

DISTRICT OF COLUMBIA OFFICE OF THE INSPECTOR GENERAL

OIG Project No. 19-I-02CR

May 2019



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS:

Civil Infractions Program Lacked a Strong Internal Control Environment



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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General



Inspector General

May 1, 2019

Ernest Chrappah
Acting Director
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Washington, D.C. 20024

Dear Acting Director Chrappah:

Enclosed is our final report entitled *Department of Consumer and Regulatory Affairs: Civil Infractions Program Lacked a Strong Internal Control Environment* (OIG Project No. 19-I-02CR). The primary objective of this inspection, which was part of my Office's *Fiscal Year 2018 Audit and Inspection Plan*,¹ was to assess the efficiency and effectiveness of DCRA's processes for collecting fines and penalties attached to violations of laws and regulations under its jurisdiction. We conducted this inspection using quality standards promulgated by the Council of the Inspectors General on Integrity and Efficiency (CIGIE).²

The OIG sent a draft report to DCRA for comment on March 21, 2019, and your response, a memorandum dated April 19, 2019, is both excerpted in the body of the final report and presented in its entirety at Appendix D. The report makes nine recommendations; DCRA agreed with seven, and did not indicate "agree" or "disagree" for the other two. The OIG will communicate with your office at the end of the fiscal year to request an update on DCRA's progress toward implementing the recommendations and other corrective actions cited in your response.

If you have questions about this report, please contact me or Edward Farley, Assistant Inspector General for Inspections and Evaluations at (202) 727-2540.

Sincerely,

A handwritten signature in black ink, appearing to read "DW Lucas".

Daniel W. Lucas
Inspector General

Enclosure
cc: See Distribution List

¹ OIG website, available at <http://oig.dc.gov>.

² CIGIE website, available at <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

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Why the OIG Did This Inspection

This inspection was part of the OIG's *Fiscal Year 2018 Audit and Inspection Plan*. The OIG identified this engagement due in part to both District resident and Council of the District of Columbia concerns about DCRA's ability to be more stringent in imposing and collecting fines.

DCRA may issue notices of infractions and assess fines and penalties for, among other things, housing, zoning, and construction code violations. NOIs issued through DCRA's civil infractions program serve as a means to enforce compliance with District regulations. All work related to NOI issuance and tracking their subsequent adjudication is handled by DCRA's Office of Civil Infractions.

What the OIG Recommends

This report presents nine recommendations to strengthen the internal control environment as it relates to the administration and effectiveness of DCRA's civil infractions program.

DCRA's Civil Infractions Program Lacked a Strong Internal Control Environment

What the OIG Found

During this inspection, we were unable to confirm the existence of any policies or procedures related to the issuance and tracking of Notices of Infraction (NOI). DCRA also lacked processes to carry out requirements defined in the D.C. Municipal Regulations, such as assessing interest on unpaid NOIs, and suspending a liable respondent's DCRA-issued license or permit for failing to comply with a final order issued by the Office of Administrative Hearings (OAH). NOI payment-handling processes were not defined, and practices deviated from language on NOIs and OAH final orders.

We also found DCRA's Quick Base and Accela information systems did not assist management in ensuring completeness, accuracy, and validity of its administration of NOIs. For example, DCRA employees were unable to query the information systems to sort or aggregate the status of NOIs and associated fines.

Finally, we found DCRA had no written procedure in place for the transfer of unpaid NOIs to the Office of the Chief Financial Officer's Central Collection Unit (CCU). DCRA periodically transfers such debt to the CCU; CCU stated the amount of transferred debt was approximately \$6 million but that it takes no action to collect debt owed to DCRA.

Overall DCRA's civil infractions program lacked a viable internal control environment. Internal control is a process used by management to help an entity achieve its objectives, assume accurate financial reporting, and detect fraud, waste, abuse, and mismanagement. Management is directly responsible for all activities of an entity, including the design, implementation, and operating effectiveness of an entity's internal control system.

As a result of these internal control weaknesses, it is reasonable to conclude that a respondent could ignore an NOI and the subsequent OAH final order, and continue to operate in the District without consequence.

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BACKGROUND

The District's Department of Consumer and Regulatory Affairs' (DCRA) 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."¹ In carrying out its mission, DCRA has the ability to impose monetary fines for various infractions as a means to enforce compliance with District regulations.² Title 16 DCMR §§ 3300-3314 defines the various violations for which DCRA may impose fines:

- Business and Professional Licensing;
- Corporation;
- Weights and Measures;
- Towing Service for Motor Vehicles;
- Housing Inspection;
- Construction Code;
- Building Condemnation;
- Rental Accommodations and Conversion;
- Property Maintenance;
- Housing Inspection Noise;
- Vacant Property;
- Zoning;
- Vending Business License; and
- Green Building Code and Alternative Compliance Path.

When a violation is discovered, DCRA will issue a Notice of Infraction (NOI), which charges a specific violation and seeks a fine. NOIs are generated from within DCRA Divisions, to include the Office of the Chief Building Official, Business and Professional Licensing Administration, and the Zoning Administration.

Notice of Infraction Issuance Process

After an NOI is generated, DCRA conducts a legal sufficiency review. Once DCRA deems the NOI to be legally sufficient, the DCRA Regulatory Enforcement Administration's Office of Civil Infractions (OCI): (1) mails the approved NOI to the respondent (i.e., the person or business entity DCRA believes committed the infraction); and (2) files the NOI with the Office of Administrative Hearings (OAH) 21 calendar days after serving the respondent the NOI. Figure 1 on the following page outlines the process once DCRA generates an NOI.

Once the NOI has been issued, the respondent has 20 calendar days to answer. The respondent may either pay the fine identified on the NOI, or request a hearing at OAH. If a respondent requests a hearing, 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.

