

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Internal Audit Review of Professionally Certified Building Applications by the Department of Buildings

EW01-177A

April 30, 2003

To the Citizens of the City of New York

Ladies and Gentlemen:

Pursuant to Chapter 5, § 93 of the New York City Charter, we have performed an audit on Department of Buildings (Department) procedures for reviewing “self certified” building permit applications. The Department instituted the self-certification program to permit licensed engineers and architects to affirm that plans comply with all applicable laws and building codes. This, in turn, eliminates the plan review by the Department and expedites the processing of permit applications.

The results of our audit, which are presented in this report, have been discussed with officials of the Department, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that that the Department only issues permits for building construction activity that is in compliance with all applicable laws and building codes.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my office at 212-669-3747 or e-mail us at audit@Comptroller.nyc.gov.

Very truly yours,



William C. Thompson, Jr.

WCT/GR

Report: #EW01-177A
Filed: April 30, 2003

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Finding and Conclusions	1
Audit Recommendations	2
INTRODUCTION	3
Background	3
Objectives	4
Scope and Methodology	4
Discussion of Audit Results	5
FINDINGS AND RECOMMENDATIONS	6
Professional Certification Process Needs Improvement	7
Inconsistent Treatment of Serious Problems on Applications	9
Lack of Formal Procedures for Selecting Applications for Audit	11
Lack of Formal Guidelines for Initiating Investigations	12
Lack of Fee Estimators	13
Registration Status of Professionals Should Be Verified	14
APPENDIX I	16
APPENDIX II	17
ADDENDUM — DOB Response	18

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

**Audit Report on the Internal Audit Review of
Professionally Certified Building Applications
By the Department of Buildings**

EW01-177A

AUDIT REPORT IN BRIEF

We performed an audit on the internal audit review of professionally certified building applications by the Department of Buildings (DOB). To obtain a building permit, a property owner must employ a New York State licensed professional engineer or registered architect to prepare plans and then must submit them to DOB. DOB examiners review the plans to ensure they comply with applicable requirements. Alternatively, property owners can obtain a building permit by having their permit applications “self-certified” by the licensed engineer or architect who affirms that the plans comply with all applicable laws and codes. Self-certification eliminates the plan review process by DOB, thereby expediting the processing of permit applications. DOB procedures require that a minimum of 20 percent of all self-certified applications be subject to an internal DOB audit.

In Fiscal Year 2001, DOB received 57,172 applications for building permits. Of these applications, 20,214 (35%) were professionally certified.

Audit Findings and Conclusions

DOB conducted audit reviews of 20 percent of the professionally certified applications submitted to the Department, in accordance with its policies and procedures. In Fiscal Year 2001, those audits found that 59 percent of the applications contained errors. In contrast, our review of 73 applications disclosed that 67 percent contained errors. The difference in the percentage between our audits and those of DOB is particularly disturbing, since 14 of the 25 applications in our sample that had already been audited by DOB contained problems DOB did not uncover. Such a high number of errors on certified applications indicates that DOB should take additional steps to ensure that engineers and architects have sufficient knowledge and experience to certify applications accurately and that they take professional care when doing so.

Moreover, DOB did not always conduct its audits within 45 days of the issuance of the permit, as required by its procedures. Also, DOB policies and procedures require that the plan examiners report serious code and zoning objections to the borough commissioners for

appropriate action; however, DOB has no formal guidelines for determining whether an objection is serious and should therefore be reported. Consequently, certain problems that are treated as serious in one borough may be treated differently in other boroughs.

In addition, although DOB officials stated that applications should be selected for audit on a random basis, DOB procedures do not specify what selection method should be used. With the exception of Manhattan, borough office commissioners claimed that applications were selected for audit based a number of different factors, including the complexity of the project, the frequency of problems found with certain applicants, and the location of the project. However, there was no documentation showing how these issues were considered when applications were selected for audit. Such a system lacks internal controls and leaves the Professional Certification program susceptible to fraud and abuse.

Also, the DOB Office of Investigations Audits and Discipline has no formal guidelines for determining which self-certifying applicants should be investigated. That Office oversees borough office compliance with DOB procedures for auditing professionally certified applications, and it identifies and investigates architects and engineers who have an established pattern of violations. Moreover, there is no DOB database that tracks audit findings by applicant that could be used to identify patterns and problems with certain architects and engineers who should be investigated.

Finally, three borough offices have no fee estimators to verify that appropriate permit fees are being paid, as required by DOB procedures.

Audit Recommendations

This report makes a total of 14 recommendations. The major recommendations are as follows:

The Department of Buildings should:

- Provide appropriate training to plan examiners to help ensure that they issue 10-day notices when required.
- Ensure that audits are performed within 45 days of permit issuance, as required.
- Develop a citywide standard and implement formal guidelines for determining whether problems on applications are serious, and require the issuance of a ten-day notice.
- Issue guidelines that specify how borough offices are to select applications for audit and ensure that the borough offices comply with the agency guidelines.
- Develop and implement guidelines and a formal process for the borough offices to follow when identifying applicants for referral to the Office of Investigations, Audit and Discipline. The Office of Investigations, Audit and Discipline should also develop and implement guidelines and a formal process to follow when selecting applicants for investigation.
- Periodically ensure that borough offices have technical personnel assigned to review cost estimates.

INTRODUCTION

Background

The Department of Buildings (DOB) has jurisdiction over more than 800,000 buildings in New York City. DOB oversees building construction and alteration by enforcing the New York City building and electrical codes, zoning resolution, and other applicable regulations. It is also responsible for granting building permits, inspecting construction work, and licensing trades people.

