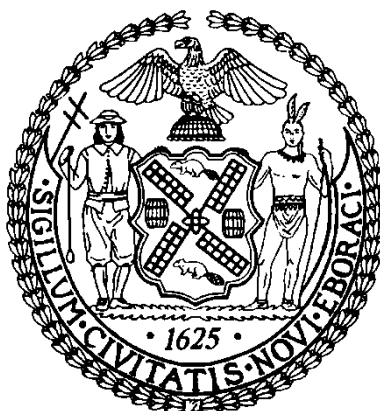


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Follow-up of Window
Guard Violations by the Department of Health
and Mental Hygiene and the Department of
Housing Preservation and Development**

MD10-066A

May 20, 2011

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

May 20, 2011

To the Residents of the City of New York:

My office has audited the window guard inspection program of the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD). We conduct these audits as a means of ensuring that City agencies are operating in a manner that promotes public safety.

The review of DOHMH's investigation of window guard complaints and referrals disclosed significant deficiencies. The auditors were unable to determine whether DOHMH's database was complete and, therefore, had no assurance that all window guard complaints and referrals forwarded to DOHMH were properly documented and investigated. For those complaints that were investigated, inspection attempts were not always made within the required timeframes. Moreover, neither DOHMH nor HPD has assurance that all window guard violations were appropriately addressed.

At the exit conference for this audit, the auditors learned for the first time that DOHMH would no longer be receiving window guard complaints and referrals and that this function was being transferred to HPD (effective April 1, 2011). The failure of both DOHMH and HPD officials to share this information with auditors during the course of audit fieldwork constituted an audit scope impairment and hindered their ability to effectively assess the program in view of the proposed changes. Nevertheless, the issues discussed in this report regarding DOHMH's processing of window guard cases merit the attention of HPD so that it can ensure that the identified deficiencies are not repeated as the agency assumes full responsibility for the program. The audit made a number of recommendations, including that HPD officials should ensure that: all window guard complaints and referrals are properly accounted for and processed, attempts at conducting initial and compliance inspections are made within required timeframes, and additional steps are made to contact tenants to confirm that their window guard violations were corrected by the landlord.

The results of the audit have been discussed with DOHMH and HPD officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JCL".

John C. Liu

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

**Audit Report on the Follow-up of Window Guard Violations
by the Department of Health and Mental Hygiene and the
Department of Housing Preservation and Development**

MD10-066A

AUDIT REPORT IN BRIEF

In late 2009, we initiated this audit of the Department of Health and Mental Hygiene's (DOHMH) and the Department of Housing Preservation and Development's (HPD) window guard inspection program. The audit objectives were to determine whether DOHMH adequately investigates window guard complaints and referrals and appropriately forwards unresolved cases to HPD, and whether HPD adequately investigates window guard violations and takes the necessary steps to ensure the installation and repair of both DOHMH- and HPD-identified violations.

As of April 1, 2011, the responsibility for investigating window guard complaints and referrals was transferred from DOHMH to HPD. While our second objective is still pertinent, our first objective is no longer relevant. DOHMH and HPD made the decision to consolidate the window guard program in 2010, but did not inform the audit team of this change until the exit conference on March 30, 2011 (when audit fieldwork was largely completed).

Had officials informed us of the planned changes during the audit fieldwork, we would have modified our audit plan so as to 1) assess whether HPD has developed, or was in the process of developing, controls to address identified deficiencies for those functions to be transferred from DOHMH to HPD, and 2) discontinue testing in those areas that would be rendered obsolete by the transfer. Instead, during a time of limited resources, officials at both agencies stood by as auditors spent months developing recommendations to improve functions that officials knew would cease to exist at the conclusion of the audit. Auditors could have spent this time assessing HPD's proposed controls over those functions that were to be transferred. Not informing the auditors of the change was a disservice to the public and to a program that, according to the DOHMH, has "saved hundreds of children's lives by preventing accidental falls from windows."

Auditing is critical to government accountability to the public. Both government managers and auditors have a responsibility within this process. As stated in generally accepted government auditing standards, "Government managers are responsible for providing reliable, useful, and timely information for accountability of government programs and their operations."

By not disclosing the pending consolidation, we feel that both HPD and DOHMH failed to meet these responsibilities.

Audit Findings and Conclusions

Our review of DOHMH's investigation of window guard complaints and referrals disclosed significant deficiencies. We were unable to determine whether DOHMH's window guard database was complete and, therefore, we have no assurance that all window guard complaints and referrals forwarded to DOHMH were properly documented and investigated. For those complaints that were investigated, inspection attempts were not always made within the required timeframes. Moreover, neither DOHMH nor HPD has assurance that all window guard violations were appropriately addressed. A total of 288 (46 percent) of the 632 violations sampled were closed (1) without verification from the tenant that the repair was made, (2) because HPD was unable to gain access to make the repair, or (3) improperly due to data entry errors. In addition, 9 percent of the sampled HPD window guard violations did not receive a final disposition within the timeframe goal established by HPD.

As a result of the change in the window guard process, we make no recommendations to DOHMH. Nevertheless, we believe that the issues discussed in this report regarding DOHMH's processing of window guard cases merit the attention of HPD. Accordingly, HPD should establish controls to ensure that the deficiencies identified in this report are not repeated as the agency assumes full responsibility for the program.

Audit Recommendations

Based on our findings, we make 13 recommendations to HPD, including that HPD officials should:

- Ensure that all window guard complaints and referrals are properly accounted for and processed.
- Ensure that attempts at conducting initial and compliance inspections are made within the required timeframes.
- Ensure that follow-up action is taken in instances where cases remain open due to the lack of access to the apartment or building.
- Take additional steps to contact tenants to confirm that their window guard violations were corrected by the landlord.
- Institute procedures to ensure that window guard cases are finalized within required timeframes.

Agency Responses

HPD officials generally agreed with the audit's findings and recommendations. DOHMH officials, however, disagreed with some of the audit's findings and disagreed with our conclusion that their failure to share timely information represents an audit impairment, arguing that the consolidation "has no bearing or relationship to DOHMH's performance of this function during the time period that is the focus of the current city Comptroller audit." Furthermore, neither agency signed requested Representation Letters confirming (as of April 15, 2011) their management responsibilities, and that they had, in fact, provided us with and disclosed all relevant operational and financial information related to our audit objectives of the window guard program, *including any events that may have occurred subsequent to our audit period*. As a result, we lack assurance that all relevant information was provided to us during the audit.

Regarding DOHMH's arguments, we considered them and found them to be without merit. A key benefit of a performance audit is the process improvements to be realized through implementation of the recommendations. While the consolidation may not have affected DOHMH's performance of this function during the time period that was the focus of the audit, it had an impact on the relevancy of the recommendations. If DOHMH had informed us of the consolidation, we would have discontinued testing of those areas rendered obsolete by the consolidation. Furthermore, we are concerned by DOHMH's statements regarding the audit impairment issue as they show a fundamental lack of understanding regarding the purpose of performance auditing, as well as their management responsibilities.

INTRODUCTION

Background

To address the incidence of preventable falls and fatalities from unguarded windows, the New York City Board of Health enacted legislation known as Health Code Section 131.15 in 1976. The window guard law requires owners of multiple dwellings (buildings of three or more apartments) to provide and properly install approved window guards on all windows in an apartment where a child or children younger than 11 years old resides.¹ Tenants with no children may also request and receive window guards if they want them for any reason. Owners of multiple dwellings are also responsible for installing window guards in public areas, such as hallways and stairways, if a child younger than 11 years of age lives in the building.

During the period reviewed, the DOHMH Window Fall Prevention Program (WFPP), a program under DOHMH's Bureau of Food Safety and Community Sanitation, received window guard referrals from trained staff, other DOHMH bureaus, and other City agencies.² It also received complaints from the public. Referrals were sub-categorized into interviews and observation reports. Interviews are reports created by DOHMH staff during outreach activities at events, such as Health Fairs, through direct conversation with individuals where the individual indicates a need for window guards. Observation reports are generated from other DOHMH bureaus and other City agencies³ by staff trained by the WFPP to inspect for window guards and who conduct visits or inspections of apartments in multiple dwellings. The WFPP downloaded complaints from the City's 311 Complaint Call System into the WFPP Microsoft Access database on a daily basis.

DOHMH WFPP staff conducted initial inspections of complaints and interview referrals, and upon verifying that a deficiency existed or receiving an observation referral from another City worker, would have issued a Commissioner of Health Order to Abate Nuisance (COTA) to the owner of the building in which the deficiency was observed. A COTA gives the building owner notice to install or repair the window guards within five days from the receipt of the COTA. Then the WFPP would have assigned an inspector to conduct a compliance inspection and, if window guards were not installed or not installed properly, then a Notice of Violation (NOV) would have been issued. The case would then have been referred to HPD for installation or repair of the window guards.

HPD's mission is to improve the availability, affordability, and quality of housing in New York City. HPD received window guard violations in two ways. The first way was via electronic transfer of window guard violations from DOHMH; referrals were automatically sent to HPD and uploaded nightly. The second way was via routine inspections by HPD's Division of Code Enforcement. As part of HPD's general inspection procedure, all HPD Housing

¹ The exceptions to this law are windows that give access to fire escapes and windows on the first floor that are a required secondary exit in a building where there are fire escapes on the second floor and up.

² Effective April 1, 2011, DOHMH reportedly no longer received window guard complaints and referrals. That responsibility was transferred to HPD.

³ The other DOHMH bureaus include Lead Poisoning Prevention and Maternity Services, and the other City agencies include the Administration for Children's Services and the Department of Housing Preservation and Development.

Inspectors are required to ask whether a child under the age of 11 resides in the apartment inspected. If a child under the age of 11 lives in the apartment, then the inspector is required to conduct an inspection to ensure the proper installation of window guards.

All window guard violations received by HPD are documented in its database (HPDINFO). In addition, for window guard deficiencies identified through its own inspection process, HPD will issue a COTA for each apartment in which a deficiency exists⁴. HPD assigns a violation sequence number (violation) for each room in which a missing or defective window guard is observed, so a COTA may have multiple violations associated with it. HPD attempts to contact and advise the building owner of the window guard condition in need of emergency repair. HPD later attempts to contact the tenant to ascertain whether the violation has been corrected. All calls made by HPD to owners and tenants, as well as their responses, are recorded in HPDINFO. If HPD determines that the window guard condition is not corrected, the violation is referred for repair.

Window guard violations may be repaired by in-house HPD staff or assigned to private contractors through the use of a requirement contract. The amount of time and materials used to correct the violation are documented and used to bill the building owner for the repairs. The repair charges are sent to the Department of Finance (DOF) to bill the owner and collect payments. DOF billed over \$1.4 million for repairs between July 1, 2007, and June 30, 2009. (See Appendix for a detailed flowchart of the HPD window guard process.)

DOHMH reported that it received 9,799 window guard cases for the audit period of July 1, 2007, through June 30, 2009. This consisted of:

- 1,849 complaints,
- 5,834 referrals,
- 1,612 index apartment violations, and
- 504 miscellaneous violations.

For the audit period of July 1, 2007, through June 30, 2009, HPD reported that it received a total of 37,148 window guard violations from DOHMH and identified a total of 35,754 window guard violations through its own inspection process.

Objectives

The audit objectives were to determine whether:

- DOHMH adequately investigates window guard complaints and referrals,
- DOHMH appropriately forwards unresolved cases to HPD, and
- HPD adequately investigates window guard violations and takes the necessary steps to ensure the installation and repair of both DOHMH- and HPD-identified violations.

⁴ HPD was authorized to issue COTAs for missing or defective window guards in November 2007 and began issuing them in December 2007.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives except for the audit impairment created by the lack of timely disclosure on the part of DOHMH and HPD officials concerning the transfer of window guard complaints and referrals from DOHMH to HPD. (This issue is further discussed below.) This issue supersedes the additional exception regarding our inability to determine the completeness of the data DOHMH provided from its WFPP Microsoft Access database. Due to control weaknesses and significant gaps in the numbering sequence, we were unable to satisfy ourselves as to the completeness of the population under review. This significantly affected our ability to satisfy our audit objectives. This issue is more fully discussed in the finding sections of our report. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Lack of Timely Disclosure Impairment

At the exit conference for this audit, we learned for the first time that DOHMH will no longer be receiving window guard complaints and referrals and that this function is being transferred to HPD (effective April 1, 2011). The failure of both DOHMH and HPD officials to share this information with us during the course of audit fieldwork constituted an audit scope impairment and hindered our ability to effectively assess the program in view of the proposed changes.

