



City of New York

OFFICE OF THE COMPTROLLER

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MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of
Housing Preservation and
Development's Alternative Enforcement
Program

MD12-084A

April 9, 2013

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
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NEW YORK, N.Y. 10007-2341

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April 9, 2013

To the Residents of the City of New York:

My office has audited the Department of Housing Preservation and Development (HPD) to determine whether it has complied with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011, and Section 27-2153 of the Administrative Code. We perform audits such as this to ensure that City agencies are complying with City laws.

In November 2007, HPD implemented the Alternative Enforcement Program (AEP), which was created by Local Law No. 29 of 2007 and amended in January 2011 by Local Law No. 7 of 2011, in an effort to increase pressure on landlords of the City's worst buildings to correct housing code violations and the conditions that caused the violations.

The audit found that HPD complied with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011, and Section 27-2153 of the Administrative Code, except for performing the required quarterly monitoring of the buildings that were discharged for compliance within four months from being identified for the program. Specifically, there was limited evidence that HPD adequately monitored all buildings that were discharged for compliance within four months from the owners' notification of their buildings' participation in the AEP. In addition, the audit found that HPD did not ensure that a building's compliance with all AEP criteria was always documented.

To address these issues, the audit recommended that HPD ensure that building summary information is generated at the time of discharge and maintained for each discharged building. The audit also recommended that HPD ensure that all buildings discharged for compliance from the AEP within the first four months are appropriately monitored and that the monitoring is sufficiently documented.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the Department of Housing Preservation and Development's Alternative Enforcement Program

MD12-084A

AUDIT REPORT IN BRIEF

The Department of Housing Preservation and Development (HPD) is the largest municipal developer of affordable housing in the nation. In November 2007, HPD implemented the Alternative Enforcement Program (AEP), which was created by Local Law No. 29 of 2007 and amended in January 2011 by Local Law No. 7 of 2011, in an effort to increase pressure on landlords of the City's worst buildings to correct housing code violations and the conditions that caused the violations.

The AEP is intended to improve conditions in buildings with multiple dwelling units (buildings)¹ with serious physical deterioration by ensuring that emergency conditions are corrected and that underlying physical conditions related to housing code violations are addressed either by the owner or by HPD. The criteria for identifying the buildings that will participate in the AEP are set forth in §27-2153 (Alternative Enforcement Program) of the New York City Administrative Code. For a building to be discharged early from the AEP (within the first four months of being selected), owners must apply for an AEP Dismissal Request Inspection, correct the cited violations, provide required documentation to the City, and either pay all outstanding charges, including liens, for emergency repair work performed by HPD or enter into an agreement with the Department of Finance (DOF) to pay such charges and liens.

Audit Findings and Conclusions

HPD complied with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011, and Section 27-2153 of the Administrative Code, except for performing the required quarterly monitoring of the buildings that were discharged for compliance within four months from being identified for the program.

¹ Buildings with multiple dwelling units are buildings that have three or more dwelling units (three family or more).

HPD generally complied with the provisions relating to the building selection for participation in the AEP; notification to the building owners and tenants; and discharging for compliance only those buildings that met the criteria established by the local law. In addition, HPD complied with the provision to perform building-wide inspections of the buildings that were not discharged from the program within four months. Finally, HPD prepared and submitted the required reports to the City Council documenting the results of the AEP program and performed a study evaluating the effectiveness of the AEP, as required.

However, HPD did not ensure that a building's compliance with all AEP criteria was documented for eight (20 percent) of the 40 sampled discharged buildings from Rounds 2 and 4. In addition, there is limited evidence that HPD adequately monitored all buildings that were discharged for compliance within four months from the owners' notification of their buildings' participation in the AEP. We found no evidence that some of the quarterly monitoring required by the local law was performed for a quarter of the 35 sampled buildings discharged for compliance within the first four months.

Audit Recommendations

To address the audit issues, we recommend that HPD officials should:

- Ensure that building summary information is generated for each discharged building at the time of discharge and maintained to document the building's compliance with discharge requirements, including payment of the emergency repair charges.
- Ensure that all buildings discharged for compliance from the AEP within the first four months are referred to the appropriate unit to be monitored at a minimum of every three months for at least one year from their discharge date and that the required monitoring is sufficiently documented.

Agency Response

In their response, HPD officials agreed with the audit's findings and recommendations.

INTRODUCTION

Background

HPD is the largest municipal developer of affordable housing in the nation. HPD strives to improve the availability, affordability, and quality of housing in New York City and works with private, public, and community partners to expand the supply and affordability of the City's housing stock. In November 2007, HPD implemented the AEP, which was created by Local Law No. 29 of 2007 and amended in January 2011 by Local Law No. 7 of 2011, in an effort to increase pressure on landlords of the City's worst buildings to correct housing code violations and the conditions that caused the violations.