Property owners who want to demolish, alter, build an addition to, or erect a structure must first obtain from DOB a building permit, which signifies that construction will comply with the building and zoning codes. To obtain a building permit, a property owner must employ a New York State licensed professional engineer or registered architect to prepare plans and then must submit them to DOB. DOB examiners review the plans to ensure they comply with applicable requirements. Alternatively, property owners can obtain a building permit by having their permit applications “self-certified” by the licensed engineer or architect who affirms that the plans comply with all applicable laws and codes. Self-certification eliminates the plan review by DOB, thereby expediting the processing of permit applications. In Fiscal Year 2001, DOB received 57,172 applications for building permits. Of these applications, 20,214 (35%) were professionally certified. (See Appendix I for details.)

Applications that can be professionally certified include the following: New Building (NB) for construction of new buildings, Alteration Type 1 (A-1) for alterations that involve a change of egress or occupancy requiring new or amended certificates-of-occupancy, and Directive 14 (D-14) for minor projects that do not affect occupancy (e.g., installation of a boiler room or removal of non-bearing partitions).

The self-certification process is governed by the DOB Operations Policy and Procedure Notice (OPPN) #2/95, which requires that a minimum of 20 percent of all self-certified applications be subject to an internal DOB audit review. Results of these audits must be reported monthly to the DOB Assistant Commissioner for Operations.

Audits of professionally certified applications are conducted in DOB borough offices by plan examiners. Each borough has a borough commissioner, a deputy borough commissioner, and a chief engineer of plan examination (or chief plan examiner). Depending on the borough, either the borough commissioner or the chief engineer selects the applications for audit. In all boroughs except the Bronx, the selected audits are assigned to various plan examiners; in the Bronx, the chief engineer conducts the audits. If an audit review discovers “objections” (problems or errors) in an application, the application must undergo the standard plan examination process. Permits obtained through self-certification may be revoked immediately if an audit identifies problems (e.g., lack of required number of exits) that jeopardize public safety.

Two other units in DOB are involved with professionally certified applications. The Office of Investigations, Audits and Discipline investigates architects and engineers accused of abusing filing privileges, providing false or misleading information to DOB, or engaging in other

misconduct. When selecting program applicants for investigation, this unit relies on the borough offices to provide copies of all 10-day notices and flag those that involve the most severe types of objections.¹ The unit also investigates applicants who have numerous unflagged notices on file. The Technical Compliance Unit audits between five and 10 percent of professionally certified applications (this is in addition to the 20 percent audit requirement for the borough offices.) The responsibility of the Technical Compliance Unit is to oversee borough office compliance with DOB procedures for the auditing of professional self-certification.

Objectives

The objectives of this audit were to determine: 1) whether current DOB audit policies and procedures are adequate to deter and detect noncompliance with relevant building and zoning laws, codes, and regulations; and 2) whether DOB complied with its policies and procedures for auditing professionally certified applications.

Scope and Methodology

The scope of this audit covers professionally certified applications filed in Fiscal Year 2001 (July 1, 2000, through June 30, 2001). As part of the audit, we reviewed DOB policies and procedures, examined records, and interviewed DOB personnel.

To obtain an understanding of DOB policies and procedures for auditing professionally certified applications, we interviewed each borough commissioner. Additionally, we spoke with DOB about its administration of the program, including the fee verification process and professional license verification procedures. We also checked with the New York State Department of Education to determine whether sampled applicants in the Professional Certification program were licensed and registered.² We attended DOB in-house training courses to gain first-hand knowledge of how plan examiners are prepared to perform their jobs. In each borough we observed how two plan examiners—one chosen by the borough commissioner and one chosen by us—performed audit reviews. In addition, we met with the Assistant Commissioner of the Technical Compliance Unit to obtain that unit's procedures for conducting audit reviews of self-certified applications.

To analyze the results of DOB audits, we performed independent audit reviews of 73 of the 20,214 professionally certified applications, 25 of which had also been audited by DOB. The sample was selected randomly on a borough basis, with the distribution corresponding to the relative number of professionally certified applications received by each borough. (See

¹ A 10-day notice of intent to revoke a permit is issued by DOB to an applicant when the Department uncovers a major problem when reviewing a building application.

² The sample of applicants reviewed consisted of 65 individuals who were the most frequent users of the Professional Certification Program. For the Brooklyn and Manhattan borough offices, we reviewed applicants who submitted 50 or more applications during Fiscal Year 2001; for Staten Island, we reviewed applicants who submitted 70 or more applications; for the Bronx, we reviewed applicants who submitted 20 or more applications; and for Queens, we reviewed applicants who submitted at least 80 applications during the year.

Appendix II for the list of sampled applications.) We reviewed DOB records pertaining to the audits of the 25 sampled applications. We obtained information from DOB pertaining to the number of applications that were audited and the number of applications in which problems were found. Finally, we obtained and analyzed procedures and specific case information from the Director of the Office of Investigations, Audits and Discipline.

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

Discussion of Audit Results

The matters covered in this report were discussed with officials from DOB during and at the conclusion of this audit. A preliminary draft report was sent to DOB officials and discussed at an exit conference held on February 21, 2003. On March 10, 2003, we submitted a draft report to DOB officials with a request for comments. We received written comments from DOB on March 24, 2003.