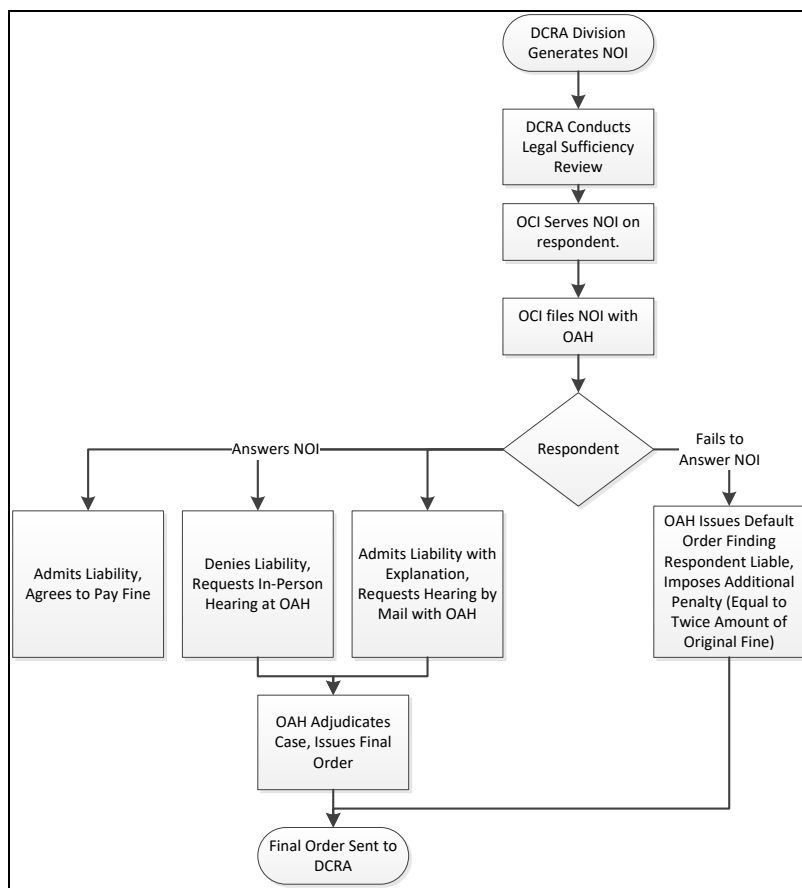
¹ DCRA website, <https://dcra.dc.gov/page/about-dcra> (last visited Jan. 9, 2019).

² Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, effective Oct. 5, 1985 (codified as amended at D.C. Code §§ 1801.01 – 1803.03 (Lexis current through Apr. 10, 2019)).

OAH documents the outcome of the adjudication process in a final order, and transmits a copy of the order to DCRA and the respondent. See Figure 1 below. If a respondent fails to answer an NOI properly served, OAH will issue a default order that informs the respondent of:

The NOI states that a respondent who fails to answer by the deadline **“will be subject to a penalty equal to twice the amount of the fine, in addition to the fine itself, and the entry of a default order without additional notice.”** (Emphasis in the original). The penalty is authorized by statute,¹ and the conditions for issuing a default order have been met.³

Figure 1: NOI Issuance and Adjudication Process



Source: OIG Illustration Based on Interviews and Observations.

³ Title 16 DCMR § 3105.1 states: “If a respondent fails to answer an NOI within fifteen (15) days of date of service, the Director shall issue and serve upon respondent a second NOI, in a form prescribed by the Director.” However, 1 DCMR § 2805.5 states that if a respondent fails to answer an NOI within the time allowed, an ALJ shall find the respondent in default (if the NOI was properly served and not deficient.) Both parts of DCMR appear to be in effect, so the OIG asked DCRA to explain the apparent conflict. DCRA stated: “If a respondent fails to answer an NOI within the statutorily allotted time, then OAH will issue a final order of default judgment against the respondent, negating any need for DCRA to issue a second NOI for the same violation(s). Thus, DCRA does not issue a second NOI.”

Internal Control Environment

To assess DCRA’s efficiency and effectiveness in collecting fines and penalties, the OIG used the Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government* (GAO-14-704G, the Green Book).⁴ 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.⁵

Internal control is “a process used by management to help an entity achieve its objectives.”⁶ Further, internal control helps assure accurate financial reporting and helps to prevent fraud, waste, and abuse. The Green Book explains that “[m]anagement is directly responsible for all activities of an entity, including the design, implementation, and operating effectiveness of an entity’s internal control system.”⁷ The internal control system comprises five components that “must be effectively designed, implemented, and operating, and operating together in an integrated manner, for an internal control system to be effective.”⁸ A description of the five components of internal control is included in Table 1.

Table 1: Components of Internal Control

Component	General Description
Control Environment	The foundation for an internal control system. It provides the discipline and structure to help an entity achieve its objectives.
Risk Assessment	Assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses.
Control Activities	The actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity’s information system.
Information and Communication	The quality information management and personnel communicate and use to support the internal control system.
Monitoring	Activities management establishes and operates to assess the quality of performance over time and promptly resolve the findings of audits and other reviews.

Source: *Standards for Internal Control in the Federal Government* § OV2.04 (GAO-14-704G).

The components of internal control help an entity run its operations, report reliable information about its operations, and comply with laws and regulations.

⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-704G, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT (Sept. 2014), available at, <https://www.gao.gov/products/GAO-14-704G> (last visited Jan. 8, 2019).

⁵ “Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of [an] entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.” *Id.* § OV1.03 at 5.

⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 4, TITLE Page.

⁷ *Id.* § OV2.14 at 12.

⁸ *Id.* § OV2.04 at 7.

FINDINGS

Overall, the OIG found that DCRA could improve its internal control environment when collecting NOI fines and assessing penalties. Our review of DCRA's internal control environment found weaknesses in its control activities, particularly the lack of policies and procedures related to DCRA's NOI issuance and tracking of NOI adjudication. DCRA management could enhance its monitoring activities, to include monitoring OCI activities and the outcomes of NOI adjudication by the OAH. Additionally, DCRA could leverage its information systems to ensure complete, accurate, and valid data related to its NOI processes. Finally, DCRA could improve its practices related to transferring and tracking debt sent to the Office of the Chief Financial Officer's (OCFO) Central Collection Unit (CCU).

As a result of these internal control weaknesses, DCRA may have lessened its ability to enforce compliance with District regulations. Further, ineffectiveness in collecting NOI fines and penalties meant that the District may not have collected all fines and penalties due from respondents.

NOI PROCESS LACKED EFFECTIVE INTERNAL CONTROLS

As set forth in the Green Book, “[c]ontrol activities are the actions management establishes through *policies and procedures* to achieve objectives and respond to risks in the internal control system”⁹ (Emphasis supplied). Examples of control activities include:

- management reviews at the activity level of operations;
- establishment and review of performance measures;
- segregation of duties;
- proper execution of transactions;
- access restrictions to and accountability for resources and records; and
- appropriate documentation of transactions.

