations. These violations include double cylinder locks and a sign posted in the building lobby for information on access to the boiler room. Inspectors are required to observe for these conditions each time they enter a building, therefore the 15,333 violations undoubtedly include duplicates.

Of the 21%, HPD attempts reinspection upon receipt of an owner's notification that the violation has been corrected (self certifications, dismissal request, and voluntary repair agreements).



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Finding

The City's Administrative Code specifies that owners are subject to certain penalties when the owners do not correct violations. However, HPD does not have the authority to collect these penalties without litigation.

Finding

When Owners Correct Violations, 39 Percent do not Notify HPD; When they do Notify HPD 27 Percent are False

Recommendation 3.

HPD should continue to seek State Legislation enabling it to adjudicate Notices of Violations (NOVs) and to issue and docket penalties for uncorrected violations without having to obtain judgments in the Housing Part of the Civil Court.

Recommendation 4.

HPD should increase its efforts to prosecute false certification cases to penalize those landlords who submit false statements to HPD claiming that they have corrected the violations.

Recommendation 5.

HPD should include on its web site as well as in newspapers and various community publications the names of building owners fined by the courts for false certification of corrections, and identify the buildings and violations in those cases.

Response 3.

HPD will continue to seek and support legislation allowing enforcement of the Housing Maintenance Code by administrative processes.

Response 4.

HPD will continue litigation of false certification cases as appropriate. HPD will maintain an appropriate balance among all of its types of litigation.

Response 5.

HPD already provides online a record of violations for every building that it has inspected. That includes the name of the owner and the violations that have been falsely certified.



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**Recommendation 6.**

HPD should continue to seek approval from the City Council to increase the civil penalties for owners falsely certifying the correction of violations.

**Response 6.**

HPD will continue to seek increases in false certification penalties.



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