The AEP is intended to improve conditions in buildings with serious physical deterioration by ensuring that emergency conditions are corrected and that underlying physical conditions related to housing code violations are addressed either by the owner or by HPD. The AEP focuses on a small group of the City's most poorly maintained buildings, targeting 200 new buildings each year that are responsible for a disproportionate percentage of the City's most serious current housing violations. The criteria for identifying the buildings that will participate in the AEP are set forth in §27-2153 (Alternative Enforcement Program) of the New York City Administrative Code and include a number of class "B" hazardous and class "C" immediately hazardous violations issued by HPD² within the previous two years and the amount of Emergency Repair Program (ERP) charges—including liens—incurred by HPD and owed to the City. (See the Appendix for the complete list of the building selection criteria.)

In order for a building to be discharged early from the AEP (within the first four months of being selected), owners must apply for an AEP Dismissal Request Inspection, correct the cited violations, provide required documentation to the City, and either pay all outstanding charges, including liens, for emergency repair work performed by HPD or enter into an agreement with DOF to pay such charges and liens. Buildings that are not discharged within the first four months of the initial HPD notice will be subject to building-wide inspections, fees, and extensive repair work by HPD to correct violations and underlying conditions.³

As part of its AEP responsibilities under the local law, HPD is required to:

- Identify no fewer than 200 different distressed buildings each year for participation in the AEP using the criteria established by law;
- Provide written notification to the owner and to the occupants of the building that it has been selected for AEP participation and is subject to the requirements of the program;

² Class "B" violations are hazardous violations, such as requiring public doors to be self-closing, adequate lighting in public areas, or existence of vermin, which must be corrected by the owners within 30 days and the correction certified within two weeks to remove the violation. Class "C" violations are immediately hazardous violations, such as lack of heat and hot water, which must be immediately corrected, and inadequate fire exits, rodents, and lack of electricity or gas, which must be corrected by the owners within 24 hours. All class "C" violations must have the correction certified within five days in order for the violation to be removed.

³ An "underlying condition" is a physical defect or failure of a building system that is causing or has caused a violation such as, but not limited to, a structural defect or failure of a heating or plumbing system.

- Perform the required dismissal request inspections and discharge only those AEP buildings that meet established criteria within four months from being identified for the program;
- Continue to monitor, for a frequency of no less than every three months for a period of at least one year, those buildings that were discharged for compliance within four months to ensure continued compliance;
- Perform building-wide inspections of the buildings that were not discharged from the program within four months due to the owner's failure to correct the existing violations and/or pay all outstanding charges or enter into a payment agreement to pay such charges;
- Issue an order to the owners of the buildings that had a building-wide inspection to correct existing violations and to repair the related underlying conditions; and
- Prepare a scope of work, within 30 days of the filing of the order to the county clerk, that is necessary to correct the violations and repair the related underlying conditions specified in the order, and make the necessary repairs

In addition, according to §27-2153(s) of the Administrative Code, HPD is required to prepare and submit to the City Council on or before February 15 of each year a report on the cumulative results of the AEP since the program began, and is required to conduct a study, no later than July 31, 2012, that evaluates the effectiveness of the AEP, in accordance with §27-2153(v) of the Administrative Code.

According to HPD's *Alternative Enforcement Program: 5 Year Report 2007- 2012*, there have been 800 buildings that have gone through at least one full year in the AEP, in which the City has spent \$23.5 million making repairs and providing basic utility services. HPD also reported that the City has collected approximately \$20 million in ERP and AEP charges and fees from building owners.

Objective

The objective of this audit was to determine whether HPD complied with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011, and Section 27-2153 of the Administrative Code.

Scope and Methodology Statement

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 primary audit scope was Fiscal Year 2011 to the present. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD officials and discussed at an exit conference on December 19, 2012. On January 9, 2013, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD officials on January 24, 2013. In their response, HPD officials agreed with the audit's findings and recommendations.

The full text of the HPD response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

HPD complied with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011, and Section 27-2153 of the Administrative Code, except for performing the required quarterly monitoring of the buildings that were discharged for compliance within four months from being identified for the program. In addition, we found a lack of documentation illustrating that all criteria were met for AEP buildings that were discharged for compliance. This documentation was needed to specifically confirm that the discharged buildings had corrected the required percentage of violations and paid all outstanding charges including liens, or as applicable, entered into an agreement with DOF to pay such outstanding charges and liens.

HPD generally complied with the provisions relating to the building selection for participation in the AEP; notification to the building owners and tenants; and discharging for compliance only those buildings that met the criteria established by the local law. In addition, HPD complied with the provision to perform building-wide inspections of the buildings that were not discharged from the program within four months, including issuing orders to correct to the owners and preparing scopes of work identifying the underlying conditions requiring repair. Finally, HPD prepared and submitted the required reports to the City Council documenting the results of the AEP program and performed a study evaluating the effectiveness of the AEP, as required.