Lack of NOI Policies and Procedures. In our December 2017 entrance conference with DCRA, the Deputy Director said that the OCI lacked written policies and procedures. During subsequent interviews, multiple OCI employees confirmed they were not aware of any written procedures or instructions on how to perform their jobs. The Green Book states “[m]anagement clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.”¹⁰ The lack of approved written procedures may cause respondents to receive inaccurate information and inconsistent service and may impede DCRA management from monitoring errors or poor performance, undermining the civil infractions program.

⁹ *Id.* at 44.

¹⁰ *Id.* § 10.03 at 48.

We recommend the Director, DCRA:

1. Develop policies and procedures that capture the continuum of activities from NOI generation through OAH adjudication.

Agree _____ X _____ Disagree _____

***DCRA's April 2019 Response to Recommendation 1, As Received:**¹¹ Although DCRA did not have written procedures at the time of the OIG Inspection, the OIG draft report does not assert that OCI employees did not know how to perform their jobs only that they were not aware of any written procedures. The OIG draft report speculates that the lack of written procedures "may cause" respondents to receive inaccurate information and inconsistent service and "may impede" DCRA management from monitoring errors or poor performance, but cites to no direct evidence of such incidents. DCRA agrees with this recommendation and has already issued written procedures that reflect the Department's practices. On February 26, 2019, DCRA issued written Standard Operating Procedures (SOPs) for the Office of Civil Infractions (OCI). The SOPs cover Notice of Infraction (NOI) sufficiency review, NOI service, filing and recordkeeping, as well as collection of fines and special assessments. A copy of that SOP is attached.*

OIG Comment: The SOP referenced in DCRA's response was not attached. The OIG subsequently requested the SOP, but as of the date of this report, DCRA had not provided it. The OIG will review it upon receipt.

Lack of Compliance with Applicable DCMR Provisions. DCRA was unable to demonstrate how they comply with Title 16 of the DCMR, *Consumers, Commercial Practices, and Civil Infractions*. Title 16 DCMR outlines how interest should accrue on unpaid NOIs, how liable respondents are afforded the opportunity to make payments in installments, and how failure to pay monetary sanctions or comply with an OAH decision results in the suspension of a license or permit. A key objective for management as defined in the Green Book is "compliance with applicable laws and regulations."¹²

A DCRA senior manager was unable to explain how or whether interest is applied to unpaid NOIs. Title 16 DCMR § 3114.2 states: "Interest on the amount to be paid under a final order shall accrue at the rate of one and one-half percent (1.5%) per month, or a prorated portion, from the date of a final order or default."

DCRA employees also were unable to explain how or whether respondents are afforded the opportunity to enter into installment agreements with DCRA. Title 16 DCMR §§ 3115.2 - 3115.4 afford liable respondents the option of making payments through installment plans:

A respondent who has been served a decision in which monetary sanctions of fifty dollars (\$ 50) or more have been imposed may, within fifteen (15) days after the date of service, request

¹¹ The full text of DCRA's April 2019 Response to the draft report is found in Appendix D.

¹² *Id.* § OV2.18.

permission to make payments pursuant to an installment agreement
....

A respondent ... who admits to infractions and penalties of fifty dollars (\$50) or more may, within fifteen (15) days after the date of service, request permission to make payments pursuant to an installment agreement

Installment applications shall be submitted on a form prescribed by the Director

Title 16 DCMR § 3115.6(f) also states that a “respondent’s license or permit may be suspended for failure to make timely payments;” however, DCRA employees were unable to identify a process that DCRA would follow to suspend a respondent’s license or permit.

Title 16 DCMR § 3117.1 states: “[F]ailure of a respondent to pay monetary sanctions imposed by an ALJ [Administrative Law Judge] or to comply with a decision of an ALJ within fifteen (15) days of the date of service of the decision shall subject the respondent to suspension of the respondent’s license or permit.” We found no indication that DCRA has a process in place to exercise this authority.

Failure to incorporate these DCMR requirements into DCRA’s policies and procedures may have reduced DCRA’s ability to collect on certain fines and penalties through offering repayment terms that are attractive to respondents, and allow violations to continue unabated in the absence of a license or permit suspension.

Inconsistency with the NOI Payment Process. Both DCRA NOIs and OAH final orders direct respondents to submit payments at OAH. DCRA’s NOI form directs respondents to answer the NOI through the Clerk at OAH, and that to admit and pay the fine, “[m]ail or bring this Notice to the address above with a check or money order for the amount of the fine” Similarly, OAH final/default orders state:

Payment must be mailed or hand-delivered to the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to ‘D.C. Treasurer’ Mail or hand-deliver to:

Clerk, Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

Given the absence of written procedures, the OIG asked DCRA employees: (1) why DCRA was accepting NOI payments; and (2) whether standard NOI/final order payment practices exist. DCRA employees provided various explanations that did not demonstrate consistency in the NOI payment process:

- At the inspection entrance conference, a DCRA senior manager said that respondents could pay fines at either DCRA or OAH, but during a subsequent interview said that all payments are processed at OAH.
- A DCRA document identifies two OCI employees whose duties include accepting NOI payments, who confirmed they handle payments from respondents.
- In August 2018, a DCRA senior manager explained why DCRA was accepting payments contrary to instructions provided to respondents: “[I]n February 2018, DCRA stopped accepting payment of civil fines.... DCRA started referring all customers to the cashier’s office on the 2nd Floor of 1100 4th Street, SW, to enhance the fine payment collection process and to provide better convenience to customers. The cashier’s office is controlled by the OCFO [Office of the Chief Financial Officer].” The senior manager also said: “Lastly, the Office of Administrative Hearings’ (OAH) Final Orders instruct the respondents to mail or hand-deliver the payments to the Clerk of the Office of Administrative Hearings, however, OAH requested that DCRA accept civil fine payments and forward the payments to the OCFO for deposit.”
- An OAH senior employee told our team that OAH accepts NOI and final order payments from respondents on behalf of DCRA, but simply holds them until a contact representative from DCRA’s Office of the Chief Administrative Officer retrieves them from OAH.