In its response, DOB generally agreed with the report's recommendations to: provide training to plan examiners; ensure that audits are performed within 45 days of permit issuance; ensure that audits are properly reviewed by supervisory personnel; develop and implement guidelines for identifying applicants for disciplinary action; assign technical personnel to borough offices to review cost estimates, and maintain a database of registered architects and engineers. However, DOB disagreed with the report's recommendation to develop a citywide standard and formal guidelines for determining whether problems on applications are serious. In addition, DOB stated that because of legal constraints, it cannot implement the audit's recommendations to develop pre-qualification requirements for applicants who want to professionally certify and to accept applications only from registered architects and engineers.

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

FINDINGS AND RECOMMENDATIONS

DOB conducted audit reviews of 20 percent of the professionally certified applications submitted to the Department, in accordance with its policies and procedures. In Fiscal Year 2001, those audits found that 59 percent of the applications contained errors.³ In contrast, our review of 73 applications disclosed that 67 percent contained errors. The difference in the percentage between our audits and those of DOB is particularly disturbing, since 14 of the 25 applications in our sample that had already been audited by DOB contained problems DOB did not uncover. In any case, such a high number of errors on certified applications indicates that DOB should take additional steps to ensure that engineers and architects have sufficient knowledge and experience to certify applications accurately and that they take professional care when doing so.

Moreover, DOB did not always conduct its audits within 45 days of the issuance of the permit, as required by its procedures. The timeliness of such audits is important to ensure that problems are identified and corrected before significant construction work is undertaken. Also, DOB policies and procedures require that the plan examiners report serious code and zoning objections to the borough commissioners for appropriate action; however, DOB has no formal guidelines for determining whether an objection is serious and should therefore be reported. Consequently, certain problems that are treated as serious in one borough may be treated differently in other boroughs.

In addition, although DOB officials stated that applications should be selected for audit on a random basis, DOB procedures do not specify what selection method should be used. We noted that only one of the agency's five borough offices—Manhattan—claims that it is using a random selection method. Such a method would help ensure that submissions from all applicants have an equal chance of being reviewed. At the Brooklyn and Bronx borough offices, applications are selected judgmentally based on various factors such as application type and past experience with applicants. However, there was no documentation showing how these issues were considered when applications were selected for review. In fact, certain engineers and architects were never audited by DOB despite submitting a significant portion of those boroughs' applications. The lack of formal procedures and documentation showing how applications were selected for audit leaves the Professional Certification program susceptible to fraud and abuse.

Also, the Office of Investigations, Audits and Discipline has no formal guidelines for determining which applicants should be investigated. Moreover, there is no database that tracks audit findings by applicant that could be used to identify patterns and problem architects and engineers who should be investigated.

Finally, three borough offices have no fee estimators to verify that appropriate permit fees are being paid, as required by DOB procedures. Fee estimators are responsible for verifying the reasonableness of job cost estimates, which are the basis for the fees due.

³ DOB audit statistics exclude the results of Brooklyn audits, since data from this borough were incomplete.

Professional Certification Process Needs Improvement

The professional certification application process needs improvement, as indicated by the large number of building code and zoning resolution errors found during audits of such applications. In Fiscal Year 2001, DOB audits of professionally certified applications revealed that 2,124 (59%) contained errors, and 638 (30%) of these errors were serious building code and zoning issues that should have resulted in issuing a 10-day notice to cure. Our review of 73 sampled applications (25 of which DOB had also audited) disclosed that 49 (67%) contained errors, of which 21 (43%) were serious in nature. However, our review revealed a more serious problem: DOB audits did not always identify errors on professionally certified applications and DOB did not always audit the applications within 45 days after a permit has been issued, as required by its procedures. Specifically, DOB audited five of the 25 applications from 46 to 85 days. Consequently, construction of projects could have been substantially complete before the audit was begun. In addition, 14 of the 25 applications that DOB had already reviewed contained problems we found but DOB did not. Moreover, on six (43%) of these 14 applications we noted serious building code and zoning issues.

For example, in one case (Application #200648228), the architect failed to indicate whether the building had two means of egress, in accordance with the building code. Certainly, this is a major fire safety hazard requiring the issuance of a 10-day notice. Nevertheless, since the DOB audit of the application did not disclose this problem, the agency approved the application. We should note that after we brought this matter to the attention of DOB officials, they issued a 10-day notice to the applicant requiring revised plans.

In another case (Application #500448090), the architect failed to indicate on the form that the building's stability would be verified, as required. Again, this omission is a major problem that calls for the issuance of a 10-day notice. Nevertheless, since the DOB audit of the application did not disclose this problem, DOB officials approved the application without requiring the architect to submit the additional documentation. After discussing this matter with DOB officials they contacted the applicant and obtained the required documentation.

The percentage of applications in which errors were found represents an unacceptably high number of professionally certified applications that fail to comply in some manner with the building code or the zoning resolution. Such large error rates indicate that DOB should take additional steps to ensure that engineers and architects have sufficient knowledge and experience to certify applications accurately and that they take due professional care when doing so. More important, to avoid the potential of public exposure to unsafe conditions, DOB must ensure that plan examiners are properly trained, that audits are performed in a timely fashion, that the audits are carefully reviewed by supervisors, and that problem applications are cured.

Recommendations

DOB should:

1. Provide appropriate training to plan examiners to help ensure that they issue 10-day notices when required.

DOB Response: “The Department of Buildings agrees with this recommendation. During the course of this audit, FY 01 (July 1, 2000 through June 30, 2001), the Department provided training to its plan examiners. In September 2002, the Department reorganized its Technical Compliance Unit (TCU) which is now responsible for all auditing of professionally certified applications.”