However, HPD did not ensure that a building's compliance with all AEP criteria was documented for eight (20 percent) of the 40 sampled discharged buildings from Rounds 2 and 4. In addition, there is limited evidence that HPD adequately monitored all buildings that were discharged for compliance within four months from the owners' notification of their buildings' participation in the AEP. Although HPD assigned the responsibility—and the AEP unit generally referred the appropriate buildings that were discharged for compliance—to its Division of Neighborhood Preservation (DNP) unit, we found no evidence that some of the quarterly monitoring required by the local law was performed for a quarter of the 35 sampled buildings discharged for compliance within the first four months.

In addition, our review of the current counts of “B” and “C” violations for a sample of 147 AEP buildings determined that the number of these violations has generally decreased over time since the buildings' AEP participation dates. As reflected in HPD's database, of the 147 buildings that participated in the AEP during 2008 through 2011, 132 (90 percent) had fewer violations in 2012 than when HPD selected them for participation.

These weaknesses are discussed in detail in the following sections of this report.

Documentation of Compliance Criteria for Discharged AEP Buildings Not Always Found

The AEP files for buildings discharged for compliance did not always contain evidence documenting the buildings' compliance with the applicable criteria. As part of our review of the AEP program's compliance with the local law, we reviewed 83 building files (53 buildings selected in Round 4 and 30 buildings selected in Round 2), 40 buildings of which were discharged for compliance. Of these 40 discharged buildings, we found AEP Building Summary Reports (which document buildings' compliance status with the discharged requirements, including the balance of ERP charges) for 32 (80 percent) buildings that were generated on or close to the discharge date. There was evidence in the files that these 32 buildings did not have any outstanding emergency repair charges due at the time of discharge or the owner entered

into a payment agreement with DOF. However, without Building Summary Reports for the remaining eight (20 percent) buildings, we were unable to verify whether these buildings met the violation compliance requirements for discharge or had an ERP balance due at the time of discharge. Because HPD officials stated that the Building Summary Reports can only be generated for a current date, it is important for HPD to sufficiently document that buildings met all criteria, including payment of ERP charges, at the time of discharge.

We requested, and HPD created and provided us with, a schedule for all buildings discharged for compliance from Rounds 1 to 4. This schedule reportedly identified the compliance status of each building at the time of discharge, similar to the information that would have been present on the Building Summary Reports.

Of the 800 buildings selected for AEP participation during the first four years of the program, there were a total of 361 (45 percent) buildings that were discharged from the AEP for compliance as of May 2012. (Please refer to the Appendix for the compliance discharge criteria.) Our review of the provided schedule revealed that all 361 buildings appeared to have met the violation compliance requirements for discharge. However, we were unable to determine what the balances of ERP charges for these buildings were or the balances that HPD personnel were aware of at the time of discharge. According to the schedule, 50 buildings had outstanding ERP charges. However, HPD officials stated that these charges “may not accurately reflect what the program [AEP] viewed or documented when the building was approved for discharge....A DOF transaction may have occurred prior to discharge, but the information may not have been available to the program at the time of discharge.”

To provide us with reasonable assurance that these buildings did not have any outstanding emergency repair charges at the time of discharge, we reviewed the AEP files for seven of the 50 buildings with the highest outstanding charges (ranging from \$4,904 to \$19,665) and found evidence for all seven buildings indicating that there were either no ERP charges due at the time of discharge or that payments were made; however, only six were at the time of discharge. There was evidence for the remaining building indicating that the payment was not made until two weeks after the discharge date. On October 15, 2012, we asked HPD officials about this building that appeared to have been incorrectly discharged before all ERP balances were paid. On November 16, 2012, HPD officials responded that “AEP would not discharge a building for compliance with an ERP balance without proof of payment.” However, they were “unable to locate the proof of payment that was used to discharge the building from AEP.”

Recommendation

1. HPD officials should ensure that a Building Summary Report is generated for each discharged building at the time of discharge and maintained to document the building's compliance, including the emergency repair charges.

HPD Response: “As provided for in the AEP Procedures document given to the auditors, the staff of AEP is required to produce and put into the file a copy of the Building Summary report at the time that a building is being recommended for discharge. Since January 2011 the AEP Director and Community Coordinator Supervisor review each folder to make sure the required documents (including the copy of the bldg summary report) are in the folder. HPD formalized this requirement in January 2012 by establishing a checklist of required documents that must be signed off by the community coordinator and then the supervisor.”

Auditor Comment: We are pleased that HPD has modified its procedures and formalized the process of ensuring that Building Summary reports are generated at the time that a building is discharged and maintained in the building's file. However, we cannot confirm or comment on whether this procedure was actually being followed. During the course of the audit, although we asked HPD officials whether there was any formal review documenting that all buildings met the discharge criteria prior to being discharged, HPD officials never mentioned the checklist.

In addition, HPD officials did not mention the checklist at the exit conference and only said that the Building Summary report should have been generated and placed in the building files. Further, during our review of the AEP building files for three of our sampled buildings that were discharged after January 2012 (the date HPD formalized the use of the checklist), we did not find any checklists. HPD officials should confirm that this new procedure is being followed and that the checklist is being used, signed by the appropriate individuals, and placed in the buildings' files.