The Green Book states that when evaluating transaction control activities, management must evaluate “consistency of performance,” in order to “meet objectives and address related risks.”¹³ Without standard practices or even a shared understanding within DCRA, or between DCRA and OAH, for how NOI and final order payments should be handled, it would be difficult for DCRA management to monitor the NOI process, and address any risk to successful NOI enforcement. Further, the inconsistency in performance and lack of monitoring by DCRA management not only prevents effective performance management and oversight, but creates an environment susceptible to fraud, waste, and abuse.

DCRA Management Did Not Track OCI Activities. DCRA management demonstrated an apparent lack of knowledge of how OCI employees administer and track NOIs and OAH final orders. For example, after learning that OAH sends its final orders to DCRA’s General Counsel, we asked members of DCRA’s senior leadership to explain how DCRA processes and acts upon the orders and other information it receives from OAH. One DCRA senior employee claimed to have no knowledge of the process, while another was unresponsive to our questions. A longtime program employee did not know whether DCRA had a process for suspending a liable respondent’s license(s) and permit(s), the authority for which is granted to DCRA in the DCMR¹⁴ and referenced on OAH’s website.¹⁵ The lack of understanding of the process could be

¹³ *Id.* § 10.11.

¹⁴ Title 16 DCMR § 3115.6(f).

¹⁵ On its website, OAH describes the types of cases the agency adjudicates and also describes one of DCRA’s roles as follows: “Denial, Suspension or Revocation of Licenses: If DCRA denies, suspends[,] or revokes a license, you may appeal that action to the Office of Administrative Hearings. Such licenses include basic business licenses,

attributed to the overall lack of policies and procedures pertaining to OCI activities. The Green Book states “[m]anagement [should track] major entity achievements and compares these to the plans, goals, and objectives set by the entity.”¹⁶ Without a clear understanding of OCI activities, DCRA management was unable to assess the effectiveness of staff performance against DCRA’s regulatory requirements.

We recommend the Director, DCRA:

2. Ensure policies and procedures implement DCMR requirements, to include: accrual of interest; respondents’ right to enter into a payment agreement; and suspension of a license or permit for failure to comply with a final order or payment agreement.

Agree _____ Disagree _____

***DCRA’s April 2019 Response to Recommendation 2, As Received:** DCRA disagrees with the conclusion that it lacked compliance with applicable DCMR provisions. Although the draft report states that “[a] DCRA senior manager was unable to explain how or whether interest is applied to unpaid NOIs” it does not assert that DCRA is not charging 1.5% interest. In fact, DCRA charges 1.5% interest on fines adjudicated by the Office of Administrative Hearings (OAH) in final orders, as authorized by Title 16 DCMR § 3114.2. Cost, Penalties, and Interest. OCI creates tax bills for fines using an Office of Tax and Revenue data system: FoxPro. The FoxPro system is programmed to auto-calculate interest at the authorized rate of 1.5%.*

The draft report also states that “DCRA employees were unable to explain how or whether respondents are afforded the opportunity to enter into installment agreements with DCRA”; however, DCRA regularly provides respondents the opportunity to enter into installment payment arrangements through OCI and, if there is a pending OAH case, through settlement agreements facilitated by DCRA’s Office of the General Counsel.

Lastly, DCRA generally does not suspend licenses for failure to comply with final orders or payment agreements, due to policy concerns, particularly regarding rental housing. Suspension of licenses in these cases would result in tenants living in unlicensed housing and may result in unintended consequences for tenants. DCRA does, however, check for clean hands before issuing or renewing a business license. In those cases where the landlord or a contractor lacks clean hands; a landlord or a contractor owes the government money; or where a landlord or contractor has failed to comply with final orders, the landlord or contractor shall face consequences. Additionally, OCI places liens on property for unpaid fines, pursuant to a final order, where respondents are found liable.

certificates of occupancy[,] and licenses to practice certain professions (e.g., cosmetology, boiler operations, etc.)” <https://oah.dc.gov/page/department-consumer-and-regulatory-affairs> (last visited Jan. 8, 2019).

¹⁶ *Id.* § 10.03 at 46.

The Green Book states that management should “evaluate performance and hold individuals accountable for their internal control responsibilities.”¹⁸ OCI employees’ most recent performance evaluations afforded little insight into employees’ duties and performance standards and DCRA processes for administering and tracking NOIs for which the respondent has been found liable. Below are examples of performance goals, taken verbatim, from recent OCI Program Support Specialist performance evaluations:

- Continue to demonstrate ability to handle all of the orders transmitted from the Office of Administrative Hearings and ensure that they are processed in a timely manner for the review of the advocates and other staff.
- Monitor closely Settlement/Installment Agreement to pin point owners and businesses that are in breach of their contract.
- Will continue to manage the billing process and track the fine/penalties imposed for noncompliance with DCRA.
- Continue to close out cases upon receipt of an order from OAH or OGC [DCRA Office of the General Counsel] by removing it from activity file to the closed file and up-dating [A]ccela of the action taken.

Some OCI employees’ performance evaluations contained vague references to processes such as handling orders received from OAH and entering case information into Accela, but OCI employees and DCRA senior managers could not describe these processes. Our interviews with DCRA employees revealed that while employees appear to perform some discrete tasks pertaining to NOI administration, there was no shared understanding of fundamental OCI processes or duties that would inform the status of DCRA staff performance goals.

Given the generic position descriptions and performance evaluations, and lack of awareness and shared understanding of fundamental processes, there is no indication that DCRA is holding OCI staff accountable for accurate, thorough, and consistent administration of NOIs.

We recommend the Director, DCRA:

4. Update all OCI employees’ position descriptions and performance plans so they reflect employees’ respective tasks and responsibilities, and OCI program objectives and goals.

Agree _____ X _____ Disagree _____

***DCRA’s April 2019 Response to Recommendation 4, As Received:** DCRA disagrees with the finding that “there is no indication that DCRA is holding OCI Staff accountable for accurate, thorough, and consistent administration of NOIs.” Nonetheless, we will ensure OCI employee’s position descriptions reflect that employees are required to*

¹⁸ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-704G, *supra* note 4, § 5.01.

perform their duties and responsibilities accordingly to the applicable SOPs for their roles and unit. We will also update the employees' performance plans going forward to include specific Smart Goals that are tied to the employee's respective tasks and responsibilities, and OCI program objectives and goals. In addition, the OCI Manager position description has already been updated.