2. Ensure that all audit reviews performed by DOB are carefully reviewed by supervisory personnel to ensure that all errors are identified, reported, and corrected.

DOB Response: “The Department agrees that audits should be reviewed by supervisory personnel. The Technical Compliance Unit (TCU) is comprised of experienced auditors. Furthermore, TCU’s Executive Director and Assistant Director review all failure recommendations generated by the unit's auditors. The Executive Director and Assistant Director also perform spot audits of professionally certified applications audited by their staff, and review other applications in the course of responding to requests for reconsideration generated by an auditor's objections.”

3. Consider implementing pre-qualification requirements (in addition to professional licensure) for applicants who want to professionally certify. As part of these requirements, prospective applicants could be required to pass a test on the building code and zoning resolution. In addition, DOB should require that participants in the Professional Certification program undergo regular training to maintain familiarity with revisions and changes to the building code, zoning resolution, and DOB procedures.

DOB Response: “The Department does not agree with this recommendation because it is not legally or operationally feasible. The creation of a pre-qualification requirement at this time would require extensive resources and pose significant legal issues for the Department. The Department’s procedure for ensuring that the program be used by qualified, competent professionals is to perform random audits, and to vigorously prosecute and discipline those responsible for serious non-compliance. The Department also seeks to revoke professional certification privileges as appropriate, and makes referrals to the State Education Department as appropriate.”

Auditor Comment: DOB has not indicated specifically why creating a pre-qualification requirement is not legally feasible. Moreover, our legal department was unable to find a legal impediment. To the extent that such an impediment exists, we recommend that DOB consider legislation to address it.

Section 27-143 of the Administrative Code, regarding examination of applications and plans, states that “examination shall be made under the direction of the commissioner” and that “personnel employed for examination of plans shall be qualified engineers or architects experienced in building construction and design.” Consistent with this language, and given the number of professionally certified applications with significant problems, it is reasonable to require that professionals wishing to participate in the

Professional Certification program first demonstrate familiarity with the New York City building code. Because the program is an optional plan review process, applicants who do not pre-qualify can still file applications and have them reviewed under the standard plan review process.

We agree that the creation of a pre-qualification requirement would require resources and understand that the program would need to be carefully crafted to address legal and operational issues. However, DOB is responsible for safeguarding the public, and its above-stated procedure for doing so has been unsuccessful. If properly administered, including the charging of fees for testing and training, the pre-qualification requirement could be self-funding. Because professional certification provides the benefit of faster processing of permits, requiring applicants to pay a fee for this service is reasonable.

4. Ensure that audits are performed within 45 days of permit issuance, as required.

DOB Response: “The Department expects to release a new Policy and Procedure Notice (PPN) regarding professional certification shortly, which will call for the Department to audit professionally certified applications within 40 days of filing or 10 business days of permit, whichever comes earlier.”

Inconsistent Treatment of Serious Problems on Applications

DOB policies and procedures require that the plan examiners report serious code and zoning problems on applications to the borough commissioners for appropriate action (such as issuing a 10-day notice). However, DOB has no formal guidelines for determining whether a problem is serious and should therefore be reported. Consequently, certain problems that are treated as serious in one borough may be treated differently in other boroughs.

For example, a Staten Island plan examiner noted that an applicant (Application #500504457) did not submit the required form stating that laminated wood beams being used as critical supports for a building would be inspected, as required by the building code. In addition, the applicant failed to provide documents, as required, showing that he informed the Fire Department that this material was being used. According to the Plan Examiner, these were major errors requiring the issuance of a 10-day notice. One of our sampled applications (Application #301152302) that was filed at the Brooklyn borough office had identical problems. However, the Brooklyn plan examiner stated that the problems were minor and would not require the issuance of a 10-day notice. Clearly, any problems on applications pertaining to structural integrity of buildings are major and should be treated as such. Moreover, DOB should establish a citywide standard so that the borough offices treat problems on applications consistently.

In another case, one of our sampled applications (Application #401224929) that was filed with the Queens borough office lacked building plans. According to the plan examiner, this problem was considered a serious error that requires the issuance of a 10-day notice. Two of our other sampled applications (#500464632 and #500464829) that were filed with the Staten Island

borough office were also missing building plans. However, the Staten Island Plan Examiner stated that he considered this a minor problem that does not warrant the issuance of a 10-day notice. The omission of building plans is a major concern since DOB requires these documents to confirm whether the proposed construction meets building standards.

Finally, plan examiners in the Bronx and Queens stated that they treat fire rating errors as only minor and, therefore, would not issue 10-day notices in these cases. However, plan examiners in Staten Island treated such problems as major errors and issued 10-day notices. Obviously, the lack of adequate fire protection is a major problem that warrants the issuance of a 10-day notice.

Recommendations

DOB should:

5. Develop a citywide standard and implement formal guidelines for determining whether problems on applications are serious and require the issuance of a 10-day notice.

DOB Response: "The Department disagrees with this recommendation. The Department enforces all applicable laws, including the Building Code and Zoning Resolution, when reviewing and auditing applications. DOB's policy (see OPPN #5/02) is to audit professionally certified applications in four areas: zoning, fire protection, egress and appropriateness of fees."

Auditor Comment: We acknowledge that DOB audits applications in the areas of zoning, fire protection, egress, and the appropriateness of fees. However, our audit found that within these areas, certain problems that are treated as serious in one borough may be treated differently in other boroughs. Therefore, we maintain that a citywide standard and formal guidelines are critical to ensure that problems of a similar magnitude are treated consistently.

