

TESTIMONY OF DANIEL W. LUCAS, INSPECTOR GENERAL

**BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE**

**PUBLIC OVERSIGHT HEARING ON THE
“DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS:
CIVIL INFRACTIONS PROGRAM LACKED A STRONG INTERNAL
CONTROL ENVIRONMENT”**

June 25, 2019

Good afternoon Chairman Mendelson and Members of the Committee. I am Daniel W. Lucas, Inspector General for the District of Columbia. I am pleased to appear before the Committee to talk about the Office of the Inspector General’s recent report on the Department of Consumer and Regulatory Affairs’ (DCRA) Civil Infractions Program, which was published May 1, 2019, and is currently available on our website. Joining me today is Edward Farley, Assistant Inspector General for Inspections and Evaluations. Mr. Farley led the team that conducted this engagement at DCRA.

Project Background

As background, my Office identified this project in our *Fiscal Year 2018 Audit and Inspection Plan*. In preparing our plan, we considered both the Council’s and the Executive’s interests in specific agencies, programs, and projects; potential for

monetary savings; budget impact; potential for corruption; timeliness; and public interest. Due to this Committee's focus on DCRA, feedback from the public, recent OIG investigative outcomes, and prior inspection reporting, my team identified this project as a means to assess the efficiency and effectiveness of DCRA's processes for collecting fines and assessing penalties attached to violations of laws and regulations under its jurisdiction.

It is also of note that this project is the second project my Office conducted at DCRA within the past three fiscal years. In September 2017, we published the *Inspection of Illegal Construction Enforcement*. That report identified opportunities for DCRA to: (1) improve the configuration of DCRA's Accela information system to track illegal construction inspectors' performance, responsiveness, and workflow; (2) develop and document processes and procedures that standardize its response to allegations of illegal construction; (3) improve its measuring and monitoring of illegal construction complaint response and performance; and (4) increase staffing levels in order to meet after hour inspection demands. The findings we identified, as well as our recommendations in that report, are still relevant and should be considered as DCRA transforms under Director Chrappah's leadership.

DCRA and the Notice of Infraction (NOI) Process

As described on its website, DCRA's mission is to support "a thriving community of residents, businesses, and visitors through diligent protection of health and safety and equitable administration of regulation and compliance in [the] District."

In carrying out its mission, DCRA may impose monetary fines for various infractions, which include business and professional licensing violations, construction and housing code violations, and zoning infractions, as a means to enforce compliance with District regulations. When a violation is discovered, DCRA issues a Notice of Infraction (NOI), which charges a specific violation and seeks a fine. Respondents, the person or business entity DCRA believes to have committed the infraction, may either elect to: (1) admit to committing the infraction and pay the fine identified in the NOI; or (2) request a hearing at the Office of Administrative Hearings (OAH). OAH may: (1) find the respondent liable for the entirety of the fine proposed in the NOI; (2) reduce the amount of the fine; or (3) dismiss the NOI in its entirety. Should an NOI remain unpaid, Title 16 of the DCMR authorizes DCRA to collect interest as an additional penalty, provide respondents with an opportunity to pay fines in installments, or even suspend a license or permit.

Findings

To assess DCRA's efficiency and effectiveness in collecting fines and penalties, the OIG used the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (also known as "The Green Book").

The Green Book sets internal control standards for federal entities, and may be adopted by state and local entities as a framework for an internal control system.

Internal control is "a process used by management to help an entity achieve its objectives." Internal controls also help to assure accurate financial reporting and to prevent fraud, waste, and abuse.

Overall, the OIG found DCRA needs to improve its internal control environment with respect to its management of civil infractions. We found weaknesses in its control activities, most notably, a lack of policies and procedures related to key elements of their management and tracking of NOIs to final resolution. For example, Title 16 of the DCMR outlines how interest should accrue on unpaid NOIs; how liable respondents are afforded the opportunity to pay fines in installments; and how a respondent's failure to comply with an OAH decision that the respondent is liable, may result in the suspension of a license or permit. During the inspection, the OIG found DCRA lacked written procedures for

operationalizing these key elements of the DCMR. Further, in speaking with DCRA management and staff, we found no indication that DCRA has standard, accepted processes in place for complying with the aforementioned DCMR provisions. Failure to incorporate these DCMR requirements into DCRA's policies and procedures (1) reduces DCRA's ability to collect fines and penalties through offering repayment terms that are attractive to respondents, and (2) allows violations to continue unabated in the absence of a license or permit suspension.

