



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

August 30, 2019

The Honorable Benjamin S. Carson, Sr.  
Secretary  
U.S. Department of Housing & Urban Development  
451 7th St SW  
Washington, DC 20410

Re: OSC File No. DI-19-2646

Dear Secretary Carson:

Pursuant to my responsibilities as Special Counsel, I am referring to you for investigation whistleblower disclosures regarding the Office of Multifamily Housing, Southwest Region, Fort Worth Asset Management Division (Fort Worth) in Fort Worth, TX. I have determined that there is a substantial likelihood that the allegations disclose a gross waste of funds, gross mismanagement, abuse of authority, and a danger to public safety. A report of your investigation, including remedial actions if warranted, is due to the U.S. Office of Special Counsel (OSC) by October 29, 2019.

The whistleblower, [REDACTED] who consented to the disclosure of [REDACTED] name, is a former Senior Account Executive at the Fort Worth Asset Management Division. [REDACTED] alleges a gross waste of funds, gross mismanagement, abuse of authority, and a danger to public safety by management officials in the Fort Worth Asset Management Division with regard to the management of multifamily properties receiving housing assistance, as described below. Specifically, the allegations to be investigated include:

- HUD failed to adequately service<sup>1</sup> property portfolios resulting in noncompliance with physical condition standards and inspection requirements for HUD housing, subsidized housing funds paid to owners of vacant properties, and a lack of adequate insurance on properties;
- Branch Chief [REDACTED] engaged in arbitrary and capricious decision-making in the approval or denial of requests for disbursements.

The whistleblower, who was employed at Fort Worth from September 2018 through March 2019, stated that while employed, [REDACTED] was assigned approximately 70-80 property portfolios to manage. [REDACTED] further asserted that all of [REDACTED] assigned portfolios lacked adequate oversight and servicing by HUD. As a result, numerous issues occurred at properties in the portfolios, including problems with the physical condition of the properties, subsidized funds being paid to property owners in error, and a lack of adequate insurance coverage. [REDACTED]

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<sup>1</sup> "Servicing" refers to maintaining current and unexpired management agreements and certifications, monitoring the financial solvency of properties, and ensuring timely inspections and repairs.

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disclosed that the majority of [REDACTED] assigned property portfolios had not been serviced in several years, with some not having been serviced since 2011, potentially resulting in unsafe living conditions for occupants. The whistleblower maintains that the lack of oversight and servicing is not limited to only the property portfolios [REDACTED] was assigned; rather, [REDACTED] believes that many property portfolios within the Fort Worth Asset Management Division are likely affected.

The whistleblower also alleges that, upon receiving her assigned 70-80 property portfolios, [REDACTED] discovered that approximately 30 of them included serious safety inspection deficiencies that required property owners to take corrective action within three days. However, according to the whistleblower, none of the approximately 30 portfolios included any documentation of follow up by HUD to ensure compliance or to mitigate the deficiencies, including, for example, a lack of fire alarms, damaged locks, broken windows, blocked or inaccessible emergency exits, and bed bug infestations.<sup>2</sup> Moreover, the whistleblower stated that when [REDACTED] brought her concerns regarding the lack of follow up to her then supervisor, Branch Chief [REDACTED] [REDACTED] was told to simply “close them out [in HUD’s computer system, iREMS],” rather than contact the property owner to confirm whether repairs had since taken place. The whistleblower alleges that [REDACTED] received the same instruction from [REDACTED] when the whistleblower was reassigned to [REDACTED] branch.

In addition, [REDACTED] alleges that none of [REDACTED] property portfolios contained the required documentation from the property owner demonstrating that the owner either (1) held adequate fire, flood (if the property is located in certain flood-prone areas), and boiler explosion insurance, or fidelity bonds for property management, or (2) listed HUD as an additional payee on these insurance policies, as required by 24 C.F.R. § 207.1 and HUD Handbook 4350.1. Further, some of the portfolios that did not contain any proof of insurance were uninsurable due to the condition of the property, even though low-income families were living in the properties, and portfolios that included insurance documentation failed to list HUD as an additional payee, which places HUD, investors, and property tenants at risk of harm if the property is mismanaged or damaged.

The whistleblower also alleges several instances of arbitrary and capricious decision-making by [REDACTED] then supervisor, [REDACTED]. For example, HUD is responsible for making determinations about whether property owners should be reimbursed from the reserve for replacement fund<sup>3</sup> when the property owner makes repairs to a covered property. The whistleblower asserts that [REDACTED], as well as several other employees under [REDACTED] direction, were present for several discussions in which [REDACTED] stated that [REDACTED] was

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<sup>2</sup> In instances where a property owner fails to cure a deficiency, HUD is required to send a notification, advising that the property owner has 60 more days to cure; in many cases, HUD failed to send out this notification, but even when it did send the notification, in each of these approximately 30 cases, it failed to document any further follow up to ensure that the deficiency was addressed.

<sup>3</sup> The whistleblower explains that the reserve for replacement is funded by the property owner at mortgage closing with monthly deposits made from subsequently earned project operating income. Disbursements must be approved by HUD and are used to pay for maintenance, repair, and replacement of capital items. The fund is held in escrow by the lender and typically funded for the life of the mortgage loan.

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approving or denying requests for reimbursement from property owners based solely on whether the property was in a “good” or “bad” neighborhood. The whistleblower alleges that HUD does not have discretion to deny requests for reimbursement based on what kind of neighborhood the property is in or the value of the property. Additionally, the whistleblower also alleges that ██████ abused ██████ discretion by making inconsistent decisions regarding the use of reserve for replacement funds instead of non-critical repair funds.<sup>4</sup>

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses gross mismanagement and a gross waste of funds. Please note that specific allegations and references to specific violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, HUD must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the report, along with the whistleblower’s comments and any comments or recommendations I may have, to the President and congressional oversight committees, and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the Appendix, which can also be accessed online at <https://osc.gov/Pages/Resources-PublicFiles.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Elizabeth McMurray, Chief of the Retaliation and Disclosure Unit, at (202) 804-7089 for assistance. I am also available for any questions you may have.

As discussed above, your investigative report, including any remedial actions, is due to OSC by October 29, 2019.

Sincerely,



Henry J. Kerner  
*Special Counsel*

Enclosure

cc: The Honorable Rae Oliver Davis, Inspector General

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<sup>4</sup> The whistleblower explains that non-critical repair funds are funds used to pay for all non-critical repairs listed on the Project Capital Needs Assessment and attachments. It is a short-term fund funded by the property owner at mortgage closing. Any balance remaining in the fund after one year from the date of closing can be released back to the property owner with HUD’s approval.

## APPENDIX

### AGENCY REPORTS UNDER 5 U.S.C. § 1213

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).