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Washington, D.C. 20036-4505

The Special Counsel

January 17, 2025

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-19-002646

Dear Mr. President:

I am forwarding to you reports transmitted to the U.S. Office of Special Counsel (OSC) by the U.S. Department of Housing & Urban Development (HUD) in response to the Special Counsel's referral of disclosures of wrongdoing within the Office of Multifamily Housing (MFH), Southwest Region. I have reviewed the disclosures, agency reports, and whistleblower's comments, and in accordance with 5 U.S.C. § 1213(e), have determined that the reports contain the information required by statute and the findings appear reasonable. The following is a summary of those findings and comments.

The whistleblower, [REDACTED], a former Senior Account Executive with the Fort Worth Asset Management Division in Fort Worth, Texas, who consented to the release of [REDACTED] name, alleged that agency officials engaged in conduct that constituted a gross waste of funds, gross mismanagement, abuse of authority, and a substantial and specific danger to public safety. Specifically, the whistleblower alleged that HUD failed to adequately service multifamily property portfolios, resulting in (1) noncompliance with inspection requirements and physical condition standards for HUD housing;¹ (2) subsidized housing funds paid to owners of vacant properties; and (3) a lack of adequate insurance on properties. The whistleblower also alleged that [REDACTED] former Branch Chief engaged in arbitrary and capricious decision-making in the approval and denial of property owner requests for disbursements of HUD-held funds. HUD

¹ During the time relevant to the investigation, the physical condition standards and inspection requirements for MFH properties were described in HUD regulations at 24 C.F.R. § 200.800 Subpart P. Inspections are performed by HUD's Real Estate Assessment Center (REAC), which scores and ranks properties based on the results of inspections. At the time, properties receiving scores of 90 points or higher on physical inspection were designated as Standard 1 and re-inspected every three years; scores of 80-90 points were designated as Standard 2 and re-inspected every two years; and scores of less than 80 points were designated as Standard 3 and re-inspected annually. Regardless of ranking, if a property is cited for "exigent, health and safety" (EHS) deficiencies, each EHS deficiency must be corrected within 72 hours of the inspection and the property owner must provide HUD a certification of immediate mitigation and reasonable evidence that the EHS deficiencies have been resolved.

partially substantiated the whistleblower's allegation regarding noncompliance with inspection requirements.

Noncompliance with inspection requirements and physical condition standards

Noncompliance with inspection requirements

Initially, HUD did not substantiate the allegation that it failed to follow its regulatory requirements for timely physical condition inspections that ensure decent and safe housing. HUD relied heavily on the fact that, at the time it issued the report, most of the properties sampled as part of the investigation were no longer overdue for inspection. Yet, HUD acknowledged that "[REAC] inspection schedules were not always in compliance with HUD Regulations." Specifically, HUD found that of the 66 properties sampled, 27 did not follow the inspection schedule dictated by HUD's regulations, and that lapses between inspections ranged anywhere from a few months to over five years overdue.

In [REDACTED] comments on the initial report, the whistleblower characterized HUD's initial analysis as minimizing the significance of its failure to conduct timely inspections by glossing over the substantial lapses of time between inspections, and instead focusing its narrative on the corrections performed in the months leading up to the date of the initial report.

OSC requested a supplemental report, requesting that the agency reconsider its initial finding. HUD partially substantiated the allegation, conceding that timely inspections have been a long-standing issue throughout MFH. The report cited a variety of factors that caused the delays, such as funding, hiring, and a lack of training. The report also details actions HUD has taken to address the delays, detailed below.

Noncompliance with physical condition standards

HUD did not substantiate the whistleblower's allegation that HUD properties were noncompliant with physical condition standards resulting in unsafe living conditions for occupants. According to the reports, HUD reviewed its system of records and found (1) the certification dates for the EHS deficiencies and (2) notations that it received the property owners' certification of immediate mitigation of the EHS deficiencies. HUD recognized that not all the documents were available in each property portfolio but indicated these were recovered from either HUD emails or property owners. While HUD did not substantiate the allegation, without timely inspections, HUD cannot properly identify EHS deficiencies or ensure that they are mitigated.

Subsidized housing funds paid to owners of vacant properties

HUD did not substantiate the allegation that subsidized housing funds were paid to owners of a vacant property. The reports explained that the data in HUD's computer system, iREMS, indicated that in fiscal year (FY) 2017, a unit in the 20-unit building in question was condemned by the local city government due to foundation settling issues. The reports further

explained that the owner voluntarily vacated the 19 remaining units, and last requested and received subsidies for the building in March of 2018. HUD stated that it was unaware of the issues with the building and the underutilization of the subsidies until a management and occupancy review in August of 2018, at which point repairs had yet to begin due to a dispute between the owner and an engineer.

In [REDACTED] comments on the initial report, the whistleblower expressed concern with the underutilized HUD subsidies and questioned why HUD cannot redirect unused subsidies to benefit tenants at other properties. HUD explained in the supplemental report that a transfer would not be possible because HUD regulations would require it to terminate the contract with the owner before it could begin a complicated process to redirect funds. However, HUD acknowledged that underutilization is concerning, and that it is exploring tools to ensure that unused subsidy funds can be redirected more efficiently.