DCRA DID NOT LEVERAGE MANAGEMENT INFORMATION SYSTEMS TO ENSURE INTEGRITY IN ITS CIVIL FINE PROCESS

We found there was limited information entered and maintained in DCRA's information systems, and no documented process for doing so. This meant DCRA was unable to provide the final outcome of NOIs based on the process identified in Figure 1 on page two of this report. Further, DCRA was unable to produce reports that aggregated the status of NOI fines and penalty payments. As a result, the District of Columbia may still be owed fines and penalties for NOIs issued by DCRA that have not been monitored through its information systems.

The Green Book states that “[m]anagement should design the entity’s information system and related control activities to achieve objectives and respond to risks.”¹⁹ Attributes that contribute to the design, implementation, and operating effectiveness of an entity’s information system include:

- Design of the Entity’s Information System
- Design of Appropriate Types of Control Activities
- Design of Information Technology Infrastructure
- Design of Security Management
- Design of Information Technology Acquisition, Development, and Maintenance²⁰

DCRA’s Information Systems Had Incomplete, Inaccurate, and Invalid Information.

Absent policies and procedures, we conducted interviews and observations on DCRA’s use of its information systems. We found that DCRA used the Quick Base information system to track the status of NOIs up until the point it sent an NOI to the respondent and filed it with OAH. DCRA did not use Quick Base to capture information regarding the final outcome of an NOI – such as, the respondent is found liable by OAH ruling, a reduction in fine/penalties following a hearing at OAH; or the dismissal of an NOI. Several DCRA interviewees stated they enter NOI status and payment information into the Accela information system, a separate information system from Quick Base. However, the thoroughness and accuracy of this activity is unknown, and the utility of the information in Accela appears limited to viewing the status of individual cases, because Accela does not have the capability to generate reports that sort or summarize information about unpaid NOIs.

We requested information regarding the number and types (housing inspections, illegal construction, vacant property, etc.) of unresolved NOIs. DCRA’s Chief Information Officer/IT Director confirmed DCRA’s information systems do not have that capability:

¹⁹ *Id.* § 11.01.

²⁰ *Id.*

DCRA's Office of Information [S]ystems (OIS) 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. OIS 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.

The information provided to the OIG corroborates DCRA's Chief Information Officer/IT Director's statements. This information is presented in Table 2 on the following page, and demonstrates the totality of NOI data maintained in Quick Base from October 2012 through February 2018.

In terms of validity and completeness, DCRA was unable to identify the number, types, and value of unpaid NOIs. Further, DCRA did not capture the aging of unpaid NOIs, so it could not accurately estimate the current dollar amount of unpaid fines and penalties. DCRA cannot ensure the completeness of NOI data in Quick Base, as: (1) OCI employees may not have entered all NOIs into Quick Base before issuing them to respondents; (2) some of the NOIs may not have been issued to respondents (i.e., they were ultimately found to be not legally sufficient); and (3) OAH may have dismissed some of the NOIs reflected in the table, or reduced the amount of proposed fines.

Also, because DCRA used Quick Base to track NOIs to the point of issuance to respondents, the proposed fine amounts reflected in Table 2 would not include accrued interest and penalties assessed for failing to respond to an NOI or comply with a final order, thereby affecting accuracy of the NOI data maintained in Quick Base.

Table 2: Summary Information Exported from Quick Base by DCRA

Administration	Number of Actions	NOI Proposed Fine Amount	Number of Violations
BLRA	9	\$1,800	18
Consumer Protection ²¹	95	\$292,500	167
Green Building	4	\$6,229	6
Illegal Construction	1,693	\$6,374,846	3,502
Inspections	3,348	\$6,738,450	12,895
Office of the Chief Administrative Officer ²²	66	\$339,000	236
Proactive	45	\$155,900	169
Regulatory Investigations ²³	1,588	\$3,681,128	6,030
Vacant Property	732	\$1,464,000	732
Vending Services	35	\$66,600	41
Weights and Measures ²⁴	129	\$231,500	135
Zoning ²⁵	<u>57</u>	<u>\$528,500</u>	<u>679</u>
Totals (12 groups)	7,801	\$19,880,453	24,610

Source: Information Provided by DCRA. Reflects NOI information from October 2012 to February 2018.

The Green Book states that “[m]anagement designs control activities over the information technology infrastructure to support the completeness, accuracy, and validity of information processing by information technology.”²⁶ The absence of complete, accurate, and valid data maintained in Quick Base and Accela meant that DCRA was unable to track and measure the number and dollar amount of unpaid fines and penalties.

²¹ Examples of consumer protection infractions are: false representation that goods are new; and false representation that repairs are needed.

²² Per DCRA, these cases were assigned to an investigator in DCRA’s Office of the Chief Administrative Officer.

²³ Per DCRA, this reflects “[a]ny infraction that falls under [the] Schedule of Fines, 16 DCMR § 3301 *et. seq.*, [and] Taxation, Licensing, Permits, Assessments and Fees, D[.]C[.] Official Code Title 47-2800 *et. seq.*...”

²⁴ Examples of weights and measures violations are: operating a weighing device with payment of the registration and inspection fee; using a weighing device that has not been inspected and approved; and use of a pump or similar device that does not measure correctly.

²⁵ Examples of zoning infractions are: failure to obtain a certificate of occupancy; failure to conform to height limitations for buildings allowed in residential districts; and failure to obtain a home occupation permit.

²⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-704G, *supra* note 4, § 11.09.

We recommend the Director, DCRA:

5. Determine the universe of unpaid NOIs, assess the number and dollar amount of unpaid fines and penalties, and determine what action, if any, can be taken to ensure receipt of fines and penalties due to the District of Columbia government.

Agree _____ X _____ Disagree _____

DCRA's April 2019 Response to Recommendation 5, As Received: DCRA disagrees with this finding but accepts the recommendation. Indeed, implementation is in place. DCRA utilizes QuickBase which is a role-based application platform. DCRA's Agency Fiscal Officer uses a specific QuickBase application named "OCFO/DCRA Account Receivables" to track the final orders by OAH on the receipts of fines and penalties as well as the accrual amounts but this application was not reviewed by OIG during the time of the inspection. DCRA's Fiscal Officer has the ability to track the final orders by OAH that have not been collected with the available information from this QuickBase application. Agency staff utilized different applications on the QuickBase platform to carry out their responsibilities.