Lack of Evidence Documenting the Monitoring of Discharged Buildings

Evidence documenting HPD's performance of the required quarterly monitoring of buildings discharged for compliance within the first four months of a building's participation in the AEP was not always found. According to §27-2153(j) of the Administrative Code, HPD must continue to monitor buildings that were discharged from the AEP within the first four months of entering the program for a minimum of every three months for at least one year from the discharge date to ensure continued compliance. HPD's DNP unit is assigned the responsibility of performing this required monitoring. In particular, this monitoring is performed by the three DNP field offices, with each office overseeing and monitoring the conditions and activities of the buildings located within their jurisdiction throughout the five boroughs.

Each AEP building referred to DNP for monitoring receives an initial inspection (survey) of the building to assess the building's current condition and assigns the building one of five ratings, with a rating of at least a "Fair" being acceptable. According to DNP officials, buildings rated "Fair Minus" or "Poor" would typically receive additional physical visits.

In addition to visiting and performing a physical monitoring of the building, the Field Offices' directors informed us that they perform a data review of HPDInfo, which includes a review of the current violations, the date and condition of the last survey, and the current ERP balances. The directors use this information to determine whether additional physical monitoring is warranted. During the period audited, this review was not documented, so we are unable to determine the degree to which this data review was performed by the field offices. In March 2012, after the initiation of our audit and after our initial contact with the DNP field offices when this topic was first discussed, DNP started documenting the performance of this data review in HPDInfo. A new monitoring category was added to HPDInfo called "Data Review Completed, No Monitoring Required" that the Field Office Directors can select. This allows them to update the status of a building indicating that a review was performed, but no physical monitoring was necessary.

From our sample of 35 discharged buildings referred to the DNP field offices for quarterly monitoring, we found evidence that 26 (74 percent) buildings received the quarterly monitoring required for a year after being discharged. The remaining nine (26 percent) buildings lacked evidence that they received the required monitoring in all four quarters; of the 36 quarterly monitorings required, there was no evidence that 11 of them were performed. HPD officials

stated that nine of these required monitorings were performed, but acknowledged that these were data reviews. Because DNP personnel did not document the reviews when they were performed, we are unable to corroborate that these reviews took place.

In addition, from our AEP file review for our sampled Round 2 buildings, we identified one building that was not forwarded to DNP and it, therefore, did not receive any monitoring. When questioned, HPD officials informed us that “DNP had no record of ever receiving the AEP Discharge Notice instructing it to proceed with monitoring. As such, the building was not monitored every three months upon discharge, nor was it included in any of the Excel spreadsheets that were maintained to track DNP’s monitoring.” HPD officials stated that a new report, developed in March 2012, was designed specifically to track AEP buildings that were referred to DNP for monitoring and is now part of their standard procedure, which should prevent delays in monitoring going forward.

It is important for HPD to ensure that all buildings discharged within the first four months of entering the AEP are referred to DNP for the required quarterly monitoring to ensure continued compliance and that HPD maintains evidence that the monitoring is conducted.

Recommendation

2. HPD officials should ensure that all buildings discharged for compliance from the AEP within the first four months are referred to the appropriate unit to be monitored at a minimum of every three months for at least one year from their discharge date, and that the required monitoring is sufficiently documented.

HPD Response: “As required by law, HPD must conduct quarterly monitoring of all buildings discharged within the first four months of discharge. As noted by the auditors, HPD has already created a report (March 2012) which was designed specifically to identify buildings referred to the Division of Neighborhood Preservation (DNP) for monitoring. . . .This will assist in assuring that all buildings are appropriately tracked into the DNP monitoring pipeline.

“...prior to the audit, HPD was not documenting the non-field review in the same database where physical monitoring is documented or in an auditable systematic way. . . .Since the auditors identified this issue, during the course of the audit (March 2012), HPD has modified its database and procedure to document the paper review.”

Evaluation of the AEP by HPD

HPD performed a study evaluating the effectiveness of the AEP as required by §27-2153(v) of the Administrative Code.

We requested and reviewed a copy of the study from HPD and determined that HPD did complete the study by July 31, 2012, and the study generally reported on the minimum requirements set forth in the Administrative Code. Overall, HPD concluded that the program can be effective in improving conditions, especially for larger buildings. HPD found that owners of large properties generally responded quickly and effectively to the threat of penalties and to HPD’s orders to correct existing violations and to repair the related underlying conditions. However, HPD determined the program was not as effective for small buildings, in part because the owners of the small buildings most likely would not have the financial means to make the

repairs required by the program and the fees incurred from the program would drive the owners further into debt. Where our testing overlapped with HPD's analysis, our test results do not contradict HPD's conclusions. A majority of the active AEP buildings are smaller buildings. As of May 2012, we found that 231 (62 percent) of the 371 active AEP buildings were smaller buildings having three to five dwelling units.