Following the exit conference, we requested from HPD officials the plan for implementing the new window guard process as well as any proposed policy or procedural changes. We were not provided this information. Instead, HPD's Audit Liaison responded via email with the following statement:

During 2010, all agencies were asked to review their operations to identify areas where greater efficiencies could be achieved without losing effectiveness by consolidating functions. Both DOHMH and HPD identified window guard inspections as one such area. On April 1, 2011, HPD began receiving all complaints for window guard conditions. Whereas DOHMH had a limited number of inspectors assigned for this function, HPD can leverage its full resource of Housing Inspectors (over 300) to respond to these complaints. . . .

Additionally, the City Council has introduced legislation which the agencies support regarding adding window guard enforcement to the Housing Maintenance Code. . . . Based upon the passage of this legislation, HPD will prepare procedures to establish the implementation of the Program.

HPD and DOHMH agree that recommendations made by the report will be relevant regardless of which agency is responding to complaints, conducting

inspections or issuing violations. HPD will review any recommendations made in the report relevant to the processes for which HPD will be responsible going forward. By the time the draft report is received, we expect to be able to outline envisioned business process changes.

We take issue with the fact that both agencies failed to share this key information with us during the course of the audit. Had officials informed us of the planned changes during the audit fieldwork, we would have modified our audit plan so as to 1) assess whether HPD has developed, or was in the process of developing, controls to address identified deficiencies for those functions that would be transferred from DOHMH to HPD, and 2) discontinue testing in those areas that would be rendered obsolete by the transfer.

Generally accepted government auditing standards dictate that we assess the adequacy of controls established by an auditee with regard to the area being audited and that we address our recommendations to parties that have the authority to implement them. Our ability to do so in this audit was affected by the failure of HPD and DOHMH officials to inform us of the transfer in a timely manner.

Due to the lack of openness on the part of HPD and DOHMH, we requested that their management sign Representation Letters effective April 15, 2011 (the date of our draft report) confirming their management responsibilities and that they had, in fact, provided us with, and disclosed all relevant operational and financial information related to, our audit objectives of the window guard program, *including any events that may have occurred subsequent to our audit period*. This procedure is not a part of our routine audit process and one that we have not previously felt the need to take. We have not received the requested signed Representation Letters. As a result, we lack assurance from HPD and DOHMH officials that all relevant information was provided to us during the audit. (Copies of the requested Representation Letters are attached to this report as Appendices II and III.) This issue is discussed further in the Discussion of Audit Results section of this report.

The audit scope was Fiscal Years 2008 and 2009.

DOHMH Window Guard Violations

To gain an understanding of DOHMH's WFPP, we interviewed officials from DOHMH, including the Assistant Commissioner of the Bureau of Food Safety and Community Sanitation, the Director of the Office of Community Sanitation, the Deputy Commissioner of Environmental Health, the Outreach Unit Coordinator, and a window guard inspector. In addition, we observed the window guard inspection process; we accompanied DOHMH inspectors on two separate occasions while conducting their assigned inspections. We then requested the documentation completed by the inspectors for each of these inspections and compared it to the information entered in the WFPP database to determine whether the information was entered accurately.

In order to further our understanding of DOHMH's responsibilities and the program, we also reviewed the following documents received from DOHMH:

- Chapter 12 of the Rules of the City of New York

- Title 17 of the New York City Administrative Code
- Bureau of Food Safety and Community Sanitation Window Fall Prevention Program procedures
- Window Guard Interview/Observation Report Instructions

We requested from DOHMH an electronic copy of all window guard complaints and observations in its WFPP Microsoft Access database for the period of July 1, 2007, through June 30, 2009. The Access database information received from DOHMH contained 9,799 window guard cases. We sorted the data by the system-assigned case number to determine whether the cases were sequentially numbered and whether there were any gaps in the case numbering sequence. In addition, to determine whether information was accurately entered into the database, we randomly selected 50 window guard cases received by DOHMH during June 2009 and matched 314 pieces of information from the source documents to the database.

We used the DOHMH record number, which correlates to the building address, as the sampling unit. We sorted the 9,799 record numbers to determine whether there were particular buildings with large numbers of window guard cases. We determined that the 9,799 record numbers pertained to 6,726 buildings and that the majority of the buildings had eight or fewer cases cited against them. There were four buildings, however, that each had between 10 and 27 cases for a total of 62 window guard cases. We, therefore, decided to judgmentally select and review all 62 window guard cases for these four buildings. In addition, we randomly selected 30 of the remaining 6,722 buildings and reviewed all the cases associated with each. The selected DOHMH sample is noted in Table I.

Table I
DOHMH Window Guard Cases Selected for Sample

Buildings Selected – Selection Type	Sample Selection Method	Number of Cases Associated with these Buildings
30 Buildings	Random	51
970 Kent Avenue	Judgmental	10
20 Lambert Street	Judgmental	12
1005 Jerome Avenue	Judgmental	13
216 East 10 th Street	Judgmental	27
TOTAL		113

For the 113 cases selected, we determined, where applicable, whether initial inspections were completed, COTAs were issued, compliance inspections were performed, NOV's were issued, and the cases were forwarded to HPD. We also determined whether the initial and compliance inspections were completed within the timeframes required by DOHMH. In addition, for those cases forwarded by DOHMH to HPD, we determined whether DOHMH received a final disposition of the cases' status from HPD.

From our population of 9,799 cases, we identified 31 where the DOHMH initial inspection result was "No Violations Cited." We reviewed the DOHMH WFPP data for the period of July 1, 2007, through June 30, 2009, to determine whether any subsequent window

guard cases were opened for these same apartments to determine the validity of inspections performed.

From our population of 9,799 cases, we identified 19 that were designated as window fall cases (instances where children have fallen out of windows) and that were reported to DOHMH between July 1, 2007, and June 30, 2009. We reviewed the WFPP and HPD databases to ascertain whether prior window guard cases existed for these apartments during the same time period of July 1, 2007, through June 30, 2009.

We reviewed 281 window guard cases that were identified by DOHMH as being in New York City Housing Authority (NYCHA) buildings to determine whether DOHMH referred them to NYCHA in a timely manner and whether DOHMH received a disposition from NYCHA regarding the outcome of these cases. In addition, we researched the building addresses in the Department of Building's Building Information System to confirm that they were accurately categorized as NYCHA buildings.

HPD Window Guard Violations

To gain an understanding of how unresolved window guard complaints are forwarded by DOHMH to HPD and processed, we conducted a walk-through meeting with HPD officials, including the Assistant Commissioner of the Division of Maintenance, the Director of Operations of the Office of Enforcement Services, the Director of Applications Development and Integration, and the audit liaison. To further our understanding of how HPD makes window guard repairs, we met with the Director of the HPD Emergency Services Unit, an HPD Housing Inspector Supervisor, a supervisor from the HPD Emergency Repair Unit, and an HPD Mechanic.

To further our understanding of HPD's responsibilities, we also reviewed the following documents received from HPD:

- Division of Maintenance Window Guard Procedure
- An excerpt from the Code Inspection Manual on conducting inspections, and
- A description of the HPD Window guard process

We requested from HPD, in electronic format, information on all window guard violations from its database (HPDINFO) for the period of July 1, 2007, through June 30, 2009. The data received contained complaint IDs that related to 72,902 violations made up of 35,754 violations identified by HPD and 37,148 violations identified by DOHMH and forwarded to HPD for repair.

We sorted the 35,754 HPD identified violations by building identification number and determined there were 10,093 buildings associated with these violations. We reviewed the 10,093 building identification numbers to see whether there were buildings with large numbers of violations. We judgmentally selected and reviewed cases associated with the four buildings that had the highest number of violations. The violations for the four buildings totaled 281. Next, we randomly selected an additional 30 buildings and reviewed all 100 violations associated

with these buildings. Lastly, we reviewed the 251 violations that were included in our DOHMH sample of window guard cases and that were forwarded by DOHMH to HPD. The selected HPD samples are noted in Table II.

Table II
HPD Sampled Violation Numbers

Building	Sample Selection Method	Number of HPD complaint IDs	Number of HPD Violations
30 Buildings	Random	64	100
3580 Broadway	Judgmental	39	69
2251 Holland Avenue	Judgmental	25	59
1504 Sheridan Avenue	Judgmental	44	88
2100 Wallace Avenue	Judgmental	36	65
Cases forwarded by DOHMH to HPD	Random	145	251
TOTAL		353	632

For the 632 violations we determined, where applicable, whether HPD attempted to contact the building owner and tenant and whether attempts were made to repair or install the window guards in violation. We also calculated the number of business days from the date of receipt of each violation until the date of the final disposition.

From our sample of 632 violations, we determined that 166 were closed based on a statement by the landlord that the repair was made but where HPD was unable to reach the tenant for confirmation. We reviewed the 166 violations to determine the number of apartments they related to that had telephone numbers listed in the data received from HPD. We determined that these 166 violations related to 71 apartments and one public area where telephone numbers were present. In order to gain assurance that the landlords actually made the repairs, we randomly selected 30 of the 72 cases and attempted to contact the tenant to confirm the repairs were made. In addition, we reviewed the HPD data for the period of July 1, 2007, through June 30, 2009, for these 166 violations to see whether subsequent violations were issued for these apartments.

Next, we contacted the HPD Repair Unit to determine the type of documentation it maintains that shows HPD or an outside contractor went to a complainant apartment to make the window guard repairs. From our sample of 632 violations, we determined that there were 39 Area Office Repairs (AORs), which are repairs made by HPD in-house staff, and 23 Open Market Orders (OMOs), which are assigned to private contractors for repair. DOF billed a total of \$13,372 for these AORs and OMOs. We then randomly selected 16 of the 39 AORs and 10 of the 23 OMOs and obtained copies of the documentation in the HPD files to ensure that the necessary documentation was present as evidence of the repairs.

The results of our tests, while not projected to the respective populations of window guard violations from which the samples were drawn, provided a reasonable basis for us to meet the audit objectives.

Discussion of Audit Results

The matters covered in this report were discussed with DOHMH and HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH and HPD officials and was discussed at an exit conference held on March 30, 2011. On April 15, 2011, we submitted a draft report to DOHMH and HPD officials with a request for comments. We received written responses from DOHMH and HPD officials on April 29, 2011. HPD officials generally agreed with the audit's findings and recommendations and stated, "We value the recommendations cited in the report and look forward to improving the accountability of the program by implementing changes in accordance with the recommendations."

DOHMH officials, however, disagreed with a number of the findings as well as our statement that the agencies' failure to notify us during audit fieldwork of the program's pending consolidation represents an audit scope impairment. Officials stated:

The transfer of function from DOHMH to HPD was well beyond the auditors' stated audit scope, Program's performance in 2008 and 2009 and stated objectives above. Consolidation of window guard inspectional and response activities within HPD was published as part of the November FY12 financial plan, as part of the required savings target assigned to all city agencies. While subsequently the agencies (DOHMH and HPD) have worked out a mutually agreeable approach to this consolidation, the City Council has not formally approved the November FY12 financial plan modification as of this writing. This consolidation has no bearing or relationship to DOHMH's performance of this function during the time period that is the focus of the current city Comptroller audit.

The above statement made by DOHMH officials shows a fundamental lack of understanding regarding the purpose of performance auditing, their management responsibilities, and the need to have fully informed our audit team of any and all events relating to the audit objectives, *including those subsequent to the audit period*. A key benefit of a performance audit is the process improvements to be realized through implementation of the recommendations. While the consolidation may not have affected DOHMH's performance of this function during the time period that was the focus of the audit, it had an impact on the relevancy of the recommendations. If DOHMH had informed us of the consolidation, we would have discontinued testing of those areas rendered obsolete by the consolidation. DOHMH's failure to recognize that the planned consolidation and ensuing changes would significantly affect the testing performed as well as the corrective actions we would recommend is of concern to us as it indicates that management does not understand its responsibilities or the benefits of the audit process. In such an environment, we are concerned that DOHMH management will be hindered in its efforts to ensure that the City's resources are being used as efficiently and effectively as possible.