To further improve the tracking and reporting process of NOIs, and unpaid fines and penalties, OCI will be working with DCRA's Office of Information Systems and OCFO team to ensure any necessary technology updates and/or process improvements are made by the end of FY2019.

6. Ensure the Accela and Quick Base information systems track all NOI-related information to ensure accuracy, completeness, and validity.

Agree _____ X _____ Disagree _____

DCRA's April 2019 Response to Recommendation 6, As Received: DCRA agrees with this recommendation. OCI is working with DCRA's Office of Information Systems to secure and ensure the necessary technology updates which support tracking and reporting of NOIs, and unpaid fines and penalties. Updated system enhancements are ongoing and planned for completion by the end of FY2019.

Lack of Segregation of Duties. We found in DCRA documentation and through interviewees that some OCI employees had access to both the Quick Base and Accela information systems. These systems are used to capture information regarding the status of NOIs and track NOI payments from respondents. The Green Book states "[m]anagement divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud."²⁷ Responsibilities for tracking NOI and case status should be separate and distinct from payment handling duties to minimize the risk of error, misuse, or fraud.

²⁷ *Id.* § 10.03 at 47.

We recommend the Director, DCRA:

7. Ensure adequate separation of duties as they relate to NOIs and tracking fines and penalties within DCRA information systems.

Agree _____ **X** _____ Disagree _____

DCRA's April 2019 Response to Recommendation 7, As Received: DCRA agrees with this recommendation and recognizes that appropriate control measures are necessary as part of the agency's fiscal responsibilities. The agency is currently revising many of its processes and will ensure proper control measures are in place. Additionally, DCRA has the ability to track employees' actions for audit and record purposes.

PROCESS OF TRANSFERRING NOI DEBT FROM DCRA TO OCTO WAS NOT DEFINED

During interviews DCRA's Agency Fiscal Officer stated that after a period of at least 90 days, if a liable respondent has not paid fines and penalties, DCRA transferred the uncollected debt to the CCU. In May 2018, OCFO informed the OIG that in FY 2017 DCRA initiated the practice of periodically transferring debt (also called aged receivables) to the CCU every 2-3 weeks, and that the debt transferred to CCU totaled approximately \$6 million.

OCFO told the OIG it takes no action to collect debt owed to DCRA. An OCFO interviewee confirmed that CCU records transferred DCRA receivables on a ledger, but does not attempt collection. OCFO's website informs visitors that "[t]he CCU is responsible for collecting virtually all District government related debts" but that "[t]he CCU is not yet fully operational, therefore not all eligible debts are assigned to the CCU for collection."²⁸

The Green Book states "[m]anagement communicates quality information externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks."²⁹ DCRA did not have a written process to establish communication with the OCFO CCU.³⁰

As a result of this communication impediment between DCRA and OCFO regarding the transfer of NOI debt, DCRA's ability to enforce compliance with District regulations was greatly diminished as liable respondents may have been able to continue violating DCMR provisions without penalty.

²⁸ OCFO website, <https://cfo.dc.gov/page/ccu-frequently-asked-questions> (last visited Mar. 20, 2019).

²⁹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-704G, *supra* note 4, § 15.03.

³⁰ As part of its [FY 2019 Audit and Inspection Plan](#), the OIG will conduct an evaluation of the CCU.

We recommend the Director, DCRA:

8. Develop policies and procedures related to the transfer and tracking of NOI debt from DCRA to the CCU.

Agree _____ **X** _____ Disagree _____

DCRA’s April 2019 Response to Recommendation 8, As Received: DCRA agrees with this recommendation in part and, in accordance with the OCFO, follows the District-wide policies and procedures as it relates to the recording, collection, and transfer of delinquent debt to the Office of Finance and Treasury – Central Collections Unit. DCRA will continue to follow those policies and procedures. Here is a link to the OCFO Policies and Procedures Manual:

[https://sharepoint.cfo.in.dc.gov/OFOS/Policies%20and%20Procedures/Financial%20Procedures%20\(Volume%201%20-%20District%20wide%2011-6-18.pdf](https://sharepoint.cfo.in.dc.gov/OFOS/Policies%20and%20Procedures/Financial%20Procedures%20(Volume%201%20-%20District%20wide%2011-6-18.pdf)

9. Determine the extent to which the OCFO CCU will collect NOI debt.

Agree _____ Disagree _____

DCRA’s April 2019 Response to Recommendation 9, As Received: The Office of the Chief Financial Officer (OCFO), not DCRA, is the appropriate agency to respond to this recommendation. As noted in the draft report, "OCFO told the OIG it takes no action to collect debt owed to DCRA," though the CCU is entrusted with collecting the District's debts. We certainly agree that outstanding debt should be collected and respectfully suggest that the OIG withhold publication until the CCU implements an effective system for collecting debt transferred from DCRA. Otherwise, violators may avoid payment without fear of consequences.

OIG Comment: DCRA’s response did not indicate whether it agrees or disagrees with recommendation #9. DCRA’s argument that absent an “effective system for collecting debt transferred [to the CCU . . .] violators may avoid payment without fear of consequences,” does not consider the tools available to DCRA which are designed to help enforce compliance with District regulations – many of which have been identified in this report. On January 10, 2019, OIG initiated a separate evaluation of the CCU, the results of which will be used to identify additional areas for improvement both internally and externally to the CCU.

CONCLUSION

Under its mission, DCRA “protects the health, safety, economic interests, and quality of life of residents, businesses, and visitors in the District of Columbia by ensuring code compliance and regulating business.”³¹ DCRA OCI’s role in this mission is to issue legally sufficient NOIs when

³¹ GOV’T OF THE DISTRICT OF COLUMBIA FY 2018 PROPOSED BUDGET AND FINANCIAL PLAN CONGRESSIONAL SUBMISSION, VOL. 2 AGENCY BUDGET CHAPTERS PART I B-109 (July 19, 2017).

violations exist, file the NOIs with OAH, and inform DCRA leadership's work to compel liable respondents to comply with District Code and DCMR requirements. Due to deficiencies in DCRA's control activities, monitoring practices, and communication, OCI appears unable to adequately support DCRA's mission of enforcing compliance with laws and regulations designed to protect consumers and businesses.