Other Issue

Building Conditions Appear to Have Improved for the Majority of AEP Buildings

Overall, the building conditions for a majority of the AEP buildings appear to have improved since the program's inception. Based on our review of HPD's data, the number of AEP buildings meeting the criteria for early discharge has increased with each passing round. Only 13 percent of the buildings selected in Round 1 met the criteria for early discharge (within the first four months), whereas in Round 4, nearly half of selected buildings qualified for early discharge. This increase may be attributed, in part, to owners being able to enter into a payment agreement with DOF (as of January 2011) rather than having to pay all fines prior to discharge. In addition, this increase may suggest that building owners are becoming more aware and receptive towards the AEP and the benefits of complying with its requirements. Owners might be more encouraged to make the necessary repairs in a timely manner to avoid the costly fees for remaining in the program. According to HPD's *Alternative Enforcement Program: 5 Year Report 2007- 2012*, the amount of AEP fees imposed on owners has generally decreased each year of the program, with \$1.4 million in Round 1 to only nearly \$600,000 in Round 4, indicating that buildings are being discharged before the four months and before the additional AEP fees are imposed by HPD.

In addition, we determined that the number of "B" and "C" violations have decreased over time for a large percentage of our sampled AEP buildings from the AEP participation date. Of the 147 sampled buildings, we found that 132 (90 percent) buildings had a decrease in the number of "B" and "C" violations (120 discharged and 12 active buildings). Of the 147 buildings, 132 had fewer violations in 2012, as reflected in HPD's database, than when HPD selected them for participation in the AEP during 2008 to 2011. These 132 buildings consist of 33 Round 1 buildings, 23 Round 2 buildings, 23 Round 3 buildings, and 53 Round 4 buildings. In general, it appears that the tenants of the AEP buildings seem to be better off with the creation of the AEP, and that, most importantly, the intent of the law is being addressed and owners are correcting the violations, thereby improving the conditions of the buildings and providing a safer environment for the tenants.

DETAILED 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 primary audit scope was Fiscal Year 2011 to the present. For certain tests, we also reviewed information from Fiscal Year 2008, when the AEP began, to Fiscal Year 2011.

To obtain an understanding of the policies, procedures, and regulations governing HPD's Alternative Enforcement Program (AEP), we reviewed and used as criteria:

- New York City (NYC) Local Law #29 of 2007;
- NYC Local Law #7 of 2011;
- Title 28 of the Rules of the City of New York Chapter 36, NYC Administrative Code §27-2153;
- Housing Maintenance Code Section 27-2143 through 2148;
- AEP Procedures Manual (September 2007);
- AEP Procedural Changes Manual (January 2011, February 2011, and March 2011);
- AEP Forms and Notices;
- DNP's Survey Guidelines and Treatment Options; and
- Information from HPD's website relating to the AEP.

To further our understanding of HPD's operations over the AEP and the related controls that were significant to our audit and to help achieve our objective, we interviewed the Chief of Staff of the Office of Enforcement and Neighborhood Services, the Assistant Commissioner of Division of Special Enforcement, and the Director of the AEP. We also interviewed the Assistant to the Chief of Staff to obtain an understanding of HPD's process to identify the buildings selected for AEP participation. In addition, to obtain an understanding of HPD's monitoring of AEP buildings discharged within the first four months of the program, we interviewed the DNP's Assistant Commissioner, the Director of Field Operations, and the three Field Office Directors.

We requested and obtained from HPD in January 2012 a listing of all buildings chosen for AEP participation with their current status in the AEP program. The listing contained buildings identified during Fiscal Years 2008 through 2011, the first four rounds of the program. Each round contained 200 buildings for a total of 800 buildings selected for AEP participation. As of March 2012, there were 371 (46 percent) buildings that were still active in the program and 429 (54 percent) buildings discharged from the AEP. Of the 429 buildings that were discharged, 361 (84 percent) were discharged for compliance and 68 (16 percent) were discharged for reasons

other than compliance, such as buildings that had a 7A administrative appointment⁴ or buildings that became vacant. Table I shows the number of active and discharged buildings as of March 2012 from Rounds 1 through 4.

TABLE I
Number of Active and Discharged Buildings from Rounds 1 through 4

Round	Number of AEP Buildings Selected	AEP Building Status, as of March 2012		Reason for Building Discharge		
		Active	Discharged	Compliance within first 4 months	Compliance after first 4 months	Other than Compliance
1	200	66	134	26	73	35
2	200	96	104	40	43	21
3	200	110	90	52	28	10
4	200	99	101	98	1	2
TOTAL	800	371	429	216	145	68

To verify the accuracy of the provided list and to determine whether HPD selected the correct 200 buildings for each round, we requested and received copies of the Microsoft Access database queries and tables used by HPD in selecting the buildings for Rounds 1 through 4. The Access databases contained building information, such as the violations issued to the buildings, including the violation date and violation type (ex. "B" and "C"), the total number of "B" and "C" violations as of the query date, building units, and ERP charges. As part of our data accuracy testing, we reviewed the queries and criteria used by HPD to determine whether the desired results would be achieved and also re-performed the queries using HPD's data in the provided databases to determine whether buildings were appropriately selected for AEP participation using the selection criteria. In addition, to determine whether HPD is reporting the same buildings selected for AEP participation, we compared the AEP building lists (located on HPD's website), the AEP City Council Report listing (also located on HPD's website), and the Excel listings provided to our office.