FINDINGS AND RECOMMENDATIONS

Our review of DOHMH's investigation of window guard complaints and referrals disclosed significant deficiencies. Due to the questionable completeness of the WFPP data, we have no assurance that all window guard complaints and referrals forwarded to DOHMH were properly documented and investigated. For those complaints and referrals that were investigated, initial and compliance inspection attempts were not always made within the required timeframes. Further, DOHMH did not forward all unresolved window guard violations to HPD, and neither agency verified that window guard violation data transmitted to HPD was received. Due to a transmission error, which began on May 13, 2009, and was not identified until September 25, 2009, a number of violations were not received by HPD in a timely manner, significantly delaying the resolution of these violations.

Moreover, neither DOHMH nor HPD has assurance that all window guard violations were appropriately addressed. A total of 288 (46 percent) of the 632 violations sampled were closed (1) without verification from the tenant that the repair was made as reported, (2) because HPD was unable to gain access to make the repair, or (3) improperly due to data entry errors. A review of 71 sampled apartments in which window guard violations were reportedly corrected without verification found that subsequent violations were issued for 16 (23 percent) of them, bringing into question whether the initial corrections were actually made. We also found that 9 percent of the sampled HPD window guard violations did not receive a final disposition within the timeframe goal established by HPD.

We also identified instances where cases referred by DOHMH to NYCHA were not made on a timely basis and instances where cases were dated as being sent to NYCHA prior to the date received by DOHMH. Further, DOHMH does not have a process for following up with NYCHA to verify that the violations identified in NYCHA buildings were appropriately addressed, and therefore, has no assurance that these violations were corrected.

These issues are discussed in detail in the following sections.

Unable to Determine the Completeness of the DOHMH WFPP Database

We were unable to determine whether the WFPP Access database is complete. In total, DOHMH provided us with 9,799 case numbers for the period of July 1, 2007, through June 30, 2009. When we sorted the data, we identified large gaps in the case numbering sequence, which DOHMH officials could not explain. For example, case number 42020 was received by DOHMH on December 16, 2008, and the next sequential case number was 62274 that was received on December 17, 2008—a gap of 20,254 case numbers. The case number sequence then jumps from case 62280 (the last case number received on December 17, 2008) to case 89285, also received on December 17, 2008. In addition, DOHMH personnel use only one password to access the WFPP database, which provides very minimal data security or access control.

According to DOHMH officials, “Record and case numbers are created via auto numbering. Auto numbers are not guaranteed to be sequential, just unique, so gaps can happen.” DOHMH officials also stated that the “[case] numbers are system generated auto-numbers and are not reset after deletions occur. During the process of database development and enhancement, records created in test are subsequently deleted.” However, we identified gaps of over 75,000 case numbers, and there were only 9,799 window guard cases for our scope period. It does not seem logical that over 75,000 records were deleted.

As a result, we were unable to verify that all cases referred to DOHMH are accounted for. Based on the large gaps in the numbering sequence and the access security weaknesses, we cannot determine whether the population is complete and, therefore, reliable for audit testing purposes. It is possible for window guard cases to have been deleted without detection, leaving open the possibility that the window guard violations still exist and that the necessary window guards may not have been installed.

DOHMH Response: “The auditors’ objective was to verify the completeness of the database by sorting the case and record numbers sequentially. However, this method is not appropriate for a database that is designed to automatically generate unique case and record numbers rather than just sequential numbers. The ‘Auto-number feature’ in the Access database ensures that duplicate numbers are not created, so each number is generated only once. Two cases for follow-up, generated one after the other, may not be sequentially numbered and may have a large gap, as the auditors noted....

“To assure that the database is complete, WFPP management performs the following manual control activities:

- All window guard complaints that are downloaded from 311 are verified to have been created in the WFPP database.
- New complaints are individually reviewed by WFPP staff from a queue in the database and processed to confirm the pre-existence of a record for the address in the database, verify current building ownership and for creation of a new record and or case. . . .
- A WFPP supervisor reviews the complaint download queue daily to ensure all complaints have been processed.

“Although the auditors’ test does not demonstrate the database is incomplete, we have taken steps to further enhance controls . . . ”

Auditor Comment: DOHMH’s explanation for the gaps in the numbering sequence does not seem reasonable, and it provided no evidence to support its claim. While the AutoNumber feature in Access does allow a user to generate unique case numbers either sequentially or randomly, our review of the WFPP database clearly shows that the case numbers were not generated randomly. We identified many large strings of case numbers that were sequential. We, therefore, do not accept DOHMH’s explanations as to why the gaps exist.

Additionally, we are unable to give any merit to the above-mentioned manual control steps that DOHMH claims it took to ensure that the WFPP database was complete. The agency provided no evidence to corroborate these steps, although it was provided ample opportunity to do so. Furthermore, it would seem counter-productive and inefficient to establish manual controls when automated controls could be used to achieve the same purpose. Accordingly, we stand by our findings.

As discussed in the Scope and Methodology section of the report, we were informed at the exit conference that DOHMH will no longer be receiving window guard complaints and referrals and that this function is being transferred to HPD. As a result of the change in the window guard process, we make no recommendations to DOHMH.

Recommendation

1. HPD officials should ensure that all window guard complaints and referrals are properly accounted for and processed. This recommendation is especially addressed to any additional complaints that DOHMH refers to HPD as part of the transition process. If any records are deleted, those deletions should be documented, including the reason for the deletions, and should require and be evidenced by appropriate approvals.

HPD Response: “HPD began to receive complaints on April 1st, 2011. Any complaints already received by the DOHMH prior to that date will be handled to completion by the DOHMH and will not be transferred to HPD mid-process. HPFINFO, HPD’s database, accounts for all complaints received through 311, including complaints generated by the Department of Health and Mental Hygiene staff. Records are not deleted in HPDINFO, only inactivated, and that happens only very rarely when the agency is advised that there was an error in the information received from the tenant or complainant.”

DOHMH Inspection Attempts Are Not Always Made in a Timely Manner

Initial and compliance inspection attempts were not always made within the required DOHMH timeframes. According to the DOHMH procedures, initial complaint inspections should be attempted within three days of receipt of the complaint, and compliance inspections should be attempted within 15 to 25 days from the date of the COTA mailing to the landlord.

We examined 113 DOHMH window guard cases and identified 21 cases that required an initial inspection. Eight (38 percent) of these 21 cases did not have an initial inspection attempt within three days of the receipt of the complaint. The initial inspection attempts for these eight cases were made from five to 13 days after the complaints were received. In addition, we identified 41 cases that required a compliance inspection. Eight (20 percent) of these 41 cases did not have a compliance inspection attempt made within 25 days from the date of the COTA mailing. The compliance inspection attempts for these cases were made from 28 to 61 days after the COTAs were mailed.

DOHMH Response: “The auditors’ conclude that ‘DOHMH inspection attempts are not always made in a timely manner.’ The auditors’ finding is based on a sample of 113 cases, just 1.1% of total cases in fiscal years 2008 and 2009 cases, included 62 cases from just four buildings selected because they had the highest number of violations. While we respond to findings related to these cases, we also point out that this non-representative sample significantly limits the generalizability of the audit’s observations, findings and recommendations. Buildings with the greatest number of violations differ from the universe of other buildings received by the WFPP. Because of the amount of time it takes to carry out inspections, routing may be delayed to ensure availability of staff for long periods of time, it may be generally more difficult to gain access to apartments in a timely manner and their owners may be less responsive than others.”

Auditor Comment: All of our audits, including this one, are conducted in accordance with generally accepted government auditing standards. Our disclosure of sample selection, finding disclosure, and audit conclusions fully comply with GAGAS. In this instance, we selected the four buildings that had the highest number of violations because we thought that DOHMH would have focused greater efforts on these buildings. Secondly, DOHMH’s assertion that the time needed to carry out inspections may be delayed because “it may be generally more difficult to gain access to apartments in a timely manner” is irrelevant. Our finding is that an attempt to gain access was not made within the required timeframe regardless of whether or not access was gained.

DOHMH Response: “The auditors state that of the 21 cases, eight did not have an initial inspection attempt within three days of receipt of complaints. We agree with the auditors that the initial inspection for three of the 21 cases was not timely. However, the remaining five cases had valid reasons for not meeting the three day threshold.”

Auditor Comment: DOHMH did not provide adequate evidence to refute our findings of late inspection attempts for the above-referenced five cases. Accordingly, our finding remains.

Initial and compliance inspection attempts should be tracked to ensure they are performed in a timely manner so that any corrective actions may be taken as quickly as possible, thereby reducing the risk to young children from falls from unguarded windows.

Again, due to the change in the window guard process, we make no recommendations to DOHMH for these identified deficiencies.

Recommendation

2. HPD officials need to ensure that attempts at conducting initial and compliance inspections are made within the required timeframes.

HPD Response: “HPD is developing procedures which outline the timeframe in which initial inspections are expected to be conducted. The timeframe for owner compliance will be defined in the law, as proposed in Intro. 531. Additionally, timeframes for

emergency repair response will also be outlined in internal procedures. A draft procedure document is attached as part of the response. Please note that these procedures are subject to change as legislation is finalized.”

Verification of Transmitted Data Not Performed

DOHMH and HPD did not verify that all data electronically transmitted from DOHMH to HPD was actually received by HPD. DOHMH electronically forwards to HPD window guard cases in need of repair on a daily basis. Due to a transmission error, which began on May 13, 2009, and was not identified until September 25, 2009, a number of violations were not received by HPD in a timely manner, significantly delaying the resolution of these violations. A total of 1,502 violations were affected.

HPD officials stated that there was an error in the transmittal file from DOHMH resulting in some records not being accepted by HPD’s system. Although this first occurred in May 2009, HPD officials stated that the error was not identified until September 2009. This error and delay in records being sent to HPD occurred because neither DOHMH nor HPD was verifying that all data transmitted from DOHMH to HPD was received. Any delay in the receipt of these cases by HPD results in a delay by HPD in attempting to correct the dangerous window guard conditions, potentially putting young children at risk.

DOHMH officials stated that they do not generate a data transfer verification (“sync” report). HPD officials, however, informed us that they instituted a new procedure in January 2010 to generate a daily “sync” report and that this report indicates the number of violations successfully converted from DOHMH to HPD. HPD officials provided us with a copy of the report as evidence of this change in procedure.

DOHMH Response: “We acknowledge that prior to September 2009, we had not verified that all data electronically transmitted from DOHMH was received by HPD. In December 2009, we implemented a process whereby the WFPP database receives daily electronic status updates from HPD as part of the data transmission of buildings being referred to HPD for emergency repairs. The WFPP issues letters to building owners and tenants for cases where HPD indicated access or installation/repair has been refused.”

Auditor Comment: From its response, it does not appear that DOHMH understands the issue. The status updates that DOHMH is referring to are the HPD final outcomes for the violations DOHMH forwarded to HPD for repair. Our finding was that the initial violation data electronically transmitted from DOHMH to HPD was not always received by HPD because DOHMH was not generating a data transfer verification report. The receiving of status updates from HPD referred to by DOHMH would not correct this condition.

DOHMH will no longer be receiving window guard complaints and referrals because this function is being transferred to HPD. We, therefore, make no recommendations to DOHMH or HPD to correct this condition.

No Assurance that All Violations Were Appropriately Addressed

HPD and DOHMH have no assurance that all window guard violations were appropriately addressed. A total of 288 (46 percent) of the 632 HPD violations sampled were closed (1) without verification from the tenant that the landlord made the repair, (2) because HPD was unable to gain access to make the repair, or (3) improperly due to data entry errors.

Cases Closed without Tenant Verification of Repair

We identified 166 (26 percent) of the 632 HPD violations sampled that were closed by HPD without verification from the tenant that the repair was made. These 166 violations—pertaining to 71 apartments and one public area—were closed based on statements from the building owner that he/she would comply. Although telephone contact attempts were made to the tenants in the 71 apartments to confirm the owners' compliance, HPD was unable to reach the tenants and the violations were subsequently closed. The one public area violation was closed simply on the statement from the building owner that he/she would comply. By not obtaining independent confirmation before closing the violations, however, there is a risk that the owners may not carry out the repairs and the hazardous conditions will remain.