6. Provide additional training to plan examiners on the application of the new guidelines.

DOB Response: "The Department does not believe that new formal guidelines are appropriate, however, because its Technical Compliance Unit is now centralized and provides biweekly training sessions, including case studies and lectures, it is developing consistency in audits citywide."

7. Ensure that the plan examiners consistently follow the new guidelines.

DOB Response: "The Department ensures consistency among audits through ongoing bi-weekly training and through supervisory spot audits of auditor's work."

Auditor Comment: We are pleased that DOB is now providing training and conducting spot audits of the auditors' work. However, we believe that new guidelines must be developed to ensure that serious problems on applications are treated consistently throughout the Department.

Lack of Formal Procedures for Selecting Applications for Audit

DOB officials stated that applications should be selected for audit on a random basis. However, DOB procedures do not specify what selection method should be used. We noted that only one of the agency's five borough offices—Manhattan—claimed that it is using a random selection method. Such a method would help ensure that submissions from all applicants have an equal chance of being reviewed.

In fact, at the Brooklyn borough office, which selects applications judgmentally based on various factors such as application type and past experience with applicants, three applicants were never audited despite submitting more than 10 percent of that borough's applications. Similarly, in the Bronx borough office, one self-certifying professional was never audited even though he submitted more than 15 percent of that borough's applications.

In addition, had the applications been selected on a random basis, it is likely that certain applicants would have been audited more frequently. For example, in Manhattan, one applicant was audited only 13 times despite submitting 378 applications in Fiscal Year 2001. Another applicant, in Queens, was audited only seven times although he submitted 142 applications during the year. In Staten Island, an applicant submitted 79 applications, of which only two were audited. Finally, a Brooklyn applicant submitted 107 applications, but only one was audited.

Conversely, certain applicants appear to have been audited more frequently than they would have been if applications had been selected randomly. For example, in Manhattan, an applicant submitted 70 applications of which 47 were audited. In the Bronx, an applicant had 19 of his 41 applications audited. Finally, in Staten Island, an applicant had 72 of his 84 applications audited.

With the exception of Manhattan, borough office commissioners claimed that applications were selected for audit based a number of different factors, including the complexity of the project, the frequency of problems found with certain applicants, and the location of the project. However, there was no documentation showing how these issues were considered when applications were selected for audit. Such a system lacks internal controls and leaves the Professional Certification program susceptible to fraud and abuse.

Recommendations

DOB should:

8. Issue guidelines that specify how borough offices are to select applications for audit. If the guidelines allow for any method other than a strictly random selection, the guidelines should require that borough office personnel document the reasons for

selecting the applications (e.g., a problem applicant). In this regard, DOB should develop and institute an audit tracking system that could be accessed by each borough office and would show the application histories of each applicant.

DOB Response: “The borough offices are no longer involved or responsible for the selection of applications for audit. This responsibility presently belongs to the Executive Director of the Technical Compliance Unit (TCU), who selects every 5th application from a computer-generated list, resulting in a random audit of 20% of all professionally certified jobs. The process will be automated in the future. TCU currently maintains an audit tracking system which can be sorted for applicant as well as other variables. The information in the database will be available to staff in DOB borough offices in the near future.

“The borough offices may choose to audit applications submitted in response to complaints, but such audits are not to be considered part of the audit program, and are done in addition to the random 20% audit performed by TCU.”

Auditor Comment: DOB’s response does not address our recommendation to formalize the procedures for selecting applications for audit. Regardless of which unit is responsible for selecting applications, formal procedures are important to ensure that the selection criteria established by the Department are consistently applied. In addition, the audit tracking system referred to in the DOB response is deficient in that it does not track audit findings by applicant. Such information could be used to identify patterns and problems with certain architects and engineers who should be investigated.

9. Ensure that the borough offices comply with the agency guidelines.

DOB Response: “The borough offices are no longer responsible for selecting or performing audits.”

Lack of Formal Guidelines for Initiating Investigations

DOB’s Office of Investigations, Audits and Discipline is responsible for identifying and disciplining professionally certifying applicants who have an established pattern of regulation violation. In Fiscal Year 2001, the Office of Investigations, Audits and Discipline disciplined 21 applicants for violations related to professional certification.⁴ Sixteen of these applicants had their professional certification privileges revoked, and their conduct was reported to the New York State Office of the Professions. From the inception of the Professional Certification program in 1995 to the present, 23 applicants have had their professional certification privileges revoked.

However, the Office of Investigations, Audits and Discipline has no formal guidelines for determining which applicants should be investigated. Moreover, there is no database that tracks audit findings by applicant that could be used to identify patterns and problem applicants that

⁴Case-closed dates were in Fiscal Year 2001. Violations may have taken place earlier.

should be investigated. Instead, the Office of Investigations, Audits and Discipline relies on the borough offices to manually “flag” for the attention of Office of Investigations, Audits and Discipline staff those 10-day notices that involve the most severe types of objections. Ten-day notices that are not flagged are filed by the Office of Investigations, Audits and Discipline without determining whether disciplinary action may be required. The Office of Investigations, Audits and Discipline investigates applicants of these unflagged notices only if they have numerous 10-day notices in the file. However, given the lack of a central database to track audit findings, we do not know how these applicants are identified.

Recommendations

DOB should develop and implement guidelines and a formal process for:

10. The borough offices to follow when identifying applicants for referral to the Office of Investigations, Audit and Discipline.