OCI employees lacked written procedures, job-specific position descriptions and performance standards, and a shared understanding of fundamental practices and DCRA duties and authority. DCRA lacked processes for exercising authorities specified in the DCMR that are designed to compel respondents to comply with NOIs and final orders, such as the accrual of interest and suspension of a respondent's license or permit. DCRA's practice of transferring unpaid NOIs to OCFO's CCU is ineffective, as CCU does not attempt collection.

It is reasonable to conclude that a respondent could ignore an NOI and the subsequent OAH final order, and continue to operate in the District without consequence, as (1) DCRA has no apparent processes for suspending the respondent's license/permit, and (2) OCFO's CCU takes no action on the outstanding debts transferred from DCRA.

APPENDIX A. OBJECTIVES, SCOPE, METHODOLOGY

The primary objective of this inspection, which was part of the OIG's *Fiscal Year 2018 Audit and Inspection Plan*,³⁴ was to assess the efficiency and effectiveness of DCRA's processes for collecting fines and penalties attached to violations of laws and regulations under its jurisdiction. OIG inspections are conducted under standards established by the Council of the Inspectors General on Integrity and Efficiency.

During this inspection, the OIG interviewed employees at DCRA and OAH, analyzed D.C. Code and D.C. Municipal Regulations, and reviewed documentation and information provided by DCRA, OAH and OCFO. The OIG reviewed and summarized NOI data for the period October 2012 to February 2018 that DCRA exported from its Quick Base database, but did not assess the accuracy or completeness of the Quick Base data.

³⁴ Available at <http://oig.dc.gov>.

APPENDIX B. RECOMMENDATIONS

We recommend the Director, DCRA:

1. Develop policies and procedures that capture the continuum of activities from NOI generation through OAH adjudication.
2. Ensure policies and procedures implement DCMR requirements, to include: accrual of interest; respondents' right to enter into a payment agreement; and suspension of a license or permit for failure to comply with a final order or payment agreement.
3. Develop policies and procedures related to receiving fine payments from respondents. Provide training to DCRA employees on these policies and procedures.
4. Update all OCI employees' position descriptions and performance plans so they reflect employees' respective tasks and responsibilities, and OCI program objectives and goals.
5. Determine the universe of unpaid NOIs, assess the number and dollar amount of unpaid fines and penalties, and determine what action, if any, can be taken to ensure receipt of fines and penalties due to the District of Columbia government.
6. Ensure the Accela and Quick Base information systems track all NOI-related information to ensure accuracy, completeness, and validity.
7. Ensure adequate separation of duties as they relate to NOIs and tracking fines and penalties within DCRA information systems.
8. Develop policies and procedures related to the transfer and tracking of NOI debt from DCRA to the CCU.
9. Determine the extent to which the OCFO CCU will collect NOI debt.

APPENDIX C. ACRONYMS AND ABBREVIATIONS

ALJ	Administrative Law Judge
CCU	Central Collection Unit
DCMR	D.C. Municipal Regulations
DCRA	Department of Consumer and Regulatory Affairs
FY	Fiscal Year
GAO	Government Accountability Office
NOI	Notice of Infraction
OAH	Office of Administrative Hearings
OCFO	Office of the Chief Financial Officer
OCI	Office of Civil Infractions
OGC	Office of the General Counsel (DCRA)
OIG	Office of the Inspector General
OIS	Office of Information Systems (DCRA)

APPENDIX D. DCRA'S RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs



MEMORANDUM

DATE: April 19, 2019

TO: Daniel W. Lucas
District of Columbia Inspector General

FROM: Ernest Chrappah *EC*
Acting Director, Department of Consumer and Regulatory Affairs

SUBJECT: DCRA's Response to Draft Report *Civil Infractions Program Lacked a Strong Internal Control Environment* (OIG Project No. 19-I-02CR)

The Office of Inspector General (OIG) emailed its draft report, "Civil Infractions Program Lacked a Strong Internal Control Environment" to the Department of Consumer and Regulatory Affairs (DCRA) on March 21, 2019. The draft report presented nine recommendations and requested the agency's response to those recommendations. DCRA's responses to the recommendations and its general comments on the draft report are contained below. We appreciate the review of our systems and the suggestions for improvements, both by DCRA and by the OCFO. We are committed to improving our internal controls and safeguarding and collecting money owed to the District.

OIG Inspection Result: DCRA Lacked NOI Policies and Procedures

OIG Recommendation #1: Develop policies and procedures that capture the continuum of activities from NOI generation through OAH adjudication.

Agency Response: Although DCRA did not have written procedures at the time of the OIG Inspection, the OIG draft report does not assert that OCI employees did not know how to perform their jobs only that they were not aware of any written procedures. The OIG draft report speculates that the lack of written procedures "may cause" respondents to receive inaccurate information and inconsistent service and "may impede" DCRA management from monitoring errors or poor performance, but cites to no direct evidence of such incidents. DCRA agrees with this recommendation and has already issued written procedures that reflect the Department's practices. On February 26, 2019, DCRA issued written Standard Operating Procedures (SOPs) for the Office of Civil Infractions (OCI). The SOPs cover Notice of Infraction (NOI) sufficiency review, NOI service, filing and recordkeeping, as well as collection of fines and special assessments. A copy of that SOP is attached.

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APPENDIX D. DCRA'S RESPONSE TO DRAFT REPORT

OIG Inspection Result: DCRA Lacked Compliance with Applicable DCMR Provisions.

OIG Recommendation #2: Ensure policies and procedures implement DCMR requirements, to include: accrual of interest; respondents' right to enter into a payment agreement; suspension of license or permit for failure to comply with a final order or payment agreement.

Agency Response: DCRA disagrees with the conclusion that it lacked compliance with applicable DCMR provisions. Although the draft report states that "[a] DCRA senior manager was unable to explain how or whether interest is applied to unpaid NOIs," it does not assert that DCRA is not charging 1.5% interest. In fact, DCRA charges 1.5% interest on fines adjudicated by the Office of Administrative Hearings (OAH) in final orders, as authorized by Title 16 DCMR § 3114.2. Cost, Penalties, and Interest. OCI creates tax bills for fines using an Office of Tax and Revenue data system: FoxPro. The FoxPro system is programmed to auto-calculate interest at the authorized rate of 1.5%.