We attempted to contact the tenants for 30 randomly selected apartments of the 71 to confirm whether the window guards were, in fact, installed or repaired by the landlord. The telephone numbers for 15 of the tenants we called were disconnected, and we were unable to contact five tenants. Of the 10 tenants we were able to contact, seven tenants confirmed that the window guards were installed. The remaining three tenants, however, stated that window guards were *not* installed. One of these tenants stated that window guards were no longer needed because the child did not live there anymore. We reported the missing window guards for the other two apartments to HPD officials, who then sent supervising inspectors to these apartments on December 14, 2010. For one apartment, the inspector determined that no window guards were required because the youngest child residing in the apartment recently turned 11 years old. (At the time the violation was issued, however, the child was still under the age of 11.) For the second apartment, the inspector determined that window guards are still required, and HPD officials stated that another violation will be issued to the landlord.

To ascertain whether any of the apartments that received these 166 violations, which were closed without verification, were again cited for missing or defective window guards, we reviewed HPDINFO to see whether subsequent HPD window guard violations were issued for these apartments during the period of July 1, 2007, through June 30, 2009. Of the 71 apartments, we determined that 16 (23 percent) had subsequent window guard violations issued. Since violations are only issued upon verification that a defective condition exists, these subsequent violations bring into question whether the original violations were ever corrected.

No Access or Refused Access

There were a total of 117 (19 percent) of the 632 violations sampled that remained open because either two unsuccessful attempts were made by HPD to gain access or HPD was refused access to the apartment or building to make the necessary repairs. It is HPD's policy to make

two attempts to gain access to the apartment or building to make a repair. If access is not gained after two attempts, the violation remains open and the repair status returned to DOHMH is “Cancel – No access.” If HPD is refused access by either the landlord or the tenant, the case also remains open and the repair status returned to DOHMH by HPD is “Complainant refused.”

When we met with HPD officials to discuss our concerns with violations that remain open, they stated that it was their understanding that DOHMH would follow up on these cases. However, DOHMH was not taking any steps to follow up on these violations during the scope period of the audit, and the dangerous conditions for these violations may have remained uncorrected. DOHMH officials informed us that they instituted a new procedure in October 2009 to send follow-up letters to landlords or tenants when access to a building or apartment is refused. Officials did not identify any further action they would take if landlords or tenants did not respond to these letters. In addition, DOHMH does not send follow-up letters in instances where two unsuccessful attempts were made to gain access.

DOHMH Response: “The auditors state that DOHMH did not follow-up on cases where HPD made two unsuccessful attempts to gain access or HPD was refused access to the apartment or building to make the necessary repairs. However, the auditors acknowledge that DOHMH instituted a process in October 2009, where the DOHMH sends follow-up letters to landlords or tenants when access is refused.”

Auditor Comment: We do not believe that sending follow-up letters to tenants is sufficient follow-up. More aggressive tactics need to be taken to ensure that all window guard violations are corrected.

DOHMH Response: “The auditors incorrectly stated that ‘officials did not identify any further action they would take if landlords or tenants did not respond to these letters.’ Tenants are not required to respond to DOHMH, but are provided an Annual Notice form attached to the letter and instructed to complete the form and submit it to the landlord. It should be noted that DOHMH has additional procedures to enforce compliance with window guard law against building owners. Building owners that fail to correct window guard violations are issued Notices of Violation requiring a hearing. Attending a hearing and being found guilty and or failing to attend a hearing which may lead to a default judgment result in the imposition of a monetary penalty.”

Auditor Comment: It is not clear how the additional procedures DOHMH mentions will enforce compliance. A tenant submitting an Annual Notice Form to the landlord does not ensure that missing or defective window guards will be repaired or installed and neither does issuing a Notice of Violation. Notices of Violation are issued after the compliance inspection, but prior to the case being transferred to HPD for attempted repair. In addition, Notices of Violation are only issued for DOHMH-identified window guard violations, not HPD-identified violations. In instances where HPD is unable to gain access or is refused access, the dangerous window guard conditions may still exist. Of more importance is that the window guards in violation are installed or repaired, not that building owners receive monetary penalties when they are not.

Violations Improperly Closed

We also identified five additional violations from our sample of 632 that were improperly closed due to data entry errors. The violation result for these cases was “Work done by others,” which could be an indication that the owner stated that he/she would comply. However, a subsequent call to the tenant disclosed that the window guard condition was not corrected. HPD officials confirmed in these instances that there was an error in either the recording of the violation result or the call result. If the call result was entered correctly in these instances, then these cases were closed improperly and the dangerous window guard conditions could still exist. However, HPD was unable to determine whether the errors were made in the recording of the violation result or the call result, and it has no assurance that these window guard violations were corrected.

After we reported our concerns with these violations to HPD officials, they sent out a supervising inspector on December 10, 2010, to review these five violations. Based on the outcome of these inspections, HPD officials stated that no window guards were required for two of the violations because there were no longer children under the age of 11 residing in the apartments. (However, at the time the violations were issued, there were children under the age of 11 residing in these apartments.) For the remaining three violations, they stated that the window guards for two were still missing, and for one violation the window guard was installed but it had the wrong screws. HPD officials stated that new violations will be issued in these three instances.

In instances where cases are closed 1) without verification from the tenant of correction, 2) because of a lack of access to the apartment or building to make the repair, or 3) improperly due to data entry errors, there is a risk that the window guard violations will remain uncorrected. In these instances, neither DOHMH nor HPD has any assurance that the window guard violations were corrected and that the dangerous conditions no longer exist. Since HPD is now receiving all complaints for window guard conditions, it should consider instituting additional procedures to ensure that all window guard violations are appropriately addressed.

As stated previously, because DOHMH will no longer be receiving window guard complaints and referrals, we make no recommendations to DOHMH with regard to these findings.

Recommendations

HPD officials should:

3. Take additional steps to contact tenants to confirm that their window guard violations were corrected by the landlord.

HPD Response: “...HPD will be implementing additional steps to contact tenants to confirm that their window guard violations were corrected by the landlord including:

- If the owner certifies the correction of the condition, a notice to the tenant advising the tenant that they can challenge an owner certification is sent.

- A field visit attempt to confirm all installations/repairs if the tenant does not verbally confirm correction.
 - An audit process to confirm that the guards have been properly installed if a tenant does verbally confirm correction.”
4. Ensure that the window guards are appropriately installed in the four instances where the HPD supervising inspector confirmed that window guards were missing or improperly installed.

HPD Response: “Four additional violations were issued in response to the inspections by the HPD supervising inspectors. Two of the violations were closed as work completed by HPD after the owner failed to installed (8739697 and 9731665 were completed on OMO EB22717). A third violation was closed as work completed by HPD after the owner failed to use the proper screws (87352550) and HPD staff reinstalled the guards. The fourth violation (8729500) was closed as refused access by tenant.”

5. Ensure that window guard data is correctly entered in HPDINFO.

HPD Response: “HPD is constantly reviewing processes to ensure data integrity, and will identify the needed steps to address the specific issues raised by the audit. The small percentage of inconsistency found during the audit (less than 1%) indicates that overall HPD’s data is reliable and consistent.”

Auditor Comment: Although we identified only five violations in our sample with data entry errors, the entry errors resulted in window guard cases being closed without correction. In fact, HPD issued four additional violations after re-inspections for these violations were conducted. The violations were issued because window guards were missing or because they were installed using the wrong screws. The children in these apartments remained at risk of injury or death from falls from windows that lacked the required window guards. Regardless of the small percentage of identified violations with data entry errors, we believe that the risk that these data entry errors may result in possible injury to children due to unguarded windows is sufficient enough for HPD to take steps to ensure that such errors do not occur.

6. Ensure that follow-up action is taken in instances where cases remain open due to the lack of access to the apartment or building.

HPD Response: “HPD and its vendors make two attempts to access an apartment in order to install window guards. In addition, as noted in the draft procedure, HPD will begin to have its vendor leave access cards in addition to trying to contact tenants by phone. In cases of tenant refused access, HPD will work with DOHMH to attempt to convince the tenants to cooperate and allow installation. In cases of landlord refused access, HPD will refer the violation to the Housing Litigation Division for potential litigation.”

Some HPD Window Guard Violations Did Not Receive a Final Disposition in a Timely Manner

Nine percent of the HPD window guard violations did not receive a final disposition within the timeframe goal established by HPD. HPD informed us that the goal for window guard violations to receive a final disposition is 45 business days from the date the window guard violations are received from DOHMH or identified by HPD. We reviewed the timeframes for 632 HPD violations and determined that 58 (9 percent) of the violations did not receive a final disposition within 45 business days of being identified. Table III shows the frequency distribution for the violations that did not receive a final disposition in a timely manner.

TABLE III
Violations that Did Not Receive a Final Disposition in a Timely Manner

Number of Business Days Late	Number of Violations
1 to 10	9
11 to 20	12
21 to 30	6
31 to 40	7
41 to 50	4
51 to 60	0
Over 60 days	20
TOTAL	58

As can be seen in Table III, there were 20 violations that did not receive a final disposition for over 60 business days after the 45 business-day goal set by HPD. Three of these violations received a final disposition 120 business days late, and one violation received a final disposition 164 business days late. We provided HPD officials with a list of these violations. After the exit conference, HPD officials explained that the majority of the violations did not receive a timely disposition due to processing delays and workload priorities, but that the use of a new aging report will help manage this process going forward.

HPD does not have written procedures that establish timeframe criteria for the separate steps required to be taken for window guard violations. For example, there is no set timeframe for when the landlord and tenant should be contacted and for how long after contacts are attempted that scope and repair attempts should be made. In addition, HPD does not generate any window guard exception reports that specifically identify window guard cases that have not received a final disposition. HPD officials did state that a general aging report is generated for all HPD violations. Without established timeframes and window guard aging reports, HPD officials cannot identify which steps in the window guard process may be taking too long and may not see a pattern of overdue window guard cases. The dangerous window guard conditions for these 58 violations were allowed to exist for a long time period. Without immediate correction, there remains an increased risk of injury or death of falls from windows that lack the required window guards.

Recommendations

HPD officials should:

7. Institute procedures to ensure that window guard cases are finalized within required timeframes.

HPD Response: “The audit found that HPD met the 45 day goal 91% of the time. HPD will review this goal to ensure that feasible and acceptable standards are established and met with consistency, especially during peak seasons when other types of work take priority (example, heat season – when responding to heat conditions is a more serious and immediate concern). HPD is also reviewing workflow and tracking to ensure that cases are finalized timely.”

8. Create written procedures that establish timeframes for each step in the HPD window guard process.

HPD Response: “HPD has drafted written procedures which establish timeframes for each step in the HPD window guard process...”

9. Periodically generate and review window guard specific aging reports to determine whether there are outstanding violations that need to be addressed.

HPD Response: “HPD has developed a window guard specific aging report to determine whether there are outstanding violations that need to be addressed and will review these reports periodically.”

DOHMH-Identified Violations in NYCHA-Owned Buildings

Although DOHMH has a process for notifying NYCHA about window guard violations identified in NYCHA-owned buildings, we identified instances where the referrals were not made in a timely manner and instances where the cases were dated as being sent to NYCHA prior to the date received by DOHMH. In addition, DOHMH does not have a process for following up with NYCHA to verify that the violations identified were appropriately addressed.

DOHMH Did Not Forward Some Cases to NYCHA in a Timely Manner

During the audit scope, DOHMH received 281 window guard cases that were identified in NYCHA-owned buildings. Although DOHMH did not indicate a mandatory timeframe for cases to be forwarded to NYCHA, DOHMH forwarded the majority of these cases to NYCHA on the same day they were received. However, we identified 25 (9 percent) of the 281 cases that were forwarded to NYCHA two or more days after being received by DOHMH (according to the information in the WFPP database). Of the 25, DOHMH forwarded 16 of them at least a week after being received; one of these cases was forwarded 193 days after receipt.