DOB Response: “The Department agrees with this recommendation. In September 2002, TCU began referring all failed audits to the Department’s Office of Investigations and Discipline (formerly known as Office of Investigations, Audits and Discipline) for evaluation.”

11. The Office of Investigations, Audit and Discipline to follow when selecting applicants for investigation. In this regard, the Office of Investigations, Audit and Discipline should use the audit tracking system (in recommendation #8) to help identify applicants to be investigated.

DOB Response: “The Office of Investigations and Discipline (IAD) does not select applications for investigations. Failed audits are referred to IAD, which evaluates each case for purposes of disciplinary action.”

Auditor Comment: DOB apparently misread our finding; it refers to applicants, not applications, selected for investigation. In any case, we repeat our recommendation that DOB formalize the process by which IAD selects applicants for investigation.

Lack of Fee Estimators

Two DOB borough offices have fee estimators to verify that appropriate permit fees are being paid, as required. Fee estimators are responsible for checking the reasonableness of job cost estimates, which are the basis for the fees due from applicants seeking a building permit. However, the Queens, Brooklyn, and Staten Island borough offices do not have fee estimators. Instead, at these borough offices, clerks collect fees based on the estimates as submitted, without knowing whether the cost estimates are reasonable.

After we brought this matter to DOB’s attention, it required that each borough office assign technical personnel to review all estimates submitted and to confirm that appropriate fees are paid.

Recommendation

12. DOB should periodically ensure that borough offices have technical personnel assigned to review cost estimates.

DOB Response: “The agency agrees and fee estimators have been assigned to review cost estimates in each of the boroughs. At the time of this audit, only two boroughs employed fee estimators. At present every borough has at least one fee estimator on its staff. Manhattan has four estimators, the Bronx currently has one fee estimator, Brooklyn has three estimators, Queens currently has one fee estimator and Staten Island has one fee estimator. The Technical Compliance Unit reviews professionally certified applications for appropriateness of fees, and if it issues an objection on this basis, the application is referred to a fee estimator in the appropriate borough office.”

Registration Status of Professionals Should Be Verified

We found 11 instances in which a licensed engineer filed applications with DOB even though the engineer was not registered with the New York State Department of Education, as required. New York State Consolidated Laws and regulations of the New York State Education Department require that a professional be licensed and registered in order to practice.⁵

In addition, we noted that two architects who had frequently filed applications with DOB in the past held expired New York State registrations. After we brought this matter to the attention of DOB officials, they “restricted” the two architects from making additional filings.

Recommendation

13. DOB should develop and maintain a database of all registered architects and engineers that participate in the professional certification. The database should be updated periodically to reflect the State’s current list of licensed and registered engineers and architects.

DOB Response: “The Department has received lists of licensed and registered professionals from the New York State Department of Education. The Department is in the process of establishing a protocol with the New York State Department of Education by which we will receive these updates on a regular basis.”

14. DOB should ensure that it accepts applications only from registered architects and engineers. Any unregistered architects and engineers who file applications should be referred to the New York State Education Department for appropriate disciplinary action.

⁵ New York State Consolidated Laws, Title VIII, Article 130, Section 6502.1.

DOB Response: “The Department does not have the legal authority to require that a licensed professional who files with us be registered as well (See Building code section 27-232 with respect to “architect” and “engineer.”) Therefore, the Department cannot legally prevent licensed but non-registered professionals from filing applications. The Department does require the applicant to provide his or her professional license number, and is working with the State Education Department to obtain periodic updates of its licensing files. The Department's Investigations and Discipline Division does refer licensed but unregistered professionals to the State Education Department. The Department of Buildings is also considering proposing legislation to require registration as well as licensure for those architects and engineers filing with it.”

Auditor Comment: Although we agree that the Department does not have the legal authority to require architects or engineers to be registered, it obviously does have the obligation and right to accept applications only from registered professionals. According to the New York State Education Department, “a licensee signing and sealing documents which are filed with public officials, must be registered.” Therefore, by accepting an application from an applicant without checking their registration status, the Department creates an opportunity for an applicant to practice illegally. In fact, during the course of our audit, we notified the Department that three applicants who had frequently filed self-certified applications with DOB in the past held expired New York State registrations. DOB acknowledged this to be a problem because upon our notification, DOB informed us that “we have placed a hold on their filing privileges until they register. We will also begin a review of this conduct and refer this matter to the State’s OPD.” [Office of Professional Development]

**Appendix I
Percentage of Applications Professionally Certified
Fiscal Year 2001**

Borough	Total Applications	No. Professionally Certified Applications	Percent Professionally Certified
Manhattan	26,961	7,381	27.38
Bronx	4,445	604	13.59
Brooklyn	10,996	3,230	29.37
Queens	10,423	5,504	52.81
Staten Island	4,347	3,495	80.40
Citywide	57,172	20,214	35.36

**Appendix II
Sampled Professionally Certified Applications
Fiscal Year 2001**

DOB Audited		
Borough	Project Number	Job Type
Manhattan	102952388	Directive 14
	102549789	Directive 14
	102902469	Alteration I
	102907776	Alteration I
	102285411	Directive 14
	102556912	Directive 14
	102804832	Directive 14
	102916392	Directive 14
	102557341	Directive 14
	102740090	Directive 14
	102490412*	Alteration I
Bronx	200648228	Alteration I
	200673547	Directive 14
Brooklyn	301150144	Directive 14
	301090619	Directive 14
	301080309	New Building
Queens	401215644	Directive 14
	401175606	New Building
	401119552	New Building
	401221003	Directive 14
	401196709	Directive 14
Staten Island	500448090	Alteration I
	500414278	New Building
	500435415	New Building
	500444995	Directive 14