I want to note that earlier this month, DCRA sent the OIG new standard operating procedures (SOP), which were dated February 2019. DCRA provided us this SOP after we issued our final report. My team is currently reviewing the SOP to determine whether it adequately addresses the conditions identified in our report.

Our report also discusses how DCRA must better leverage its information systems to ensure complete, accurate, and valid data related to its NOI processes. One of our goals at the outset of this project was to determine the universe of unresolved NOIs. In other words, we hoped to see the numbers and types of infractions, such as housing inspection infractions, illegal construction infractions, and vacant property infractions, which remain unpaid by liable parties. We felt that such an

analysis would help to inform not only DCRA's enforcement activities but also resource, policy, and legislative decision-making. During our fieldwork, we found that DCRA employees enter NOI data into both a Quickbase software database and the Accela information technology system. However, DCRA's NOI data entry processes are not documented, and during fieldwork we were unable to obtain a clear explanation of how or why DCRA employees use these two separate systems to capture information about NOI issuance and outcomes. Ultimately, in response to our requests for reports detailing the number and types of unresolved NOIs, DCRA's then Chief Information Officer/IT Director told us: "DCRA's Office of Information [S]ystems does not have the ability to generate the kind of reports you are requesting. OAH final [o]rders come to us as a document and that is how we maintain the records currently. [The Office of Information Systems] is currently evaluating the process and working on developing a solution that would allow information to be place[d] in our IT systems so that future reports can be generated."

Without complete, accurate, and valid NOI data, my team was unable to conduct a meaningful analysis of the data – to include looking for various patterns in NOIs, determining frequency of respondent names and addresses, and estimating the

collectability of NOIs. This information would be helpful to DCRA, too, as it determines how best to operationalize its enforcement mission to ensure compliance with District regulations, and how to apply its available resources.

Finally, in FY 2017, DCRA initiated the practice of regularly transferring unpaid NOIs to the Office of the Chief Financial Officer's Central Collection Unit (CCU). This process lacks consequence, as the CCU is not yet fully functional to process DCRA's transferred debts and therefore does not attempt to collect unpaid NOIs and the associated penalties and interest.¹ As of May 2018, the face value of unpaid NOIs that DCRA has transferred to CCU totaled approximately \$6 million. The true value of the unpaid NOIs is actually higher, because that \$6 million figure does not include interest, which should be applied to all unpaid NOIs at a rate of 1.5% per month.

It is reasonable to conclude that a person or business entity in the District could ignore an NOI, or finding of liability from the Office of Administrative Hearings, and continue to operate without consequence, because (1) DCRA has no apparent process for suspending a liable respondent's license or permit, which DCMR

¹ On January 10, 2019, the OIG initiated a separate evaluation of OCFO's CCU. As of the date of this testimony, the project is ongoing.

authorizes DCRA to do, and (2) OCFO's Central Collection Unit currently takes no action to collect the outstanding debts transferred from DCRA.

Conclusion

As stated in the conclusion of my report, “[d]ue to deficiencies in DCRA’s control activities, monitoring practices, and communication, [the Office of Civil Infractions] OCI appears unable to adequately support DCRA’s mission of enforcing compliance with laws and regulations designed to protect consumers and businesses.” However, I hope that DCRA will use the report’s detailed findings to inform its efforts to improve the operations and effectiveness of the Office of Civil Infractions. The report’s recommendations are actionable, achievable first steps toward improvement, and my Office will continue to communicate and collaborate with DCRA as it works to transform its operations. That concludes my prepared testimony, and I am happy to answer any questions you have.