Although we provided these case numbers to DOHMH officials to investigate, we did not receive an explanation as to why these cases were not sent in a timely manner to NYCHA. Any delay in sending cases to NYCHA causes a delay in NYCHA correcting the dangerous window guard conditions that put young children at risk for injury or death from falls.

DOHMH Response: “The auditors cite that 25 of 281 cases referred to NYCHA were referred two or more days after the cases were received by the DOHMH. WFPP’s goal is to refer the cases to NYCHA timely and in all instances, DOHMH practice is to retain a paper record of the complaint or referral, the date it was received and the date it was referred to NYCHA. A review of the paper records would reveal that all but one of the referrals to NYCHA were made in a timely manner.”

Auditor Comment: We used the dates that were present in the WFPP data for the dates the cases were received by DOHMH and the dates the cases were forwarded to NYCHA. DOHMH claims that a review of the paper records would reveal that all but one of the referrals to NYCHA were made in a timely manner. However, DOHMH officials failed to share these paper records with us even though we provided them with a list of these cases back in December 2010 and, at that time, asked for any additional information. Although requested, DOHMH did not provide evidence to refute this finding.

Errors with Dates Sent to NYCHA

For 13 of the 281 NYCHA window guard cases, the dates that DOHMH forwarded the cases to NYCHA, as indicated in the WFPP database, were earlier than the dates the cases were indicated as being received by DOHMH. The majority of these cases were noted as being sent to NYCHA from one to three days prior to being received by DOHMH. However, there were two instances where the cases were noted as being sent to NYCHA 14 and 18 days prior to being received by DOHMH.

We asked DOHMH officials for an explanation regarding the dates for these cases, but none was provided. It was not until after the exit conference, more than three months after we shared the details of this finding with DOHMH, that DOHMH officials stated that their practice is to refer to NYCHA upon receipt of the case to expedite a response and that some cases required additional research prior to entry of the case in the database. They also stated that they believe the cases that exceeded one to three days were manual keying errors. Due to the errors we uncovered with the dates entered in the WFPP database for these 13 cases, we are concerned about whether these cases were actually forwarded to NYCHA to be addressed. If these cases were not forwarded to NYCHA, it is possible that these dangerous window guard conditions still exist, putting the lives of young children at risk.

No DOHMH Follow-up with NYCHA

DOHMH does not have a process in place for following up with NYCHA on window guard violations identified in NYCHA buildings. As a result, DOHMH does not have any assurance that the identified window guard conditions were corrected by NYCHA.

DOHMH is responsible for establishing policy and enforcing the New York City Health Code, including §131.15 which requires owners of multiple dwellings to provide and properly install approved window guards. Although HPD provides DOHMH with the final disposition of all DOHMH- and HPD-identified window guard violations, there is no such process in place for window guard violations identified in NYCHA buildings. It is possible that these violations were not appropriately addressed by NYCHA. Requiring NYCHA to provide a final disposition for these cases would give DOHMH assurance that the window guard violations were appropriately addressed. It would also alert DOHMH to violations that may not have been resolved and that may require additional attention.

Once more, because DOHMH will no longer be receiving window guard complaints and referrals and this function is being transferred to HPD, we make no recommendations to DOHMH to correct these conditions.

Recommendations

HPD officials should:

10. Ensure that window guard violations in NYCHA buildings are forwarded to NYCHA in a timely manner.

HPD Response: “Window guard complaints are referred directly to NYCHA through the 311 Call Center. NYCHA maintains its own call center and will accept complaints directly.”

11. Ensure that the correct dates that cases are forwarded to NYCHA are entered in the database.

HPD Response: “Since NYCHA complaints will not be received into HPD’s database, the dates that the complaints are received by NYCHA will be tracked in their database.”

12. Investigate the window guard violations with dates sent to NYCHA prior to dates received by DOHMH to ensure that they were, in fact, forwarded to NYCHA.

HPD Response: “The WFPP maintains a separate file for all cases referred to NYCHA and has documentation of all referrals. The files were available for the auditors to review. The discrepancy between the date received and date referred to NYCHA was due to referrals being made immediately upon receipt via a manual process and then subsequently being entered into the WFPP database. The data field in the database automatically enters the current date and does not allow the user to change it to the date the referral was actually made. However, the paper records document the actual referral date.”

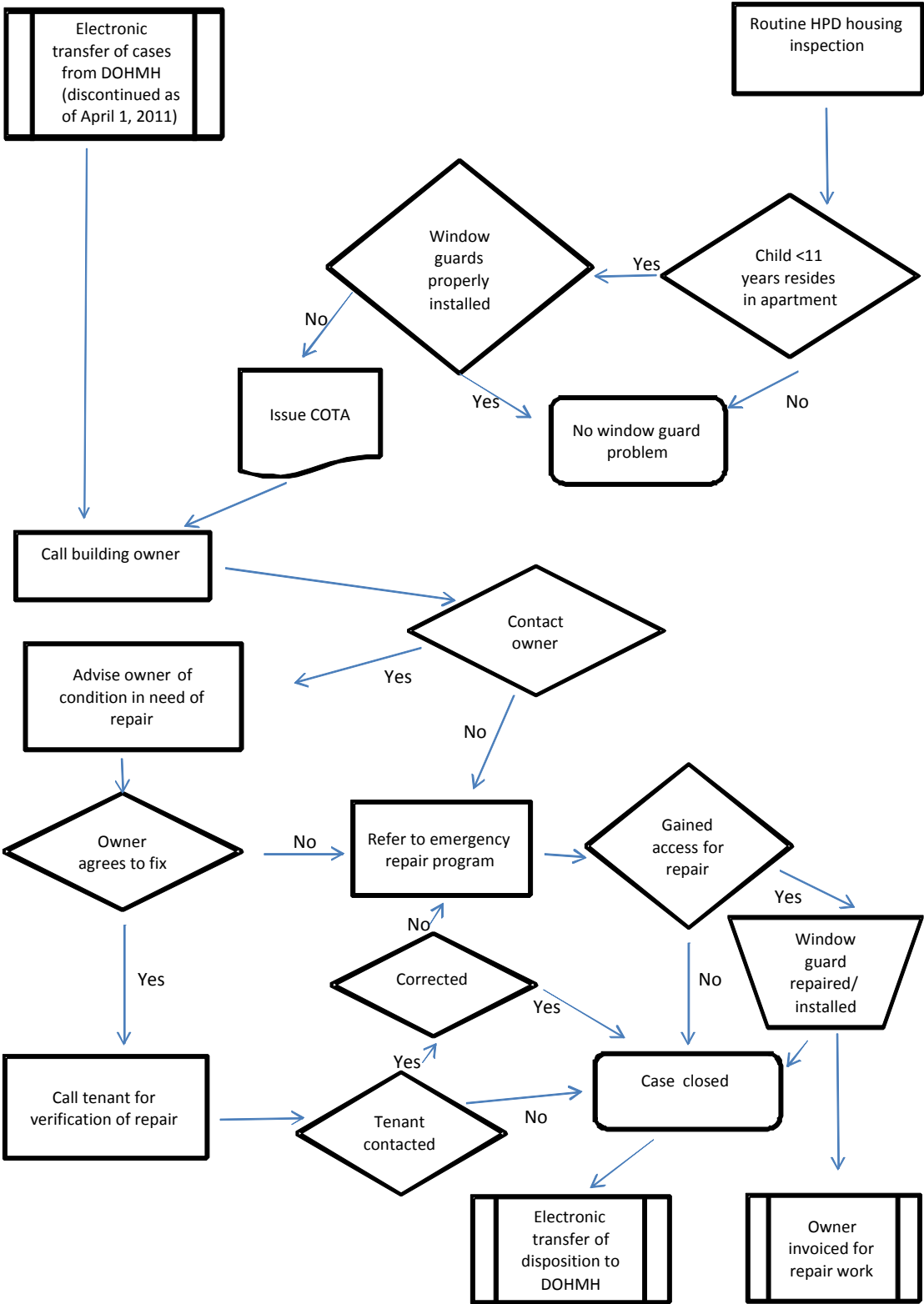
Auditor Comment: We received no evidence that these cases were forwarded to NYCHA. The paper files that HPD is referring to in its response were never provided to

us by DOHMH officials, although we shared the details of this finding with DOHMH officials back in December 2010.

13. Develop a process to obtain information on the final disposition of window guard violations identified in NYCHA buildings. HPD should then track and follow up with NYCHA in instances where a disposition is not received.

HPD Response: “HPD and NYCHA will be meeting in early May to discuss the audit and issues regarding window guard complaints. We will take this recommendation under consideration.”

Flowchart of the HPD Window Guard Process



Sample DOHMH Representation Letter

[Letterhead of the Auditee]

[Date]

[To Deputy Comptroller for Audit
New York City Office of the Comptroller
One Centre Street, Room 1100N
New York, NY 10007]

Subject: Representation Letter for Audit Report on the Follow-up of Window Guard Violations by the Department of Health and Mental Hygiene and the Department of Housing Preservation and Development
MD10-066A

In connection with your audit of the window guard inspection programs of the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD) as of April 15, 2011, and for the period of July 1, 2007, through June 30, 2009, we confirm, to the best of our knowledge and belief, the following representations made to you during your audit.

1. For the DOHMH Window Fall Prevention Program (WFPP), we are responsible for
 - The internal control system,
 - Compliance with applicable laws and regulations, and
 - The fairness and accuracy of the operational and financial information.
2. We have made available to you all of the requested operational and financial information associated with the DOHMH WFPP.
3. We have disclosed to you all relevant operational and financial information that directly relates to the objectives of the audit of the DOHMH WFPP.
4. We have disclosed to you any findings received and related corrective actions taken during and subsequent to the period under audit for previous audits, attestation engagements, and internal and external monitoring that directly relate to the objectives of the audit of the DOHMH WFPP.
5. For the DOHMH WFPP, no events have occurred subsequent to the period under audit that would affect the above representations.
6. For the DOHMH WFPP, we are responsible for taking corrective actions on audit findings of the audit.

Sincerely,

Agency Head or Designee

Cc: Agency Audit Coordinator
Deputy Director, Mayor's Office of Operations

Sample HPD Representation Letter

[Letterhead of the Auditee]

[Date]

[To Deputy Comptroller for Audit
New York City Office of the Comptroller
One Centre Street, Room 1100N
New York, NY 10007]

Subject: Representation Letter for Audit Report on the Follow-up of Window Guard Violations by the Department of Health and Mental Hygiene and the Department of Housing Preservation and Development
MD10-066A

In connection with your audit of the window guard inspection programs of the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD) as of April 15, 2011, and for the period of July 1, 2007, through June 30, 2009, we confirm, to the best of our knowledge and belief, the following representations made to you during your audit.

1. For the HPD window guard program, we are responsible for
 - The internal control system,
 - Compliance with applicable laws and regulations, and
 - The fairness and accuracy of the operational and financial information.
2. We have made available to you all of the requested operational and financial information associated with the HPD window guard program.
3. We have disclosed to you all relevant operational and financial information that directly relates to the objectives of the audit of the HPD window guard program.
4. We have disclosed to you any findings received and related corrective actions taken during and subsequent to the period under audit for previous audits, attestation engagements, and internal and external monitoring that directly relate to the objectives of the audit of the HPD window guard program.
5. For the HPD window guard program, no events have occurred subsequent to the period under audit that would affect the above representations.
6. For the HPD window guard program, we are responsible for taking corrective actions on audit findings of the audit.

Sincerely,

Agency Head or Designee

Cc: Agency Audit Coordinator
Deputy Director, Mayor's Office of Operations



MATHEW M. WAMBUA
Commissioner
DOUGLAS APPLE
First Deputy Commissioner

Office of the Commissioner
100 Gold Street
New York, N.Y. 10038

April 29, 2011

Ms. H. Tina Kim
Deputy Comptroller for Audit
City of New York Office of the Comptroller
One Centre Street
New York, NY 10007-2341

Re: New York City Comptroller's Draft Audit Report on the Follow-up of Window Guard Violations by the Department of Health and Mental Hygiene and the Department of Housing Preservation and Development MD 10-066A

Dear Deputy Comptroller Kim:

Thank you for the opportunity to respond to the above mentioned Draft Audit Report. We appreciate the diligence and the efforts of your auditors during the fieldwork.