DOB Did Not Audit			
Borough	Project Number	Job Type	
Manhattan	102523770	Directive 14	
	102580878	Directive 14	
	102738067	Directive 14	
	102900014	Directive 14	
	102340726	Directive 14	
	102486098	Directive 14	
	102695399	Directive 14	
	102694924	Directive 14	
	102740571	Directive 14	
	102525750	Directive 14	
	102950371	Directive 14	
	102906866	New Building	
	102926336	Directive 14	
	102522986	Directive 14	
	102592197	Directive 14	
	102586088*	Alteration I	
	102940365*	Alteration I	
	Bronx	200649334	New Building
		200615815	New Building
	Brooklyn	301178730	Alteration I
301096971		Directive 14	
301082717		New Building	
301154462		Directive 14	
301152302		New Building	
301107647		New Building	
301128624		Directive 14	
301159323		Directive 14	
301078839		Alteration I	
401220102		Directive 14	
401132083		Alteration I	
401275614		Directive 14	
401223118		Directive 14	
401249494	New Building		
401136132	Directive 14		
401253745	Directive 14		
401183143	Alteration I		
401247236	Directive 14		
401179835	Directive 14		
401224929	Directive 14		
401166714	Alteration I		
401138023	Directive 14		
Staten Island	500391658	New Building	
	500464632	New Building	
	500311441	Directive 14	
	500464829	Directive 14	
	500424249	New Building	
	500478752	New Building	
500467112	New Building		

Note: * indicates additional job type Alteration I application selected for review (one DOB audited and two DOB un-audited)



EXECUTIVE OFFICES
280 Broadway, New York, NY 10007-1801
website:NYC.gov/buildings
Patricia J. Lancaster, A.I.A., Commissioner

Julie M. Lubin
Director
Program Management and Analysis
(212) 566-3529
(212) 566-3877 Fax
Email: juliel@buildings.nyc.gov

March 21, 2003

Greg Brooks
Deputy Comptroller
Policy, Audits, Accountancy & Contracts
N.Y.C. Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Audit Report of the Internal Audit Review of Professionally Certified Building Applications by the Department of Buildings

Dear Mr. Brooks:

I am writing in response to the recommendations stated in your draft report on the above-referenced audit. The Department of Buildings' responses to each recommendation are as follows:

Finding:

Professional certification process needs improvement.

Auditor Recommendation #1

Provide appropriate training to plan examiners to help ensure that they issue ten-day notices when required.

Agency Response:

The Department of Buildings agrees with this recommendation. During the course of this audit, FY 01 (July 1, 2000 through June 30, 2001), the Department provided training to its plan examiners. In September 2002, the Department reorganized its Technical Compliance Unit (TCU) which is now responsible for all auditing of professionally certified applications. Plan examiners assigned to TCU are known as auditors, and report centrally to the Executive Director of TCU, even though they are located in five borough offices. The auditors receive additional training that specifically addresses issues pertaining to post-approval review of

professionally certified applications. Our training program for auditors is ongoing, with training sessions taking place every two weeks. Auditors receive training on applying the rules and regulations in the Building Code, Zoning Resolution and other applicable laws, as well as on when to recommend that the Borough Commissioners issue ten-day notices.

Auditor Recommendation #2

Ensure that all audit reviews performed by DOB are carefully reviewed by supervisory personnel to ensure that all errors are identified, reported and corrected.

Agency Response:

The Department agrees that audits should be reviewed by supervisory personnel. The Technical Compliance Unit (TCU) is comprised of experienced auditors. Furthermore, TCU's Executive Director and Assistant Director review all failure recommendations generated by the unit's auditors. The Executive Director and Assistant Director also perform spot audits of professionally certified applications audited by their staff, and review other applications in the course of responding to requests for reconsideration generated by an auditor's objections.

When an audit results in a permit revocation, the application is reassigned to a plan examiner in a borough office, the applicant is prohibited from further professional certification with respect to that job, and may only continue through regular plan examination.

Auditor Recommendation #3

Consider implementing pre-qualification requirements (in addition to professional licensure) for applicants who want to professionally certify. As part of these requirements, prospective applicants could be required to pass a test on the building code and zoning resolution. In addition, DOB should require that participants in the professional certification program undergo regular training to maintain familiarity with revisions and changes to the building code, zoning resolution and DOB procedures.

Agency Response:

The Department does not agree with this recommendation because it not legally or operationally feasible. The creation of a pre-qualification requirement at this time would require extensive resources and pose significant legal issues for the Department. The Department's procedure for ensuring that the program be used by qualified, competent professionals is to perform random audits, and to vigorously prosecute and discipline those responsible for serious non-compliance. The Department also seeks to revoke professional certification privileges as appropriate, and makes referrals to the State Education Department as appropriate.

Auditor Recommendation #4

Ensure that all audits are done within 45 days of permit issuance, as required.

Agency Response:

Section 27-191 of the New York City Administrative Code requires the Department to approve or reject a job within 40 days of filing, and upon good cause, within an additional 20 days, for a possible total of 60 days. The Department expects to release a new Policy and Procedure Notice (PPN) regarding professional certification shortly, which will call for the Department to audit professionally certified applications within 40 days of filing or 10 business days of permit, whichever comes earlier. The Technical Compliance Unit (TCU) is now responsible for performing all audits of professionally certified applications.