We selected a number of different samples of buildings from all four rounds, as detailed in Table II, and as discussed in greater detail in the text following the table.

⁴ Buildings going through 7A Administration have administrators appointed by the Court (pursuant to New York State Law) to operate privately owned buildings that have been abandoned by their owners, resulting in conditions that are dangerous to the tenants' life, health, and safety. The administrators act under Court Order to collect rents and use the money to provide essential services to the tenants and make necessary repairs.

TABLE II
Sampling Selection

Test Performed	Number of Buildings Included in the Sample from the following Rounds:				
	Round 1	Round 2	Round 3	Round 4	Total Sample
Major Milestones	0	30	0	53	83
Presence of AEP Building Summary Report for discharged buildings	0	12	0	28	40
Quarterly monitoring of buildings discharged within the first 4 months	1	0	2	32	35
Conditions improved or worsened for AEP buildings	33	25	26	63	147

To determine whether HPD adhered to the major milestones (requirements) of the local laws and Administrative Code and performed the key requirements within established timeframes, we reviewed the AEP building files and AEP-related information recorded in HPDInfo for a sample of 83 buildings (53 from Round 4 and 30 from Round 2). As part of our preliminary testing to determine whether HPD performed the major milestones in a timely manner and to provide us with an understanding of HPD’s AEP files, we first separated the population of Round 4 buildings into three segments: (1) active buildings still in the AEP; (2) buildings that were discharged for compliance within the first four months; and (3) buildings that were discharged for compliance after the first four months. We then selected three buildings, one from each segment, and reviewed their AEP file—we randomly selected two buildings (one from the 99 active buildings and one from the 98 buildings that were discharged within the first four months) and we selected the only building that was discharged after the four-month period at the time of our sample selection. During our fieldwork testing, we randomly selected an additional 50 buildings from Round 4 (for a total of 53 Round 4 buildings) and randomly selected 30 buildings from Round 2.

For the 83 sampled buildings, we reviewed the AEP files and HPDInfo to determine whether there was evidence of key AEP documents and performance of key AEP-related events, such as the mailing of AEP Form #1 Notice to Owner; the posting of AEP Form #3 Notice to Tenants with the accompanying affidavit; Inspection Form applicable to buildings in which the owners requested their building be discharged within the first four months of the program; a Discharge or Failure to Discharge notice; Order to Correct; Scope of Work; and DNP Referral. In addition, for all 40 of the 83 sampled buildings that were discharged for compliance, we reviewed the AEP files to determine whether an AEP Building Summary Report was present documenting a building’s compliance with the discharge requirements, including the violation compliance requirement and the ERP balance, at the time of discharge.

Because an AEP Building Summary Report, generated at the time of discharge, was not present in all reviewed files to document a building’s compliance, we requested and HPD provided us with a building discharge compliance summary schedule for all 361 discharged buildings identifying the compliance status of each discharged building at the time of discharge. The schedule included similar information found on the Building Summary Report, such as the building’s heat and hot water violation compliance, mold violation compliance, and ERP

balances. The missing Building Summary Reports could not be generated at the time of our review to identify the building status at the time of discharge because the report can only show this information as of the date the report is generated. To provide us with the violation information and the emergency repair charges at the time of the discharge date, HPD created queries to extract the necessary data from HPDInfo. We did not, and were not able to, verify the accuracy of the information provided for all 361 buildings on the schedule. For 16 of our sampled discharged buildings that had a Building Summary Report in the AEP building file (that was generated on or close to the discharge date indicating compliance), we compared the information from this report with the information on the provided schedule and found the violation information and emergency repair charges generally agreed.

We reviewed the Discharge Compliance Summary for all 361 buildings that were discharged for compliance to determine whether the buildings met the major compliance requirements for discharge. We verified whether the buildings met the violation compliance percentages at the time of discharge.

We requested and received from HPD in January 2012 a listing of all the buildings that were discharged within the first four months and referred to the DNP for monitoring. The listing contained 216 (60 percent) of the 361 buildings discharged for compliance, consisting of 26 (12 percent) from Round 1, 40 (19 percent) from Round 2, 52 (24 percent) from Round 3, and 98 (45 percent) from Round 4. As part of our preliminary testing to provide us with an understanding of DNP's files and to determine whether DNP complied with quarterly monitoring for the AEP referred buildings for at least one year, as required by the Administrative Code, we randomly selected five of the 216 discharged buildings (for compliance within the first four months). During our fieldwork, we randomly selected an additional 30 (31 percent) of the 98 Round 4 discharged buildings that were referred to DNP.