This letter addresses the findings and recommendations (Recommendations) contained in the New York City Comptrollers' Draft Audit Report (Report) dated April 15, 2011 on the above subject matter. In late 2009, the Comptroller's Office initiated an Audit on the Follow-up of Window Guard Violations by the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD) for the period of July 1, 2007 through June 30, 2009. DOHMH and HPD have worked together for many years on the issue of window guard inspections, the issuance of repair orders and window guard installations and the emergency repair of those conditions. The agencies met with your auditors throughout 2010 – on occasions independently and on occasions together – to provide data, procedures and explanations. All of the requested operational and financial information of the Window Guard Program has been disclosed and was provided to your auditors during the audit. Information regarding the policies, procedures, audit findings, and any other relevant data regarding the Window Guard Program from the audit period was also provided.

Changes with regards to the administration of the program were not contemplated until late in 2010, at which point the audit was concluding. At that point, in response to budget concerns and a general request for all agencies to review their operations to identify areas where greater efficiencies could be achieved without losing effectiveness by consolidating functions, DOHMH and HPD identified window guard inspections as one such area. The decision was made that the consolidation could, without negatively affecting the process, save approximately \$672,000 a



year and consolidate enforcement into one agency. As part of our duties, HPD will be responsible for ensuring compliance with the applicable laws, regulations, and maintaining an effective internal control system.

On April 1, 2011, HPD began receiving all complaints for window guard conditions. Whereas DOHMH had a limited number of inspectors assigned for this function, HPD can leverage its full resource of Housing Inspectors (over 300) to respond to these complaints. The majority of HPD work currently occurs during the winter - primarily, HPD responds to heat and hot water complaints. Having HPD respond to window guard complaints, which are primarily received during the spring and summer months, maximizes the use of the City's inspection resources without compromising response time or effectiveness.

Additionally, the City Council introduced legislation at HPD's request regarding adding window guard enforcement to the Housing Maintenance Code.

Both DOHMH and HPD believe that the audit of the window guard program was not "wasted." Recommendations made by the audit are relevant regardless of which agency is responding to complaints, conducting inspections or issuing violations. We value the recommendations cited in the report and look forward to improving the accountability of the program by implementing changes in accordance with the recommendations. Specifically, HPD will finalize clear written procedures outlining timeframes for the various stages of the inspection and repair processes and related emergency repair verification.

The response to each specific finding and recommendation from the audit is documented below.

Recommendation

HPD officials should ensure that all window guard complaints and referrals are properly accounted for and processed. This recommendation is especially addressed to any additional complaints that DOHMH refers to HPD as part of the transition process. If any records are deleted, those deletions should be documented, including the reason for the deletions, and should require and be evidenced by appropriate approvals.

Response

HPD began to receive complaints on April 1st, 2011. Any complaints already received by the DOHMH prior to that date will be handled to completion by the DOHMH and will not be transferred to HPD mid-process. HPDINFO, HPD's database, accounts for all complaints received through 311, including complaints generated by the Department of Health and Mental



Hygiene staff. Records are not deleted in HPDINFO, only inactivated, and that happens only very rarely when the agency is advised that there was an error in the information received from the tenant or complainant.

Recommendation

HPD officials need to ensure that attempts at conducting initial and compliance inspections are made within the required timeframes.

Response

HPD is developing procedures which outline the timeframe in which initial inspections are expected to be conducted. The timeframe for owner compliance will be defined in the law, as proposed in Intro. 531. Additionally, timeframes for emergency repair response will also be outlined in internal procedures. A draft procedure document is attached as part of the response. Please note that these procedures are subject to change as legislation is finalized.

Recommendation

HPD officials should take additional steps to contact tenants to confirm that their window guard violations were corrected by the landlord.

Response

HPD takes several steps to contact tenants, including telephone call attempts in response to all referrals for emergency repair action. When attempting to conduct repairs with in-house staff, HPD leaves a card after a first no access, asking the tenant to contact the agency to schedule an appointment. After the second no access, HPD sends letters to tenants requesting that the tenant contact HPD before closing out the repair order. If the work is being done by a vendor on contract with HPD, HPD requires the vendor also to attempt to contact a tenant by phone to schedule the work and to make two attempts to complete the work.

As outlined in the attached procedures draft, HPD will be implementing additional steps to contact tenants to confirm that their window guard violations were corrected by the landlord including:

- If the owner certifies the correction of the condition, a notice to the tenant advising the tenant that they can challenge an owner certification is sent.
- A field visit attempt to confirm all installations/repairs if the tenant does not verbally confirm correction.
- An audit process to confirm that the guards have been properly installed if a tenant does verbally confirm correction.



Recommendation

HPD officials should ensure that the window guards are appropriately installed in the four instances where the HPD supervising inspector confirmed that the window guards were missing or improperly installed.

Response

Four additional violations were issued in response to the inspections by the HPD supervising inspectors. Two of the violations were closed as work completed by HPD after the owner failed to installed (8739697 and 9731665 were completed on OMO EB22717). A third violation was closed as work completed by HPD after the owner failed to use the proper screws (87352550) and HPD staff reinstalled the guards. The fourth violation (8729500) was closed as refused access by the tenant.

Recommendation

HPD officials should ensure that window guard data is correctly entered in HPDINFO.

Response

HPD is constantly reviewing processes to ensure data integrity, and will identify the needed steps to address the specific issues raised by the audit. The small percentage of inconsistency found during the audit (less than 1%) indicates that overall HPD's data is reliable and consistent.

Recommendation

HPD officials should ensure that follow-up action is taken in instances where cases remain open due to the lack of access to the apartment or building.

Response

HPD and its vendors make two attempts to access an apartment in order to install window guards. In addition, as noted in the draft procedure, HPD will begin to have its vendor leave access cards in addition to trying to contact tenants by phone. In cases of tenant refused access, HPD will work with DOHMH to attempt to convince the tenants to cooperate and allow installation. In cases of landlord refused access, HPD will refer the violation to the Housing Litigation Division for potential litigation.

Recommendation

HPD officials should institute procedures to ensure that window guard cases are finalized within required timeframes.



Response

The audit found that HPD met the 45 day goal 91% of the time. HPD will review this goal to ensure that feasible and acceptable standards are established and met with consistency, especially during peak seasons when other types of work take priority (example, heat season – when responding to heat conditions is a more serious and immediate concern.). HPD is also reviewing workflow and tracking to ensure that cases are finalized timely.

Recommendation

HPD officials should create written procedures that establish timeframes for each step in the HPD window guard process.

Response

HPD has drafted written procedures which establish timeframes for each step in the HPD window guard process. Those draft procedures are attached.

Recommendation

HPD officials should periodically generate and review window guard specific aging reports to determine whether there are outstanding violations that need to be addressed.

Response

HPD has developed a window guard specific aging report to determine whether there are outstanding violations that need to be addressed and will review these reports periodically.

Recommendation

HPD officials should ensure that window guard violations in NYCHA buildings are forwarded to NYCHA in a timely manner.

Response

Window guard complaints are referred directly to NYCHA through the 311 Call Center. NYCHA maintains its own call center and will accept complaints directly.



Recommendation

HPD should ensure that the correct dates that cases are forwarded to NYCHA are entered in the database.

Response

Since NYCHA complaints will not be received into HPD's database, the dates that the complaints are received by NYCHA will be tracked in their database.

Recommendation

HPD officials should investigate the window guard violations with dates sent to NYCHA prior to dates received by DOHMH to ensure that they were, in fact, forwarded to NYCHA.

Response

The WFPP maintains a separate file for all cases referred to NYCHA and has documentation of all referrals. The files were available for the auditors to review. The discrepancy between the date received and date referred to NYCHA was due to referrals being made immediately upon receipt via a manual process and then subsequently being entered into the WFPP database. The date field in the database automatically enters the current date and does not allow the user to change it to the date the referral was actually made. However, the paper records document the actual referral date.

Recommendation

HPD officials should develop a process to obtain information on the final disposition of window guard violations identified in NYCHA buildings. HPD should then track and follow up with NYCHA in instances where a disposition is not received.

Response

HPD and NYCHA will be meeting in early May to discuss the audit and issues regarding window guard complaints. We will take this recommendation under consideration.



HPD wishes to thank you and your audit staff for the time and effort devoted to completing the Audit Report.

If you have any questions about our response, please contact Joshua Cucchiaro, Assistant Commissioner for Administration at (212) 863-6610.

Sincerely,

A handwritten signature in black ink, appearing to read 'Douglas Apple', with a long horizontal stroke extending to the right.

Douglas Apple
First Deputy Commissioner

Attachment

cc: Vito Mustaciuolo, Deputy Commissioner, Enforcement and Neighborhood Services, HPD
Joshua Cucchiaro, Assistant Commissioner, Administration, HPD
George Davis III, Deputy Director, Mayors Office of Operations



Effective xx, this document outlines the procedures of the Department of Housing Preservation and Development related to the processing of complaints received, violations issued and work orders created related to window guards. These procedures will be incorporated into existing or new procedures for each Division as necessary.

Complaints

- Complaints for window guards will be processed through HPDINFO.
- Window guard problems will receive owner and tenant callback following the rules of emergency complaints. Owner callback should be completed within 36 hours (business days) of complaint receipt. Tenant callback should be completed within 72 hours of the final owner callback attempt.

Inspections

- Window Guards will receive a higher priority for inspection than non-lead, non-heat emergency complaints. A first inspection should be attempted within 5-10 days of a complaint.
- Window Guard complaints should be closed within 35 days of receipt if there are access issues:
 - If there is no access on a first visit, the Inspector will leave an F-22 card indicating that a second attempted inspection will be made and that the tenant can call for an appointment.
 - If the tenant does not call for an appointment, the complaint will be re-routed for inspection within 5-7 days.
 - If there is no access on the second attempted inspection, a letter will be generated to the tenant indicating that the tenant has 10 days from the second attempted inspection to call for an appointment. Failure to contact HPD will result in the complaint being closed.
- If a certification of correction is received from the property owner/agent, the tenant will receive a notification from HPD affording the opportunity to challenge the certification. At least 25% of window guard certifications will be attempted for reinspection (audit).
- Inspection procedure
 - Complaint inspection for apartment with child under 11 and line of sight where there is a child under 11: If a window guard violation is found in the apartment, the inspector will issue violation order #790. The inspector may issue one violation for the entire apartment. The inspector should document the number of window guards for repair, replacement and installation. ER Code 18C is to be used for all window guard violations within the apartment. The inspector is also responsible to check all public hall windows in his/her line of travel to the building entrance. If at least one window is found to be in violation, violation order #791 instructing the owner to Install/Repair window guards in all public area windows is to be issued. For this order #, no locations or # of window guards need be indicated.

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- Complaint inspection w/out child under 11: If a window guard violation is found in the apartment, the inspector will issue violation order #790. The inspector may issue one violation for the entire apartment and indicate in the body of the violation the locations of the missing/improperly installed guards. The inspector should document the number of window guards for repair, replacement and installation. Under this situation, there is no requirement to conduct a line-of-travel inspection for public area windows.
- Complaint for public area only with a child under 11: If the complaint is for a public area window guard missing or improperly installed, the inspector should inspect the area cited in the complaint. If there is a window in violation, violation order #791 should be issued.

Violations: *This portion of the procedure is pending the approval of the currently proposed law authorizing HPD to issue violations of the Housing Maintenance Code for window guard conditions*

- Notices of Violation will be generated within 5-10 days of an inspection.
- The DOHMH one-page instructional document on window guard installation will be inserted with the mailing of Notice of Violation.
- Window Guard violations will be prioritized for owner callback, and should be completed within 5 days of the approval of the violation.
- The first tenant callback will occur within 5 days of owner callback
- On/just before the certification date, an additional call will be made to the tenant to verify whether the owner has complied prior to mailing to ERP.
- Violations will only be closed on callback as complied with per tenant.
- A percentage of window guard violations closed as complied with per tenant by ESB will be audited by an inspection.
- If the violation is not closed as complied per tenant, a work order will be issued to the requirement contract vendor or to an in-house repair crew within 10 days of receipt of a window guard violation from ESB.