Lack of adequate insurance on properties

HUD did not substantiate the allegation that it failed to ensure properties had adequate hazard insurance and fidelity bonding, although HUD acknowledged that there is room for improvement.² The reports explained that, generally, during the management agent review process, management agents and owners certify to carrying appropriate hazard insurances, but that there is no separate requirement for HUD staff to collect proof of insurances or to confirm that the insurance policies are maintained, with the exception of HUD-held properties. However, as to the property the whistleblower alleged lacked properly maintained hazard insurance, the report indicated that it is not a HUD-held property, and no additional requirement beyond the initial certification was required by HUD staff.

Unlike hazard insurance, HUD staff is required to confirm that the management agent has fidelity bonding in an amount at least equal to two months of projected gross income, and lists HUD as an additional payee, in addition to requiring that the management agent certify to such during the management agent review process. The reports explained that proof of insurance was found in all but one of the nine portfolios examined. However, the records do not specify the amount of coverage, and not all list HUD as an additional payee, as required by HUD Handbook 4381.5, which the agency asserts does not constitute gross mismanagement.

Arbitrary and capricious decision-making

HUD's investigation did not find evidence to support the whistleblower's allegation that [REDACTED] former Branch Chief exceeded [REDACTED] discretionary authority and engaged in arbitrary and capricious decision-making in the approval and denial of requests from property owners for disbursements of HUD-held funds. Specifically, the whistleblower alleged that [REDACTED] Branch Chief approved disbursements of funds that brought a project's account below the minimum HUD-recommended threshold of \$1,000 per unit for sidewalk and mailbox repairs, and that [REDACTED]

² Fidelity bonding refers to insurance coverage that protects businesses against financial losses incurred due to the actions of dishonest employees.

Branch Chief stated [REDACTED] would approve/deny requests based on whether a project was in a “good” or “bad” neighborhood. The Branch Chief was interviewed as part of the investigation, where [REDACTED] denied making such a statement. HUD further explained in the reports that the Branch Chief has the discretionary authority to release funds to increase a project’s marketability. The reports also explained that physical condition and geographical location are allowable factors to consider when making the determination whether to disburse funds. The whistleblower commented that HUD’s investigation into this matter was lacking, as investigators only interviewed the whistleblower and the former Branch Chief.

Additional allegations investigated, but not referred by OSC

HUD investigated but did not substantiate additional allegations made by the whistleblower that OSC did not refer to the agency.³ The allegations involved the existence and use of an incident reporting policy; management agents providing services despite expired management agreements; whether monthly accounting reports for certain properties are mandatory; disbursements of HUD-held reserve funds for critical and non-critical repairs; HUD’s responsibility for servicing delinquent mortgage loans not held by HUD but insured by FHA; and the improper transfer of physical assets.

Corrective action

In response to the investigative findings, the DEC made several recommendations, which were adopted by the Secretary. The recommendations included ensuring that staff collect and maintain EHS certifications and reasonable evidence of EHS corrections in every instance and work expeditiously with owners and contract administrators to address voucher utilization and pursue transfers where warranted. Moreover, MFH has implemented protocols to ensure staff collect proof of fidelity bonding and conduct and document in MFH’s electronic record management system checks to ensure the policy names HUD as a third party and that it carries the correct amount of coverage. The protocol identifies key submission or trigger points wherein the fidelity bonding information should be checked and includes training in such areas.

As for the REAC inspection backlog, HUD reported that upon lifting pandemic restrictions, the Big Inspection Program was instituted in an effort to inspect every property in the MFH portfolio by the end of FY 2023—a goal that the agency largely accomplished but for a few properties. On October 1, 2023, HUD implemented the National Standards for the Physical Inspection of Real Estate (NSPIRE), which consist of a new protocol to replace the outdated protocol of prior inspections. HUD admits that it experienced some issues in rolling out the new protocol—mainly inspector vendor and funding issues—and as a result fell behind in inspections. However, MFH is working closely with REAC by creating a prioritization schedule and helping REAC scale up inspection production volume by upwards of 56% by deploying HUD

³ The whistleblower also included in [REDACTED] comments allegations [REDACTED] reported to OSC that were not referred or investigated by HUD, including allegations that HUD committed or engaged in unfair, deceptive, or abusive acts or practices, which [REDACTED] alleged are enforceable against HUD by the Federal Trade Commission; that government recordkeeping regulations were likely violated; and that the agency has failed to properly train new staff.

inspector staff to assist the vendors, which will result in appropriately managing and minimizing any potential backlogs going forward.

The Special Counsel's Findings

I commend the whistleblower for bringing these issues to OSC's attention. I note that HUD's report to OSC provides adequate explanation for allegations that were not substantiated, and details plans intended to ensure that HUD housing is inspected and serviced timely. For this reason, I have determined that the findings of the agency head appear reasonable. As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency report, and the whistleblower's comments to the Chairman and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs and the Chairman and Ranking Member of the House Committee on Financial Services. I have also filed redacted copies of these documents and a redacted copy of the referral letter in our public file, which is available online at <https://osc.gov>. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Hampton Dellinger".

Hampton Dellinger
Special Counsel

Enclosures