To determine whether HPD conducted a study by July 31, 2012, evaluating the effectiveness of the AEP, we requested and received a copy of this report. We reviewed the study to determine whether HPD reported on the criteria set forth in the Administrative Code.

To determine whether the building conditions have improved or worsened over time while in the AEP, we compared the current violation counts of "B" and "C" violations identified in HPDInfo to the violation counts of the "B" and "C" violations at the time of AEP participation for 147 sampled buildings from the 732 active buildings and buildings that were discharged for compliance. These 147 buildings represent 126 discharged and 21 active buildings at the time of our review, and consist of 33 from Round 1, 25 from Round 2, 26 from Round 3, and 63 from Round 4. We randomly selected the 147 sampled buildings from Rounds 1 to 4 as follows:

- 10 buildings from each round for a total of 40 buildings;
- 35 buildings referred to the DNP for monitoring, consisting of one Round 1 building, two Round 3 buildings, and 32 Round 4 buildings; and
- 72 buildings from the 361 buildings discharged for compliance, consisting of 22 Round 1 buildings, 15 Round 2 buildings, 14 Round 3 buildings, and 21 Round 4 buildings.

The test results of our various samples, while not projected to their respective populations, provide a reasonable basis for us to determine whether HPD has adequate controls over properly selecting the buildings into the AEP; monitoring buildings while in the AEP and in the DNP unit, when applicable; and properly discharging buildings based on the Administrative Code requirements.

Selection and Discharge Criteria for AEP Buildings

1. Selection Criteria for AEP Participation:

In Round 1 and Round 2, the selection criteria for the AEP were:

- 27 or more open class “B” (hazardous) & “C” (immediately hazardous) violations issued in the past two years, AND
- a ratio of five or more open class “B” & “C” violations per dwelling unit issued in the past two years, AND
- Unpaid ERP charges, including liens, in a ratio of at least \$100 per dwelling unit incurred in the past two years.

For Round 3, the selection criteria for the AEP were:

- 25 or more open class “B” (hazardous) & “C” (immediately hazardous) violations issued in the past two years, AND
- a ratio of five or more open class “B” & “C” violations per dwelling unit issued in the past two years, AND
- Unpaid ERP charges, including liens, in a ratio of at least \$100 per dwelling unit incurred in the past two years.

For Round 4 and each succeeding year, the selection criteria for the AEP are:

- For buildings with more than 3 dwelling units and less than 20 dwelling units, a ratio of five or more open class “B” & “C” violations per dwelling unit issued in the past two years AND \$2,500 in ERP charges, including liens, paid or unpaid incurred in the past two years.
- For buildings with at least 20 dwelling units, a ratio of three or more open class “B” & “C” violations per dwelling unit issued in the past two years, AND \$5,000 in ERP charges, including liens, paid or unpaid incurred in the past two years.

2. Compliance Discharge Criteria:

Effective January 31, 2011, for a building to be discharged for compliance from the AEP, the owner must:

- Correct 100 percent of violations directly related to heat and hot water;
- Correct 100 percent of class “C” (immediately hazardous) and a minimum of 80 percent of class “B” (hazardous) violations related to mold;
- Correct a minimum of 80 percent of violations related to vermin;
- Correct a minimum of 80 percent of all other class “B” (hazardous) and class “C” (immediately hazardous) violations;
- Submit a current and valid property registration statement;
- Correct all related underlying conditions detailed in the Order to Correct (for buildings not discharged in the first four months);
- Submit an Integrated Pest Management plan (when applicable); and
- Pay all outstanding charges, including liens, for emergency repair work performed by HPD or enter into an agreement with DOF to pay such charges and liens.



MATHEW M. WAMBUA
Commissioner

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

January 24, 2013

Ms. Tina Kim
Deputy Comptroller for Audits
Office of the New York City Comptroller
1 Centre Street –Room 1100N
New York, New York 10007-2341

Re: Audit of the Department of Housing Preservation and Development's Alternative Enforcement Program
Audit Number: MD12-084A

Dear Deputy Comptroller Kim:

The following represents the Department of Housing Preservation and Development's response to the recommendations contained in your audit of the Alternative Enforcement Program. As your office found, HPD takes its compliance with the key provisions of Local Law 29 of 2007, Local Law 7 of 2011 and Section 27-2153 of the Administrative Code very seriously. I wish to thank your office for the time and effort used into completing this audit.

If you have any additional questions, please call Assistant Commissioner Josh Cucchiaro at (212) 863-6610.

Thank you.