Work orders

- If a work order is assigned to a vendor, work is expected to be completed by the vendor and an affidavit of completion received within 15 business days.
- If a vendor is unable to gain access on a first visit, the vendor must follow the procedures documented in the Bid Terms and Conditions which includes attempting to contact the tenant by phone, contacting HPD for assistance making contact with the tenant and, if no access can be obtained after two efforts, filing and affidavit of no access.
- If the landlord or landlord's representative refuses access to the vendor to install the window guards, the vendor should submit the Affidavit of owner refused access within 10 days.
- If the tenant refuses access, the vendor will notify HPD within 5 days of the refusal. HPD will contact DOHMH to refer for outreach, documenting the referral with a note on the OMO. DOHMH will attempt to contact the tenant within 10 days and advise HPD if HPD should proceed with the installation or if

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the tenant is still refusing access. Based on the DOHMH information, HPD will either make an appointment with the tenant for the vendor or the violation will be closed as tenant refused access, with a note indicating the outcome.

- Work assigned to an in-house repair crew should be routed within 15 days from OMO creation for a first attempt to install, and within an additional 10 days for a second visit.
- Audits will be conducted on a percentage of the work orders.
- Work orders and violations associated to the work orders will be closed within 45 days of OMO creation.
- Window guard violations resulting in no access will generate a letter from HPD indicating to the tenant the agency is taking no further action. The letter will advise tenants that they must contact 311 if they still require window guards.
- Window guard violations resulting in a landlord refused access will be referred immediately to the Housing Litigation Division upon receipt of the affidavit for potential access warrant litigation upon closure of the OMO and the mailing of the violation.



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, MD, MPH
Commissioner

Gotham Center
42-09 28th Street, 8th Floor
Queens, NY 11101-4132

April 28, 2011

+ 1 347 396 4100 tel

Tina Kim
Deputy Comptroller for Audits
Office of the Comptroller
1 Centre Street Room 1100
New York, NY 10007-2341

Re: Audit Report on the Follow-up of Window Guard Violations by the
Department of Health and Mental Hygiene and the Department of Housing
Preservation and Development
MD 1—066A

Dear Ms. Kim:

We have received and reviewed your draft audit report on the Follow-up of Window Guard Violations by the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD). The stated objectives of the Comptroller's audit were to determine whether DOHMH adequately investigated the window guard complaints and referrals, appropriately forwarded unresolved cases to the Department of Housing Preservation and Development (HPD), and to determine if HPD adequately investigated the window guard violations and took the necessary steps to ensure the installation and repair of both DOHMH and HPD identified violations. The auditors' scope was for fiscal years 2008 and 2009.

We acknowledge the work of the auditors and recognize the criticality of the auditing function to government accountability to the public. We also appreciate the auditors' recommendations to enhance the Window Fall Prevention Program (WFPP).

Notwithstanding the auditors' recommendations, the WFPP has been a large and efficient program that responds to critical complaints about environmental safety risks to young children. Based on a review of the entirety of the program's activity throughout FY 2008 and FY 2009, the WFPP handled 9,799 window guard cases in 6,722 buildings, conducted over 53 educational programs, meetings and workshops on identifying window fall hazards and attended over 128 health fairs to promote window fall prevention, reaching over an estimated 71,500 people. For this universe of cases, the average WFPP response time for complaint/interview cases from the time of receipt to the first inspection attempt was 3.1 calendar days in FY 2008 and 1.1 calendar days in FY 2009.

Tina Kim, Deputy Comptroller for Audits

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April 28, 2011

The average response time between when the Department issued a Commissioner's Order to Abate (COTA) indicating how a property owner must comply to the first verification inspection attempt (which we refer to as the "observation response time") was 12.8 calendar days for FY 2008 and 13.5 calendar days in FY 2009.

While we appreciate the auditors' efforts and input, we disagree with the auditors' conclusions regarding the audit process. Specifically, we disagree that "...audit impairment [was] created by the lack of timely disclosure on the part of DOHMH and HPD concerning the transfer of window guard complaints and referrals from DOHMH to HPD" and that "By not disclosing the pending consolidation....DOHMH failed to meet... its responsibility for ...providing reliable, useful, and timely information..."

The transfer of function from DOHMH to HPD was well beyond the auditors' stated audit scope, Program's performance in 2008 and 2009 and stated objectives above. Consolidation of window guard inspectional and response activities within HPD was published as part of the November FY12 financial plan, as part of the required savings target assigned to all city agencies. While subsequently the agencies (DOHMH and HPD) have worked out a mutually agreeable approach to this consolidation, the City Council has not formally approved the November FY12 financial plan modification as of this writing. This consolidation has no bearing or relationship to DOHMH's performance of this function during the time period that is the focus of the current city Comptroller audit.

We confirm that, to the best of our knowledge, we have made available to the auditors all of the requested operational information associated with the DOHMH WFPP and responded to all their questions. In late 2009, you interviewed our officials and accompanied our inspectors on two occasions. We provided the auditors with an electronic database of all the window guard complaints and observations for the fiscal years 2008 and 2009, and responded to your questions throughout the audit process. To the best of our knowledge, we disclosed to the auditors our process and control activities we implemented, some of which resulted from the auditors' field work.

The auditors raise five issues relevant to WFPP Program's operational performance in fiscal years 2008 and 2009. The issues and our responses are as follows:

- 1) DOHMH WFPP Database - The auditors state that they were "Unable to determine the completeness of DOHMH WFPP database" thus have "no assurance that all window guard complaints and referrals forwarded to DOHMH were properly documented and investigated."

We disagree with the auditors and previously stated that their testing methodology was not appropriate for a database that is designed to automatically generate unique case and record numbers rather than just sequential numbers. Nevertheless, we recognized the auditors' comment on data security and have enhanced the database access security. The latest version of the WFPP Database that was deployed on December 28, 2010, requires each user to establish and maintain his or her own unique password.

- 2) The auditors conclude that "DOHMH inspection attempts are not always made in a timely manner." The auditors' finding is based on a sample of 113 cases, just 1.1% of total cases in fiscal years 2008 and 2009 cases, included 62 cases from just four buildings selected because they had the highest number of violations. While we respond to findings related to these cases, we also point out that this non-representative sample significantly limits the generalizability of the audit's observations, findings and

Tina Kim, Deputy Comptroller for Audits

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April 28, 2011

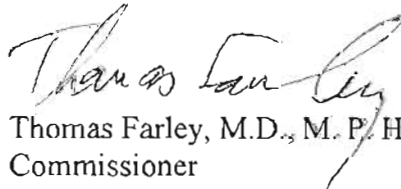
recommendations. Buildings with the greatest number of violations differ from the universe of other buildings reached by the WFPP. Because of the amount of time it takes to carry out inspections, routing may be delayed to ensure availability of staff for long periods of time, it may be generally more difficult to gain access to apartments in a timely manner, and their owners may be less responsive than others.

- 3) The auditors state that, "DOHMH and HPD did not verify data transmitted electronically from DOHMH to HPD." We concur with this assessment and implemented more than a year ago, in December 2009, a process whereby the WFPP database receives daily electronic status updates from HPD as part of the data transmission of buildings being referred to HPD for emergency repairs.
- 4) The auditors state that "HPD and DOHMH have no assurance that all window guard violations were appropriately addressed." The auditors state that DOHMH did not follow-up on cases where HPD made two unsuccessful attempts to gain access, or HPD was refused access to the apartment or building to make the necessary repairs. However, the auditors acknowledge that DOHMH instituted in October 2009 a process where the DOHMH sends follow-up letters to landlords or tenants when access is refused.
- 5) The auditors identified instances whereby cases were dated as being sent to NYCHA prior to the date received by DOHMH. DOHMH has already addressed this issue by switching to a scannable referral form so that all referrals are entered into the database upon receipt and all notifications to NYCHA occur on or after that date. This procedure became effective in December 2009.

The auditors also state that "DOHMH does not have a process in place for following up with NYCHA on window guard violations identified in NYCHA buildings." As of September, 2010, the WFPP supervisor tracks and follows up with NYCHA to ensure that window guard violations have been corrected.

Attached is a detail response to your draft audit report. We appreciate the courtesy and professionalism of your staff in the performance of this audit. If you have any questions or need further information, please contact Sara Packman, Assistant Commissioner, Audit Services, at (347) 396-6679.

Sincerely,



Thomas Farley, M.D., M. P. H.
Commissioner

Attachment

cc: Patsy Yang, Dr. PH
Daniel Kass
Sara Packman
George Davis, III, MOO

**DOHMH Response to the Draft Report
On the Follow-up of Window Guard Violations by the Department of Health
and Mental Hygiene and the Department of Housing Preservation and
Development
MD 1—066A**

The following is the Department of Health and Mental Hygiene's (DOHMH) response to the NYC Comptroller's draft audit findings of the DOHMH's follow-up on window guard complaints and violations. The objectives of the audit were to determine whether DOHMH adequately investigates window guard complaints and referrals, appropriately forwards unresolved cases to the Department of Housing Preservation and Development (HPD), and if HPD adequately investigates window guard violations and takes the necessary steps to ensure the installation and repair of both DOHMH and HPD identified violations. The auditors' scope was FY 2008 and 2009.

We acknowledge the work of the auditors and recognize the criticality of the auditing function to government accountability to the public. Although we appreciate the auditors' work and recommendations for improving follow-up on cases, we disagree with some of the contentions and implications derived from their report. Specifically, we disagree with auditors that

“...audit impairment [was] created by the lack of timely disclosure on the part of DOHMH and HPD concerning the transfer of window guard complaints and referrals from DOHMH to HPD” and that “By not disclosing the pending consolidation...DOHMH failed to meet... its responsibility for ...providing reliable, useful, and timely information...”

The transfer of function from DOHMH to HPD was well beyond the auditors' stated audit scope, Program's performance in 2008 and 2009 and stated objectives above. Consolidation of window guard inspectional and response activities within HPD was published as part of the November FY12 financial plan, as part of the required savings target assigned to all city agencies. While subsequently the agencies (DOHMH and HPD) have worked out a mutually agreeable approach to this consolidation, the City Council has not formally approved the November FY12 financial plan modification as of this writing. This consolidation has no bearing or relationship to DOHMH's performance of this function during the time period that is the focus of the audit.

We confirm that, to the best of our knowledge, we have made available to the auditors all of the requested operational information associated with the DOHMH WFPP and responded to all questions. In late 2009, the auditors interviewed our officials and accompanied our inspectors on two occasions. We provided the auditors with an electronic copy of all the window guard complaints and observations for the fiscal years 2008 and 2009, and responded to questions throughout the audit process. To the best of our knowledge, we disclosed to the auditors our process and control activities we implemented, some of which resulted from the auditors' field work.

The following is a detailed response to the remainder of the auditors' scope and methodology section and findings.

SCOPE AND METHODOLOGY

With regard to the DOHMH, the audit objectives were to determine whether during fiscal years 2008 and 2009, the DOHMH: 1) adequately investigated window guard complaints and referrals; and 2) appropriately forwarded unresolved cases to HPD. One key sample of 113 cases, just 1.1% of the total cases in fiscal years 2008 and 2009, included 62 cases from just four buildings selected because they had the highest number of violations. While we respond to findings related to these cases, we also point out that this non-representative sample significantly limits the generalizability of the audit's observations, findings and recommendations. Buildings with the greatest number of violations differ from the universe of other buildings reached by the WFPP. Because of the amount of time it takes to carry out inspections, routing may be delayed to ensure availability of staff for long periods of time, it may be generally more difficult to gain access to apartments in a timely manner, and their owners may be less responsive than others.

FINDINGS

Issue: Unable to Determine the Completeness of the DOHMH WFPP Database

The auditors' objective was to verify the completeness of the database by sorting the case and record numbers sequentially. However, this method is not appropriate for a database that is designed to automatically generate unique case and record numbers rather than just sequential numbers. The "Auto-number feature" in the Access database ensures that duplicate numbers are not created, so each number is generated only once. Two cases for follow-up, generated one after the other, may not be sequentially numbered and may have a large gap, as the auditors noted. This gap may occur as part of the designed function of the database, as well as, when records are deleted or data structure errors occur. As such, sorting records by case numbers to identify missing records would not accomplish the auditors' intended purpose, determining the completeness of the WFPP database.

