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BUREAU OF AUDIT

December 11, 2018

By Electronic Mail

Commissioner Maria Torres-Springer
New York City Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Re: Letter Report on the Billing and Collection of Funds for Fees Issued through New York City Department of Housing Preservation and Development's Alternative Enforcement Program, Audit Number SR18-114AL

Dear Commissioner Torres-Springer:

This Letter Report presents the results of the New York City Comptroller's audit to determine whether New York City is properly billing and collecting fees, reimbursements, and any other funds due to the City for repairs made through New York City Department of Housing Preservation and Development's (HPD's) Alternative Enforcement Program (AEP).

Background

HPD is the largest municipal developer of affordable housing in the nation. HPD's mission is to promote the quality and affordability of the City's housing and the strength and diversity of its neighborhoods. HPD is responsible for financing the construction and preservation of affordable housing; monitoring the condition and affordability of nearly 5,000 buildings, containing over 100,000 units, in its Asset Management portfolio; and ensuring the quality and safety of the City's housing stock through the enforcement of the Housing Maintenance Code.

In November 2007, HPD implemented the AEP, which was mandated by Local Law 29 of 2007 and codified at New York City Administrative Code §27-2153. According to Section 1 of Local Law 29, the AEP is intended to alleviate the serious physical deterioration of the City's most distressed multiple dwellings "by forcing the owner to make effective repairs or have city government do so in a more comprehensive fashion so that emergency conditions are alleviated and the underlying physical conditions related to housing code violations are addressed." As amended by Local Law 7 of 2011 and Local Law 64 of 2014, the statute currently requires HPD to identify 250 of the City's most distressed multifamily residential buildings each year for inclusion in the AEP. The program imposes what HPD refers to as significant fees, as well as repair charges, on the owners of those buildings when they fail to correct violations and the conditions that cause them.

The statute sets forth criteria for HPD to use in identifying the buildings that will be included in the AEP, including the number and ratio-to-apartment of open violations classified as hazardous

or immediately hazardous and the dollar value of the paid and unpaid emergency repair charges, and authorizes HPD in the ninth year of the program and thereafter to establish additional or different criteria by rule.¹ Owners of buildings selected for inclusion in the AEP are sent letters notifying them of their selection and instructions on how the buildings can be discharged from the program. Tenants are also notified via a public posting in their building.

Within the first four months following the initial notification of a building's inclusion in the AEP, owners have the opportunity to correct any open violations themselves. To be considered for discharge from the program, building owners must correct the open violations, pay any outstanding emergency repair charges, submit a "Dismissal Request" form by May 31st, and pay a \$1,000 dismissal re-inspection fee. Once the building passes the re-inspection it is removed from the program.²

Owners of buildings that are not discharged within the first four months of the initial notice are charged additional fees while enrolled in the program:

- \$500 per dwelling unit every six months, with a maximum total fee of \$1,000 per dwelling unit during participation in the AEP.
- \$200 for any complaint inspection performed in the subject property that results in the issuance of a class "B" or class "C" violation.
- \$100 for each re-inspection pursuant to a certification of correction of violation(s) submitted to HPD where HPD finds one or more violations have not been corrected.

If within the first four months owners are not discharged from the program, HPD will issue an AEP Order to Correct³ that lists the underlying conditions in need of fixing. If the owner fails to comply with the AEP Order to Correct, HPD may hire a contractor to make all necessary emergency repairs at the owner's expense. The Department of Finance (DOF) is responsible for the billing and collection of these charges. An owner's failure to pay the fees and charges imposed through the AEP may result in DOF filing of a tax lien against the property.

On or about the 20th of each month, a Production Control Manager from HPD Tech (HPD's Information Technology department) runs a computer application that generates a file of new emergency repair charges and fees incurred for the month for transmission to DOF. The file consists of repair costs with administrative fees and taxes, and HPD fees.

To ensure that the two agencies' records are in agreement, HPD's office of Fiscal Affairs performs a reconciliation of the total number and dollar amount of the repair charges and fees that HPD transmits to DOF compared with the totals that DOF reports it received.

¹ HPD can issue three types of violations: class "A" which are non-hazardous; class "B" which are hazardous; and class "C" which are immediately hazardous. Class "B" violations include, but not limited to, falling/chipping paint, or the existence of vermin. Class "C" violations include, but not limited to, lead, cascading water, or inadequate heat or hot water.