The draft report also states that "DCRA employees were unable to explain how or whether respondents are afforded the opportunity to enter into installment agreements with DCRA"; however, DCRA regularly provides respondents the opportunity to enter into installment payment arrangements through OCI and, if there is a pending OAH case, through settlement agreements facilitated by DCRA's Office of the General Counsel.

Lastly, DCRA generally does not suspend licenses for failure to comply with final orders or payment agreements, due to policy concerns, particularly regarding rental housing. Suspension of licenses in these cases would result in tenants living in unlicensed housing and may result in unintended consequences for tenants. DCRA does, however, check for clean hands before issuing or renewing a business license. In those cases where the landlord or a contractor lacks clean hands; a landlord or a contractor owes the government money; or where a landlord or contractor has failed to comply with final orders, the landlord or contractor shall face consequences. Additionally, OCI places liens on property for unpaid fines, pursuant to a final order, where respondents are found liable.

OIG Inspection Result: DCRA Management Did Not Track OCI Activities.

OIG Recommendation #3: Develop policies and procedures related to receiving fine payments from respondents. Provide training to DCRA employees on these policies and procedures.

Agency Response: DCRA agrees with this recommendation and has implemented written policies to receive fine payments. As mentioned above, the SOP is attached to this response. Although there were not written procedures in place at the time of OIG's inspection, DCRA does accept NOI payments and now has written procedures outlining the process. The OCI staff has been provided with a copy of the SOP, and the SOP is maintained on the DCRA shared drive and is available to all DCRA employees. As part of the ongoing training process, OCI staff participates in monthly team meetings, led by the OCI Program Manager, where SOPs are regularly reviewed and discussed.



APPENDIX D. DCRA'S RESPONSE TO DRAFT REPORT

DCRA also has begun work on developing a new process for on-line payment of fines and special assessments.

OIG Inspection Result: Ineffective Management of Human Capital.

OIG Recommendation #4: Update all OCI employees' position descriptions and performance plans so they reflect employees' respective tasks and responsibilities, and OCI program objectives and goals.

Agency Response: DCRA disagrees with the finding that "there is no indication that DCRA is holding OCI Staff accountable for accurate, thorough, and consistent administration of NOIs." Nonetheless, we will ensure OCI employee's position descriptions reflect that employees are required to perform their duties and responsibilities accordingly to the applicable SOPs for their roles and unit. We will also update the employees' performance plans going forward to include specific Smart Goals that are tied to the employee's respective tasks and responsibilities, and OCI program objectives and goals. In addition, the OCI Manager position description has already been updated.

OIG Inspection Result: DCRA Did Not Leverage Management Information Systems to Ensure Integrity in its Civil Fine Process.

OIG Recommendation #5: Determine the universe of unpaid NOIs, assess the number and dollar amount of unpaid fines and penalties, and determine what action, if any, can be taken to ensure receipt of fines and penalties due to the District of Columbia government.

Agency Response: DCRA disagrees with this finding but accepts the recommendation. Indeed, implementation is in place. DCRA utilizes QuickBase which is a role-based application platform. DCRA's Agency Fiscal Officer uses a specific QuickBase application named "OCFO/DCRA Account Receivables" to track the final orders by OAH on the receipts of fines and penalties as well as the accrual amounts but this application was not reviewed by OIG during the time of the inspection. DCRA's Fiscal Officer has the ability to track the final orders by OAH that have not been collected with the available information from this QuickBase application. Agency staff utilized different applications on the QuickBase platform to carry out their responsibilities.

To further improve the tracking and reporting process of NOIs, and unpaid fines and penalties, OCI will be working with DCRA's Office of Information Systems and OCFO team to ensure any necessary technology updates and/or process improvements are made by the end of FY2019.

OIG Recommendation #6: Ensure the Accela and QuickBase information systems track all NOI-related information to ensure accuracy, completeness, and validity.

Agency Response: DCRA agrees with this recommendation. OCI is working with DCRA's Office of Information Systems to secure and ensure the necessary technology updates which support tracking and reporting of NOIs, and unpaid fines and penalties. Updated system enhancements are ongoing and planned for completion by the end of FY2019.



APPENDIX D. DCRA'S RESPONSE TO DRAFT REPORT

OIG Inspection Result: Lack of Segregation of Duties.

OIG Recommendation #7: Ensure adequate separation of duties as they relate to NOIs and tracking fines and penalties within DCRA information systems.

Agency Response: DCRA agrees with this recommendation and recognizes that appropriate control measures are necessary as part of the agency's fiscal responsibilities. The agency is currently revising many of its processes and will ensure proper control measures are in place. Additionally, DCRA has the ability to track employees' actions for audit and record purposes.

OIG Inspection Result: Process of Transferring NOI Debt From DCRA to OCFO Was Not Defined.

OIG Recommendation #8: Develop policies and procedures related to the transfer and tracking of NOI debt from DCRA to the CCU.

Agency Response: DCRA agrees with this recommendation in part and, in accordance with the OCFO, follows the District-wide policies and procedures as it relates to the recording, collection, and transfer of delinquent debt to the Office of Finance and Treasury – Central Collections Unit. DCRA will continue to follow those policies and procedures. Here is a link to the OCFO Policies and Procedures Manual:

[https://sharepoint.cfo.in.dc.gov/OFOS/Policies%20and%20Procedures/Financial%20Procedures%20\(Volume%20I%20-%20District%20wide%2011-6-18.pdf](https://sharepoint.cfo.in.dc.gov/OFOS/Policies%20and%20Procedures/Financial%20Procedures%20(Volume%20I%20-%20District%20wide%2011-6-18.pdf)

OIG Recommendation #9: Determine the extent to which the OCFO CCU will collect NOI debt.

Agency Response: The Office of the Chief Financial Officer (OCFO), not DCRA, is the appropriate agency to respond to this recommendation. As noted in the draft report, "OCFO told the OIG it takes no action to collect debt owed to DCRA," though the CCU is entrusted with collecting the District's debts. We certainly agree that outstanding debt should be collected and respectfully suggest that the OIG withhold publication until the CCU implements an effective system for collecting debt transferred from DCRA. Otherwise, violators may avoid payment without fear of consequences.

The opportunity to provide input to this draft report is appreciated. I can be reached at 202-442-8935 or ernest.chrappah@dc.gov should there be any questions or additional information required from DCRA.