Finding:

Inconsistent treatment of serious problems on applications.

Auditor Recommendation #5

Develop a citywide standard and implement formal guidelines for determining whether problems on applications are serious and require the issuance of a ten-day notice.

Agency Response:

The Department disagrees with this recommendation. The Department enforces all applicable laws, including the Building Code and Zoning Resolution, when reviewing and auditing applications. DOB's policy (see OPPN #5/02) is to audit professionally certified applications in four areas: zoning, fire protection, egress and appropriateness of fees.

Auditor Recommendation #6

Provide additional training to plan examiners on the application of the new guidelines.

Agency Response:

The Department does not believe that new formal guidelines are appropriate, however, because its Technical Compliance Unit is now centralized and provides biweekly training sessions, including case studies and lectures, it is developing consistency in audits citywide.

Auditor Recommendation #7

Ensure that the plan examiners consistently follow the new guidelines.

Agency Response:

The Department ensures consistency among audits through ongoing bi-weekly training and through supervisory spot audits of auditors' work.

Finding:

Lack of formal procedures for selecting applications for audit.

Auditor Recommendation #8

Issue guidelines that specify how borough offices are to select applications for audit. If the guidelines allow for any other method other than strictly random selection, the guidelines should require that borough office personnel document the reasons for selecting the applications (e.g., a problem applicant). In this regard, DOB should develop and institute an audit tracking system that could be accessed by each borough office and would show the application histories of each applicant.

Agency Response:

The borough offices are no longer involved or responsible for the selection of applications for audit. This responsibility presently belongs to the Executive Director of the Technical Compliance Unit (TCU), who selects every 5th application from a computer-generated list, resulting in a random audit of 20% of all professionally certified jobs. The process will be automated in the future. TCU currently maintains an audit tracking system which can be sorted for applicant as well as other variables. The information in the database will be available to staff in DOB borough offices in the near future.

The borough offices may choose to audit applications submitted in response to complaints, but such audits are not be considered part of the audit program, and are done in addition to the random 20% audit performed by TCU.

Auditor Recommendation #9

Ensure that the borough offices comply with the agency guidelines.

Agency Response:

As noted in #8 above, the Technical Compliance Unit (TCU) complies with the agency's selection criteria of professionally certified applications. The borough offices are no longer responsible for selecting or performing audits. The Executive Director of TCU selects the applications to be audited by each auditor for each of the individual boroughs.

The auditors in the Technical Compliance Unit, who have their offices within the respective boroughs, conduct audits of the applications to which they have been assigned by the Executive Director.

Finding:

Lack of formal guidelines for initiating investigations.

Auditor Recommendation #10

DOB should develop and implement guidelines and a formal process for the borough offices to follow when identifying applicants for referral to the Office of Investigations, Audit and Discipline.

Agency Response:

The Department agrees with this recommendation. In September 2002, TCU began referring all failed audits to the Department's Office of Investigations and Discipline (formerly known as Office of Investigations, Audits and Discipline) for evaluation.

Auditor Recommendation #11

DOB should develop and implement guidelines and a formal process for the Office of Investigations, Audits and Discipline to follow when selecting applications for investigation. In this regard, the Office of Investigations, Audits and Discipline should use a tracking system (in recommendation #8) to help identify applicants to be investigated.

Agency Response:

The Office of Investigations and Discipline (IAD) does not select applications for investigations. Failed audits are referred to IAD, which evaluates each case for purposes of disciplinary action.

Finding:

Lack of Fee Estimators.

Auditor Recommendation #12

DOB should periodically ensure that borough offices have technical personnel assigned to review cost estimates.

Agency Response:

The agency agrees and fee estimators have been assigned to review cost estimates in each of the boroughs. At the time of this audit, only two boroughs employed fee estimators. At

present every borough has at least one fee estimator on its staff. Manhattan has four estimators, the Bronx currently has one fee estimator, Brooklyn has three estimators, Queens currently has one fee estimator and Staten Island has one fee estimator. The Technical Compliance Unit reviews professionally certified applications for appropriateness of fees, and if it issues an objection on this basis, the application is referred to a fee estimator in the appropriate borough office.

Finding:

Registration status of professionals should be verified.

Auditor Recommendation #13

DOB should maintain a database of all registered architects and engineers that participate in the professional certification. The database should be updated periodically to reflect the State's current list of licensed and registered engineers and architects.

Agency Response:

The Department has received lists of licensed and registered professionals from the New York State Department of Education. The Department is in the process of establishing a protocol with the New York State Department of Education by which we will receive these updates on regular basis.

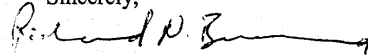
Auditor Recommendation #14

DOB should ensure that it accepts applications only from registered architects and engineers. Any unregistered architects and engineers who file applications should be referred to the New York State Education Department for appropriate disciplinary action.

Agency Response:

The Department does not have the legal authority to require that a licensed professional who files with us be registered as well. (See Building Code section 27-232 with respect to "architect" and "engineer.") Therefore, the Department cannot legally prevent licensed but non-registered professionals from filing applications. The Department does require the applicant to provide his or her professional license number, and is working with State Education Department to obtain periodic updates of its licensing files. The Department's Investigations and Discipline Division does refer licensed but unregistered professionals to the State Education Department. The Department of Buildings is also considering proposing legislation to require registration as well as licensure for those architects and engineers filing with it.

Sincerely,



Richard N. Bernard