² To pass re-inspection and be discharged from the AEP, an owner must correct all heat and hot water violations, all class "C" violations related to mold, a minimum of 80 percent of class "B" violations related to mold, a minimum of 80 percent of violations related to vermin, and a minimum of 80 percent of all other class "B" and class "C" violations.

³ AEP Order to Correct is an Administrative Order that will list the underlying conditions that the owner must correct; it is enforceable in Housing Court, to compel owners to perform certain actions with respect to their property. The AEP Order to Correct is mailed to the owner, posted at the building, and filed with the County Clerk.

Audit Findings

The audit found that HPD properly transferred AEP-related charges and fees to DOF on a monthly basis to DOF for buildings enrolled in the AEP, which DOF subsequently billed to building owners for payment. We tested 185 (25 percent) of the 738 buildings that were included in the AEP during Calendar Year 2016 through Calendar Year 2018 (also known as “rounds” 9 through 11 of the program).⁴ We found that repair charges, sales tax, administrative fees, and participation/inspection fees were correctly transferred to DOF for collection and posted accordingly on DOF’s Account History for each property tested. We also found that \$1,000,419 in AEP charges and AEP fees were collected by DOF; however, an outstanding balance of \$778,483 in AEP charges and fees remained unpaid as of October 18, 2018 according to DOF’s records.

We also found that HPD satisfactorily collected and documented the amounts owed and discharged 15 of our sampled 16 buildings that submitted requests for dismissal from the AEP. The one remaining building is still active in the AEP and therefore no dismissal re-inspection fee was collected for it. HPD received the \$1,000 dismissal re-inspection fee from each of the 15 building owners that completed their own repairs within the first four months of inclusion in the AEP, making them eligible to be discharged from the program. These payments were recorded in the Financial Management System (FMS).

Recommendations

HPD should continue to transfer all AEP-related charges and fees to DOF on a monthly basis to recoup any outstanding funds. HPD should also continue to collect the dismissal re-inspection fees.

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. 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.

The audit covered the period of Calendar Year 2016 through Calendar Year 2018.

To obtain an understanding of the policies and procedures governing HPD’s AEP and the AEP billing and collection process, we obtained and reviewed as criteria:

- New York City Local Law 29 of 2007;
- New York City Local Law 7 of 2011;
- New York City Administrative Code §27-2153, the Alternative Enforcement Program;

⁴ A round is defined as one year in the AEP, beginning on January 31 of each year. In 2008, HPD began with round 1 and each following year were identified as additional rounds in ascending increments.

- Title 28 of the Rules of the City of New York Chapter 36;
- HPD's AEP *Repair Fee Charge Process*; and
- All information from HPD's website related to the AEP.

To further our understanding of HPD's controls over the billing and collection of funds for fines made through the AEP and related controls significant to our audit, we met with the Assistant Commissioner of Division of Special Enforcement and the Director of the AEP. We also met with HPD Tech officials to obtain an understanding of HPD's process of transferring bills and payments to DOF for collection.

We requested and obtained from HPD a list of all buildings included in the AEP. The list contained buildings identified during Calendar Year 2016 through Calendar Year 2018, (rounds 9 through 11 of the program). Each round's list contained 250 buildings for a total of 750 buildings identified for AEP participation from 2016 through 2018. Some of the 750 buildings appeared on multiple rounds, and we removed the duplicates, resulting in 738 unique buildings. To determine the reliability of the list of buildings identified for the AEP, we matched each building on the Excel list provided by HPD and the "List of Building Identified (By Fiscal Year)" on HPD's website to ensure all buildings identified for participation corresponded. We also requested documentation of AEP repair work completed on all AEP buildings from rounds 9 through 11. HPD provided a list of buildings that were either still active in the AEP or discharged from the program and the associated repair charges for each building. The list indicated the AEP vouchered amount (dollars paid to the vendors who made repairs), the DOF liability (total cost transferred by HPD to DOF for collection, which includes repair costs, sales tax, and administrative fees), the DOF collection amount (dollars collected of the DOF liability amount plus interest), and the DOF balance.