To assure that the database is complete, WFPP management performs the following manual control activities:

- All window guard complaints that are downloaded from 311 are verified to have been created in the WFPP database.
- New complaints are individually reviewed by WFPP staff from a queue in the database and processed to confirm the pre-existence of a record for the address in the database, verify current building ownership and for creation of the new record and or case. A record is established for a building address and a case is established for each instance of a complaint, observation or interview received by DOHMH. A record (building) may have many cases (activities) associated with it.
- The process steps are sequential with one step required to be completed before the next is initiated.
- A WFPP supervisor reviews the complaint download queue daily to ensure all complaints have been processed.

Although the auditors' test does not demonstrate that the database is incomplete, we have taken steps to further enhance controls and implemented the following procedure in December 2010.

- A request to delete any record or cases in the WFPP database is submitted in writing to the Program Director, who reviews the request.
- Upon the Director's approval, the request is forwarded to the Database Administrator for review and action.
- All requests are sent in writing, via e-mail.
- The database creates an audit trail for changes to certain fields, including deletions of cases and records.

We further enhanced the WFPP database's access security.

- The latest version of the WFPP Database, which was deployed on December 28, 2010, requires each user to establish and maintain his or her own unique password. The required password is case sensitive, must be eight (8) or more characters in length and must include at least one character from each of the following character groups:
 - upper case alphabetic characters;
 - lower case alphabetic characters;
 - numbers; and
 - symbols
- Three login attempts are allowed and the user is locked out if these attempts fail until such time that their password is reset by the database administrator.
- Passwords expire after 90 days and the user is locked out until such time that their account is reset by the database administrator.

Issue: DOHMH Inspection Attempts Are Not Always Made in a Timely Manner

The auditors state that they examined 113 window guard cases of which 21 required an initial inspection. The auditors state that of the 21 cases, eight did not have an initial inspection attempt within three days of receipt of complaints. We agree with the auditors that the initial inspection for three of the 21 cases was not timely. However, the remaining five cases had valid reasons for not meeting the three days threshold. The auditors also state that of the 113 cases, 41 required compliance inspections. Of the 41 cases, eight did not have a compliance inspection attempt made within 25 days from the date of COTA mailing. The auditors recommend that DOHMH should track and ensure that compliance inspections are performed in a timely manner so that corrective actions may be taken as quickly as possible. We acknowledge this recommendation and highlight our process and controls including the complexity associated with the follow-ups of window guard complaints as follows.

- The WFPP receives and processes complaints and referrals on a daily basis. This entails:
 - Researching the WFPP database for existing records.
 - Creating new cases for those with existing records and creating new records and cases for those that have no prior history.
 - Verifying the current building ownership for each complaint and referral received.
 - Routing each complaint inspection for an initial inspection.
 - Routing compliance inspections for complaints and referrals when required.
- Delays in processing and inspecting are attributable to the following issues:

- Inspectors attempt to contact the complainant and arrange access to the apartment at the convenience of the tenant. This often leads to inspections exceeding the five day target because the tenant is not available at an earlier date.
- Inspectors route five to six inspections per day. Due to the size of the building and frequent problems gaining entry into the building and apartments, the inspections may take a considerable amount of time causing the inspector to not inspect all the assigned apartment for the day.
- Inspectors sometimes request leave (day or days off) after work has been assigned to them, causing the supervisor to re-route the assignment.
- Re-routing of assignments is attempted the same day but often a delay in the inspection attempt occurs as the inspectors to whom re-routed cases are assigned are already in the field with a caseload.
- The WFPP supervisors utilize a number of reports and queries in the database to oversee the window guard inspection process from case creation to completion. A complete listing of the reports was provided to the auditors in our prior November, 2010, response and is included below.
 - Process Indicators:
 - Received to COTA/Detail – tracks process time and lists cases from receipt of case to Commissioner of Health Order to Abate Nuisance (COTA).
 - Received to First Inspection/Detail - tracks process time and lists cases.
 - Action E to COTA/Detail – tracks process time and lists cases in Violation to COTA issuance.
 - COTA to First Inspection – tracks process time from COTA to first inspection.
 - Compliance Interval/Detail – tracks process time and lists cases from initial inspection failure to compliance inspection first attempt.
 - NOV to HPD – tracks process time from issuance of Notice of Violation to referral of case to HPD.
 - NOV to AT – tracks process time from notice of violation (NOV) issuance to delivery to the Administrative Tribunal (AT).
 - First Inspection to HPD/Detail – tracks process time and lists cases from the first inspection to referral of the case to HPD.
 - Received to HPD – tracks process time of the case from receipt to referral to HPD.
 - Inspection Assignment Status – indicates types of assignments and total per inspector.
 - View Open Cases – provides listing of all open cases, date received and assignment to inspector.
 - Review Recent Cases Entered NCA or CFA – lists referrals that were processed for review (No Cause for Action and Cause for Action cases).
 - Buildings w/o Owner Information – allows for records without owner information to be identified and corrected.
 - Property Owner Search – lists owner name, address, case status.
 - Process Scanned Referrals – operational data entry and processing screen with secondary view of processed records for review.
 - Case Load: “rptScannedReferrals” – tracks observation/interview reports scanned into database.

- Case Load: “wgCaseload” – tracks open cases in database by date range.
- Summary Report:” Falls_detail report” – tracks window fall case information by date range.
- Tasks to be Completed: “rptScannedReferralsToBeEntered” – tracks referrals that are to be moved into active WFPP database.
- Tasks to be Completed: “rptToBeReferredToNYCHA” – tracks cases to be referred to NYCHA.
- Tasks to be Completed: “wgCasesToBeReferredToHPD” – tracks cases to be referred to HPD.
- Tasks to be Completed: “wgCOTAsToBeMailed” – tracks COTAs to be mailed out to building owners.
- Tasks to be Completed: “wgNOVsToBeIssued” – tracks NOV’s to be processed and sent to Tribunal.
- Tasks to be Completed: “wgOutstanding Assignments” – tracks open cases assigned to staff.

Issue: Verification of Transmitted Data Not Performed

We acknowledge that prior to September 2009, we had not verified that all data electronically transmitted from DOHMH was received by HPD. In December 2009, we implemented a process whereby the WFPP database receives daily electronic status updates from HPD as part of the data transmission of buildings being referred to HPD for emergency repairs. The WFPP issues letters to building owners and tenants for cases where HPD indicated access or installation/repair has been refused.

Issue: No Assurance That All Violations Were Appropriately Addressed

No Access or Refused Access – The auditors state that DOHMH did not follow-up on cases where HPD made two unsuccessful attempts to gain access or HPD was refused access to the apartment or building to make the necessary repairs. However, the auditors acknowledge that DOHMH instituted a process in October, 2009, where the DOHMH sends follow-up letters to landlords or tenants when access is refused (follow-up letters are summarized below). DOHMH does not take further action on cases where HPD does not gain access as HPD leaves notification for each attempt at access.

The auditors incorrectly stated that “officials did not identify any further action they would take if landlords or tenants did not respond to these letters.” Tenants are not required to respond to DOHMH, but are provided an Annual Notice form attached to the letter and instructed to complete the form and submit it to the landlord. It should also be noted that DOHMH has additional procedures to enforce compliance with window guard law against building owners. Building owners that fail to correct window guard violations are issued Notices of Violation requiring a hearing. Attending a hearing and being found guilty and or failing to attend a hearing which may lead to a default judgment result in the imposition of a monetary penalty..

In discussing the follow-up policy on cases in which HPD did not install window guards, HPD has informed DOHMH that its policy is to confirm installation through telephone contact with the tenant and the building’s owner, if contact with the tenant was unsuccessful, consistent with other housing complaints and violations.

DOHMH follow up letters include the following:

- Upon learning that the HPD was refused access to inspect or install window guards, the DOHMH's database generates letters that are sent to the building owner and tenant.
- The landlord letter states, in general:
 - A criminal and civil violation of the window guard law to not install and maintain window guards where required or when requested.
 - The DOHMH and HPD enforcement process and HPD emergency installation and repair process, including billing the landlord for expenses.
- The tenant letter states, in general:
 - The landlord must send an annual notice to the tenant inquiring about the need for and or condition of window guards in the apartment.
 - The annual notice must be returned to the landlord promptly.
 - The window guard law requirements for the landlord.
 - The tenant cannot refuse installation or remove window guards.
 - An annual notice is attached to the letter and the tenant is instructed to complete and return to the landlord within five days.
 - Educational materials on the window guard law are included with the letter.
- The DOHMH follows up with tenants who contact us in response to letters sent about obtaining access.
- When the DOHMH is notified by a landlord that a tenant has refused access to a dwelling unit, the DOHMH contacts the tenant, explains the law and arranges access.

Issue: DOHMH Identified Violations in NYCHA-Owned Buildings and Did Not Forward Some Cases to NYCHA in a Timely Manner

The auditors cite that 25 of the 281 cases referred to NYCHA were referred two or more days after the cases were received by the DOHMH. WFPP's goal is to refer the cases to NYCHA timely and in all instances, DOHMH practice is to retain a paper record of the complaint or referral, the date it was received and the date it was referred to NYCHA. A review of the paper records would reveal that all but one of the referrals to NYCHA were made in a timely manner.

Issue: Errors with dates sent to NYCHA

The auditors cite 13 cases where the date the case was entered into the WFPP database was the post referral date. The Program reviewed the 13 cases and concurred that the referral data to NYCHA was prior to database entry date. As part of the referral process to NYCHA the cases, i.e., complaint, observation, etc. are immediately sent to NYCHA upon receipt to expedite a response. The creation of the actual case in the WFPP database still required additional research prior to the entry of case in the database and the manual keying in of case information in the database. Some of the 13 cases required research that entailed:

- Determining if there is an existing record for the building and if there is an existing open case under investigation.
- Creating a new record and case, if required.
- Verifying the current building ownership using the HPD and Finance databases.

In December 2009, the WFPP switched to a scannable referral form. All referrals are entered into the database upon receipt and all notifications to NYCHA occur on or after that date.

DOHMH took the following actions prior to the issuance of the auditors draft report:

- As of February, 2011, DOHMH began handling NYCHA window guard complaints and referrals using the same inspection and notification process as all other complaints and referrals, except that Notices of Violation returnable to the Health Tribunal are not issued and apartments in violation are not referred to HPD for emergency repair or installation.
- Additionally, the WFPP continues to notify the NYCHA compliance unit by mail or fax of complaints or referrals of apartments determined to have window guard violations, when received. In the event a window fall occurs, the WFPP notifies NYCHA via telephone and e-mail and or faxes a copy of the report to NYCHA, if necessary.
- As of September, 2010, the WFPP supervisor tracks and follows up with NYCHA to ensure that window guard violations have been corrected.
- Effective April 1, 2011, complaints about window guard violations will go directly to NYCHA.

Conclusion

We appreciate the auditors' review of the Window Fall Prevention Program's conduct, and value the recommendations. Notwithstanding their recommendations, the WFPP has been a large and efficient program that responds to critical complaints about environmental safety risks to young children. Based on a review of the entirety of the program's activity throughout FY 2008 and FY 2009, the WFPP handled 9,799 window guard cases in 6,722 buildings, conducted over 53 educational programs, meetings and workshops on identifying window fall hazards and attended over 128 health fairs to promote window fall prevention, reaching over an estimated 71,500 people. For this universe of cases, the average WFPP response time for complaint/interview cases from the time of receipt to the first inspection attempt was 3.1 calendar days in FY 2008 and just 1.1 calendar days in FY 2009. The average response time between when the Department issued a Commissioner's Order to Abate (COTA) indicating how a property owner must comply to the first verification inspection attempt (which we refer to as the "observation response time") was 12.8 calendar days for FY 2008 and 13.5 calendar days in FY 2009.

Over the years, the enforcement authority exercised by the WFPP has had a direct and significant impact on the safety of New York City's children. In 1976, when the New York Board of Health implemented the window guard law, 217 window falls were reported. Only three years later, after the program was created, there were only 80 reported falls. During calendar year 2010 there were just five preventable falls reported to the Window Falls Prevention Program.