Sincerely,

Mathew M. Wambua

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NEW YORK CITY COMPTROLLERS AUDIT
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DEVELOPMENT
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January 24,2013

The Alternative Enforcement Program (AEP) is one of the Department of Housing Preservation and Development's (HPD) most focused and effective enforcement programs. When the program started in 2007, HPD invested significant resources - including investments in technology, training and personnel - to ensure that all legally mandated requirements were met and enforced. Discharge of properties from the program and monitoring of discharged buildings were key components that were given the highest scrutiny. HPD diligently ensured, with reviews from the staff assigned to the building, the Chief of the program, the Director of the program and the Associate Commissioner at that time to ensure that all criteria were met prior to discharge. Quarterly monitoring of the buildings discharged within the first four months to ensure that these buildings did not slide back into distress was vital to ensuring that the program would be successful and was strictly enforced. As recognized by this report, HPD has complied with all requirements of the law with a small number of discrepancies.

Throughout the existence of AEP, HPD has constantly made improvements and enhancements in the program and taken steps to ensure that all requirements are being met in all aspects of the program. Based on the findings of the auditors, HPD has during the course of the audit taken some steps to ensure that a proper audit trail is available. These steps are in compliance with the recommendations of the Comptroller's Office and are outlined below.

Recommendation:

- 1- HPD officials should ensure that a Building Summary report is generated for each discharged building at the time of discharge and maintained to document the building's compliance, including the emergency repair charges.

As provided for in the AEP Procedures document given to the auditors, the staff of AEP is required to produce and put into the file a copy of the Building Summary report at the time that a building is being recommended for discharge. Since January 2011 the AEP Director and Community Coordinator Supervisor review each folder to make sure the required documents (including the copy of the bldg summary report) are in the folder. HPD formalized this requirement in January 2012 by establishing a checklist of required documents that must be signed off by the community coordinator and then the supervisor.

2. HPD officials should ensure that all buildings discharged for compliance from the AEP within the first four months are referred to the appropriate unit to be monitored at a minimum of every three months for at least one year from their discharge date, and that the required monitoring is sufficiently monitored.



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As required by law, HPD must conduct quarterly monitoring of all buildings discharged within the first four months of discharge. As noted by the auditors, HPD has already created a report (March 2012) which was designed specifically to identify buildings referred to the Division of Neighborhood Preservation (DNP) for monitoring. The DNP Field Director can run this report as required, instead of relying solely on the individual e-mail/paper referrals from AEP to DNP. This will assist in assuring that all buildings are appropriately tracked into the DNP monitoring pipeline.

Regarding the issue of quarterly monitoring, HPD's procedure has been to have the DNP conduct a review of the violations issued and emergency repair activity quarterly, and if the paper review warrants it, to conduct a field review. However, prior to the audit, HPD was not documenting the non-field review in the same database where physical monitoring is documented or in an auditable systematic way, relying on the Field Director's communication with the Site Directors in each borough to ensure proper monitoring. Since the auditors identified this issue, during the course of the audit (March 2012), HPD has modified its database and procedure to document the paper review. Going forward, the quarterly review – whether monitoring of conditions via review of violations and emergency repairs only or by field visit – will be documented using the same methodology.

At this time, there are no outstanding findings.

HPD is proud of its success with AEP and is committed to continuing to enhance the program's ability to meet its goal of working with the most distressed buildings to improve living conditions for all tenants.



Agency Audit Response and Implementation Plan

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
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Audit Finding	Audit Recommendation and Agency Response	Corrective Action Plan
<p>Documentation of Compliance Criteria for Discharged AEP Buildings Not Always Found</p>	<p>1. Recommendation: HPD officials should ensure that a Building Summary Report is generated for each discharged building at the time of discharge and maintained to document the building's compliance, including the emergency repair charges.</p> <p>Agency Response: <i>(Only state whether you agree, disagree or partially agree)</i> Agree</p>	<p>1. Corrective Action: Since January 2011 the AEP Director and Community Coordinator Supervisor review each folder to make sure the required documents (including the copy of the bldg summary report) are in the folder. HPD formalized this requirement in January 2012 by establishing a checklist of required documents that must be signed off by the community coordinator and then the supervisor.</p> <p>Date Implemented: <i>(Specify target date)</i> January 2012</p>
<p>Lack of Evidence Documenting the Monitoring of Discharged Buildings</p>	<p>2. Recommendation: HPD officials should ensure that all buildings discharged for compliance from the AEP within the first four months are referred to the appropriate unit to be monitored at a minimum of every three months for at least one year from their discharge date, and that the required monitoring is sufficiently documented.</p> <p>Agency Response: Agree.</p>	<p>2. Corrective Action: HPD created a report in March 2012 designed specifically to identify buildings referred to the Division of Neighborhood Preservation (DNP) for monitoring instead of relying on the individual referrals from AEP to DNP. HPD modified it's database and procedure to document the paper review in March 2012. Going forward, the quarterly review – whether monitoring of conditions via review of violations and emergency repairs only or by field visit – will be documented using the same methodology.</p> <p>Date Implemented: Report implemented: March 2012. Documentation of paperwork review: March 2012</p>