We randomly selected 185 (25 percent) of the 738 buildings for review. Of the 185 buildings, 104 buildings had no AEP-related charges because they were either discharged or still active in the program and within the four month window before any charges would be imposed, and 81 buildings had AEP-related charges transferred to DOF and posted on the building's Account History. To determine whether the vendors' invoices for repairs were included we selected three buildings with large repair charges, reviewed all 49 repair invoices associated with the three buildings, and verified that all 49 invoices were included in the AEP charges for the three buildings. To determine whether the liability amounts (including repair charges, sales tax, and administrative fees) were transferred to DOF for collection, we compared the liability amounts HPD reported for the 81 buildings on its list to the liability amounts that DOF reported on its Account History record. We also verified whether the 81 buildings had the additional fees charged for participation and inspections and that those additional fees were transferred to DOF for collection.

To determine whether HPD collected the \$1,000 AEP dismissal re-inspection fee for the 104 buildings that had no AEP-related charges, we first eliminated all buildings from round 11 because they fell within the first four months of the AEP discharge window and would not have any charges yet this left us with 64 buildings from rounds 9 and 10 that should have been charged the AEP dismissal fee. We randomly selected 16 of the 64 buildings (25 percent) and requested supporting documentation from HPD officials that proved HPD received the \$1,000 dismissal fee for each building. HPD provided discharge letters and FMS cash receipt numbers for 15 of the 16 buildings and explained that one building was still actively enrolled in AEP and is being charged the additional fees for participation and inspections. To determine the reliability of this data, we accessed FMS to

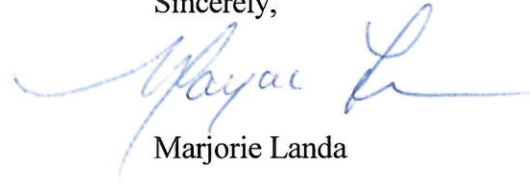
verify and obtain the cash receipts to document the receipt of the \$1,000 dismissal fee per building for the 15 of 16 buildings.

Although the results of the above tests cannot be projected to the entire population of AEP-related emergency repair charges and fees, they provided us a reasonable basis to assess the City's billing and collection of emergency repair charges and fees related to AEP.

The findings in this letter report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft letter report was sent to HPD and in response, HPD sent an email dated November 16, 2018 stating that "We see no reason for an exit conference." Comments included in the November 16, 2018 email were considered in preparation of the draft letter report. On November 20, 2018, we submitted a draft letter report to HPD with a request for comments. We received a written response from HPD on December 5, 2018. In its response, HPD agreed with the report's findings and recommendations and stated, "HPD will continue to transfer all AEP related charges and fees to DOF on a monthly basis to recoup any outstanding charges or fees as well as to continue to collect the dismissal re-inspection fees."

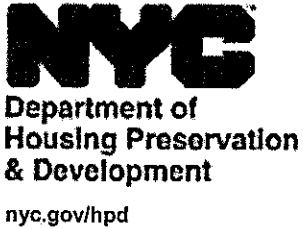
The full text of HPD's response is included as an addendum to this letter report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marjorie Landa", is written over a light blue horizontal line.

Marjorie Landa

c: Steven Fodera, Director, Department of Housing Preservation and Development
Jeff Thamkittikasem, Director, Mayor's Office of Operations
George Davis III, Deputy Director, Mayor's Office of Operations



MARIA TORRES-SPRINGER
Commissioner

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

December 5, 2018

Marjorie Landa
Deputy Comptroller for Audit
Office of the New York City Comptroller
One Centre Street, Room 1100
New York, New York 10007

Re: Response to NYC Comptroller Letter on the Billing and Collection of Funds for Fees Issued through New York City Department of Housing Preservation and Development's Alternative Enforcement Program SR18-114AL

Dear Deputy Comptroller Landa:

I write to thank you for your audit on the Billing and Collection of Funds for Fees Issued through New York City Department of Housing Preservation and Development's Alternative Enforcement Program affirming the agency's commitment to ensuring that all AEP related charges and fees are properly transferred to DOF, enabling DOF to bill building owners for payment.

HPD will continue to transfer all AEP related charges and fees to DOF on a monthly basis to recoup any outstanding charges or fees as well as to continue to collect the dismissal re-inspection fees.

We appreciate the time and consideration that you gave to auditing our work with this important portfolio.

Thank you for your consideration of our response.

Sincerely,

Maria Torres-Springer